DEPARTMENT OF HEALTH SERVICES (Expedited Rulemaking)
Title 9, Chapter 7

Amend: R9-7-1302, Table 13.1
MEETING DATE: July 6, 2022

TO: Members of the Governor’s Regulatory Review Council (Council)

FROM: Council Staff

DATE: June 13, 2022

SUBJECT: DEPARTMENT OF HEALTH SERVICES (Expeditied Rulemaking)
Title 9, Chapter 7

Amend: R9-7-1302, Table 13.1

Summary:

This expedited rulemaking from the Department of Health Services (Department) seeks to amend two rules in Title 9, Chapter 7, Article 13 related to license and registration fees. Laws 2021, Ch. 409, § 26 requires the Department to reduce revenue generated by the fees specified in Article 13 by $300,000. In this rulemaking, the Department intends to reduce the fees to be charged to categories of licensees and registrants of radiation sources.

Additionally, as part of the review for a Five-Year Review Report, the Department also identified that it is unclear under which category and type of license persons who service devices containing radioactive materials are regulated. The Department indicates these persons are currently licensed under category/type (D)(8) Health Physics Class A, but the rules would be improved by better describing the license type under which they are regulated without changing the fee currently paid by these persons.
1. **Do the rules satisfy the criteria for expedited rulemaking pursuant to A.R.S. § 41-1027(A)?**

   The Department states that these changes are consistent with the purpose for A.R.S. § 41-1027(A) in that this rulemaking does not increase the cost of regulatory compliance, does not increase a fee, or reduce a procedural right of regulated persons. Instead, the Department indicates the rulemaking will not only make the rules compliant with Legislative requirements, but also reduce the regulatory burden of both persons who service devices containing radioactive materials and those who will pay the reduced fees.

   Council staff believes the rules satisfy the criteria for expedited rulemaking pursuant to A.R.S. § 41-1027(A).

2. **Are the rules legal, consistent with legislative intent, and within the agency’s statutory authority?**

   The Department cites both general and specific statutory authority for these rules.

3. **Do the rules establish a new fee or contain a fee increase?**

   This rulemaking does not establish a new fee or contain a fee increase. Instead, this rulemaking reduces fees charged for Category E1-E3 registrations.

4. **Does the agency adequately address the comments on the proposed rules and any supplemental proposals?**

   The Department indicates it did not receive public or stakeholder comments related to this rulemaking.

5. **Are the final rules a substantial change, considered as a whole, from the proposed rules and any supplemental proposals?**

   The Department indicates there were no changes to the rules between the Notice of Proposed Expedited Rulemaking published in the Administrative Register and the Notice of Final Expedited Rulemaking now before the Council.

6. **Are the rules more stringent than corresponding federal law and, if so, is there statutory authority to exceed the requirements of federal law?**

   Not applicable. The Department indicates there is no corresponding federal law directly applicable to the subject of the proposed rulemaking.
7. **Do the rules require a permit or license and, if so, does the agency comply with A.R.S. § 41-1037?**

   Pursuant to A.R.S. § 41-1037(A), if an agency proposes an amendment to an existing rule that requires the issuance of a regulatory permit, license, or agency authorization, the agency shall use a general permit, as defined by A.R.S. § 41-1001(11), if the facilities, activities or practices in the class are substantially similar in nature unless certain exceptions apply.

   The Department indicates, according to A.R.S. Title 30, Chapter 2, Article 2, as amended by Laws 2017, Ch. 313, the Department is authorized to issue licenses and registrations for sources of ionizing radiation and those persons using these sources. The Department states this licensing and registration must be compatible with requirements in the Agreement. The Department indicates the rules refer to permits both general and specific. The general permit applies to certain levels of radioactive material, and specific permits are issued by rule for quantities and uses that are specific to the user and their training or scope of practice.

8. **Does the preamble disclose a reference to any study relevant to the rules that the agency reviewed and either did or did not rely upon?**

   The Department did not review or rely on any study in conducting this rulemaking.

9. **Conclusion**

   The Department seeks to amend two rules to reduce fees to be charged to categories of licensees and registrants of radiation sources and clarify under which category and type of license persons who service devices containing radioactive materials are regulated.

   Pursuant to A.R.S. § 41-1027(H), an expedited rulemaking becomes effective immediately on filing with the Secretary of State.

   Council staff recommends approval of this rulemaking.
VIA EMAIL: grrc@azdoa.gov
Nicole Sornsin, Chair
Governor’s Regulatory Review Council
Arizona Department of Administration
100 N. 15th Avenue, Suite 305
Phoenix, AZ 85007

RE: Department of Health Services, 9 A.A.C. 7, Article 13, Expedited Rulemaking

Dear Ms. Sornsin:

1. **The close of record date: January 3, 2022**

2. **Explanation of how the expedited rule meets the criteria in A.R.S. § 41-1027(A):**
The rulemaking does not increase the cost of regulatory compliance, increase a fee, or reduce procedural rights of regulated persons. In a rulemaking pursuant to Laws 2021, Ch. 409, § 26, the Department is amending the rules to reduce revenue generated by the fees specified in 9 A.A.C. 7, Article 13 by $300,000, and clarifying under which category and type of license persons who service devices containing radioactive materials are regulated. This rulemaking conforms to requirements in A.R.S. § 41-1027(A)(1), (3), and (7).

3. **Whether the rulemaking relates to a five-year-review report and, if applicable, the date the report was approved by the Council:**
Part of the rulemaking for 9 A.A.C. 7, Article 13 relates to a five-year-review report approved by the Council on October 5, 2021.

4. **A list of all items enclosed:**
a. Notice of Final Expedited Rulemaking, including the Preamble, Table of Contents, and text of the rule
b. Statutory authority
c. Current rule
d. Laws 2021, Ch. 409

The Department is requesting that the rules be heard at the Council meeting on July 6, 2022.
I certify that the Preamble of this rulemaking discloses a reference to any study relevant to the rule that the Department reviewed and either did or did not rely on in its evaluation of or justification for the rule.

The Department’s point of contact for questions about the rulemaking documents is Ruthann Smejkal at Ruthann.Smejkal@azdhs.gov.

Sincerely,

Robert Lane
Director’s Designee

RL: rms

Enclosures
NOTICE OF FINAL EXPEDITED RULEMAKING
TITLE 9. HEALTH SERVICES
CHAPTER 7. RADIATION CONTROL

PREAMBLE

1. Article, Part, of Section Affected (as applicable)    Rulemaking Action
   R9-7-1302                Amend
   Table 13.1               Amend

2. Citations to the agency’s statutory authority for the rulemaking to include the authorizing statute (general) and the implementing statute (specific):
   Authorizing Statutes: A.R.S. §§ 30-654(B)(5) and 36-136(G)
   Implementing Statutes: A.R.S. §§ 30-654, 30-656, 30-657, 30-671 through 30-672.01, 30-681 through 30-689, and 30-721

3. The effective date of the rules:
   The rule is effective the day the Notice of Final Expedited Rulemaking is filed with the Office of the Secretary of State.

4. Citations to all related notices published in the Register as specified in R1-1-409(A) that pertain to the record of the proposed expedited rulemaking:
   Notice of Docket Opening: 27 A.A.R. 2866, December 10, 2021
   Notice of Proposed Expedited Rulemaking: 27 A.A.R. 2976, December 24, 2021

5. The agency’s contact person who can answer questions about the rulemaking:
   Name: Brian D. Goretzki, Chief, Bureau of Radiation Control
   Address: Arizona Department of Health Services
            Public Health Licensing Services
            4814 South 40th Street
            Phoenix, AZ  85040
   Telephone: (602) 255-4840
   Fax: (602) 437-0705
   E-mail: Brian.Goretzki@azdhs.gov
            or
   Name: Robert Lane, Chief
   Address: Arizona Department of Health Services
            Office of Administrative Counsel and Rules
6. **An agency's justification and reason why a rule should be made, amended, repealed or renumbered, under A.R.S. § 41-1027, to include an explanation about the rulemaking:**

Arizona Revised Statutes (A.R.S.) § 30-654(B)(5) requires the Arizona Department of Health Services (Department) to make rules deemed necessary to administer A.R.S. Title 30, Chapter 4, Control of Ionizing Radiation. The Department has adopted these rules in A.A.C. Title 9, Chapter 7. Pursuant to A.R.S. § 30-654(B)(17), the Department has established a schedule of fees to be charged to categories of licensees and registrants of radiation sources in Article 13 of the Chapter. Laws 2021, Ch. 409, § 26 requires the Department to reduce revenue generated by the fees specified in Article 13 by $300,000. As part of the review for a five-year-review report fees, the Department has also identified that it is unclear under which category and type of license persons who service devices containing radioactive materials are regulated. These persons are currently licensed under category/type (D)(8) Health Physics Class A, but the rules would be improved by better describing the license type under which they are regulated without changing the fee currently paid by these persons. The Department believes that these changes are consistent with the purpose for A.R.S. § 41-1027 in that this rulemaking does not increase the cost of regulatory compliance, does not increase a fee, or reduce a procedural right of regulated persons. In fact, the rulemaking will not only make the rules compliant with Legislative requirements, but also reduce the regulatory burden of both persons who service devices containing radioactive materials and those who will pay the reduced fees.

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

The Department did not review or rely on any study for this rulemaking.

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

Not applicable

9. **A summary of the economic, small business, and consumer impact:**
Under A.R.S. § 41-1055(D)(2), the Department is not required to provide an economic, small business, and consumer impact statement.

10. **A description of any changes between the proposed expedited rulemaking, including supplemental notices, and the final expedited rulemaking:**

   Between the proposed expedited rulemaking and the final expedited rulemaking, no changes were made to the rulemaking.

11. **Agency's summary of the public or stakeholder comments or objections made about the rulemaking and the agency response to the comments:**

   The Department did not receive public or stakeholder comments about the rulemaking.

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

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

   According to A.R.S. Title 30, Chapter 2, Article 2, as amended by Laws 2017, Ch. 313, the Department is authorized to issue licenses and registrations for sources of ionizing radiation and those persons using these sources. This licensing and registration must be compatible with requirements in the Agreement. The rules refer to permits both general and specific. The general permit applies to certain levels of radioactive material, and specific permits are issued by rule for quantities and uses that are specific to the user and their training or scope of practice.

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

   These rules rely on statutory authority from state statutes, not from federal regulations.

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

   No such analysis was submitted.

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

   In R9-7-1302(D)(11): 10 CFR 61, revised January 1, 2015

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

The rule was not previously made as an emergency rule.

15. The full text of the rule follows:
ARTICLE 13. LICENSE AND REGISTRATION FEES

R9-7-1302. License and Registration Categories

A. Category A licenses are those specific licenses that authorize a school, college, university, or other teaching facility to possess and use radioactive materials for instructional or research purposes.
1. A broad academic class A license is any category A license that meets the specifications of R9-7-310(A)(1).
2. A broad academic class B license is any category A license other than a broad academic class A license that meets the specifications of R9-7-310(A)(2).
3. A broad academic class C license is any category A license other than a broad academic class A or B license that meets the specifications of R9-7-310(A)(3).
4. A limited academic license is any category A license that authorizes only those radioisotopes, forms, and quantities individually specified in the license.

B. Category B licenses are those specific or general licenses that authorize the application of radioactive material or the radiation from it to a human being for medical diagnostic, therapeutic, or research purposes, or the use of radioactive material in medical laboratory testing. Except for a type B6, general medical license, the Department shall not combine a category B license with a license of any other category.
1. A broad medical license is any category B license that meets the specifications of R9-7-310(A)(1) and meets the requirements of 9 A.A.C. 7, Article 7. A broad medical license may authorize any medical use other than teletherapy.
2. A medical materials class A license is any specific category B license other than a broad medical license, that authorizes the use of radiopharmaceuticals and sealed sources containing radioactive materials for a therapeutic purpose in quantities that require hospitalization of the patient for radiation safety purposes. The license may authorize other radioactive materials and other medical uses, except teletherapy.
3. A medical materials class B license is any specific category B license that authorizes the diagnostic or therapeutic use, other than teletherapy, of radioactive materials only in limited quantities such that the patient need not be hospitalized for radiation safety purposes.
4. A medical materials class C license is any specific category B license that authorizes possession of specified radioisotopes only in the form of sealed sources for treatment of the eye or skin or for use in diagnostic medical imaging devices.
5. A medical teletherapy license is a specific category B license that solely authorizes radioisotopes in the form of multi-curie sealed sources for use in external beam therapy. The Department shall not combine a medical teletherapy license with any other type of category B license.

6. A general medical license is one that authorizes the use of radioactive material pursuant to R9-7-306(D) or R9-7-306(E). A general medical license may be combined into a broad medical, medical materials class A, or medical materials class B license.

C. Category C licenses are those specific or general licenses that authorize the use of radioactive materials in any activity other than those authorized by a category A, B, or D license. Except as specifically authorized in this Section, the Department shall not combine a category C license with any other type of license.

1. A broad industrial class A license is any category C license that meets the specifications of R9-7-310(A)(1). The Department may combine a broad industrial class A license with any other category C license except industrial radiography, open field irradiator, or well logging licenses.

2. A broad industrial class B license is any category C license other than a broad industrial class A license that meets the specifications of R9-7-310(A)(2). The Department may combine a broad industrial class B license with any other category C license except industrial radiography, open field irradiator, or well logging licenses.

3. A broad industrial class C license is any category C license other than a broad industrial class A or B license that meets the specifications of R9-7-310(A)(3). The Department may combine a broad industrial class C license with any other category C license except industrial radiography, open field irradiator, or well logging licenses.

4. A limited industrial license is a specific category C license that authorizes the possession of the radioactive materials authorized in R9-7-305(A), or R9-7-306(A), (C), or (F) for uses authorized in those subsections, but in quantities greater than authorized by those subsections.

5. A portable gauge license is a specific category C license that authorizes radioactive materials in the form of sealed sources for use in measuring or gauging devices designed and manufactured to be transported to the location of use. The Department may combine a portable gauge license with any broad scope industrial license or a fixed gauge class A license.

6. A fixed gauge class A license is a specific category C license that authorizes the possession of 50 or more measuring or gauging devices containing radioactive materials,
A fixed gauge class B license is a specific category C license that authorizes the possession of 1 through 49 measuring or gauging devices containing radioactive materials, where each device is permanently mounted for use at a single location.

A leak detector license is a specific category C license that authorizes the use of radioisotopes in the form of a gas to test hermetic seals on electronic packages.

A gas chromatograph license is a specific category C license that authorizes the use of radioactive materials as ionization sources in gas chromatography or electron capture devices.

A general industrial license is one that authorizes the use of a material, source, or device generally licensed pursuant to R9-7-305 or R9-7-306, except R9-7-305(B), R9-7-306(D), or R9-7-306(E).

An industrial radiography class A license is a specific category C license that authorizes industrial radiography using sealed radioisotope sources at specific facilities identified in the license conditions or at temporary field job sites.

An industrial radiography class B license is a specific category C license that authorizes industrial radiography using sealed radioisotope sources only at specific facilities identified in the license conditions.

An open field irradiator license is a specific category C license that authorizes the use of radioisotopes in the form of sealed sources not permanently mounted within a shielding container, for irradiation of materials.

A self-shielded irradiator license is a specific category C license that authorizes the use of radioisotopes in the form of sealed sources for irradiation of materials in a shielding device from which the sources are not removed during irradiation. The Department may combine a self-shielded irradiator license with any broad license.

A well logging license is a specific category C license that authorizes the use of radioactive material in sealed or unsealed sources for wireline services or field tracer studies.

A research and development license is a specific category C license that authorizes a licensee to utilize radioactive material in unsealed and sealed form for industrial, scientific, or biomedical research, not including administration of radiation or radioactive material to human beings.

A laboratory license is a specific category C license that authorizes a licensee to perform specific in-vitro or in-vivo medical or veterinary testing, while possessing quantities of
radioactive material greater than the general license quantities authorized in R9-7-306.

D. Category D licenses are the following specific or general radioactive material licenses. Except for type D4, general industrial; type D5, depleted uranium; type D8 and D9, health physics; and type D14, additional facilities licenses, the Department shall not combine a category D license with any other license.

1. A distribution license is one that authorizes the commercial distribution of radioactive materials or radioisotopes in products to persons holding an appropriate general or specific license. The Department shall ensure that a distribution license does not:
   a. Authorize distribution of radiopharmaceuticals or distribution to persons exempt from regulatory control, or
   b. Authorize any other use of the radioactive material. An appropriate category C license is required for possession of radioisotopes and their incorporation into products.

2. A nuclear pharmacy license is one that authorizes the preparation, compounding, packaging, or dispensing of radiopharmaceuticals for use by other licensees.

3. A nuclear laundry license is one that authorizes the collection and cleaning of items contaminated with radioactive materials.

4. A general industrial gauging device license is one that authorizes the use of a gauging device in accordance with R9-7-306(A). The Department may combine a general industrial gauging device license with a class A, B, or C broad industrial, limited industrial, portable gauge, or class A or B fixed gauge license.

5. A general depleted uranium license is one that authorizes the use of the general license authorized pursuant to R9-7-305(C) or the use of depleted uranium as a concentrated mass or as shielding for another radiation source within a device or machine. The Department may combine a general depleted uranium license with a medical teletherapy; class A, B, or C broad industrial; portable gauge; class A or B fixed gauge; class A or B industrial radiography; or self-shielded irradiator license. For licensing purposes, an applicant shall follow the requirements in R9-7-305(C).

6. A veterinary medicine license is one that authorizes the use of radioactive materials for specific applications in veterinary medicine as authorized in the license.

7. A general veterinary medicine license is one that authorizes the use of the general license authorized in R9-7-306(E) in veterinary medicine.

8. A health physics class A license is one that authorizes the use of radioactive materials for performing instrument calibrations, processing leak test or environmental samples, or
providing radiation dosimetry services or the performance of maintenance on devices containing radioactive materials.

9. A health physics class B license is one that authorizes only the collection, possession, and transfer of radioactive materials in the form of leak test samples for processing by others.

10. A secondary uranium recovery license is one that authorizes the extraction of natural uranium or thorium from an ore stream or tailing that is being or has been processed primarily for the extraction of another mineral. The Department shall not combine a secondary uranium recovery license with any other license.

11. A low-level, radioactive waste disposal facility license is a license that is issued for a “disposal facility,” as that term is used in R9-7-439 and R9-7-442, that has a closure or long-term care plan and is constructed and operated according to the requirements in 10 CFR 61, revised January 1, 2015, incorporated by reference, available under R9-7-101 and containing no future editions or amendments.

12. A waste processor class A license is one that authorizes the incineration, compaction, repackaging, or any other treatment or processing of low-level radioactive waste prior to transfer to another person authorized to receive or dispose of the waste. The Department shall not combine a waste processor class A license with any other license.

13. A waste processor class B license is one that authorizes a waste broker to receive prepackaged, low-level radioactive waste from other licensees; combine the waste into shipments; and transfer the waste without treating or processing the waste in any manner and without repackaging except to place damaged or leaking packages into overpacks. The Department shall not combine a waste processor class B license with any other license.

14. An additional storage and use site license is an endorsement, by license condition to an existing specific license, authorizing one or more additional separate facilities where radioactive material may be stored or used for a period exceeding six months.

15. A possession-only license is a license of any other category that authorizes only the possession in storage, but no use of, the authorized materials. A license that has been suspended as an enforcement action is not considered a possession-only license.

16. A reciprocal license is the general license authorized by R9-7-320. This license is subject to a special fee as provided by R9-7-1306(C) but is exempt from annual fees.

17. Reserved

18. An “unclassified” radioactive material license is one that authorizes radioisotopes, physical or chemical forms, possession limits, or uses not included in any other type of
license specified in this Section.

19. A NORM commercial disposal site license is one that authorizes the receipt of waste material contaminated with naturally occurring radioactive material from other licensees for permanent disposal, provided the concentration of the radioactive material does not exceed 74kBq (2,000 picocuries)/gram.

E. Category E registrations are those that register the possession of x-ray machine(s) under 9 A.A.C. 7, Article 2. The Department shall not combine category E registrations with any other registration.

1. An X-ray machine class A registration is one authorizing the possession of X-ray machines in a hospital or other facility offering inpatient care.
2. An X-ray machine class B registration is one authorizing the possession of X-ray machines in a medical, osteopathic, or chiropractic office or clinic not offering inpatient care; or the possession of X-ray machines in a school, college, university, or other teaching facility.
3. An X-ray machine class C registration is one authorizing the possession of X-ray machines in dental, podiatry, or veterinarian offices or clinics.
4. An industrial radiation machine registration is one authorizing the possession of X-ray machines, or the possession of particle accelerators not capable of producing a high radiation area, in a nonmedical facility.
5. An accelerator facility registration is one authorizing the possession and operation of one or more particle accelerators of any kind capable of accelerating any particle and producing a high radiation area.
6. An “other” ionizing radiation machine registration is one authorizing possession or use of an ionizing radiation machine not included in any other category specified in subsection (E).

F. Category F registrations are those that register non-ionizing radiation producing sources regulated under 9 A.A.C. 7, Article 14. The Department shall not combine category F registrations with any other registration categories that have a difference in fee per unit.

1. A tanning registration authorizes the commercial operation of one or more tanning booths, beds, cabinets, or other devices in a single establishment.
2. A Class A laser registration authorizes the operation of one to 10 laser devices subject to R9-7-1433.
3. A Class B laser registration authorizes the operation of 11 to 49 laser devices subject to R9-7-1433.
4. A Class C laser registration authorizes operation of 50 or more laser devices subject to R9-7-1433.
5. A laser light show or laser demonstration registration authorizes the operation of a laser device subject to R9-7-1441.
6. A medical laser registration authorizes the operation of one or more laser devices subject to R9-7-1440.
7. A Class II surgical device registration authorizes the operation of one or more Class II surgical devices subject to R9-7-1438. A device is designated as a Class II surgical device by the USFDA and is labeled as such by the manufacturer.
8. A cosmetic radiofrequency device registration authorizes the operation of one or more medical radiofrequency devices for non-ionizing cosmetic procedures.
9. A class A industrial radiofrequency device registration authorizes the operation of one to five radiofrequency devices.
10. A class B industrial radiofrequency device registration authorizes the operation of six to 20 radiofrequency devices.
11. A class C industrial radiofrequency device registration authorizes the operation more than 20 radiofrequency devices.
12. A medical radiofrequency device registration authorizes the operation of one or more medical radiofrequency devices for non-ionizing, non-cosmetic procedures.
13. An “other” non-ionizing radiation device registration authorizes the operation of a non-ionizing radiation device or other device not included in any other category specified in subsection (F).
<table>
<thead>
<tr>
<th>Category</th>
<th>Type</th>
<th>Application/Annual Fee</th>
</tr>
</thead>
<tbody>
<tr>
<td>A1</td>
<td>Broad academic class A</td>
<td>$10,000</td>
</tr>
<tr>
<td>A2</td>
<td>Broad academic class B</td>
<td>$10,000</td>
</tr>
<tr>
<td>A3</td>
<td>Broad academic class C</td>
<td>$10,000</td>
</tr>
<tr>
<td>A4</td>
<td>Limited academic</td>
<td>$2,500</td>
</tr>
<tr>
<td>B1</td>
<td>Broad medical</td>
<td>$20,000</td>
</tr>
<tr>
<td>B2</td>
<td>Medical materials class A</td>
<td>$4,000</td>
</tr>
<tr>
<td>B3</td>
<td>Medical materials class B</td>
<td>$4,000</td>
</tr>
<tr>
<td>B4</td>
<td>Medical materials class C</td>
<td>$4,000</td>
</tr>
<tr>
<td>B5</td>
<td>Medical teletherapy</td>
<td>$8,000</td>
</tr>
<tr>
<td>B6</td>
<td>General medical</td>
<td>$500</td>
</tr>
<tr>
<td>C1</td>
<td>Broad industrial class A</td>
<td>$20,000</td>
</tr>
<tr>
<td>C2</td>
<td>Broad industrial class B</td>
<td>$20,000</td>
</tr>
<tr>
<td>C3</td>
<td>Broad industrial class C</td>
<td>$6,000</td>
</tr>
<tr>
<td>C4</td>
<td>Limited industrial</td>
<td>$1,500</td>
</tr>
<tr>
<td>C5</td>
<td>Portable gauge</td>
<td>$2,000</td>
</tr>
<tr>
<td>C6</td>
<td>Fixed gauge class A</td>
<td>$2,000</td>
</tr>
<tr>
<td>C7</td>
<td>Fixed gauge class B</td>
<td>$2,000</td>
</tr>
<tr>
<td>C8</td>
<td>Leak detector</td>
<td>$2,000</td>
</tr>
<tr>
<td>C9</td>
<td>Gas chromatograph</td>
<td>$2,000</td>
</tr>
<tr>
<td>C10</td>
<td>General industrial</td>
<td>$300</td>
</tr>
<tr>
<td>C11</td>
<td>Industrial radiography class A</td>
<td>$10,000</td>
</tr>
<tr>
<td>C12</td>
<td>Industrial radiography class B</td>
<td>$10,000</td>
</tr>
<tr>
<td>C13</td>
<td>Open field irradiator</td>
<td>$10,000</td>
</tr>
<tr>
<td>C14</td>
<td>Shelf-shielded irradiator</td>
<td>$5,000</td>
</tr>
<tr>
<td>C15</td>
<td>Well logging</td>
<td>$5,000</td>
</tr>
<tr>
<td>C16</td>
<td>Research and development</td>
<td>$5,000</td>
</tr>
<tr>
<td>C17</td>
<td>Laboratory</td>
<td>$3,000</td>
</tr>
<tr>
<td>D1</td>
<td>Distribution</td>
<td>$5,000</td>
</tr>
<tr>
<td>D2</td>
<td>Nuclear pharmacy</td>
<td>$10,000</td>
</tr>
<tr>
<td>D3</td>
<td>Nuclear laundry</td>
<td>$25,000</td>
</tr>
<tr>
<td>D4</td>
<td>General industrial gauging device</td>
<td>$500</td>
</tr>
<tr>
<td>D5</td>
<td>General depleted uranium</td>
<td>$200</td>
</tr>
<tr>
<td>D6</td>
<td>Veterinary medicine</td>
<td>$2,000</td>
</tr>
<tr>
<td>D7</td>
<td>General veterinary medicine</td>
<td>$500</td>
</tr>
<tr>
<td>D8</td>
<td>Health physics class A</td>
<td>$5,000</td>
</tr>
<tr>
<td>D9</td>
<td>Health physics class B</td>
<td>$3,000</td>
</tr>
<tr>
<td>D10</td>
<td>Secondary uranium recovery</td>
<td>$8,000</td>
</tr>
<tr>
<td>D11</td>
<td>Low-level radioactive waste disposal facility</td>
<td>According to R9-7-1306(B)</td>
</tr>
<tr>
<td>D12</td>
<td>Waste processor class A</td>
<td>$10,000</td>
</tr>
<tr>
<td>D13</td>
<td>Waste processor class B</td>
<td>$8,000</td>
</tr>
<tr>
<td>D14</td>
<td>Additional storage and use site</td>
<td>30% of the applicable fee for each additional site</td>
</tr>
<tr>
<td>-----</td>
<td>--------------------------------</td>
<td>-----------------------------------------------</td>
</tr>
<tr>
<td>D15</td>
<td>Possession-only</td>
<td>50% of the applicable fee for the category under which storage will occur</td>
</tr>
<tr>
<td>D16</td>
<td>Reciprocal</td>
<td>According to R9-7-1306(C)</td>
</tr>
<tr>
<td>D17</td>
<td>Reserved</td>
<td></td>
</tr>
<tr>
<td>D18</td>
<td>Unclassified radioactive material</td>
<td>Full Cost, according to R9-7-1306(D) or (E)</td>
</tr>
<tr>
<td>D19</td>
<td>NORM commercial disposal site</td>
<td>$600,000</td>
</tr>
<tr>
<td>E1</td>
<td>X-ray machine class A (per tube)</td>
<td>$195, $145</td>
</tr>
<tr>
<td>E2</td>
<td>X-ray machine class B (per tube)</td>
<td>$145, $95</td>
</tr>
<tr>
<td>E3</td>
<td>X-ray machine class C (per tube)</td>
<td>$95, $90</td>
</tr>
<tr>
<td>E4</td>
<td>Industrial radiation machine (per device)</td>
<td>$95</td>
</tr>
<tr>
<td>E5</td>
<td>Accelerator facility</td>
<td>$2,500</td>
</tr>
<tr>
<td>E6</td>
<td>Other ionizing radiation machine</td>
<td>Full Cost, according to R9-7-1306(D) or (E)</td>
</tr>
<tr>
<td>F1</td>
<td>Tanning device (per device)</td>
<td>$50</td>
</tr>
<tr>
<td>F2</td>
<td>Class A laser (1 to 10 laser devices)</td>
<td>$300</td>
</tr>
<tr>
<td>F3</td>
<td>Class B laser (11 to 49 laser devices)</td>
<td>$600</td>
</tr>
<tr>
<td>F4</td>
<td>Class C laser (50 or more laser devices)</td>
<td>$1,000</td>
</tr>
<tr>
<td>F5</td>
<td>Laser light show or laser demonstration</td>
<td>$500</td>
</tr>
<tr>
<td>F6</td>
<td>Medical laser (per laser device)</td>
<td>$100</td>
</tr>
<tr>
<td>F7</td>
<td>Class II surgical device (per device)</td>
<td>$100</td>
</tr>
<tr>
<td>F8</td>
<td>Cosmetic radiofrequency device (per device)</td>
<td>$100</td>
</tr>
<tr>
<td>F9</td>
<td>Class A industrial (1 to 5 radiofrequency devices)</td>
<td>$150</td>
</tr>
<tr>
<td>F10</td>
<td>Class B industrial (6 to 20 radiofrequency devices)</td>
<td>$350</td>
</tr>
<tr>
<td>F11</td>
<td>Class C industrial (more than 20 radiofrequency devices)</td>
<td>$600</td>
</tr>
<tr>
<td>F12</td>
<td>Medical radiofrequency (one or more device)</td>
<td>$100</td>
</tr>
<tr>
<td>F13</td>
<td>Other non-ionizing radiation device</td>
<td>Full Cost, according to R9-7-1306(D) or (E)</td>
</tr>
</tbody>
</table>
ARTICLE 13. LICENSE AND REGISTRATION FEES

Section
R9-7-1301. Definition
R9-7-1302. License and Registration Categories
R9-7-1303. Fee for Initial License and Initial Registration
R9-7-1304. Annual Fees for Licenses and Registrations
R9-7-1305. Method of Payment
R9-7-1306. Application Fees and Annual Fees
R9-7-1308. Fee for Requested Inspections
R9-7-1309. Abandonment of License or Registration Application

Table 13.1. Table of Fees
Table 13.2. Small Entity Fees
ARTICLE 13. LICENSE AND REGISTRATION FEES

R9-7-1301. Definition
“Combined” means the Department has granted authorized activities contained in two or more license
types in a single license document, requiring the payment of a single license fee for the more expensive
license of the planned combination.

R9-7-1302. License and Registration Categories
A. Category A licenses are those specific licenses that authorize a school, college, university, or
other teaching facility to possess and use radioactive materials for instructional or research
purposes.
   1. A broad academic class A license is any category A license that meets the specifications
      of R9-7-310(A)(1).
   2. A broad academic class B license is any category A license other than a broad academic
      class A license that meets the specifications of R9-7-310(A)(2).
   3. A broad academic class C license is any category A license other than a broad academic
      class A or B license that meets the specifications of R9-7-310(A)(3).
   4. A limited academic license is any category A license that authorizes only those
      radioisotopes, forms, and quantities individually specified in the license.

B. Category B licenses are those specific or general licenses that authorize the application of
radioactive material or the radiation from it to a human being for medical diagnostic, therapeutic,
or research purposes, or the use of radioactive material in medical laboratory testing. Except for a
type B6, general medical license, the Department shall not combine a category B license with a
license of any other category.
   1. A broad medical license is any category B license that meets the specifications of
      R9-7-310(A)(1) and meets the requirements of 9 A.A.C. 7, Article 7. A broad medical
      license may authorize any medical use other than teletherapy.
   2. A medical materials class A license is any specific category B license other than a broad
      medical license, that authorizes the use of radiopharmaceuticals and sealed sources
      containing radioactive materials for a therapeutic purpose in quantities that require
      hospitalization of the patient for radiation safety purposes. The license may authorize
      other radioactive materials and other medical uses, except teletherapy.
   3. A medical materials class B license is any specific category B license that authorizes the
      diagnostic or therapeutic use, other than teletherapy, of radioactive materials only in
      limited quantities such that the patient need not be hospitalized for radiation safety
purposes.
4. A medical materials class C license is any specific category B license that authorizes possession of specified radioisotopes only in the form of sealed sources for treatment of the eye or skin or for use in diagnostic medical imaging devices.
5. A medical teletherapy license is a specific category B license that solely authorizes radioisotopes in the form of multi-curie sealed sources for use in external beam therapy. The Department shall not combine a medical teletherapy license with any other type of category B license.
6. A general medical license is one that authorizes the use of radioactive material pursuant to R9-7-306(D) or R9-7-306(E). A general medical license may be combined into a broad medical, medical materials class A, or medical materials class B license.

C. Category C licenses are those specific or general licenses that authorize the use of radioactive materials in any activity other than those authorized by a category A, B, or D license. Except as specifically authorized in this Section, the Department shall not combine a category C license with any other type of license.

1. A broad industrial class A license is any category C license that meets the specifications of R9-7-310(A)(1). The Department may combine a broad industrial class A license with any other category C license except industrial radiography, open field irradiator, or well logging licenses.
2. A broad industrial class B license is any category C license other than a broad industrial class A license that meets the specifications of R9-7-310(A)(2). The Department may combine a broad industrial class B license with any other category C license except industrial radiography, open field irradiator, or well logging licenses.
3. A broad industrial class C license is any category C license other than a broad industrial class A or B license that meets the specifications of R9-7-310(A)(3). The Department may combine a broad industrial class C license with any other category C license except industrial radiography, open field irradiator, or well logging licenses.
4. A limited industrial license is a specific category C license that authorizes the possession of the radioactive materials authorized in R9-7-305(A), or R9-7-306(A), (C), or (F) for uses authorized in those subsections, but in quantities greater than authorized by those subsections.
5. A portable gauge license is a specific category C license that authorizes radioactive materials in the form of sealed sources for use in measuring or gauging devices designed and manufactured to be transported to the location of use. The Department may combine a
portable gauge license with any broad scope industrial license or a fixed gauge class A license.

6. A fixed gauge class A license is a specific category C license that authorizes the possession of 50 or more measuring or gauging devices containing radioactive materials, where each device is permanently mounted for use at a single location.

7. A fixed gauge class B license is a specific category C license that authorizes the possession of 1 through 49 measuring or gauging devices containing radioactive materials, where each device is permanently mounted for use at a single location.

8. A leak detector license is a specific category C license that authorizes the use of radioisotopes in the form of a gas to test hermetic seals on electronic packages.

9. A gas chromatograph license is a specific category C license that authorizes the use of radioactive materials as ionization sources in gas chromatography or electron capture devices.

10. A general industrial license is one that authorizes the use of a material, source, or device generally licensed pursuant to R9-7-305 or R9-7-306, except R9-7-305(B), R9-7-306(D), or R9-7-306(E).

11. An industrial radiography class A license is a specific category C license that authorizes industrial radiography using sealed radioisotope sources at specific facilities identified in the license conditions or at temporary field job sites.

12. An industrial radiography class B license is a specific category C license that authorizes industrial radiography using sealed radioisotope sources only at specific facilities identified in the license conditions.

13. An open field irradiator license is a specific category C license that authorizes the use of radioisotopes in the form of sealed sources not permanently mounted within a shielding container, for irradiation of materials.

14. A self-shielded irradiator license is a specific category C license that authorizes the use of radioisotopes in the form of sealed sources for irradiation of materials in a shielding device from which the sources are not removed during irradiation. The Department may combine a self-shielded irradiator license with any broad license.

15. A well logging license is a specific category C license that authorizes the use of radioactive material in sealed or unsealed sources for wireline services or field tracer studies.

16. A research and development license is a specific category C license that authorizes a licensee to utilize radioactive material in unsealed and sealed form for industrial, scientific, or biomedical research, not including administration of radiation or radioactive material to
human beings.

17. A laboratory license is a specific category C license that authorizes a licensee to perform specific in-vitro or in-vivo medical or veterinary testing, while possessing quantities of radioactive material greater than the general license quantities authorized in R9-7-306.

D. Category D licenses are the following specific or general radioactive material licenses. Except for type D4, general industrial; type D5, depleted uranium; type D8 and D9, health physics; and type D14, additional facilities licenses, the Department shall not combine a category D license with any other license.

1. A distribution license is one that authorizes the commercial distribution of radioactive materials or radioisotopes in products to persons holding an appropriate general or specific license. The Department shall ensure that a distribution license does not:
   a. Authorize distribution of radiopharmaceuticals or distribution to persons exempt from regulatory control, or
   b. Authorize any other use of the radioactive material. An appropriate category C license is required for possession of radioisotopes and their incorporation into products.

2. A nuclear pharmacy license is one that authorizes the preparation, compounding, packaging, or dispensing of radiopharmaceuticals for use by other licensees.

3. A nuclear laundry license is one that authorizes the collection and cleaning of items contaminated with radioactive materials.

4. A general industrial gauging device license is one that authorizes the use of a gauging device in accordance with R9-7-306(A). The Department may combine a general industrial gauging device license with a class A, B, or C broad industrial, limited industrial, portable gauge, or class A or B fixed gauge license.

5. A general depleted uranium license is one that authorizes the use of the general license authorized pursuant to R9-7-305(C) or the use of depleted uranium as a concentrated mass or as shielding for another radiation source within a device or machine. The Department may combine a general depleted uranium license with a medical teletherapy; class A, B, or C broad industrial; portable gauge; class A or B fixed gauge; class A or B industrial radiography; or self-shielded irradiator license. For licensing purposes, an applicant shall follow the requirements in R9-7-305(C).

6. A veterinary medicine license is one that authorizes the use of radioactive materials for specific applications in veterinary medicine as authorized in the license.

7. A general veterinary medicine license is one that authorizes the use of the general license
authorized in R9-7-306(E) in veterinary medicine.

8. A health physics class A license is one that authorizes the use of radioactive materials for performing instrument calibrations, processing leak test or environmental samples, or providing radiation dosimetry services.

9. A health physics class B license is one that authorizes only the collection, possession, and transfer of radioactive materials in the form of leak test samples for processing by others.

10. A secondary uranium recovery license is one that authorizes the extraction of natural uranium or thorium from an ore stream or tailing that is being or has been processed primarily for the extraction of another mineral. The Department shall not combine a secondary uranium recovery license with any other license.

11. A low-level, radioactive waste disposal facility license is a license that is issued for a “disposal facility,” as that term is used in R9-7-439 and R9-7-442, that has a closure or long-term care plan and is constructed and operated according to the requirements in 10 CFR 61, revised January 1, 2015, incorporated by reference, available under R9-7-101 and containing no future editions or amendments.

12. A waste processor class A license is one that authorizes the incineration, compaction, repackaging, or any other treatment or processing of low-level radioactive waste prior to transfer to another person authorized to receive or dispose of the waste. The Department shall not combine a waste processor class A license with any other license.

13. A waste processor class B license is one that authorizes a waste broker to receive prepackaged, low-level radioactive waste from other licensees; combine the waste into shipments; and transfer the waste without treating or processing the waste in any manner and without repackaging except to place damaged or leaking packages into overpacks. The Department shall not combine a waste processor class B license with any other license.

14. An additional storage and use site license is an endorsement, by license condition to an existing specific license, authorizing one or more additional separate facilities where radioactive material may be stored or used for a period exceeding six months.

15. A possession-only license is a license of any other category that authorizes only the possession in storage, but no use of, the authorized materials. A license that has been suspended as an enforcement action is not considered a possession-only license.

16. A reciprocal license is the general license authorized by R9-7-320. This license is subject to a special fee as provided by R9-7-1306(C) but is exempt from annual fees.

17. Reserved
18. An “unclassified” radioactive material license is one that authorizes radioisotopes, physical or chemical forms, possession limits, or uses not included in any other type of license specified in this Section.

19. A NORM commercial disposal site license is one that authorizes the receipt of waste material contaminated with naturally occurring radioactive material from other licensees for permanent disposal, provided the concentration of the radioactive material does not exceed 74kBq (2,000 picocuries)/gram.

E. Category E registrations are those that register the possession of x-ray machine(s) under 9 A.A.C. 7, Article 2. The Department shall not combine category E registrations with any other registration.
   1. An X-ray machine class A registration is one authorizing the possession of X-ray machines in a hospital or other facility offering inpatient care.
   2. An X-ray machine class B registration is one authorizing the possession of X-ray machines in a medical, osteopathic, or chiropractic office or clinic not offering inpatient care; or the possession of X-ray machines in a school, college, university, or other teaching facility.
   3. An X-ray machine class C registration is one authorizing the possession of X-ray machines in dental, podiatry, or veterinarian offices or clinics.
   4. An industrial radiation machine registration is one authorizing the possession of X-ray machines, or the possession of particle accelerators not capable of producing a high radiation area, in a nonmedical facility.
   5. An accelerator facility registration is one authorizing the possession and operation of one or more particle accelerators of any kind capable of accelerating any particle and producing a high radiation area.
   6. An “other” ionizing radiation machine registration is one authorizing possession or use of an ionizing radiation machine not included in any other category specified in subsection (E).

F. Category F registrations are those that register non-ionizing radiation producing sources regulated under 9 A.A.C. 7, Article 14. The Department shall not combine category F registrations with any other registration categories that have a difference in fee per unit.
   1. A tanning registration authorizes the commercial operation of one or more tanning booths, beds, cabinets, or other devices in a single establishment.
   2. A Class A laser registration authorizes the operation of one to 10 laser devices subject to R9-7-1433.
   3. A Class B laser registration authorizes the operation of 11 to 49 laser devices subject to R9-7-1433.
   4. A Class C laser registration authorizes operation of 50 or more laser devices subject to
5. A laser light show or laser demonstration registration authorizes the operation of a laser device subject to R9-7-1441.

6. A medical laser registration authorizes the operation of one or more laser devices subject to R9-7-1440.

7. A Class II surgical device registration authorizes the operation of one or more Class II surgical devices subject to R9-7-1438. A device is designated as a Class II surgical device by the USFDA and is labeled as such by the manufacturer.

8. A cosmetic radiofrequency device registration authorizes the operation of one or more medical radiofrequency devices for non-ionizing cosmetic procedures.

9. A class A industrial radiofrequency device registration authorizes the operation of one to five radiofrequency devices.

10. A class B industrial radiofrequency device registration authorizes the operation of six to 20 radiofrequency devices.

11. A class C industrial radiofrequency device registration authorizes the operation more than 20 radiofrequency devices.

12. A medical radiofrequency device registration authorizes the operation of one or more medical radiofrequency devices for non-ionizing, non-cosmetic procedures.

13. An “other” non-ionizing radiation device registration authorizes the operation of a non-ionizing radiation device or other device not included in any other category specified in subsection (F).

R9-7-1303. Fee for Initial License and Initial Registration
An applicant shall remit for a new license or new registration the appropriate fee as prescribed in R9-7-1306 and Table 13.1. Table of Fees.

R9-7-1304. Annual Fees for Licenses and Registrations
A. Each license or registration issued by the Department shall identify the category by a letter and number corresponding to the appropriate subsection of R9-7-1302 or the category and type listed in Table 13.1. Table of Fees.

B. Except as specified in R9-7-1306(C), (D), and (E), each licensee or registrant shall submit payment of the annual fee in the amount prescribed in Table 13.1 Table of Fees on or before January 1 of each year. This single annual fee will cover any and all renewals, amendments, and regular inspections of the license during the forthcoming calendar year.
C. If a licensee or registrant fails to pay the annual fee by January 1, the license is not current.
D. If a licensee or registrant fails to pay the annual fee by April 1, the Department shall apply administrative sanction provisions of Article 12 of this Chapter.
E. A licensee who is required to pay an annual fee under this Article may qualify as a small entity and pay the reduced annual fee in Table 13.2 if the licensee has the following characteristics:
   1. For a business not engaged in manufacturing or a not-for-profit organization, having a three-year average of gross annual receipts of $6.5 million or less;
   2. For an entity engaged in manufacturing, having an annual average of no more than 500 employees;
   3. For a government jurisdiction, not including publicly supported educational institutions, having no more than 50,000 residents in the jurisdiction;
   4. For a publicly supported educational institution, having no more than 50,000 faculty, staff, and students; and
   5. For an educational institution that is not publicly supported, having no more than 500 faculty and staff.
F. A licensee who seeks to establish status as a small entity for the purpose of paying an annual fee in Table 13.2, rather than the annual fee in Table 13.1, shall file with the Department a certification statement annually on Department Form 333, accessed through the Department website at https://azdhs.gov/documents/licensing/radiation-regulatory/forms/ram-small-entity-form.pdf, for each license under which the licensee is billed.
G. If a licensee qualifies as a small entity and provides the Department with the certification required in subsection (F), the licensee may pay the applicable reduced annual fee shown in Table 13.2.

Small Entity Fees. Failure to file a small entity certification, according to subsection (F), in a timely manner may result in the licensee being required to pay the applicable fee in Table 13.1.

Table of Fees.
R9-7-1305. Method of Payment
A. An applicant licensee or registrant shall pay fees by check or money order, payable to the “State of Arizona” at the address shown on the application, license, registration, or renewal notice.
B. Once a license or registration has been issued, no portion of the application fee or any annual fee will be refunded.

R9-7-1306. Application Fees and Annual Fees
A. The application fee or annual fee for each category and type is shown in Table 13.1. Table of Fees.
B. The fee for a category D11 license, for a low-level radioactive waste disposal site, is $6,000,000 for years one through five. Based on data gathered during the first five years, the Department shall set a reasonable fee after consideration of the following factors:
   1. Unrecovered costs that the Department may charge under A.R.S. § 30-654(B)(18), and
   2. Actual costs incurred by the Department in regulating the licensee.

C. The fee for a category D16 license, providing reciprocal recognition under R9-7-320 of a radioactive materials license issued by the NRC or another Agreement state, is half of the annual fee for an Arizona license of the appropriate category and type. If there is no Arizona license of the appropriate category and type, the Department shall assess the “Full Cost” fee according to subsection (D) or (E), as applicable. The fee is due and payable at the time reciprocity is requested, and the general license does not become current until the fee is paid.

D. “Full Cost” for an application fee is based on professional personnel time for preparation, travel, onsite inspection, any reports, review of findings, and preparation of the license or registration or denial charged at $99 per hour and mileage charged at 44.5¢ per mile. The Department shall assess the licensee or registrant 90% of the estimated full cost of issuing the license or registration. The Department will assess for any remaining costs when it is prepared to issue the license, registration, denial, or if Department costs for the requested activity exceed $10,000.

E. “Full Cost” for an annual fee is based on professional personnel time for preparation, travel, onsite inspection, preparation of reports, review of findings, and preparation for any inspections or completion of any amendments to the license, registration or denials charged at $99 per hour and mileage charged at 44.5¢ per mile for the preceding 12 months.

R9-7-1308. Fee for Requested Inspections

A. A licensee or registrant may request an inspection of its facility at any time. The Department shall assess the licensee or registrant the full cost of the inspection, based on personnel time for preparation, travel, onsite inspection, review of findings, and preparation of a report, charged at $99 per hour and mileage charged at 44.5¢ per mile.

B. The fee specified in this Section does not apply to:
   1. Regular inspections as scheduled by the Department,
   2. Enforcement reinspections conducted to ensure the correction of violations or safety hazards, or
   3. Inspections requested by workers pursuant to R9-7-1007.

R9-7-1309. Abandonment of License or Registration Application
A. Any license or registration application for which the applicant has been provided a written notification of deficiencies in the application and for which the applicant does not make a written attempt to supply the requested information or request an extension in writing within 90 days of the date of the written notice of deficiencies, is considered abandoned and will not be processed.

B. If an applicant does not act in the time-frame specified in subsection (A), the applicant shall submit a new application with the appropriate fee.

Table 13.1. Table of Fees

<table>
<thead>
<tr>
<th>Category</th>
<th>Type</th>
<th>Application/Annual Fee</th>
</tr>
</thead>
<tbody>
<tr>
<td>A1</td>
<td>Broad academic class A</td>
<td>$10,000</td>
</tr>
<tr>
<td>A2</td>
<td>Broad academic class B</td>
<td>$10,000</td>
</tr>
<tr>
<td>A3</td>
<td>Broad academic class C</td>
<td>$10,000</td>
</tr>
<tr>
<td>A4</td>
<td>Limited academic</td>
<td>$2,500</td>
</tr>
<tr>
<td>B1</td>
<td>Broad medical</td>
<td>$20,000</td>
</tr>
<tr>
<td>B2</td>
<td>Medical materials class A</td>
<td>$4,000</td>
</tr>
<tr>
<td>B3</td>
<td>Medical materials class B</td>
<td>$4,000</td>
</tr>
<tr>
<td>B4</td>
<td>Medical materials class C</td>
<td>$4,000</td>
</tr>
<tr>
<td>B5</td>
<td>Medical teletherapy</td>
<td>$8,000</td>
</tr>
<tr>
<td>B6</td>
<td>General medical</td>
<td>$500</td>
</tr>
<tr>
<td>C1</td>
<td>Broad industrial class A</td>
<td>$20,000</td>
</tr>
<tr>
<td>C2</td>
<td>Broad industrial class B</td>
<td>$20,000</td>
</tr>
<tr>
<td>C3</td>
<td>Broad industrial class C</td>
<td>$6,000</td>
</tr>
<tr>
<td>C4</td>
<td>Limited industrial</td>
<td>$1,500</td>
</tr>
<tr>
<td>C5</td>
<td>Portable gauge</td>
<td>$2,000</td>
</tr>
<tr>
<td>C6</td>
<td>Fixed gauge class A</td>
<td>$2,000</td>
</tr>
<tr>
<td>C7</td>
<td>Fixed gauge class B</td>
<td>$2,000</td>
</tr>
<tr>
<td>C8</td>
<td>Leak detector</td>
<td>$2,000</td>
</tr>
<tr>
<td>C9</td>
<td>Gas chromatograph</td>
<td>$2,000</td>
</tr>
<tr>
<td>C10</td>
<td>General industrial</td>
<td>$300</td>
</tr>
<tr>
<td>C11</td>
<td>Industrial radiography class A</td>
<td>$10,000</td>
</tr>
<tr>
<td>C12</td>
<td>Industrial radiography class B</td>
<td>$10,000</td>
</tr>
<tr>
<td>C13</td>
<td>Open field irradiator</td>
<td>$10,000</td>
</tr>
<tr>
<td>C14</td>
<td>Shelf-shielded irradiator</td>
<td>$5,000</td>
</tr>
<tr>
<td>C15</td>
<td>Well logging</td>
<td>$5,000</td>
</tr>
<tr>
<td>C16</td>
<td>Research and development</td>
<td>$5,000</td>
</tr>
<tr>
<td>C17</td>
<td>Laboratory</td>
<td>$3,000</td>
</tr>
<tr>
<td>D1</td>
<td>Distribution</td>
<td>$5,000</td>
</tr>
<tr>
<td>D2</td>
<td>Nuclear pharmacy</td>
<td>$10,000</td>
</tr>
<tr>
<td>D3</td>
<td>Nuclear laundry</td>
<td>$25,000</td>
</tr>
<tr>
<td>D4</td>
<td>General industrial gauging device</td>
<td>$500</td>
</tr>
<tr>
<td>D5</td>
<td>General depleted uranium</td>
<td>$200</td>
</tr>
</tbody>
</table>
Table 13.2. Small Entity Fees

| Licensee qualifying as a small entity under R9-7-1304(E)(1) |
|---------------------------------|------------------|
| Gross Annual Receipts | Fee |
| $350,000 to $6.5 million | $2,200 |
| < $350,000 | $500 |

| Licensee qualifying as a small entity under R9-7-1304(E)(2) |
|---------------------------------|------------------|
| Number of Employees | Fee |
| [Details not visible] | [Details not visible] |

<p>| D6      | Veterinary medicine | $2,000 |
| D7      | General veterinary medicine | $500 |
| D8      | Health physics class A | $5,000 |
| D9      | Health physics class B | $3,000 |
| D10     | Secondary uranium recovery | $8,000 |
| D11     | Low-level radioactive waste disposal facility | According to R9-7-1306(B) |
| D12     | Waste processor class A | $10,000 |
| D13     | Waste processor class B | $8,000 |
| D14     | Additional storage and use site | 30% of the applicable fee for each additional site |
| D15     | Possession-only | 50% of the applicable fee for the category under which storage will occur |
| D16     | Reciprocal | According to R9-7-1306(C) |
| D17     | Reserved | |
| D18     | Unclassified radioactive material | Full Cost, according to R9-7-1306(D) or (E) |
| D19     | NORM commercial disposal site | $600,000 |
| E1      | X-ray machine class A (per tube) | $195 |
| E2      | X-ray machine class B (per tube) | $145 |
| E3      | X-ray machine class C (per tube) | $95 |
| E4      | Industrial radiation machine (per device) | $95 |
| E5      | Accelerator facility | $2,500 |
| E6      | Other ionizing radiation machine | Full Cost, according to R9-7-1306(D) or (E) |
| F1      | Tanning device (per device) | $50 |
| F2      | Class A laser (1 to 10 laser devices) | $300 |
| F3      | Class B laser (11 to 49 laser devices) | $600 |
| F4      | Class C laser (50 or more laser devices) | $1,000 |
| F5      | Laser light show or laser demonstration | $500 |
| F6      | Medical laser (per laser device) | $100 |
| F7      | Class II surgical device (per device) | $100 |
| F8      | Cosmetic radiofrequency device (per device) | $100 |
| F9      | Class A industrial (1 to 5 radiofrequency devices) | $150 |
| F10     | Class B industrial (6 to 20 radiofrequency devices) | $350 |
| F11     | Class C industrial (more than 20 radiofrequency devices) | $600 |
| F12     | Medical radiofrequency (one or more device) | $100 |
| F13     | Other non-ionizing radiation device | Full Cost, according to R9-7-1306(D) or (E) |</p>
<table>
<thead>
<tr>
<th>Licensee qualifying as a small entity under R9-7-1304(E)(3)</th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Number of Residents</strong></td>
<td><strong>Fee</strong></td>
</tr>
<tr>
<td>20,000 to 50,000</td>
<td>$2,200</td>
</tr>
<tr>
<td>&lt;20,000</td>
<td>$500</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Licensee qualifying as a small entity under R9-7-1304(E)(4)</th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Number of Faculty, Staff, and Students</strong></td>
<td><strong>Fee</strong></td>
</tr>
<tr>
<td>20,000 to 50,000</td>
<td>$2,200</td>
</tr>
<tr>
<td>&lt;20,000</td>
<td>$500</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Licensee qualifying as a small entity under R9-7-1304(E)(5)</th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Number of Faculty and Staff</strong></td>
<td><strong>Fee</strong></td>
</tr>
<tr>
<td>35 to 500 employees</td>
<td>$2,200</td>
</tr>
<tr>
<td>&lt;35 employees</td>
<td>$500</td>
</tr>
</tbody>
</table>
30-654. Powers and duties of the department

A. The department may:

1. Accept grants or other contributions from the federal government or other sources, public or private, to be used by the department to carry out any of the purposes of this chapter.

2. Do all things necessary, within the limitations of this chapter, to carry out the powers and duties of the department.

3. Conduct an information program, including:
   (a) Providing information on the control and regulation of sources of radiation and related health and safety matters, on request, to members of the legislature, the executive offices, state departments and agencies and county and municipal governments.
   (b) Providing such published information, audiovisual presentations, exhibits and speakers on the control and regulation of sources of radiation and related health and safety matters to the state’s educational system at all educational levels as may be arranged.
   (c) Furnishing to citizen groups, on request, speakers and such audiovisual presentations or published materials on the control and regulation of sources of radiation and related health and safety matters as may be available.
   (d) Conducting, sponsoring or cosponsoring and actively participating in the professional meetings, symposia, workshops, forums and other group informational activities concerned with the control and regulation of sources of radiation and related health and safety matters when representation from this state at such meetings is determined to be important by the department.

B. The department shall:

1. Regulate the use, storage and disposal of sources of radiation.

2. Establish procedures for purposes of selecting any proposed permanent disposal site located within this state for low-level radioactive waste.

3. Coordinate with the department of transportation and the corporation commission in regulating the transportation of sources of radiation.

4. Assume primary responsibility for and provide necessary technical assistance to handle any incidents, accidents and emergencies involving radiation or sources of radiation occurring within this state.

5. Adopt rules deemed necessary to administer this chapter in accordance with title 41, chapter 6.

6. Adopt uniform radiation protection and radiation dose standards to be as nearly as possible in conformity with, and in no case inconsistent with, the standards contained in the regulations of the United States nuclear regulatory commission and the standards of the United States public health service. In the adoption of the standards, the department shall consider the total occupational radiation exposure of individuals, including that from sources that are not regulated by the department.

7. Adopt rules for personnel monitoring under the close supervision of technically competent people in order to determine compliance with safety rules adopted under this chapter.

8. Adopt a uniform system of labels, signs and symbols and the posting of the labels, signs and symbols to be affixed to radioactive products, especially those transferred from person to person.

9. By rule, require adequate training and experience of persons using sources of radiation with respect to the hazards of excessive exposure to radiation in order to protect health and safety.

10. Adopt standards for the storage of radioactive material and for security against unauthorized removal.

11. Adopt standards for the disposal of radioactive materials into the air, water and sewers and burial in the soil in accordance with 10 Code of Federal Regulations part 20.
12. Adopt rules that are applicable to the shipment of radioactive materials in conformity with and compatible with those established by the United States nuclear regulatory commission, the department of transportation, the United States department of the treasury and the United States postal service.

13. In individual cases, impose additional requirements to protect health and safety or grant necessary exemptions that will not jeopardize health or safety, or both.

14. Make recommendations to the governor and furnish such technical advice as required on matters relating to the utilization and regulation of sources of radiation.

15. Conduct or cause to be conducted off-site radiological environmental monitoring of the air, water and soil surrounding any fixed nuclear facility, any uranium milling and tailing site and any uranium leaching operation, and maintain and report the data or results obtained by the monitoring as deemed appropriate by the department.

16. Develop and utilize information resources concerning radiation and radioactive sources.

17. Prescribe by rule a schedule of fees to be charged to categories of licensees and registrants of radiation sources, including academic, medical, industrial, waste, distribution and imaging categories. The fees shall cover a significant portion of the reasonable costs associated with processing the application for license or registration, renewal or amendment of the license or registration and the costs of inspecting the licensee or registrant activities and facilities, including the cost to the department of employing clerical help, consultants and persons possessing technical expertise and using analytical instrumentation and information processing systems.

18. Adopt rules establishing radiological standards, personnel standards and quality assurance programs to ensure the accuracy and safety of screening and diagnostic mammography.

C. The department shall deposit, pursuant to sections 35-146 and 35-147, the first $300,000 in fees collected each fiscal year pursuant to subsection B, paragraph 17 of this section and section 32-2805 in the state general fund. The department shall deposit, pursuant to sections 35-146 and 35-147, ninety percent of the remaining monies received from fees collected pursuant to subsection B, paragraph 17 of this section and section 32-2805 in the health services licensing fund established by section 36-414 and ten percent of the remaining monies received from fees collected pursuant to subsection B, paragraph 17 of this section and section 32-2805 in the state general fund.

30-656. Authority for governor to enter into agreements with federal government; effect on federal licenses

A. The governor, on behalf of this state, may enter into agreements with the federal government providing for discontinuance of certain of the federal government's responsibilities with respect to sources of radiation and the assumption of the responsibilities by this state.

B. Any person that, on the effective date of an agreement entered into under subsection A of this section, possesses a license issued by the federal government shall be deemed to possess a like license issued under this chapter, which shall expire either ninety days after receipt from the department of a notice of expiration of the license or on the date of expiration specified in the federal license, whichever is earlier.

30-671. Radiation protection standards

A. Radiation protection standards in rules adopted by the department under this chapter do not limit the kind or amount of radiation that may be intentionally applied to a person or animal for diagnostic or therapeutic purposes by or under the direction of a licensed practitioner of the healing arts.

B. Radiation sources shall be registered, licensed or exempted at the discretion of the department.

30-672. Licensing and registration of sources of radiation; exemptions

A. The department by rule shall provide for general or specific licensing of by-product, source, special nuclear materials or devices or equipment using those materials. The department shall require from the applicant satisfactory evidence that the applicant is using methods and techniques that are demonstrated to be safe and that the applicant is familiar with the rules adopted by the department under section 30-654, subsection B, paragraph 5 relative to uniform radiation standards, total occupational radiation exposure norms, labels, signs
and symbols, storage, waste disposal and shipment of radioactive materials. The department may require that, before it issues a license, the employees or other personnel of an applicant who may deal with sources of radiation receive a course of instruction approved by the department concerning department rules. The department shall require that the applicant's proposed equipment and facilities be adequate to protect health and safety and that the applicant's proposed administrative controls over the use of the sources of radiation requested be adequate to protect health and safety.

B. The department may require registration or licensing of other sources of radiation if deemed necessary to protect public health or safety.

C. The department may exempt certain sources of radiation or kinds of uses or users from the licensing or registration requirements set forth in this section if it finds that exempting such sources of radiation or kinds of uses or users will not constitute a significant risk to the health and safety of the public.

D. The director may suspend or revoke, in whole or in part, any license issued under subsection A of this section if the licensee or an officer, agent or employee of the licensee:

1. Violates this chapter or rules of the department adopted pursuant to this chapter.

2. Has been, is or may continue to be in substantial violation of the requirements for licensure of the radiation source and as a result the health or safety of the general public is in immediate danger.

E. If the licensee, or an officer, agent or employee of the licensee, refuses to allow the department or its employees or agents to inspect the licensee's premises, such an action shall be deemed reasonable cause to believe that a substantial violation under subsection D, paragraph 2 of this section exists.

F. A license may not be suspended or revoked under this chapter without affording the licensee notice and an opportunity for a hearing as provided in title 41, chapter 6, article 10.

G. The department shall not require persons who are licensed in this state to practice as a dentist, physician assistant, chiropodist or veterinarian or licensed in this state to practice medicine, surgery, osteopathic medicine, chiropractic or naturopathic medicine to obtain any other license to use a diagnostic x-ray machine, but these persons are governed by their own licensing acts.

H. Persons who are licensed by the federal communications commission with respect to the activities for which they are licensed by that commission are exempt from this chapter.

I. Rules adopted pursuant to this chapter may provide for recognition of other state or federal licenses as the department deems desirable, subject to such registration requirements as the department prescribes.

J. Any licenses issued by the department shall state the nature, use and extent of use of the source of radiation. If at any time after a license is issued the licensee desires any change in the nature, use or extent, the licensee shall seek an amendment or a new license under this section.

K. The department shall prescribe by rule requirements for financial security as a condition for licensure under this article. The department shall deposit all amounts posted, paid or forfeited as financial security in the radiation regulatory and perpetual care fund established by section 30-694.

L. Persons applying for licensure shall provide notice to the city or town where the applicant proposes to operate as part of the application process.

M. Any facility that provides diagnostic or screening mammography examinations by or under the direction of a person who is exempt from further licensure under subsection G of this section shall obtain certification by the department. The department shall prescribe by rule the requirements of certification in order to ensure the accuracy and safety of diagnostic and screening mammography.

30-686. Appeal; hearing

A person who is denied licensure or registration under article 2 of this chapter or who is denied an exception from licensure or registration under article 2 of this chapter may appeal the denial by making a written request for a hearing pursuant to title 41, chapter 6, article 10. The department shall give notice of such an action pursuant to title 41, chapter 6, article 10, and the notice shall state the person’s right to make a written request for a hearing.
Adoption and text of compact

The southwestern low-level radioactive waste disposal compact is adopted and enacted into law as follows:

Article 1.

Compact Policy and Formation

The party states hereby find and declare all of the following:

(A) The United States Congress, by enacting the low-level radioactive waste policy act, Public Law 96-573, as amended by the low-level radioactive waste policy amendments act of 1985 (42 U.S.C. sec. 2021b to 2021j, incl.), has encouraged the use of interstate compacts to provide for the establishment and operation of facilities for regional management of low-level radioactive waste.

(B) It is the purpose of this compact to provide the means for such a cooperative effort between or among party states to protect the citizens of the states and the states' environments.

(C) It is the policy of party states to this compact to encourage the reduction of the volume of low-level radioactive waste requiring disposal within the compact region.

(D) It is the policy of the party states that the protection of the health and safety of their citizens and the most ecological and economical management of low-level radioactive wastes can be accomplished through cooperation of the states by minimizing the amount of handling and transportation required to dispose of these wastes and by providing facilities that serve the compact region.

(E) Each party state, if an agreement state pursuant to section 2021 of title 42 of the United States Code, or the nuclear regulatory commission if not an agreement state, is responsible for the primary regulation of radioactive materials within its jurisdiction.

Article 2.

Definitions

As used in this compact, unless the context clearly indicates otherwise, the following definitions apply:

(A) "Commission" means the southwestern low-level radioactive waste commission established in article 3 of this compact.

(B) "Compact region" or "region" means the combined geographical area within the boundaries of the party states.

(C) "Disposal" means the permanent isolation of low-level radioactive waste pursuant to requirements established by the nuclear regulatory commission and the environmental protection agency under applicable laws, or by a party state if that state hosts a disposal facility.

(D) "Generate," when used in relation to low-level radioactive waste, means to produce low-level radioactive waste.

(E) "Generator" means a person whose activity, excluding the management of low-level radioactive waste, results in the production of low-level radioactive waste.

(F) "Host county" means a county, or other similar political subdivision of a party state, in which a regional disposal facility is located or being developed.

(G) "Host state" means a party state in which a regional disposal facility is located or being developed. The state of California is the host state under this compact for the first thirty years from the date the California regional disposal facility commences operations.

(H) "Institutional control period" means that period of time in which the facility license is transferred to the disposal site owner in compliance with the appropriate regulations for long-term observation and maintenance following the postclosure period.

(I) "Low-level radioactive waste" means regulated radioactive material that meets all of the following requirements:
The waste is not high-level radioactive waste, spent nuclear fuel, or by-product material (as defined in section 11e(2) of the atomic energy act of 1954 (42 U.S.C. sec. 2014(e)(2))).

The waste is not uranium mining or mill tailings.

The waste is not any waste for which the federal government is responsible pursuant to subdivision (b) of section 3 of the low-level radioactive waste policy amendments act of 1985 (42 U.S.C. sec. 2021c(b)).

The waste is not an alpha emitting transuranic nuclide with a half-life greater than five years and with a concentration greater than one hundred nanocuries per gram, or plutonium-241 with a concentration greater than three thousand five hundred nanocuries per gram, or curium-242 with a concentration greater than twenty thousand nanocuries per gram.

"Management" means collection, consolidation, storage, packaging, or treatment.

"Major generator state" means a party state which generates ten per cent of the total amount of low-level radioactive waste produced within the compact region and disposed of at the regional disposal facility. If no party state other than California generates at least ten per cent of the total amount, "major generator state" means the party state which is second to California in the amount of waste produced within the compact region and disposed of at the regional disposal facility.

"Operator" means a person who operates a regional disposal facility.

"Party state" means any state that has become a party in accordance with article 7 of this compact.

"Person" means an individual, corporation, partnership, or other legal entity, whether public or private.

"Postclosure period" means that period of time after completion of closure of a disposal facility during which the licensee shall observe, monitor, and carry out necessary maintenance and repairs at the disposal facility to assure that the disposal facility will remain stable and will not need ongoing active maintenance. This period ends with the beginning of the institutional control period.

"Regional disposal facility" means a nonfederal low-level radioactive waste disposal facility established and operated under this compact.

"Site closure and stabilization" means the activities of the disposal facility operator taken at the end of the disposal facility's operating life to assure the continued protection of the public from any residual radioactive or other potential hazards present at the disposal facility.

"Transporter" means a person who transports low-level radioactive waste.

"Uranium mine and mill tailings" means waste resulting from mining and processing of ores containing uranium.

Article 3.

The Commission

There is hereby established the southwestern low-level radioactive waste commission.

(1) The commission shall consist of one voting member from each party state to be appointed by the governor, confirmed by the senate of that party state, and to serve at the pleasure of the governor of each party state, and one voting member from the host county. The appointing authority of each party state shall notify the commission in writing of the identity of the member and of any alternates. An alternate may act in the member's absence.

(2) The host state shall also appoint that number of additional voting members of the commission which is necessary for the host state's members to compose at least fifty-one per cent of the membership on the commission. The host state's additional members shall be appointed by the host state governor and confirmed by the host state senate. If there is more than one host state, only the state in which is located the regional disposal facility actively accepting low-level radioactive waste pursuant to this compact may appoint these additional members.

(3) If the host county has not been selected at the time the commission is appointed, the governor of the host state shall appoint an interim local government member, who shall be an elected representative of a local government of one of the party states.
government. After a host county is selected, the interim local government member shall resign and the governor shall appoint the host county member pursuant to paragraph (4).

(4) The governor shall appoint the host county member from a list of at least seven candidates compiled by the board of supervisors of the host county.

(5) In recommending and appointing the host county member pursuant to paragraph (4), the board of supervisors and the governor shall give first consideration to recommending and appointing the member of the board of supervisors in whose district the regional disposal facility is located or being developed. If the board of supervisors of the host county does not provide a list to the governor of at least seven candidates from which to choose, the governor shall appoint a resident of the host county as the host county member.

(6) The host county member is subject to confirmation by the senate of that party state and shall serve at the pleasure of the governor of the host state.

(B) The commission is a legal entity separate and distinct from the party states and shall be so liable for its actions. Members of the commission shall not be personally liable for actions taken in their official capacity. The liabilities of the commission shall not be deemed liabilities of the party states.

(C) The commission shall conduct its business affairs pursuant to the laws of the host state and disputes arising out of commission action shall be governed by the laws of the host state. The commission shall be located in the capital city of the host state in which the regional disposal facility is located.

(D) The commission's records shall be subject to the host state's public records law, and the meetings of the commission shall be open and public in accordance with the host state's open meeting law.

(E) The commission members are public officials of the appointing state and shall be subject to the conflict of interest laws, as well as any other law, of the appointing state. The commission members shall be compensated according to the appointing state's law.

(F) Each commission member is entitled to one vote. A majority of the commission constitutes a quorum. Unless otherwise provided in this compact, a majority of the total number of votes on the commission is necessary for the commission to take any action.

(G) The commission has all of the following duties and authority:

(1) The commission shall do, pursuant to the authority granted by this compact, whatever is reasonably necessary to ensure that low-level radioactive wastes are safely disposed of and managed within the region.

(2) The commission shall meet at least once a year and otherwise as business requires.

(3) The commission shall establish a compact surcharge to be imposed upon party state generators. The surcharge shall be based upon the cubic feet of low-level radioactive waste and the radioactivity of the low-level radioactive waste and shall be collected by the operator of the disposal facility. The host state shall set, and the commission shall impose, the surcharge after congressional approval of the compact. The amount of the surcharge shall be sufficient to establish and maintain at a reasonable level funds for all of the following purposes:

(a) The activities of the commission and commission staff.

(b) At the discretion of the host state, a third-party liability fund to provide compensation for injury to persons or property during the operational, closure, stabilization, and postclosure and institutional control periods of the regional disposal facility. This subparagraph does not limit the responsibility or liability of the operator, who shall comply with any federal or host state statutes or regulations regarding third-party liability claims.

(c) A local government reimbursement fund, for the purpose of reimbursing the local government entity or entities hosting the regional disposal facility for any costs or increased burdens on the local governmental entity for services, including, but not limited to, general fund expenses, the improvement and maintenance of roads and bridges, fire protection, law enforcement, monitoring by local health officials, and emergency preparation and response related to the hosting of the regional disposal facility.
(4) The surcharges imposed by the commission for purposes of subparagraphs (b) and (c) of paragraph (3) and surcharges pursuant to paragraph (3) of subdivision (E) of article 4 shall be transmitted on a monthly basis to the host state for distribution to the proper accounts.

(5) The commission shall establish a fiscal year which conforms to the fiscal years of the party states to the extent possible.

(6) The commission shall keep an accurate account of all receipts and disbursements. An annual audit of the books of the commission shall be conducted by an independent certified public accountant, and the audit report shall be made a part of the annual report of the commission.

(7) The commission shall prepare and include in the annual report a budget showing anticipated receipts and disbursements for the subsequent fiscal year.

(8) The commission may accept any grants, equipment, supplies, materials, or services, conditional or otherwise, from the federal or state government. The nature, amount and condition, if any, of any donation, grant, or other resources accepted pursuant to this paragraph and the identity of the donor or grantor shall be detailed in the annual report of the commission. However, the host state shall receive, for the uses specified in subparagraph (E) of paragraph (2) of subsection (d) of section 2021e of title 42 of the United States Code, any payments paid from the special escrow account for which the secretary of energy is trustee pursuant to subparagraph (A) of paragraph (2) of subsection (d) of section 2021e of title 42 of the United States Code.

(9) The commission shall submit communications to the governors and to the presiding officers of the legislatures of the party states regarding the activities of the commission, including an annual report to be submitted on or before January 15 of each year. The commission shall include in the annual report a review of, and recommendations for, low-level radioactive waste disposal methods which are alternative technologies to the shallow land burial of low-level radioactive waste.

(10) The commission shall assemble and make available to the party states, and to the public, information concerning low-level radioactive waste management needs, technologies, and problems.

(11) The commission shall keep a current inventory of all generators within the region, based upon information provided by the party states.

(12) The commission shall keep a current inventory of all regional disposal facilities, including information on the size, capacity, location, specific low-level radioactive wastes capable of being managed, and the projected useful life of each regional disposal facility.

(13) The commission may establish advisory committees for the purpose of advising the commission on the disposal and management of low-level radioactive waste.

(14) The commission may enter into contracts to carry out its duties and authority, subject to projected resources. No contract made by the commission shall bind a party state.

(15) The commission shall prepare contingency plans, with the cooperation and approval of the host state, for the disposal and management of low-level radioactive waste in the event that any regional disposal facility should be closed.

(16) The commission may sue and be sued and, when authorized by a majority vote of the members, may seek to intervene in an administrative or judicial proceeding related to this compact.

(17) The commission shall be managed by an appropriate staff, including an executive director. Notwithstanding any other provision of law, the commission may hire or retain, or both, legal counsel.

(18) The commission may, subject to applicable federal and state laws, recommend to the appropriate host state authority suitable land and rail transportation routes for low-level radioactive waste carriers.

(19) The commission may enter into an agreement to import low-level radioactive waste into the region only if both of the following requirements are met:

(a) The commission approves the importation agreement by a two-thirds vote of the commission.
(b) The commission and the host state assess the affected regional disposal facilities' capability to handle imported low-level radioactive wastes and any relevant environmental or economic factors, as defined by the host state's appropriate regulatory authorities.

(20) The commission may, upon petition, allow an individual generator, a group of generators, or the host state of the compact, to export low-level radioactive wastes to a low-level radioactive waste disposal facility located outside the region. The commission may approve the petition only by a two-thirds vote of the commission. The permission to export low-level radioactive wastes shall be effective for that period of time and for the amount of low-level radioactive waste, and subject to any other term or condition, which may be determined by the commission.

(21) The commission may approve, only by a two-thirds vote of the commission, the exportation outside the region of material, which otherwise meets the criteria of low-level radioactive waste, if the sole purpose of the exportation is to process the material for recycling.

(22) The commission shall, not later than ten years before the closure of the initial or subsequent regional disposal facility, prepare a plan for the establishment of the next regional disposal facility.

Article 4.

Rights, Responsibilities, and Obligations of Party States

(A) There shall be regional disposal facilities sufficient to dispose of the low-level radioactive waste generated within the region.

(B) Low-level radioactive waste generated within the region shall be disposed of at regional disposal facilities and each party state shall have access to any regional disposal facility without discrimination.

(C) (1) Upon the effective date of this compact, the state of California shall serve as the host state and shall comply with the requirements of subdivision (E) for at least thirty years from the date the regional disposal facility begins to accept low-level radioactive waste for disposal. The extension of the obligation and duration shall be at the option of the state of California. If the state of California does not extend this obligation, the party state, other than the state of California, which is the largest major generator state shall then serve as the host state for the second regional disposal facility. The obligation of a host state which hosts the second regional disposal facility shall also run for thirty years from the date the second regional disposal facility begins operations.

(2) The host state may close its regional disposal facility when necessary for public health or safety.

(D) The party states of this compact cannot be members of another regional low-level radioactive waste compact entered into pursuant to the low-level radioactive waste policy act, as amended by the low-level radioactive waste policy amendments act of 1985 (42 U.S.C. secs. 2021b to 2021j, incl.).

(E) A host state shall do all of the following:

(1) Cause a regional disposal facility to be developed on a timely basis.

(2) Ensure by law, consistent with any applicable federal laws, the protection and preservation of public health and safety in the siting, design, development, licensing, regulation, operation, closure, decommissioning, and long-term care of the regional disposal facilities within the state.

(3) Ensure that charges for disposal of low-level radioactive waste at the regional disposal facility are reasonably sufficient to do all of the following:

(a) Ensure the safe disposal of low-level radioactive waste and long-term care of the regional disposal facility.

(b) Pay for the cost of inspection, enforcement, and surveillance activities at the regional disposal facility.

(c) Assure that charges are assessed without discrimination as to the party state of origin.

(4) Submit an annual report to the commission on the status of the regional disposal facility including projections of the facility's anticipated future capacity.

(5) The host state and the operator shall notify the commission immediately upon the occurrence of any event which could cause a possible temporary or permanent closure of a regional disposal facility.
(F) Each party state is subject to the following duties and authority:

(1) To the extent authorized by federal law, each party state shall develop and enforce procedures requiring low-level radioactive waste shipments originating within its borders and destined for a regional disposal facility to conform to packaging and transportation requirements and regulations. These procedures shall include, but are not limited to, all of the following requirements:

(a) Periodic inspections of packaging and shipping practices.
(b) Periodic inspections of low-level radioactive waste containers while in the custody of transporters.
(c) Appropriate enforcement actions with respect to violations.

(2) A party state may impose a surcharge on the low-level radioactive waste generators within the state to pay for activities required by paragraph (1).

(3) To the extent authorized by federal law, each party state shall, after receiving notification from a host state that a person in a party state has violated packaging, shipping, or transportation requirements or regulations, take appropriate actions to ensure that these violations do not continue. Appropriate actions may include, but are not limited to, requiring that a bond be posted by the violator to pay the cost of repackaging at the regional disposal facility and prohibit future shipments to the regional disposal facility.

(4) Each party state shall maintain a registry of all generators within the state that may have low-level radioactive waste to be disposed of at a regional disposal facility, including, but not limited to, the amount of low-level radioactive waste and the class of low-level radioactive waste generated by each generator.

(5) Each party state shall encourage generators within its borders to minimize the volume of low-level radioactive waste requiring disposal.

(6) Each party state may rely on the good faith performance of the other party states to perform those acts which are required by this compact to provide regional disposal facilities, including the use of the regional disposal facilities in a manner consistent with this compact.

(7) Each party state shall provide the commission with any data and information necessary for the implementation of the commission's responsibilities, including taking those actions necessary to obtain this data or information.

(8) Each party state shall agree that only low-level radioactive waste generated within the jurisdiction of the party states shall be disposed of in the regional disposal facility, except as provided in paragraph (19) of subdivision (G) of article 3.

(9) Each party state shall agree that if there is any injury to persons or property resulting from the operation of a regional disposal facility, the damages resulting from the injury may be paid from the third-party liability fund pursuant to subparagraph (b) of paragraph (3) of subdivision (G) of article 3, only to the extent that the damages exceed the limits of liability insurance carried by the operator. No party state, by joining this compact, assumes any liability resulting from the siting, operation, maintenance, long-term care, or other activity relating to a regional facility, and no party state shall be liable for any harm or damage resulting from a regional facility not located within the state.

Article 5.
Approval of Regional Facilities

A regional disposal facility shall be approved by the host state in accordance with its laws. This compact does not confer any authority on the commission regarding the siting, design, development, licensure, or other regulation, or the operation, closure, decommissioning, or long-term care of, any regional disposal facility within a party state.

Article 6.
Prohibited Acts and Penalties

(A) No person shall dispose of low-level radioactive waste within the region unless the disposal is at a regional disposal facility, except as otherwise provided in paragraphs (20) and (21) of subdivision (G) of article 3.
(B) No person shall dispose of or manage any low-level radioactive waste within the region unless the low-level radioactive waste was generated within the region, except as provided in paragraphs (19), (20), and (21) of subdivision (G) of article 3.

(C) Violations of this section shall be reported to the appropriate law enforcement agency within the party state’s jurisdiction.

(D) Violations of this section may result in prohibiting the violator from disposing of low-level radioactive waste in the regional disposal facility, as determined by the commission or the host state.

Article 7.

Eligibility, Entry into Effect, Congressional Consent, Withdrawal, Exclusion

(A) The states of Arizona, North Dakota, South Dakota, and California are eligible to become parties to this compact. Any other state may be made eligible by a majority vote of the commission and ratification by the legislatures of all of the party states by statute, and upon compliance with those terms and conditions for eligibility which the host state may establish. The host state may establish all terms and conditions for the entry of any state, other than the states named in this subparagraph, as a member of this compact.

(B) Upon compliance with the other provisions of this compact, an eligible state may become a party state by legislative enactment of this compact or by executive order of the governor of the state adopting this compact. A state becoming a party state by executive order shall cease to be a party state upon adjournment of the first general session of its legislature convened after the executive order is issued, unless before the adjournment the legislature enacts this compact.

(C) A party state, other than the host state, may withdraw from the compact by repealing the enactment of this compact, but this withdrawal shall not become effective until two years after the effective date of the repealing legislation. If a party state which is a major generator of low-level radioactive waste voluntarily withdraws from the compact pursuant to this subdivision, that state shall make arrangements for the disposal of the other party states’ low-level radioactive waste for a time period equal the period of time it was a member of this compact. If the host state withdraws from the compact, the withdrawal shall not become effective until five years after the effective date of the repealing legislation.

(D) A party state may be excluded from this compact by a two-thirds vote of the commission members, acting in a meeting, if the state to be excluded has failed to carry out any obligations required by compact.

(E) This compact shall take effect upon the enactment by statute by the legislatures of the state of California and at least one other eligible state and upon the consent of Congress and shall remain in effect until otherwise provided by federal law. This compact is subject to review by Congress and the withdrawal of the consent of Congress every five years after its effective date, pursuant to federal law.

Article 8.

Construction and Severability

(A) The provisions of this compact shall be broadly construed to carry out the purposes of the compact, but the sovereign powers of a party state shall not be infringed unnecessarily.

(B) This compact does not affect any judicial proceeding pending on the effective date of this compact.

(C) If any provision of this compact or the application thereof to any person or circumstances is held invalid, that invalidity shall not affect other provisions or applications of the compact which can be given effect without the invalid provision or application, and to this end the provisions of this compact are severable.

(D) Nothing in this compact diminishes or otherwise impairs the jurisdiction, authority, or discretion of either of the following:

(1) The nuclear regulatory commission pursuant to the atomic energy act of 1954, as amended (42 U.S.C. sec. 2011 et seq.).


(E) Nothing in this compact confers any new authority on the states or commission to do any of the following:
(1) Regulate the packaging or transportation of low-level radioactive waste in a manner inconsistent with the regulations of the nuclear regulatory commission or the United States department of transportation.

(2) Regulate health, safety, or environmental hazards from source, by-product, or special nuclear material.

(3) Inspect the activities of licensees of the agreement states or of the nuclear regulatory commission.

36-136. **Powers and duties of director; compensation of personnel; rules; definitions**

A. The director shall:

1. Be the executive officer of the department of health services and the state registrar of vital statistics but shall not receive compensation for services as registrar.

2. Perform all duties necessary to carry out the functions and responsibilities of the department.

3. Prescribe the organization of the department. The director shall appoint or remove personnel as necessary for the efficient work of the department and shall prescribe the duties of all personnel. The director may abolish any office or position in the department that the director believes is unnecessary.

4. Administer and enforce the laws relating to health and sanitation and the rules of the department.

5. Provide for the examination of any premises if the director has reasonable cause to believe that on the premises there exists a violation of any health law or rule of this state.

6. Exercise general supervision over all matters relating to sanitation and health throughout this state. When in the opinion of the director it is necessary or advisable, a sanitary survey of the whole or of any part of this state shall be made. The director may enter, examine and survey any source and means of water supply, sewage disposal plant, sewerage system, prison, public or private place of detention, asylum, hospital, school, public building, private institution, factory, workshop, tenement, public washroom, public restroom, public toilet and toilet facility, public eating room and restaurant, dairy, milk plant or food manufacturing or processing plant, and any premises in which the director has reason to believe there exists a violation of any health law or rule of this state that the director has the duty to administer.

7. Prepare sanitary and public health rules.

8. Perform other duties prescribed by law.

B. If the director has reasonable cause to believe that there exists a violation of any health law or rule of this state, the director may inspect any person or property in transportation through this state, and any car, boat, train, trailer, airplane or other vehicle in which that person or property is transported, and may enforce detention or disinfection as reasonably necessary for the public health if there exists a violation of any health law or rule.

C. The director, after consultation with the department of administration, may take all necessary steps to enhance the highest and best use of the state hospital property, including contracting with third parties to provide services, entering into short-term lease agreements with third parties to occupy or renovate existing buildings and entering into long-term lease agreements to develop the land and buildings. The director shall deposit any monies collected from contracts and lease agreements entered into pursuant to this subsection in the Arizona state hospital charitable trust fund established by section 36-218. At least thirty days before issuing a request for proposals pursuant to this subsection, the department of health services shall hold a public hearing to receive community and provider input regarding the highest and best use of the state hospital property related to the request for proposals. The department shall report to the joint committee on capital review on the terms, conditions and purpose of any lease or sublease agreement entered into pursuant to this subsection relating to state hospital lands or buildings or the disposition of real property pursuant to this subsection, including state hospital lands or buildings, and the fiscal impact on the department and any revenues generated by the agreement. Any lease or sublease agreement entered into pursuant to this subsection relating to state hospital lands or buildings or the disposition of real property pursuant to this subsection, including state hospital lands or buildings, must be reviewed by the joint committee on capital review.

D. The director may deputize, in writing, any qualified officer or employee in the department to do or perform on the director's behalf any act the director is by law empowered to do or charged with the responsibility of doing.
E. The director may delegate to a local health department, county environmental department or public health services district any functions, powers or duties that the director believes can be competently, efficiently and properly performed by the local health department, county environmental department or public health services district if:

1. The director or superintendent of the local health agency, environmental agency or public health services district is willing to accept the delegation and agrees to perform or exercise the functions, powers and duties conferred in accordance with the standards of performance established by the director of the department of health services.

2. Monies appropriated or otherwise made available to the department for distribution to or division among counties or public health services districts for local health work may be allocated or reallocated in a manner designed to ensure the accomplishment of recognized local public health activities and delegated functions, powers and duties in accordance with applicable standards of performance. Whenever in the director's opinion there is cause, the director may terminate all or a part of any delegation and may reallocate all or a part of any funds that may have been conditioned on the further performance of the functions, powers or duties conferred.

F. The compensation of all personnel shall be as determined pursuant to section 38-611.

G. The director may make and amend rules necessary for the proper administration and enforcement of the laws relating to the public health.

H. Notwithstanding subsection I, paragraph 1 of this section, the director may define and prescribe emergency measures for detecting, reporting, preventing and controlling communicable or infectious diseases or conditions if the director has reasonable cause to believe that a serious threat to public health and welfare exists. Emergency measures are effective for no longer than eighteen months.

I. The director, by rule, shall:

1. Define and prescribe reasonably necessary measures for detecting, reporting, preventing and controlling communicable and preventable diseases. The rules shall declare certain diseases reportable. The rules shall prescribe measures, including isolation or quarantine, that are reasonably required to prevent the occurrence of, or to seek early detection and alleviation of, disability, insofar as possible, from communicable or preventable diseases. The rules shall include reasonably necessary measures to control animal diseases transmittable to humans.

2. Define and prescribe reasonably necessary measures, in addition to those prescribed by law, regarding the preparation, embalming, cremation, interment, disinterment and transportation of dead human bodies and the conduct of funerals, relating to and restricted to communicable diseases and regarding the removal, transportation, cremation, interment or disinterment of any dead human body.

3. Define and prescribe reasonably necessary procedures that are not inconsistent with law in regard to the use and accessibility of vital records, delayed birth registration and the completion, change and amendment of vital records.

4. Except as relating to the beneficial use of wildlife meat by public institutions and charitable organizations pursuant to title 17, prescribe reasonably necessary measures to ensure that all food or drink, including meat and meat products and milk and milk products sold at the retail level, provided for human consumption is free from unwholesome, poisonous or other foreign substances and filth, insects or disease-causing organisms. The rules shall prescribe reasonably necessary measures governing the production, processing, labeling, storing, handling, serving and transportation of these products. The rules shall prescribe minimum standards for the sanitary facilities and conditions that shall be maintained in any warehouse, restaurant or other premises, except a meat packing plant, slaughterhouse, wholesale meat processing plant, dairy product manufacturing plant or trade product manufacturing plant. The rules shall prescribe minimum standards for any truck or other vehicle in which food or drink is produced, processed, stored, handled, served or transported. The rules shall provide for the inspection and licensing of premises and vehicles so used, and for abatement as public nuisances of any premises or vehicles that do not comply with the rules and minimum standards. The rules shall provide an exemption relating to food or drink that is:

(a) Served at a noncommercial social event such as a potluck.
(b) Prepared at a cooking school that is conducted in an owner-occupied home.

(c) Not potentially hazardous and prepared in a kitchen of a private home for occasional sale or distribution for noncommercial purposes.

(d) Prepared or served at an employee-conducted function that lasts less than four hours and is not regularly scheduled, such as an employee recognition, an employee fund-raising or an employee social event.

(e) Offered at a child care facility and limited to commercially prepackaged food that is not potentially hazardous and whole fruits and vegetables that are washed and cut on-site for immediate consumption.

(f) Offered at locations that sell only commercially prepackaged food or drink that is not potentially hazardous.

(g) A cottage food product that is not potentially hazardous or a time or temperature control for safety food and that is prepared in a kitchen of a private home for commercial purposes, including fruit jams and jellies, dry mixes made with ingredients from approved sources, honey, dry pasta and roasted nuts. Cottage food products must be packaged at home with an attached label that clearly states the name and registration number of the food preparer, lists all the ingredients in the product and the product's production date and includes the following statement: "This product was produced in a home kitchen that may process common food allergens and is not subject to public health inspection." If the product was made in a facility for individuals with developmental disabilities, the label must also disclose that fact. The person preparing the food or supervising the food preparation must complete a food handler training course from an accredited program and maintain active certification. The food preparer must register with an online registry established by the department pursuant to paragraph 13 of this subsection. The food preparer must display the preparer's certificate of registration when operating as a temporary food establishment. For the purposes of this subdivision, "not potentially hazardous" means cottage food products that meet the requirements of the food code published by the United States food and drug administration, as modified and incorporated by reference by the department by rule.

(h) A whole fruit or vegetable grown in a public school garden that is washed and cut on-site for immediate consumption.

(i) Produce in a packing or holding facility that is subject to the United States food and drug administration produce safety rule (21 Code of Federal Regulations part 112) as administered by the Arizona department of agriculture pursuant to title 3, chapter 3, article 4.1. For the purposes of this subdivision, "holding", "packing" and "produce" have the same meanings prescribed in section 3-525.

5. Prescribe reasonably necessary measures to ensure that all meat and meat products for human consumption handled at the retail level are delivered in a manner and from sources approved by the Arizona department of agriculture and are free from unwholesome, poisonous or other foreign substances and filth, insects or disease-causing organisms. The rules shall prescribe standards for sanitary facilities to be used in identity, storage, handling and sale of all meat and meat products sold at the retail level.

6. Prescribe reasonably necessary measures regarding production, processing, labeling, handling, serving and transportation of bottled water to ensure that all bottled drinking water distributed for human consumption is free from unwholesome, poisonous, deleterious or other foreign substances and filth or disease-causing organisms. The rules shall prescribe minimum standards for the sanitary facilities and conditions that shall be maintained at any source of water, bottling plant and truck or vehicle in which bottled water is produced, processed, stored or transported and shall provide for inspection and certification of bottled drinking water sources, plants, processes and transportation and for abatement as a public nuisance of any water supply, label, premises, equipment, process or vehicle that does not comply with the minimum standards. The rules shall prescribe minimum standards for bacteriological, physical and chemical quality for bottled water and for the submission of samples at intervals prescribed in the standards.

7. Define and prescribe reasonably necessary measures governing ice production, handling, storing and distribution to ensure that all ice sold or distributed for human consumption or for the preservation or storage of food for human consumption is free from unwholesome, poisonous, deleterious or other foreign substances and filth or disease-causing organisms. The rules shall prescribe minimum standards for the sanitary facilities and conditions and the quality of ice that shall be maintained at any ice plant, storage and truck or vehicle in which ice is produced, stored, handled or transported and shall provide for inspection and licensing of the premises.
and vehicles, and for abatement as public nuisances of ice, premises, equipment, processes or vehicles that do not comply with the minimum standards.

8. Define and prescribe reasonably necessary measures concerning sewage and excreta disposal, garbage and trash collection, storage and disposal, and water supply for recreational and summer camps, campgrounds, motels, tourist courts, trailer coach parks and hotels. The rules shall prescribe minimum standards for preparation of food in community kitchens, adequacy of excreta disposal, garbage and trash collection, storage and disposal and water supply for recreational and summer camps, campgrounds, motels, tourist courts, trailer coach parks and hotels and shall provide for inspection of these premises and for abatement as public nuisances of any premises or facilities that do not comply with the rules. Primitive camp and picnic grounds offered by this state or a political subdivision of this state are exempt from rules adopted pursuant to this paragraph but are subject to approval by a county health department under sanitary regulations adopted pursuant to section 36-183.02. Rules adopted pursuant to this paragraph do not apply to two or fewer recreational vehicles as defined in section 33-2102 that are not park models or park trailers, that are parked on owner-occupied residential property for less than sixty days and for which no rent or other compensation is paid. For the purposes of this paragraph, "primitive camp and picnic grounds" means camp and picnic grounds that are remote in nature and without accessibility to public infrastructure such as water, electricity and sewer.

9. Define and prescribe reasonably necessary measures concerning the sewage and excreta disposal, garbage and trash collection, storage and disposal, water supply and food preparation of all public schools. The rules shall prescribe minimum standards for sanitary conditions that shall be maintained in any public school and shall provide for inspection of these premises and facilities and for abatement as public nuisances of any premises that do not comply with the minimum standards.

10. Prescribe reasonably necessary measures to prevent pollution of water used in public or semipublic swimming pools and bathing places and to prevent deleterious health conditions at these places. The rules shall prescribe minimum standards for sanitary conditions that shall be maintained at any public or semipublic swimming pool or bathing place and shall provide for inspection of these premises and for abatement as public nuisances of any premises and facilities that do not comply with the minimum standards. The rules shall be developed in cooperation with the director of the department of environmental quality and shall be consistent with the rules adopted by the director of the department of environmental quality pursuant to section 49-104, subsection B, paragraph 12.

11. Prescribe reasonably necessary measures to keep confidential information relating to diagnostic findings and treatment of patients, as well as information relating to contacts, suspects and associates of communicable disease patients. In no event shall confidential information be made available for political or commercial purposes.

12. Prescribe reasonably necessary measures regarding human immunodeficiency virus testing as a means to control the transmission of that virus, including the designation of anonymous test sites as dictated by current epidemiologic and scientific evidence.

13. Establish an online registry of food preparers that are authorized to prepare cottage food products for commercial purposes pursuant to paragraph 4 of this subsection. A registered food preparer shall renew the registration every three years and shall provide to the department updated registration information within thirty days after any change.

14. Prescribe an exclusion for fetal demise cases from the standardized survey known as "the hospital consumer assessment of healthcare providers and systems".

J. The rules adopted under the authority conferred by this section shall be observed throughout the state and shall be enforced by each local board of health or public health services district, but this section does not limit the right of any local board of health or county board of supervisors to adopt ordinances and rules as authorized by law within its jurisdiction, provided that the ordinances and rules do not conflict with state law and are equal to or more restrictive than the rules of the director.

K. The powers and duties prescribed by this section do not apply in instances in which regulatory powers and duties relating to public health are vested by the legislature in any other state board, commission, agency or instrumentality, except that with regard to the regulation of meat and meat products, the department of health
services and the Arizona department of agriculture within the area delegated to each shall adopt rules that are not in conflict.

L. The director, in establishing fees authorized by this section, shall comply with title 41, chapter 6. The department shall not set a fee at more than the department's cost of providing the service for which the fee is charged. State agencies are exempt from all fees imposed pursuant to this section.

M. After consultation with the state superintendent of public instruction, the director shall prescribe the criteria the department shall use in deciding whether or not to notify a local school district that a pupil in the district has tested positive for the human immunodeficiency virus antibody. The director shall prescribe the procedure by which the department shall notify a school district if, pursuant to these criteria, the department determines that notification is warranted in a particular situation. This procedure shall include a requirement that before notification the department shall determine to its satisfaction that the district has an appropriate policy relating to nondiscrimination of the infected pupil and confidentiality of test results and that proper educational counseling has been or will be provided to staff and pupils.

N. Until the department adopts exemptions by rule as required by subsection I, paragraph 4, subdivision (f) of this section, food and drink are exempt from the rules prescribed in subsection I of this section if offered at locations that sell only commercially prepackaged food or drink that is not potentially hazardous, without a limitation on its display area.

O. Until the department adopts exemptions by rule as required by subsection I, paragraph 4, subdivision (h) of this section, a whole fruit or vegetable grown in a public school garden that is washed and cut on-site for immediate consumption is exempt from the rules prescribed in subsection I of this section.

P. Until the department adopts an exclusion by rule as required by subsection I, paragraph 14 of this section, the standardized survey known as "the hospital consumer assessment of healthcare providers and systems" may not include patients who experience a fetal demise.

Q. For the purposes of this section:

1. "Cottage food product":
   a. Means a food that is not potentially hazardous or a time or temperature control for safety food as defined by the department in rule and that is prepared in a home kitchen by an individual who is registered with the department.
   b. Does not include foods that require refrigeration, perishable baked goods, salsas, sauces, fermented and pickled foods, meat, fish and shellfish products, beverages, acidified food products, nut butters or other reduced-oxygen packaged products.

2. "Fetal demise" means a fetal death that occurs or is confirmed in a licensed hospital. Fetal demise does not include an abortion as defined in section 36-2151.
DEPARTMENT OF HEALTH SERVICES (Expeditied Rulemaking)
Title 9, Chapter 3

Amend: R9-3-101, R9-3-201, R9-3-202, R9-3-205, R9-3-301
MEETING DATE: July 6, 2022

TO: Members of the Governor’s Regulatory Review Council (Council)

FROM: Council Staff

DATE: June 13, 2022

SUBJECT: DEPARTMENT OF HEALTH SERVICES (Expedited Rulemaking)
Title 9, Chapter 3

Amend: R9-3-101, R9-3-201, R9-3-202, R9-3-205, R9-3-301

Summary:

This expedited rulemaking from the Department of Health Services (Department) seeks to amend five (5) rules in Title 9, Chapter 3, Articles 1-3 related to child care group homes. Specifically, the Department seeks to clarify requirements for personnel, volunteers, and others providing services for enrolled children who attend licensed child care group homes to ensure the health and safety of the enrolled children. To ensure that the Article 3 rules are not outdated, the Department states the amended rules will comply with Laws 2020, Ch. 86 and the Child Care and Development Block Grant Act of 2014 (P.L. 113-186) by specifying all child care personnel and volunteers shall have both a valid fingerprint clearance card issued and a background check conducted pursuant to P.L. 113-186 before starting employment or volunteer work. The Department indicates the current Article 3 rules contain requirements for fingerprint checks and state criminal registry verification. To ensure consistency and compliance with the P.L. 113-186, the Department plans to add requirements for background check verification that includes: the state sex offender registry, the state child abuse and neglect registries and databases, the National Crime Information Center, and the National Sex Offender Registry.
1. **Do the rules satisfy the criteria for expedited rulemaking pursuant to A.R.S. § 41-1027(A)?**

Pursuant to A.R.S. § 41-1027(A), an agency may only conduct an expedited rulemaking if the rulemaking “does not increase the cost of regulatory compliance, increase a fee or reduce procedural rights of persons regulated...” and meets one of several other criteria. The Department indicates that the following rulemaking does not increase the cost of regulatory compliance, increase a fee, or reduce procedural rights of persons regulated. Furthermore, the Department indicates that the rulemaking provides a public benefit, amends rules made obsolete by legislative action, and is expected to increase the quality of health and safety for children attending licensed child care group homes. As such, the Department indicates that the rulemaking complies with criteria for expedited rulemaking under A.R.S. § 41-1027(A)(4) and (6).

However, Council staff expressed concern that adding requirements for additional background check verification that includes the state sex offender registry, the state child abuse and neglect registries and databases, the National Crime Information Center, and the National Sex Offender Registry, may increase the cost of regulatory compliance to parties regulated by these rules. Council staff raised these concerns with the Department. In response, the Department stated,

[T]he Department does not expect the changes made to the rules to include a background check will increase a cost for a licensee or child care personnel; rather any increase cost related to obtaining a background check is the result of changes made by SB 1504 and the State’s receipt of Block Grant funds. A State that receives funds pursuant to the Block Grant shall require and conduct a criminal background check for child care personnel (including prospective child care staff members) that includes an FBI fingerprint check using the Integrated Fingerprint Identification System. Arizona is receiving Block Grant funds and thus is required to have background checks. See P.L. 113-186 § 658H. Accordingly, the rules simply codify something the State is already required to do. Notwithstanding the foregoing, the Department is currently working with DES, Department of Public Safety (DPS), and Department of Child Safety (DCS) to eliminate duplication of efforts and to ensure that child care personnel and volunteers required to obtain both FPCC and background check documentation do not incur any additional cost.

Additionally, the Department stated,

The Department does not expect the amended rules to increase costs for licensees, child care personnel, or volunteers since no fees/costs have been added or changed. The Department has considered that child care personnel and volunteers may incur a minimal cost for time taken to apply online for a background check. Many occupations require various certifications and considered a requirement necessary to ensure employment in a profession of one’s choice; the cost is cost
created by one’s choice. The Department expects the benefit of having amended child care rules that significantly increase the health and safety of Arizona children is greater than the cost of these rulemakings.

In light of the Department’s response, Council staff is still concerned that the proposed amendments in this rulemaking increase the cost of regulatory compliance, making this rulemaking ineligible for expedited rulemaking pursuant to A.R.S. § 41-1027(A). Council staff encourages the Council to discuss further with the Department whether this rulemaking satisfies the criteria for expedited rulemaking pursuant to A.R.S. § 41-1027(A).

2. **Are the rules legal, consistent with legislative intent, and within the agency’s statutory authority?**

   The Department cites both general and specific statutory authority for these rules.

3. **Do the rules establish a new fee or contain a fee increase?**

   This rulemaking does not establish a new fee or contain a fee increase.

4. **Does the agency adequately address the comments on the proposed rules and any supplemental proposals?**

   The Department indicates it did not receive public or stakeholder comments related to this rulemaking.

5. **Are the final rules a substantial change, considered as a whole, from the proposed rules and any supplemental proposals?**

   The Department indicates there were no changes to the rules between the Notice of Proposed Expedited Rulemaking published in the Administrative Register and the Notice of Final Expedited Rulemaking now before the Council.

6. **Are the rules more stringent than corresponding federal law and, if so, is there statutory authority to exceed the requirements of federal law?**

   The Department indicates A.R.S. § 46-811 provides the Department authority to require background checks for staff members and volunteers specified in the Child Care and Development Block Grant Act of 2014 (P. L. 113 – 186). The Department in this rulemaking adds background checks consistent with P. L. 113 – 186. The Department states it is not aware of any other federal laws applicable to the subject of this rulemaking.

7. **Do the rules require a permit or license and, if so, does the agency comply with A.R.S. § 41-1037?**
Pursuant to A.R.S. § 41-1037(A), if an agency proposes an amendment to an existing rule that requires the issuance of a regulatory permit, license, or agency authorization, the agency shall use a general permit, as defined by A.R.S. § 41-1001(11), if the facilities, activities or practices in the class are substantially similar in nature unless certain exceptions apply.

The Department, pursuant to A.R.S. § 36-882, is required to provide licensure for child care group homes and, pursuant to A.R.S. § 36-888, the Department retains the authority to deny, revoke, or suspend an applicant or a child care group home licensee’s ability to operate. The Department indicates it does not use a general permit. The Department states that under A.R.S. § 41-1037(A)(3) that a general permit is not applicable.

8. **Does the preamble disclose a reference to any study relevant to the rules that the agency reviewed and either did or did not rely upon?**

The Department did not review or rely on any study in conducting this rulemaking.

9. **Conclusion**

This expedited rulemaking from the Department of Health Services (Department) seeks to amend five (5) rules in Title 9, Chapter 3, Articles 1-3 related to child care group homes by adding requirements for background check verification that includes: the state sex offender registry, the state child abuse and neglect registries and databases, the National Crime Information Center, and the National Sex Offender Registry. The Department seeks to clarify requirements for personnel, volunteers, and others providing services for enrolled children who attend licensed child care group homes to ensure the health and safety of the enrolled children.

Pursuant to A.R.S. § 41-1027(H), an expedited rulemaking becomes effective immediately on filing with the Secretary of State.

As outlined above, Council staff is concerned that adding requirements for additional background check verification that includes the state sex offender registry, the state child abuse and neglect registries and databases, the National Crime Information Center, and the National Sex Offender Registry, may increase the cost of regulatory compliance to parties regulated by these rules. Council staff encourages the Council to discuss further with the Department whether this rulemaking satisfies the criteria for expedited rulemaking pursuant to A.R.S. § 41-1027(A).
May 13, 2022

VIA EMAIL: grre@azdoa.gov
Nicole Sornsin, Chair
Governor’s Regulatory Review Council
Arizona Department of Administration
100 N. 15th Avenue, Suite 305
Phoenix, AZ 85007

RE: Department of Health Services, 9 A.A.C. 3, Expedited Rulemaking

Dear Ms. Sornsin:

1. The close of record date: January 20, 2022

2. Explanation of how the expedited rule meets the criteria in A.R.S. § 41-1027(A):
The rulemaking does not increase the cost of regulatory compliance, increase a fee, or reduce procedural rights of persons regulated. The rulemaking adopts requirements implementing Laws 2020, Ch. 86 and amends an outdated rule. The rulemaking provides a public benefit, amends rules made obsolete by legislative action, and is expected to increase the quality of health and safety for children attending licensed child care group homes. The rulemaking complies with criteria for expedited rulemaking under A.R.S. § 41-1027(A)(4) and (A)(6).

3. Whether the rulemaking relates to a five-year-review report and, if applicable, the date the report was approved by the Council:
The changes being made by the rulemaking are not related to a five-year-review report approved by the Council.

The Department certifies that the Preamble of this rulemaking discloses a reference to any study relevant to the rule that the Department reviewed and either did or did not rely on in its evaluation of or justification for the rule.

4. A list of all items enclosed:
a. Notice of Final Expedited Rulemaking, including the Preamble, Table of Contents, and text of the rule, and
b. Statutory authority

Douglas A. Ducey | Governor
Don Herrington | Interim Director
The Department's point of contact for questions about the rulemaking documents is Teresa Koehler at Teresa.Koehler@azdhs.gov.

Sincerely,

[Signature]

Robert Link
Director's Designee

RL:tk

Enclosures
NOTICE OF FINAL EXPEDITED RULEMAKING
TITLE 9. HEALTH SERVICES
CHAPTER 3. DEPARTMENT OF HEALTH SERVICES -
CHILD CARE GROUP HOMES

PREAMBLE

1. **Article, Part, or Section Affected (as applicable)** | **Rulemaking Action**
   - R9-3-101.                         Amend
   - R9-3-201.                         Amend
   - R9-3-202.                         Amend
   - R9-3-205.                         Amend
   - R9-3-301.                         Amend

2. **Citations to the agency’s statutory rulemaking authority to include the authorizing statute (general) and the implementing statute (specific):**
   - Authorizing statutes: A.R.S. §§ 36-132(A)(1) and 36-136(G)
   - Implementing statutes: A.R.S. §§ 36-897.01 through 36-897.13 and 46-811

3. **The effective date of the rules:**
   - The rule is effective the day the Notice of Final Expedited Rulemaking is filed with the Office of the Secretary of State.

4. **Citations to all related notices published in the Register as specified in R1-1-409(A) that pertain to the record of the proposed expedited rule:**
   - Notice of Rulemaking Docket Opening: 26 A.A.R. 2809, October 30, 2020
   - Notice of Rulemaking Docket Opening: 27 A.A.R. 2535, October 29, 2021

5. **The agency's contact person who can answer questions about the rulemaking:**
   - **Name:** Thomas Salow, Branch Chief
   - **Address:** Arizona Department of Health Services
     Division of Licensing Services
     150 N. 18th Ave., Suite 400
     Phoenix, AZ  85007
   - **Telephone:** (602) 364-1935
   - **Fax:** (602) 364-4808
   - **E-mail:** Thomas.Salow@azdhs.gov
   - or
Name: Robert Lane, Chief
Address: Arizona Department of Health Services
         Office of Administrative Counsel and Rules
         150 N. 18th Ave., Suite 200
         Phoenix, AZ 85007
Telephone: (602) 542-1020
Fax: (602) 364-1150
E-mail: Robert.Lane@azdhs.gov

6. **An agency’s justification and reason why a rule should be made, amended, repealed or renumbered, under A.R.S § 41-1027, to include an explanation about the rulemaking:**

   The Department licenses child care group homes under Arizona Revised Statutes (A.R.S.) Title 36, Chapter 7.1, Article 3, and has adopted rules for child care group homes in Arizona Administrative Code Title 9, Chapter 3. The Department in this expedited rulemaking clarifies requirements for personnel, volunteers, and others providing services for enrolled children who attend licensed child care group homes to ensure the health and safety of the enrolled children. To ensure that the Article 3 rules are not outdated, the amended rules will comply with Laws 2020, Ch. 86 and the Child Care and Development Block Grant Act of 2014 (P.L. 113-186) by specifying all child care personnel and volunteers shall have both a valid fingerprint clearance card issued and a background check conducted pursuant to P.L. 113-186 before starting employment or volunteer work. The current Article 3 rules contain requirements for fingerprint checks and state criminal registry verification. To ensure consistency and compliance with the P.L. 113-186, the Department plans to add requirements for background check verification that includes: the state sex offender registry, the state child abuse and neglect registries and databases, the National Crime Information Center, and the National Sex Offender Registry. Amending Article 3 will make the rules consistent with A.R.S. § 46-811, eliminate confusion related to child care fingerprinting and background check requirements, and ensure the health and safety for enrolled children attending a child care group homes. The proposed amendments will conform to rulemaking format and style requirements of the Governor’s Regulatory Review Council and the Office of the Secretary of State.

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

   The Department did not review or rely on any study for this rulemaking.
8. A showing of good cause why the rulemaking is necessary to promote a statewide interest if the rulemaking will diminish a previous grant of authority of a political subdivision of this state.
Not applicable

9. A summary of the economic, small business, and consumer impact:
Under A.R.S. § 41-1055(D)(2), the Department is not required to provide an economic, small business, and consumer impact statement.

10. A description of any changes between the proposed expedited rulemaking, including supplemental notices, and the final expedited rulemaking:
Between the proposed expedited rulemaking and the final expedited rulemaking, no changes were made to the rulemaking.

11. Agency's summary of the pubic or stakeholder comments or objections made about the rulemaking and the agency response to the comments:
No comments were received about this rulemaking.

12. All agencies shall list other matters prescribed by statute applicable to the specific agency or to any specific rule or class of rules. Additionally, an agency subject to Council review under A.R.S. §§ 41-1052 and 41-1055 shall respond to the following questions:
There are no other matters prescribed by statutes applicable specifically to the Department or this specific rulemaking.

a. Whether the rule requires a permit, whether a general permit is used and if not, the reasons why a general permit is not used:
The Department pursuant to A.R.S. § 36-882 is required to provide licensure for child care group homes and pursuant to A.R.S. § 36-888, the Department retains the authority to deny, revoke, or suspend an applicant or a child care group home licensee’s ability to operate. The Department does not use a general permit. The Department believes that under A.R.S. § 41-1037(A)(3) that a general permit is not applicable.

b. Whether a federal law is applicable to the subject of the rule, whether the rule is more stringent than federal law and if so, citation to the statutory authority to exceed the requirements of federal law:
A.R.S. § 46-811 provides the Department authority to require background checks for staff members and volunteers specified in the Child Care and Development Block Grant Act of 2014 (P. L. 113 – 186). The Department in this rulemaking adds background checks consistent with P. L. 113 – 186. The Department is not aware of any other federal laws applicable to the subject of this Article 1 and Article 2 rulemaking.
c. Whether a person submitted an analysis to the agency that compares the rule’s impact of the competitiveness of business in this state to the impact on business in other states:

No business competitiveness analysis was received.

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

Not applicable

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

The rule was not previously made as an emergency rule.

15. The full text of the rule follows:
TITLE 9. HEALTH SERVICES
CHAPTER 3. DEPARTMENT OF HEALTH SERVICES –
CHILD CARE GROUP HOMES

Sections
R9-3-101. Definitions
R9-3-201. Application for a Certification
R9-3-202. Fingerprinting and Central Registry Requirements
R9-3-205. Changes Affecting a Certificate
R9-3-301. Certificate Holder and Provider Responsibilities
R9-3-101. Definitions

In addition to the definitions in A.R.S. § 36-897 and unless the context indicates otherwise, the following definitions apply in this Chapter:

1. “Abuse” has the meaning in A.R.S. § 8-201.
2. “Accident” means an unexpected occurrence that:
   a. Causes physical injury to an enrolled child, and
   b. May or may not be an emergency.
3. “Accredited” means approved by the:
   a. New England, Commission of Institution of Higher Education
   b. Middle States, Commission of Higher Education
   c. North Central, the Higher Learning Commission
   d. Northwest Association of Schools and Colleges,
   e. Commission on Colleges, or
   f. Western Association of Colleges and Schools.
4. “Activity” means an action planned by a certificate holder or staff member and performed by an enrolled child while supervised by a staff member.
5. “Adaptive device” means equipment used to augment an individual’s use of the individual’s arms, legs, sight, hearing, or other physical part or function.
6. “Adult” means an individual 18 years of age or older.
7. “Age-appropriate” means consistent with a child’s age and age-related stage of physical growth and mental development.
8. “Applicant” means an individual or business organization requesting one of the following:
   a. A certificate under R9-3-201, or
   b. Approval of a change affecting a certificate under R9-3-205.
9. “Application” means the documents that an applicant is required to submit to the Department to request a certificate or approval of a request for a change affecting a certificate.
10. “Background check certification” means results identified in searches according to A.R.S. § 46-811(A) and consistent with the Child Care and Development Block Grant Act of 2014 (Public Law 113-186):
    1. The state sex offender registry within this state and each state where a staff member resided during the preceding five years;
The state-based child abuse and neglect registries and databases within this state and each state where a staff member resided during the preceding five years;

The National Crime Information Center; and


“Business organization” has the same meaning as “entity” in A.R.S. § 10-140.

“Calendar day” means each day, not including the day of the act, event, or default from which a designated period of time begins to run, but including the last day of the period unless it is a Saturday, Sunday, or legal holiday, in which case the period runs until the end of the next day that is not a Saturday, Sunday, or legal holiday.

“Capacity” means the maximum number of enrolled children authorized by the Department to be present at a child care group home during hours of operation.

“Certificate holder” means a person to whom the Department has issued a certificate.

“Change in ownership” means a transfer of controlling legal or controlling equitable interest and authority in the operation of a child care group home.

“Child” means any individual younger than 13 years of age.

“Child care experience” means an individual’s documented work with children in:

a. A child care facility or a child care group home that was licensed, certified, or approved by a state in the United States or by one of the Uniformed Services of the United States;

b. A public school, a charter school, a private school, or an accommodation school; or

c. A public or private educational institution authorized under the laws of another state where instruction was provided for any grade or combination of grades between pre-kindergarten and grade 12.

“Child care services” means the range of activities and programs provided by a certificate holder to an enrolled child, including personal care, supervision, education, guidance, and transportation.

“Child with special needs” means:

a. A child with a documented diagnosis from a physician, physician assistant, or registered nurse practitioner of a physical or mental condition that substantially limits the child in providing self-care or performing manual tasks or any other major life function such as walking, seeing, hearing, speaking, breathing, or learning;
b. A child with a “developmental disability” as defined in A.R.S. § 36-551; or
c. A “child with a disability” as defined in A.R.S. § 15-761.

19. “Clean” means:
   a. To remove dirt or debris by methods such as washing with soap and water, vacuuming, wiping, dusting, or sweeping; or
   b. Free of dirt and debris.

20. “Communicable disease” has the meaning in A.A.C. R9-6-101.

21. “Compensation” means money or other consideration, including goods, services, vouchers, time, government or public expenditures, government or public funding, or another benefit, that is received as payment.

22. “Controlling person” has the meaning in A.R.S. § 36-881.

23. “Corporal punishment” means any physical act used to discipline a child that inflicts pain to the body of the child, or that may result in physical injury to the child.


25. “Credit hour” means an academic unit earned through an accredited college or university for completing the equivalent of one hour of class time each week during a semester or equivalent shorter course term, as designated by the accredited college or university.

26. “Designated agent” means an individual who is authorized by an applicant or certificate holder to receive communications from the Department, including legal service of process, and to file or sign documents on behalf of the applicant or certificate holder.

27. “Developmentally appropriate” means consistent with a child’s physical, emotional, social, cultural, and cognitive development, based on the child’s age and family background and the child’s personality, learning style, and pattern and timing of growth.

28. “Discipline” means the on-going process of helping a child develop self-control and assume responsibility for the child’s own actions.

29. “Documentation” means information in written, photographic, electronic, or other permanent form.

30. “Emergency” means a potentially life-threatening occurrence involving an enrolled child or staff member that requires an immediate response or medical treatment.

31. “Endanger” means to expose an individual to a situation where physical or mental injury to the individual may occur.

32. “Enrolled child” means a child:
   a. Who is not a resident; and
b. Who has been placed by a parent or guardian to receive child care services regardless of payment.

33. “Fall zone” means the surface under and around a piece of equipment onto which a child falling from or exiting from the equipment would be expected to land.

34. “Field trip” means travel for a specific activity to a location away from an area of the child care group home approved for providing child care services.

35. “Food” means a raw, cooked, or processed edible substance or ingredient, including a beverage, used or intended for use in whole or in part for human consumption.

36. “Guidance” means the ongoing direction, counseling, teaching, or modeling of generally accepted social behavior through which a child learns to develop and maintain the self-control, self-reliance, and self-esteem necessary to assume responsibilities, make daily living decisions, and live according to generally accepted social behavior.

37. “Hazard” means a source of endangerment.

38. “High school equivalency diploma” means:
   a. A document issued by the Arizona State Board of Education under A.R.S. § 15-702 to an individual who passes a general educational development test or meets the requirements of A.R.S. § 15-702(B);
   b. A document issued by another state to an individual who passes a general educational development test or meets the requirements of a state statute equivalent to A.R.S. § 15-702(B); or
   c. A document issued by another country to an individual who has completed that country’s equivalent of a 12th grade education, as determined by the Department based upon information obtained from American or foreign consulates or embassies or other governmental entities.

39. “Hours of operation” means the specific days of the week and time period during a day when a certificate holder provides child care services on a regular basis.

40. “Illness” means physical manifestation or signs of sickness such as pain, vomiting, rash, fever, discharge, or diarrhea.

41. “Immediate” or “Immediately” means without restriction, delay, or hesitation.

42. “Inaccessible” means:
   a. Out of an enrolled child’s reach, or
   b. Locked.

43. “Individual plan” means a written description of the daily activities required for an enrolled child with special needs.
“Infant” means a child 12 months of age or younger.

“Infestation” means the presence of lice, pinworms, scabies, or other parasites.

“Licensed applicator” means an individual who complies with A.A.C. R3-8-201(C).

“Mat” means a foam pad that has a waterproof cover.

“Mechanical restraint” means a device, article, or garment attached or adjacent to a child’s body that the child cannot easily remove and that restricts the child’s freedom of movement or normal access to the child’s body, but does not include a device, article, or garment:

   a. Used for orthopedic purposes, or
   b. Necessary to allow a child to heal from a medical condition.

“Medication” means a substance prescribed by a physician, physician assistant, or registered nurse practitioner or that is available without a prescription for the treatment or prevention of illness or infestation.

“Menu” means a written description of food that a child care group home provides and serves as a meal or snack.

“Modification” means the substantial improvement, enlargement, reduction, alternation, or other substantial change in the facility or another structure on the premises at a child care group home.

“Motor vehicle” has the meaning in A.R.S. § 28-101.

“Neglect” has the meaning in A.R.S. § 8-201.

“Outbreak” has the meaning in A.A.C. R9-6-101.

“Parent” means:

   a. A natural or adoptive mother or father,
   b. A legal guardian appointed by a court of competent jurisdiction, or
   c. A “custodian” as defined in A.R.S. § 8-201.

“Perishable food” means food that becomes unfit for human consumption if not stored to prevent spoilage.

“Person” has the meaning in A.R.S. § 1-215.

“Personal items” means those articles of property that belong to an enrolled child and are brought to the child care group home for that enrolled child’s exclusive use, such as clothing, a blanket, a sheet, a toothbrush, a pacifier, a hairbrush, a comb, a washcloth, or a towel.

“Physician” means an individual licensed as a doctor of:

   a. Allopathic medicine under A.R.S. Title 32, Chapter 13;
b. Naturopathic medicine under A.R.S. Title 32, Chapter 14;
c. Osteopathic medicine under A.R.S. Title 32, Chapter 17;
d. Homeopathic medicine under A.R.S. Title 32, Chapter 29; or
e. Allopathic, naturopathic, osteopathic, or homeopathic medicine under the laws of another state.

60-61. “Physician assistant” means:
a. The same as in A.R.S. § 32-2501, or
b. An individual licensed as a physician assistant under the laws of another state.

61-62. “Positioning device” means a belt or harness that prevents an enrolled infant’s movement.

62-63. “Premises” means a child care group home’s residence and the surrounding property, including any structures on the property, that can be enclosed by a single unbroken boundary line that does not encompass property owned or leased by another person.

63-64. “Registered nurse practitioner” means:
a. The same as in A.R.S. § 32-1601, or
b. An individual licensed as a registered nurse practitioner under the laws of another state.

64-65. “Regular basis” means at recurring, fixed, or uniform intervals.

65-66. “Residence” means a dwelling, such as a house, used for human habitation.

66-67. “Resident” means an individual who receives child care services and uses a child care group home as the individual’s principal place of habitation for 30 calendar days or more during the calendar year.

67-68. “Sanitize” means to use heat, a chemical agent, or a germicidal solution to disinfect and reduce pathogen counts, including bacteria, viruses, mold, and fungi.

68-69. “School-age child” means a child who attends:
a. A public school, as defined for “school” in A.R.S. § 15-101; or

69-70. “Separate” means to exclude a child from and have the child physically move away from other children, while keeping the child under supervision.

70-71. “Signed” means affixed with an individual’s signature or, if the individual is unable to write the individual’s name, with a symbol representing the individual’s signature.

71-72. “Sippy cup” means a lidded drinking container that is designed to be leak-proof or leak-resistant and from which a child drinks through a spout or straw.

72-73. “Space utilization” means the designated use of specific areas on the premises for
providing child care services.

73.74. “Staff member” means an individual who works at a child care group home providing child care services, regardless of whether compensation is received by the individual in return for providing child care services, and includes a provider.

74.75. “Supervision” means:

a. For a child who is awake, knowledge of and accountability for the actions and whereabouts of the child, including the ability to see or hear the child at all times, to interact with the child, and to provide guidance to the child;

b. For a child who is asleep, knowledge of and accountability for the actions and whereabouts of the child, including the ability to see or hear the child at all times and to respond to the child;

c. For a staff member who is not an adult, knowledge of and accountability for the actions and whereabouts of the staff member and the ability to interact with and provide guidance to the staff member; or

d. For an individual other than a child or staff member, knowledge of and accountability for the actions and whereabouts of the individual, including the ability to see and hear the individual when the individual is in the presence of an enrolled child and the ability to intervene in the individual’s actions to prevent harm to enrolled children.

75.76. “Swimming pool” has the meaning in A.A.C. R18-5-201.

76.77. “Training” means instruction received through:

a. Completion of a live or computerized conference, seminar, lecture, workshop, class, or course; or

b. Watching a video presentation.

77.78. “Week” means a seven-day period beginning on Sunday at 12:00 a.m. and ending on Saturday at 11:59 p.m.

78.79. “Working day” means the period between 8:00 a.m. and 5:00 p.m. on a Monday, Tuesday, Wednesday, Thursday, or Friday that is not a state holiday.

ARTICLE 2. CERTIFICATION

R9-3-201. Application for a Certificate

An applicant for a certificate shall:

1. Be at least 21 years of age, and

2. Submit to the Department an application packet containing:

a. An application on a form provided by the Department that contains:
i. The applicant’s name and date of birth;
ii. The name to be used for the child care group home, if any;
iii. The address and telephone number of the residence;
iv. The mailing address of the applicant, if different from the address of the residence;
v. The applicant’s contact telephone number, if different from the telephone number of the residence;
vi. The applicant’s e-mail address, if applicable;
vii. The name of the provider, if different from the applicant;
viii. The requested capacity for the child care group home;
ix. The anticipated hours of operation for the child care group home;
x. Whether the applicant agrees to allow the Department to submit supplemental requests for information;
xii. Whether the applicant or any controlling person has been denied a certificate or license to operate a child care group home or child care facility in this state or another state or has had a certificate or license to operate a child care group home or child care facility revoked in this state or another state and, if so:
   (1) The name of the individual who had the certificate or license denied or revoked,
   (2) The reason for the denial or revocation,
   (3) The date of the denial or revocation, and
   (4) The name and address of the certifying or licensing agency that denied or revoked the certificate or license;
xiii. A statement that the applicant has read and will comply with A.R.S. Title 36, Chapter 7.1, Article 4 and this Chapter;
xiv. A statement that the applicant has sufficient financial resources to comply with A.R.S. Title 36, Chapter 7.1, Article 4 and this Chapter;
xv. A statement that the information provided in the application packet is accurate and complete; and
xvi. The applicant’s signature and date the applicant signed the application;
b. A copy of the applicant’s:
i. U.S. passport,
ii. Birth certificate,
iii. Naturalization documents, or
iv. Documentation of legal resident alien status;
c. A copy of the applicant’s valid fingerprint clearance card issued, both front and back, according to A.R.S. Title 41, Chapter 12, Article 3.1;
d. A copy of the applicant’s valid background check document according to A.R.S. § 46-811(A);
d-e. A copy of the form required in A.R.S. § 36-897.03(B) for the applicant;
e-f. A document issued by the Department showing that the applicant has completed Department-provided orientation training that included the Department’s role in certifying and regulating child care group homes under A.R.S. Title 36, Chapter 7.1, Article 4, and this Chapter;
f-g. A floor plan of the residence where child care services will be provided, showing:
i. The location and dimensions of each room in the residence, with designation of the rooms to be used for providing child care services;
ii. The location of each exit from the residence;
iii. The location of each sink and toilet available for use by enrolled children;
iv. The location of each smoke detector in the residence; and
v. The location of each fire extinguisher in the residence;
e-h. A site plan of the premises showing:
i. The location and dimensions of the outdoor activity area;
ii. The height of the fence around the outdoor activity area;
iii. The location of each exit from the outdoor activity area;
iv. The location of the residence;
v. The location of each swimming pool, if applicable;
vi. The location and height of the fence around each swimming pool, if applicable; and
vii. The location and dimensions of any other building or structure on the premises, if applicable;
h-i. If the child care group home is located within one-fourth of a mile of agricultural land:
i. The names and addresses of the owners or lessees of each parcel of agricultural land located within one-fourth mile of the child care group home, and

ii. A copy of an agreement complying with A.R.S. § 36-897.01(B) for each parcel of agricultural land;

i+j. The applicable fee in R9-3-203; and

j+k. If the applicant is a business organization, a form provided by the Department that contains:

i. The name, street address, city, state, and zip code of the business organization;

ii. The type of business organization;

iii. The name, date of birth, title, street address, city, state, and zip code of the designated agent;

iv. The name, date of birth, title, street address, city, state, and zip code of each other controlling person;

v. A copy of the business organization’s articles of incorporation, articles of organization, partnership documents, or joint venture documents, if applicable; and

vi. Documentation of good standing issued by the Arizona Corporation Commission and dated no earlier than three months before the date of the application, if applicable.

R9-3-202. Fingerprinting and Central Registry Requirements

A. A certificate holder shall ensure that:

1. A staff member completes, signs, dates, and submits to the certificate holder before the staff member’s starting date of employment or volunteer service:
   a. The form required in A.R.S. § 36-897.03(B); and
   b. If required by A.R.S. § 8-804, the form in A.R.S. § 8-804(I); and

2. An adult resident completes, signs, dates, and submits to the certificate holder before the resident’s starting date of residency or the date of certification of the child care group home the form required in A.R.S. § 36-897.03(B).

B. A certificate holder shall maintain documentation of a valid fingerprint clearance card issued under A.R.S. § 41-1758.03 and documentation of a valid background check document issued under A.R.S. § 46-811.
C. Except as provided in A.R.S. § 41-1758.03, a certificate holder shall ensure that a staff member or adult resident submits a copy of:

1. A valid fingerprint clearance card, front and back, issued under A.R.S. Title 41, Chapter 12, Article 3.1; or

2. The fingerprint clearance card application that was submitted to the Department of Public Safety under A.R.S. § 41-1758.02:
   a. For the staff member, within seven working days after the staff member’s starting date of employment or volunteer service; and
   b. For the adult resident, within seven working days after before the resident’s starting date of residency or the date of certification of the child care group home.

Except as provided in A.R.S. § 41-1758.03, a certificate holder shall ensure that a staff member before starting date of employment or volunteer service and an adult resident before starting date of residency or the date of certification of the child care group homes, submits a copy of a valid fingerprint clearance card, front and back, issued under A.R.S. Title 41, Chapter 12, Article 3.1.

D. A certificate holder shall ensure that each individual who is a staff member or an adult resident submits to the certificate holder a copy of the individual’s valid fingerprint clearance card each time the fingerprint clearance card is issued or renewed, a valid fingerprint clearance card each time the fingerprint clearance card is issued or renewed every six years.

E. If a staff member or resident possesses a fingerprint clearance card that was issued before the staff member or resident became a staff member or resident at the child care group home, a certificate holder shall:

1. Contact the Department of Public Safety within seven working days after before the individual becomes a staff member or resident to determine whether the fingerprint clearance card is valid; and

2. Document this determination, including the name of the staff member or resident, the date of contact with the Department of Public Safety, and whether the fingerprint clearance card is valid.

F. A certificate holder shall ensure each staff member and each adult resident submits to the certificate holder documentation of the staff member’s or adult resident’s valid:

1. Background check issued under A.R.S. § 46-811(A) within 10 calendar days after stating date of employment or volunteer service; and

2. Background check each time the background check document is issued or renewed every five years.
If required by A.R.S. § 8-804, before an individual’s starting date of employment or volunteer service, a certificate holder shall comply with the submission requirements in A.R.S. § 8-804(C) for the individual.

A certificate holder shall not allow an adult individual to be a staff member or a resident if the individual:

1. Has been denied a fingerprint clearance card under A.R.S. Title 41, Chapter 12, Article 3.1, and has not received an interim approval under A.R.S. § 41-619.55;
2. Has been denied a background check document that indicates the adult individual is not eligible for employment due to violations identified pursuant to A.R.S. § 46-811;
3-4. Receives an interim approval under A.R.S. § 41-619.55 but is subsequently denied a good cause exception under A.R.S. § 41-619.55 and a fingerprint clearance card under A.R.S. Title 41, Chapter 12, Article 3.1;
3. Is a parent or guardian of a child adjudicated to be a dependent child as defined in A.R.S. § 8-201;
4. Has been denied a certificate to operate a child care group home or a license to operate a child care facility for the care of children in this state or another state;
5-6. Has had a license to operate a child care facility or certificate to operate a child care group home in this state or another state revoked for reasons related to the endangerment of the health and safety of children;
6-7. If applicable, has stated on the form required in A.R.S. § 8-804(I) that the individual is currently under investigation for an allegation of abuse or neglect or has a substantiated allegation of abuse or neglect and has not subsequently received a central registry exception according to A.R.S. § 41-619.57; or
7. If applicable, is disqualified from employment or volunteer service as a staff member according to A.R.S. § 8-804 and has not subsequently received a central registry exception according to A.R.S. § 41-619.57.

Within 30 calendar days after the day of a staff member’s or adult resident’s 18th birthday, the staff member or adult resident shall provide to the certificate holder copies of a valid fingerprint clearance card and a valid background check document specified in subsection (C).

Beginning November 1, 2021, certificate holders, staff members, and adult residents shall comply with A.R.S. § 46-811(A) and subsection (C)(2) by November 1, 2022.

Changes Affecting a Certificate

For an intended change in a certificate holder’s name or the name of a child care group home:

1. The certificate holder shall send the Department written notice of the name change at
least 30 calendar days before the intended date of the name change; and

2. Upon receipt of the written notice required in subsection (A)(1), the Department shall issue an amended certificate that incorporates the name change but retains the anniversary date of the certificate.

B. At least 30 calendar days before the date of an intended change in a child care group home’s space utilization or capacity, a certificate holder shall submit to the Department a written request for approval of the intended change that includes:

1. The certificate holder’s name;
2. The child care group home’s name, if applicable;
3. The name, telephone number, e-mail address, and fax number of a point of contact for the request;
4. The child care group home’s certificate number;
5. The type of change intended:
   a. Space utilization, or
   b. Capacity;
6. A narrative description of the intended change; and
7. The following additional information, as applicable:
   a. If requesting a change in capacity, the square footage of the outdoor activity area and the square footage of the indoor areas where child care services will be provided;
   b. If requesting a change that involves a modification of the residence that requires a building permit, a copy of the building permit;
   c. If requesting a change in space utilization that affects individual rooms:
      i. A floor plan of the residence that complies with R9-3-201(2)(f) and shows the intended changes, and
      ii. The square footage of each affected room; and
   d. If requesting a change in space utilization that affects the outdoor activity area:
      i. A site plan of the premises that complies with R9-3-201(2)(g) and shows the intended changes, and
      ii. The square footage of the intended outdoor activity area.

C. The Department shall review a request submitted under subsection (B) according to R9-3-102. If the intended change is in compliance with A.R.S. Title 36, Chapter 7.1, Article 4 and this Chapter, the Department shall send the certificate holder an approval of the request and, if
necessary, an amended certificate that incorporates the change but retains the anniversary date of the current certificate.

D. A certificate holder shall not implement any change in subsection (B) until the Department issues an approval or amended certificate.

E. At least 30 calendar days before the date of a change in ownership:
   1. A certificate holder shall send the Department written notice of the change in ownership; and
   2. A person planning to assume operation of a child care group home shall obtain a new certificate as specified in R9-3-201 before beginning operation of the child care group home.

F. A certificate holder changing a child care group home’s location shall:
   1. Apply for a new certificate as prescribed in R9-3-201, and
   2. Obtain a new certificate from the Department before beginning operation of the child care group home at the new location.

G. Within 30 calendar days after the date of a change in the business organization information provided under R9-3-201(2)(j)R9-3-201(2)(k), other than a change in ownership, a certificate holder that is a business organization shall send the Department written notice of the change.

ARTICLE 3. OPERATING A CHILD CARE GROUP HOME

R9-3-301. Certificate Holder and Provider Responsibilities

A. A certificate holder shall:
   1. Designate a provider who:
      a. Lives in the residence;
      b. Is 21 years of age or older;
      c. Has a high school diploma, high school equivalency diploma, associate degree, or bachelor degree;
      d. Meets one of the following:
         i. Has completed at least three credit hours in child growth and development, nutrition, psychology, or early childhood education;
         ii. Has completed at least 60 hours of training in child growth and development, nutrition, psychology, early childhood education, or management of a child care business; or
         iii. Has at least 12 months of child care experience; and
e. Has completed Department-provided orientation training that includes the Department's role in certifying and regulating child care group homes under A.R.S. Title 36, Chapter 7.1, Article 4 and this Chapter;

2. Ensure that each staff member is 16 years of age or older;

3. Ensure that each resident 12 years of age or older and each staff member submits, on or before the starting date of residency, employment, or volunteer services, one of the following as evidence of freedom from infectious active tuberculosis:
   a. Documentation of a negative Mantoux skin test or other tuberculosis screening test recommended by the U.S. Centers for Disease Control and Prevention, administered within 12 months before the starting date of residency, employment, or volunteer service, that includes the date and the type of tuberculosis screening test; or
   b. If the resident or staff member has had a positive Mantoux skin test or other tuberculosis screening test, a written statement that the resident or staff member is free from infectious active tuberculosis that is signed and dated by a physician, physician assistant, or registered nurse practitioner within six months before the starting date of residency, employment, or volunteer service; and

4. Ensure that the provider:
   a. Supervises or assigns an adult staff member to supervise each staff member who is not an adult;
   b. Maintains on the premises a file for each staff member, for 12 months after the date the staff member last worked at the child care group home, containing:
      i. The staff member’s name, date of birth, home address, and telephone number;
      ii. The staff member’s starting date of employment or volunteer service;
      iii. The staff member’s ending date of employment or volunteer service, if applicable;
      iv. The staff member’s written statement attesting to current immunity against measles, rubella, diphtheria, mumps, and pertussis;
      v. The form required in A.R.S. § 36-897.03(B);
      vi. For an adult staff member, a copy of the staff member’s valid fingerprint clearance card issued under A.R.S. Title 41, Chapter 12, Article 3.1;
      vii. Documents required by subsection (A)(3);
      viii. Documentation of the requirements in A.R.S. § 36-897.03(C);
ix. If applicable:
   (1) The form required in A.R.S. § 8-804(I);
   (2) Documentation of the submission required in A.R.S. § 8-804(C) and the information received as a result of the submission; and
   (3) Documentation of the completion of the Department-provided orientation training specified in subsection (A)(1)(e), if applicable;

x. Documentation of the training required in R9-3-302; and

xi. Documentation of a high school diploma, high school equivalency diploma, associate degree, or bachelor degree, if applicable;

c. Maintains on the premises a file for each resident, for 12 months after the date the resident last resided at the child care group home, containing:
   i. The resident’s name and date of birth;
   ii. The resident’s relationship to the provider;
   iii. The date the resident began residing at the child care group home;
   iv. The date the resident last resided at the child care group home, if applicable;
   v. A written statement by the resident or, if the resident is a minor, the provider attesting to the resident’s current immunity against measles, rubella, diphtheria, mumps, and pertussis;
   vi. If the resident is an adult, the form required in A.R.S. § 36-897.03(B);
   vii. If the resident is an adult, the documents required by R9-3-202(C)(2) or R9-3-202(D); and
   viii. If the resident is 12 years of age or older, the documents required by subsection (A)(3);

d. Prepares a dated attendance record for each day and ensures that each staff member records on the attendance record the staff member’s start time and end time of providing child care services for the child care group home;

e. Maintains on the premises the dated attendance record required in subsection (A)(4)(d) for 12 months after the date on the attendance record;

f. Except as specified in R9-3-408, provides child care services only in areas:
   i. Designated as provided in R9-3-201(2)(f)(i) or R9-3-201(2)(g)(i) R9-3-201(2)(g)(i) or R9-3-201(2)(g)(i), or
   ii. Approved under R9-3-205(C);
g. Does not engage in outside employment during hours of operation or operate another business at or out of the residence during hours of operation;

h. Does not allow another staff member to engage in or operate another business at or out of the residence during the staff member’s assigned work hours at the child care group home;

i. Does not allow the operation of another business on the premises during hours of operation unless the operation of the business does not involve persons coming onto the premises during hours of operation because of the business; and

j. Does not allow the cultivation of medical marijuana on the premises.

B. A certificate holder shall ensure that all of the records required to be maintained by this Chapter either are written in English or, if written in a language other than English, include an English translation.

C. A certificate holder shall:

1. Secure and maintain general liability insurance of at least $100,000 for the child care group home; and

2. Maintain on the premises documentation of the insurance coverage required in subsection (C)(1).

D. A certificate holder shall ensure that:

1. While acting on behalf of the certificate holder when the provider is not present at the child care group home, an adult staff member with a high school diploma or high school equivalency certificate and one of the following is on the premises:
   a. At least six months of child care experience;
   b. Two or more credit hours in child growth and development, nutrition, psychology, or early childhood education; or
   c. At least 30 hours of training in child growth and development, nutrition, psychology, or early childhood education; and

2. At least one adult staff member, in addition to the provider or the staff member specified in subsection (D)(1), is on the premises when six or more enrolled children are at the child care group home.

E. A certificate holder shall ensure that a parent, an individual designated in writing by the parent, or legal guardian of an enrolled child is allowed immediate access during hours of operation to the areas of the premises where the enrolled child is receiving child care services.

F. A certificate holder shall:

1. Prepare a document that includes the following information:
a. The name and contact telephone number of the provider;
b. The hours of operation of the child care group home;
c. Charges, fees, and payment requirements for child care services;
d. Whether medications are administered at the child care group home and, if so, a description of what the parent is required to give to the child care group home;
e. Whether enrolled children go on field trips under the supervision of a staff member;
f. Whether the child care group home provides transportation for enrolled children to or from school, a school bus stop, or other locations;
g. The mechanism by which a staff member will verify that an individual contacting the child care group home by telephone claiming to be the parent of an enrolled child is the enrolled child’s parent;
h. A statement that a parent has access to the areas on the premises where the parent’s enrolled child is receiving child care services;
i. A statement that inspection reports for the child care group home are available for review at the child care group home; and
j. The local address and contact telephone number for the Department; and

2. Ensure that a staff member provides the document required in subsection (F)(1) to a parent of an enrolled child.

G. A certificate holder shall ensure that a staff member posts in a place that can be conspicuously viewed by individuals entering or leaving the child care group home:
1. The child care group home certificate;
2. The name of the provider;
3. The name of the staff member designated to act on behalf of the certificate holder when the provider is not present at the child care group home;
4. The hours of operation for the child care group home;
5. The weekly activity schedule required in R9-3-401(B)(4)(b);
6. The amount of time in minutes enrolled children may watch television, videos, or DVDs at the child care group home; and
7. The weekly menu, required in R9-3-406(F), before the first meal or snack of the week.

H. A certificate holder shall ensure that a staff member supervises any individual who is not a staff member and is on the premises where enrolled children are present.
I. A certificate holder shall ensure that a staff member who has current training in first aid and CPR is present during hours of operation when an enrolled child is on the premises or on a trip away from the premises under the supervision of a staff member.

J. A certificate holder shall ensure that if a staff member or resident lacks documentation of immunization or evidence of immunity that complies with A.A.C. R9-6-704 for a communicable disease listed in A.A.C. R9-6-702:
1. The staff member or resident is excluded from the child care group home between the start and end of an outbreak of the communicable disease at the child care group home, or
2. The child care group home is closed until the end of an outbreak at the child care group home.

K. Within 72 hours after changing a provider, a certificate holder shall send the Department written notice of the change, including the name of the new provider.

L. Except as provided in subsections (M) and (N), a certificate holder shall notify the Department in writing of a planned change in a child care group home’s hours of operation at least three calendar days before the date of the planned change, including:
1. The certificate holder's name;
2. The child care group home's certificate number; and
3. The current and intended hours of operation.

M. A certificate holder is not required to notify the Department of a change in a child care group home’s hours of operation when the change in the child care group home’s hours of operation is due to the occurrence of a state or federal holiday on a day of the week the child care group home regularly provides child care services.

N. When the premises of a child care group home are left unoccupied during hours of operation or the child care group home is temporarily closed due to an unexpected event, a certificate holder shall ensure that a staff member notifies the Department before leaving the child care group home unoccupied or closing the child care group home, stating the period of time during which the child care group home will be unoccupied or closed.
GRRC E-mail received June 14, 2022:

[1] How does this not increase the costs of regulatory compliance as stated in A.R.S. § 41-1027(A)?

SB 1504 (Fifty-Fourth Legislature, Second Regular Session) updated fingerprinting requirements for individuals that work with vulnerable populations, such as children. Specifically, SB 1504 added a requirement that child care personnel shall have a valid fingerprint clearance card (FPCC) pursuant to A.R.S. § 41-1758.07 before starting employment or volunteer work. Additionally, SB 1504 authorizes the Department of Economic Security (DES) and the Department of Health Services (DHS) to require background checks pursuant to the Child Care and Development Block Grant Act of 2014 (P.L. 113-186) (Block Grant) that are not included in the FPCC process under A.R.S. § 41-1758.07. The Department does not expect the rule changes related to when a licensee receives a valid FPCC to increase costs for a licensee and child care personnel since the rules do not add or change a fee, and the fee for obtaining a valid FPCC is established and required by the Department of Public Safety who issues FPCCs. Additionally, the Department does not expect the changes made to the rules to include a background check will increase a cost for a licensee or child care personnel; rather any increase cost related to obtaining a background check is the result of changes made by SB 1504 and the State’s receipt of Block Grant funds. A State that receives funds pursuant to the Block Grant shall require and conduct a criminal background check for child care personnel (including prospective child care staff members) that includes an FBI fingerprint check using the Integrated Fingerprint Identification System. Arizona is receiving Block Grant funds and thus is required to have background checks. See P.L. 113-186 § 658H. Accordingly, the rules simply codify something the State is already required to do. Notwithstanding the foregoing, the Department is currently working with DES, Department of Public Safety (DPS), and Department of Child Safety (DCS) to eliminate duplication of efforts and to ensure that child care personnel and volunteers required to obtain both FPCC and background check documentation do not incur any additional cost.

[2] How does this new requirement compare the current requirements found in Title 9, Chapter 3, Article 3 and Title 9, Chapter 5, Article 5

As stated, SB 1504 added a requirement that child care personnel and volunteers shall have and provide a valid FPCC to a licensee before starting employment or volunteer work. Additionally, SB 1504 allows DES and the Department to require that child care personnel and volunteers provide documentation of a valid background check consistent with requirement specified in the Block Grant.

To implement statutes, in the Chapter 3 rules, the Department:

- Adds a definition for “background check certification”;
- Adds a requirement for “documentation of a valid background check”;
- Adds a requirement for a “valid FPCC be provided to a certificate holder before starting date of residency or child care group home employment or volunteer work;
- Removes the requirement for staff members and adult residents to provide a copy of a FPCC application within seven working days after starting date of employment or volunteer work; and
- Amends requirements for a certificate holder to maintain and verify a valid FPCC to include a valid background check.

1 A.R.S. §§ 36-883.02 and 36-897.03 “child care personnel, including volunteers...shall have a valid fingerprint clearance cards issued pursuant...”

2 Background checks: state sex offender registry, the state child abuse and neglect registries and databases, the National Crime Information Center, and the National Sex Offender Registry.
Similarly, in the Chapter 5 rules, the Department:

- Adds a definition for “background check certification”;
- Adds a requirement for “documentation of a valid background check”;
- Adds a requirement for a “valid FPCC be provided to a certificate holder before starting date of residency or child care group home employment or volunteer work;
- Removes requirements for staff members and adult residents to provide a copy of a FPCC application within seven working days after starting date of employment or volunteer work; and
- Amends requirements for a licensee to maintain and verify a valid FPCC to include a valid background check.

In addition to the above, the rules were amended, as necessary, to account for changes to Section titles and the renumbering of subsections and citations. The Department does not expect the amended rules to increase costs for licensees, child care personnel, or volunteers since no fees/costs have been added or changed. The Department has considered that child care personnel and volunteers may incur a minimal cost for time taken to apply online for a background check. Many occupations require various certifications and considered a requirement necessary to ensure employment in a profession of one’s choice; the cost is cost created by one’s choice. The Department expects the benefit of having amended child care rules that significantly increase the health and safety of Arizona children is greater than the cost of these rulemakings.
CHAPTER 3. DEPARTMENT OF HEALTH SERVICES - CHILD CARE GROUP HOMES

Editor’s Note: New 9 A.A.C. 3 made by final rulemaking at 10 A.A.R. 1214, effective September 1, 2004 (Supp. 04-1).

Editor’s Note: Chapter heading changed to “Expired” (Supp. 02-2).

ARTICLE 1. GENERAL

Article 1, consisting of R9-3-101 through R9-3-103, made by final rulemaking at 10 A.A.R. 1214, effective September 1, 2004 (Supp. 04-1).

Article 1, consisting of Section R9-3-101, expired on June 30, 1999 under A.R.S. § 41-1056(E) upon receipt of notice from the Governor’s Regulatory Review Council (Supp. 99-3).

Article 1, consisting of Section R9-3-101, adopted effective October 22, 1992 (Supp. 92-2).

Article 1, consisting of Section R9-3-101, adopted by emergency action effective June 16, 1992, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 92-2).

Section
R9-3-101. Definitions ........................................................... 2
R9-3-102. Time-frames ......................................................... 4
Table 1. Time-frames (in calendar days) .............................. 5
R9-3-103. Individuals to Act for Applicant or Certificate Holder ................................................................. 5

ARTICLE 2. CERTIFICATION

Article 2, consisting of R9-3-201 through R9-3-206, made by final rulemaking at 10 A.A.R. 1214, effective September 1, 2004 (Supp. 04-1).

Section
R9-3-201. Application for a Certificate .............................. 5
R9-3-202. Fingerprinting and Central Registry Requirements ........................................................... 6
R9-3-203. Certification Fees .................................................... 7
R9-3-204. Invalid Certificate .................................................. 7
R9-3-205. Changes Affecting a Certificate ............................ 7
R9-3-206. Inspections; Investigations ................................. 8
R9-3-207. Denial, Revocation, or Suspension of a Certificate ................................................................. 8

ARTICLE 3. OPERATING A CHILD CARE GROUP HOME

Article 3, consisting of R9-3-301 through R9-3-315, made by final rulemaking at 10 A.A.R. 1214, effective September 1, 2004 (Supp. 04-1)

Section
R9-3-301. Certificate Holder and Provider Responsibilities 8
R9-3-302. Staff Training ..................................................... 10
R9-3-303. Enrollment of Children .................................. 11
R9-3-304. Enrolled Child Immunization Requirements .... 11
R9-3-305. Admission and Release of Enrolled Children .... 12
R9-3-306. Pesticides ......................................................... 12
R9-3-307. Illness and Infestation ....................................... 12
R9-3-308. Suspected Abuse or Neglect of an Enrolled Child ................................................................. 13
R9-3-309. Medications ....................................................... 13
R9-3-310. Accident and Emergency Procedures .................. 14
R9-3-311. Renumbered ..................................................... 14
Table 2. Repealed ............................................................. 14
R9-3-312. Renumbered ..................................................... 15
R9-3-313. Renumbered ..................................................... 15
R9-3-314. Renumbered ..................................................... 15
R9-3-315. Repealed .......................................................... 15

ARTICLE 4. PROGRAM AND EQUIPMENT STANDARDS

Article 4, consisting of R9-3-401 through R9-3-413, made by final rulemaking at 10 A.A.R. 1214, effective September 1, 2004 (Supp. 04-1).

Section
R9-3-401. General Program, Equipment, and Health and Safety Standards ............................................. 15
R9-3-402. Supplemental Standards for Napping or Sleeping ................................................................. 16
R9-3-403. Supplemental Standards for Care of an Enrolled Infant or One- or Two-Year-Old Child ............... 16
R9-3-404. Supplemental Standards for Care of an Enrolled Child with Special Needs .............................. 17
R9-3-405. Discipline and Guidance ..................................... 17
R9-3-406. General Nutrition and Menu Standards ............ 18
Table 4.1. Meals and Snacks Required to Be Served to Enrolled Children ................................................ 18
Table 4.2. Meal Pattern Requirements for Children .......... 18
R9-3-407. General Food Service and Food Handling Standards ............................................................. 19
R9-3-408. Field Trips and Other Trips Away from the Child Care Group Home ...................................... 20
R9-3-409. Renumbered ..................................................... 20
R9-3-410. Renumbered ..................................................... 21
Table 3. Repealed ............................................................. 21
Table 4. Repealed ............................................................. 21
R9-3-411. Renumbered ..................................................... 21
R9-3-412. Renumbered ..................................................... 21
R9-3-413. Repealed .......................................................... 21

ARTICLE 5. PHYSICAL ENVIRONMENT STANDARDS

Article 5, consisting of R9-3-501 through R9-3-508, made by final rulemaking at 10 A.A.R. 1214, effective September 1, 2004 (Supp. 04-1).

Section
R9-3-501. General Physical Environment Standards ........ 21
R9-3-502. Outdoor Activity Area Standards ....................... 21
R9-3-503. Swimming Pool Standards ................................. 22
R9-3-504. Fire Safety, Gas Safety, and Emergency Standards ................................................................. 22
R9-3-505. General Safety Standards .................................... 24
R9-3-506. General Cleaning and Sanitation Standards ...... 24
R9-3-507. Diaper-Changing Standards ............................... 25
R9-3-508. Pet and Animal Standards ................................. 25
R9-3-101. Definitions
In addition to the definitions in A.R.S. § 36-897 and unless the context indicates otherwise, the following definitions apply in this chapter:

1. “Abuse” has the meaning in A.R.S. § 8-201.
2. “Accident” means an unexpected occurrence that:
   a. Causes physical injury to an enrolled child, and
   b. May or may not be an emergency.
3. “Accredited” means approved by the:
   a. New England, Commission of Institution of Higher Education
   b. Middle States, Commission of Higher Education
   c. North Central, the Higher Learning Commission
   d. Northwest Association of Schools and Colleges
   e. Commission on Colleges, or
   f. Western Association of Colleges and Schools.
4. “Activity” means an action planned by a certificate holder or staff member and performed by an enrolled child while supervised by a staff member.
5. “Adaptive device” means equipment used to augment an individual’s use of the individual’s arms, legs, sight, hearing, or other physical part or function.
6. “Adult” means an individual 18 years of age or older.
7. “Age-appropriate” means consistent with a child’s age and age-related stage of physical growth and mental development.
8. “Applicant” means an individual or business organization requesting one of the following:
   a. A certificate under R9-3-201, or
   b. Approval of a change affecting a certificate under R9-3-205.
9. “Application” means the documents that an applicant is required to submit to the Department to request a certificate or approval of a request for a change affecting a certificate.
10. “Business organization” has the same meaning as “entity” in A.R.S. § 10-140.
11. “Calendar day” means each day, not including the day of the act, event, or default from which a designated period of time begins to run, but including the last day of the period unless it is a Saturday, Sunday, or legal holiday, in which case the period runs until the end of the next day that is not a Saturday, Sunday, or legal holiday.
12. “Capacity” means the maximum number of enrolled children authorized by the Department to be present at a child care group home during hours of operation.
13. “Certificate holder” means a person to whom the Department has issued a certificate.
14. “Change in ownership” means a transfer of controlling legal or controlling equitable interest and authority in the operation of a child care group home.
15. “Child” means any individual younger than 13 years of age.
16. “Child care experience” means an individual’s documented work with children in:
   a. A child care facility or a child care group home that was licensed, certified, or approved by a state in the United States or by one of the Uniformed Services of the United States;
   b. A public school, a charter school, a private school, or an accommodation school; or
   c. A public or private educational institution authorized under the laws of another state where instruction was provided for any grade or combination of grades between pre-kindergarten and grade 12.
17. “Child care services” means the range of activities and programs provided by a certificate holder to an enrolled child, including personal care, supervision, education, guidance, and transportation.
18. “Child with special needs” means:
   a. A child with a documented diagnosis from a physician, physician assistant, or registered nurse practitioner of a physical or mental condition that substantially limits the child in providing self-care or performing manual tasks or any other major life function such as walking, seeing, hearing, speaking, breathing, or learning;
   b. A child with a “developmental disability” as defined in A.R.S. § 36-551; or
   c. A “child with a disability” as defined in A.R.S. § 15-761.
19. “Clean” means:
   a. To remove dirt or debris by methods such as washing with soap and water, vacuuming, wiping, dusting, or sweeping; or
   b. Free of dirt and debris.
20. “Communicable disease” has the meaning in A.A.C. R9-6-101.
21. “Compensation” means money or other consideration, including goods, services, vouchers, time, government or public expenditures, government or public funding, or another benefit, that is received as payment.
22. “Controlling person” has the meaning in A.R.S. § 36-881.
23. “Corporal punishment” means any physical act used to discipline a child that inflicts pain to the body of the child, or that may result in physical injury to the child.
25. “Credit hour” means an academic unit earned through an accredited college or university for completing the equivalent of one hour of class time each week during a semester or equivalent shorter course term, as designated by the accredited college or university.
26. “Designated agent” means an individual who is authorized by an applicant or certificate holder to receive communications from the Department, including legal service of process, and to file or sign documents on behalf of the applicant or certificate holder.
27. “Developmentally appropriate” means consistent with a child’s physical, emotional, social, cultural, and cognitive development, based on the child’s age and family background and the child’s personality, learning style, and pattern and timing of growth.
28. “Discipline” means the on-going process of helping a child develop self-control and assume responsibility for the child’s own actions.
29. “Documentation” means information in written, photographic, electronic, or other permanent form.
30. “Emergency” means a potentially life-threatening occurrence involving an enrolled child or staff member that requires an immediate response or medical treatment.
31. “Endanger” means to expose an individual to a situation where physical or mental injury to the individual may occur.
32. “Enrolled child” means a child:
   a. Who is not a resident; and
   b. Who has been placed by a parent or guardian, to receive child care services regardless of payment.
33. “Fall zone” means the surface under and around a piece of equipment onto which a child falling from or exiting from the equipment would be expected to land.
34. “Field trip” means travel for a specific activity to a location away from an area of the child care group home approved for providing child care services.
35. “Food” means a raw, cooked, or processed edible substance or ingredient, including a beverage, used or intended for use in whole or in part for human consumption.
36. “Guidance” means the ongoing direction, counseling, teaching, or modeling of generally accepted social behavior through which a child learns to develop and maintain the self-control, self-reliance, and self-esteem necessary to assume responsibilities, make daily living decisions, and live according to generally accepted social behavior.
37. “High school equivalency diploma” means:
   a. A document issued by the Arizona State Board of Education under A.R.S. § 15-702 to an individual who passes a general educational development test or meets the requirements of A.R.S. § 15-702(B);
   b. A document issued by another state to an individual who passes a general educational development test or meets the requirements of a state statute equivalent to A.R.S. § 15-702(B); or
   c. A document issued by another country to an individual who has completed that country’s equivalent of a 12th grade education, as determined by the Department based upon information obtained from American or foreign consulates or embassies or other governmental entities.
38. “Hours of operation” means the specific days of the week and time period during a day when a certificate holder provides child care services on a regular basis.
39. “Illness” means physical manifestation or signs of sickness such as pain, vomiting, rash, fever, discharge, or diarrhea.
40. “Immediate” or “Immediately” means without restriction, delay, or hesitation.
41. “Inaccessible” means:
   a. Out of an enrolled child’s reach, or
   b. Locked.
42. “Individual plan” means a written description of the daily activities required for an enrolled child with special needs.
43. “Infant” means a child 12 months of age or younger.
44. “Infestation” means the presence of lice, pinworms, scabies, or other parasites.
45. “Licensed applicator” means an individual who complies with A.A.C. R3-8-201(C).
46. “Mat” means a foam pad that has a waterproof cover.
47. “Mechanical restraint” means a device, article, or garment attached or adjacent to a child’s body that the child cannot easily remove and that restricts the child’s freedom of movement or normal access to the child’s body, but does not include a device, article, or garment:
   a. Used for orthopedic purposes, or
   b. Necessary to allow a child to heal from a medical condition.
48. “Medication” means a substance prescribed by a physician, physician assistant, or registered nurse practitioner or that is available without a prescription for the treatment or prevention of illness or infestation.
49. “Menu” means a written description of food that a child care group home provides and serves as a meal or snack.
50. “Modification” means the substantial improvement, enlargement, reduction, alternation, or other substantial change in the facility or another structure on the premises at a child care group home.
51. “Motor vehicle” has the meaning in A.R.S. § 28-101.
52. “Neglect” has the meaning in A.R.S. § 8-201.
53. “Outbreak” has the meaning in A.A.C. R9-6-101.
54. “Parent” means:
   a. A natural or adoptive mother or father,
   b. A legal guardian appointed by a court of competent jurisdiction, or
   c. A “custodian” as defined in A.R.S. § 8-201.
55. “Personal items” means those articles of property that belong to an enrolled child and are brought to the child care group home for that enrolled child’s exclusive use, such as clothing, a blanket, a sheet, a toothbrush, a pacifier, a hairbrush, a comb, a washcloth, or a towel.
56. “Physician” means a physician licensed as a doctor of:
   a. Allopathic medicine under A.R.S. Title 32, Chapter 13;
   b. Naturopathic medicine under A.R.S. Title 32, Chapter 14;
   c. Osteopathic medicine under A.R.S. Title 32, Chapter 17;
   d. Homeopathic medicine under A.R.S. Title 32, Chapter 29; or
   e. Allopathic, naturopathic, osteopathic, or homeopathic medicine under the laws of another state.
57. “Physician assistant” means:
   a. The same as in A.R.S. § 32-2501, or
   b. An individual licensed as a physician assistant under the laws of another state.
58. “Positioning device” means a belt or harness that prevents an enrolled infant’s movement.
59. “Premises” means a child care group home’s residence and the surrounding property, including any structures on the property, that can be enclosed by a single unbroken boundary line that does not encompass property owned or leased by another person.
60. “Registered nurse practitioner” means:
   a. The same as in A.R.S. § 32-1601, or
   b. An individual licensed as a registered nurse practitioner under the laws of another state.
61. “Regular basis” means at recurring, fixed, or uniform intervals.
62. “Resident” means an individual who receives child care services and uses a child care group home as the individual’s principal place of habitation for 30 calendar days or more during the calendar year.
63. “Sanitize” means to use heat, a chemical agent, or a germicidal solution to disinfect and reduce pathogen counts, including bacteria, viruses, mold, and fungi.
64. “School-age child” means a child who attends:
   a. A public school, as defined for “school” in A.R.S. § 15-101; or
65. “Separate” means to exclude a child from and have the child physically move away from other children, while keeping the child under supervision.
CHAPTER 3. DEPARTMENT OF HEALTH SERVICES - CHILD CARE GROUP HOMES

70. “Signed” means affixed with an individual’s signature or, if the individual is unable to write the individual’s name, with a symbol representing the individual’s signature.

71. “Sippy cup” means a lidded drinking container that is designed to be leak-proof or leak-resistant and from which a child drinks through a spout or straw.

72. “Space utilization” means the designated use of specific areas on the premises for providing child care services.

73. “Staff member” means an individual who works at a child care group home providing child care services, regardless of whether compensation is received by the individual in return for providing child care services, and includes a provider.

74. “Supervision” means:
   a. For a child who is awake, knowledge of and accountability for the actions and whereabouts of the child, including the ability to see or hear the child at all times, to interact with the child, and to provide guidance to the child;
   b. For a child who is asleep, knowledge of and accountability for the actions and whereabouts of the child, including the ability to see or hear the child at all times and to respond to the child;
   c. For a staff member who is not an adult, knowledge of and accountability for the actions and whereabouts of the individual, including the ability to see and hear the individual when the individual is in the presence of an enrolled child and the ability to intervene in the individual’s actions to prevent harm to enrolled children.

75. “Swimming pool” has the meaning in A.A.C. R18-5-201.

76. “Training” means instruction received through:
   a. Completion of a live or computerized conference, seminar, lecture, workshop, class, or course; or
   b. Watching a video presentation.

77. “Week” means a seven-day period beginning on Sunday at 12:00 a.m. and ending on Saturday at 11:59 p.m.

78. “Working day” means the period between 8:00 a.m. and 5:00 p.m. on a Monday, Tuesday, Wednesday, Thursday, or Friday that is not a state holiday.

Historical Note

R9-3-102. Time-frames
A. The overall time-frame described in A.R.S. § 41-1072 for each type of approval granted by the Department under this Chapter is set forth in Table 1.1. The applicant and the Department may agree in writing to extend the substantive review time-frame and the overall time-frame. An extension of the substantive review time-frame and the overall time-frame may not exceed 25% of the overall time-frame.

B. The administrative completeness review time-frame described in A.R.S. § 41-1072 for each type of approval granted by the Department under this Chapter is set forth in Table 1.1 and begins on the date that the Department receives an application.

1. The Department shall send a notice of administrative completeness or deficiencies to the applicant within the administrative completeness review time-frame.
   a. A notice of deficiencies shall list each deficiency and the information or items needed to complete the application.
   b. The administrative completeness review time-frame and the overall time-frame are suspended from the date that the notice of deficiencies is sent until the date that the Department receives all of the missing information or items from the applicant.
   c. If an applicant fails to submit to the Department all of the information or items listed in the notice of deficiencies within 180 calendar days after the date that the Department sent the notice of deficiencies, the Department shall consider the application withdrawn.

2. If the Department issues a certificate or other approval to the applicant during the administrative completeness review time-frame, the Department shall not issue a separate written notice of administrative completeness.

C. The substantive review time-frame described in A.R.S. § 41-1072 is set forth in Table 1.1 and begins on the date of the notice of administrative completeness.

1. As part of the substantive review for an application for a certificate, the Department shall conduct an inspection that may require more than one visit to the child care group home or premises.

2. As part of the substantive review for a request for approval of a change affecting a certificate that requires a change in the use of physical space at a child care group home, the Department shall conduct an inspection that may require more than one visit to the child care group home.

3. The Department shall send a certificate or a written notice of approval or denial of a certificate or other request for approval to an applicant within the substantive review time-frame.

4. During the substantive review time-frame, the Department may make one comprehensive written request for additional information, unless the Department and the applicant have agreed in writing to allow the Department to submit supplemental requests for information.
   a. If the Department determines that an applicant, a child care group home, or the premises are not in substantial compliance with A.R.S. Title 36, Chapter 7.1, Article 4 and this Chapter, the Department shall send a comprehensive written request for additional information that includes a written statement of deficiencies stating each statute and rule upon which noncompliance is based.
   b. An applicant shall submit to the Department all of the information requested in a comprehensive written request for additional information or a supplemental request for information, including, if applicable, documentation of the corrections required in a statement of deficiencies, within 30 calendar days after the date of the comprehensive written request for additional information or the supplemental request for information.
CHAPTER 3. DEPARTMENT OF HEALTH SERVICES - CHILD CARE GROUP HOMES

The substantive review time-frame and the overall time-frame are suspended from the date that the Department sends a comprehensive written request for additional information or a supplemental request for information until the date that the Department receives all of the information requested, including, if applicable, documentation of corrections required in a statement of deficiencies.

d. If an applicant fails to submit to the Department all of the information requested in a comprehensive written request for additional information or a supplemental request for information, including, if applicable, documentation of corrections required in a statement of deficiencies, within the time prescribed in subsection (C)(4)(b), the Department shall deny the application.

5. The Department shall issue a certificate or approval if the Department determines that the applicant and the child care group home or premises are in substantial compliance with A.R.S. Title 36, Chapter 7.1, Article 4 and this Chapter, and the applicant submits documentation of corrections, which is acceptable to the Department, for any deficiencies.

Table 1.1. Time-frames (in calendar days)

<table>
<thead>
<tr>
<th>Type of Approval</th>
<th>Statutory Authority</th>
<th>Overall Time-frame</th>
<th>Administrative Completeness Review Time-frame</th>
<th>Substantive Review Time-frame</th>
</tr>
</thead>
<tbody>
<tr>
<td>Certificate under R9-3-201</td>
<td>A.R.S. § 36-897.01</td>
<td>150</td>
<td>30</td>
<td>120</td>
</tr>
<tr>
<td>Approval of Change Affecting Certificate under R9-3-205(B)</td>
<td>A.R.S. §§ 36-897.01 and 36-897.02</td>
<td>75</td>
<td>30</td>
<td>45</td>
</tr>
</tbody>
</table>

Historical Note

New Table 1.1 renumbered from Table 1 and amended by exempt rulemaking at 17 A.A.R. 1530, effective September 30, 2011 (Supp. 11-3). Amended by final expedited rulemaking at 26 A.A.R. 1969, with an immediate effective date of September 2, 2020 (Supp. 20-3).

R9-3-103. Individuals to Act for Applicant or Certificate Holder

When an applicant or certificate holder is required by this Chapter to provide information on or sign an application form or other document, hold a fingerprint clearance card, or complete Department-provided orientation, the following shall satisfy the requirement on behalf of the applicant or certificate holder:

1. If the applicant or certificate holder is an individual, the individual, and
2. If the applicant or certificate holder is a business organization, the designated agent who:
   a. Is a controlling person of the business organization,
   b. Is a U.S. citizen or legal resident, and
   c. Has an Arizona address.

Historical Note

New Section made by final rulemaking at 10 A.A.R. 1214, effective September 1, 2004 (Supp. 04-1). Amended by exempt rulemaking at 17 A.A.R. 1530, effective September 30, 2011 (Supp. 11-3). Amended by final expedited rulemaking at 26 A.A.R. 1969, with an immediate effective date of September 2, 2020 (Supp. 20-3).

ARTICLE 2. CERTIFICATION

Article 2, consisting of R9-3-201 through R9-3-206, made by final rulemaking at 10 A.A.R. 1214, effective September 1, 2004 (Supp. 04-1).

R9-3-201. Application for a Certificate

An applicant for a certificate shall:

1. Be at least 21 years of age, and

2. Submit to the Department an application packet containing:
   a. An application on a form provided by the Department that contains:
      i. The applicant’s name and date of birth;
      ii. The name to be used for the child care group home, if any;
      iii. The mailing address of the applicant, if different from the address of the residence;
      iv. The name to be used for the child care group home, if any;
      v. The applicant’s e-mail address, if applicable;
      vi. The name of the provider, if different from the applicant;
      vii. The anticipated hours of operation for the child care group home;
      viii. The requested capacity for the child care group home;
      ix. Whether the applicant agrees to allow the Department to submit supplemental requests for information;
      x. Whether the applicant or any controlling person has been denied a certificate or license to operate a child care group home or child care facility in this state or another state or has had a...
CHAPTER 3. DEPARTMENT OF HEALTH SERVICES - CHILD CARE GROUP HOMES

certificate or license to operate a child care group home or child care facility revoked in this state or another state and, if so:
(1) The name of the individual who had the certificate or license denied or revoked,
(2) The reason for the denial or revocation,
(3) The date of the denial or revocation, and
(4) The name and address of the certifying or licensing agency that denied or revoked the certificate or license;
n. A statement that the applicant has read and will comply with A.R.S. Title 36, Chapter 7.1, Article 4 and this Chapter;
ii. A statement that the applicant has sufficient financial resources to comply with A.R.S. Title 36, Chapter 7.1, Article 4 and this Chapter;
iv. The location of each fire extinguisher in the residence; and
vi. The location of each exit from the residence;
ii. A copy of the applicant’s valid fingerprint clearance card issued under A.R.S. § 41-1758.03.
2. An adult resident completes, signs, dates, and submits to the Department of Public Safety under A.R.S. § 41-1758.03(B) the fingerprint clearance card application that was submitted to the Department of Public Safety under A.R.S. § 41-1758.03(B).
D. A certificate holder shall ensure that each individual who is a staff member or an adult resident submits to the certificate holder a copy of the individual’s valid fingerprint clearance card each time the fingerprint clearance card is issued or renewed.

E. If a staff member or resident possesses a fingerprint clearance card that was issued before the staff member or resident became a staff member or resident at the child care group home, a certificate holder shall:
1. Contact the Department of Public Safety within seven working days after the individual becomes a staff member or resident to determine whether the fingerprint clearance card is valid; and
2. Document this determination, including the name of the staff member or resident, the date of contact with the Department of Public Safety, and whether the fingerprint clearance card is valid.

F. If required by A.R.S. § 8-804, before an individual’s starting date of employment or volunteer service, a certificate holder shall comply with the submission requirements in A.R.S. § 8-804(C) for the individual.

G. A certificate holder shall not allow an adult individual to be a staff member or a resident if the individual:
1. Has been denied a fingerprint clearance card under A.R.S. Title 41, Chapter 12, Article 3.1, and has not received an interim approval under A.R.S. § 41-619.55;
2. Receives an interim approval under A.R.S. § 41-619.55 but is subsequently denied a good cause exception under A.R.S. § 41-619.55 and a fingerprint clearance card under A.R.S. Title 41, Chapter 12, Article 3.1;
3. Is a parent or guardian of a child adjudicated to be a dependent child as defined in A.R.S. § 8-201;
4. Has been denied a certificate to operate a child care group home or a license to operate a child care facility in this state or another state; or
5. Has had a license to operate a child care facility or certificate to operate a child care group home in this state or another state revoked for reasons related to the endangerment of the health and safety of children;
6. If applicable, has stated on the form required in A.R.S. § 8-804(I) that the individual is currently under investigation for an allegation of abuse or neglect or has a substantiated allegation of abuse or neglect and has not subsequently received a central registry exception according to A.R.S. § 41-619.57; or
7. If applicable, is disqualified from employment or volunteer service as a staff member according to A.R.S. § 8-804 and has not subsequently received a central registry exception according to A.R.S. § 41-619.57.

Historical Note

R9-3-204. Invalid Certificate
If a certificate holder does not submit the certification fee as required in R9-3-203(C)(2), the certificate to operate a child care group home is no longer valid, and the child care group home is operating without a certificate.

Historical Note
New Section made by final rulemaking at 10 A.A.R. 1214, effective September 1, 2004 (Supp. 04-1). Former R9-3-204 renumbered to R9-3-205; new R9-3-204 renumbered from R9-3-207 and amended by exempt rulemaking at 17 A.A.R. 1530, effective September 30, 2011 (Supp. 11-3).

R9-3-205. Changes Affecting a Certificate
A. For an intended change in a certificate holder’s name or the name of a child care group home:
1. The certificate holder shall send the Department written notice of the name change at least 30 calendar days before the intended date of the name change; and
2. Upon receipt of the written notice required in subsection (A)(1), the Department shall issue an amended certificate that incorporates the name change but retains the anniversary date of the certificate.

B. At least 30 calendar days before the date of an intended change in a child care group home’s space utilization or capacity, a certificate holder shall submit to the Department a written request for approval of the intended change that includes:
1. The certificate holder’s name;
2. The child care group home’s name, if applicable;
3. The name, telephone number, e-mail address, and fax number of a point of contact for the request;
4. The child care group home’s certificate number;
5. The type of change intended:
   a. Space utilization, or
   b. Capacity;
6. A narrative description of the intended change; and
CHAPTER 3. DEPARTMENT OF HEALTH SERVICES - CHILD CARE GROUP HOMES

7. The following additional information, as applicable:
   a. If requesting a change in capacity, the square footage of the outdoor activity area and the square footage of the indoor areas where child care services will be provided;
   b. If requesting a change that involves a modification of the residence that requires a building permit, a copy of the building permit;
   c. If requesting a change in space utilization that affects individual rooms:
      i. A floor plan of the residence that complies with R9-3-201(2)(f) and shows the intended changes, and
      ii. The square footage of each affected room; and
   d. If requesting a change in space utilization that affects the outdoor activity area:
      i. A site plan of the premises that complies with R9-3-201(2)(g) and shows the intended changes, and
      ii. The square footage of the intended outdoor activity area.

C. The Department shall review a request submitted under subsection (B) according to R9-3-102. If the intended change is in compliance with A.R.S. Title 36, Chapter 7.1, Article 4 and this Chapter, the Department shall send the certificate holder an approval of the request and, if necessary, an amended certificate that incorporates the change but retains the anniversary date of the current certificate.

D. A certificate holder shall not implement any change in subsection (B) until the Department issues an approval or amended certificate.

E. At least 30 calendar days before the date of a change in ownership:
   1. A certificate holder shall send the Department written notice of the change in ownership; and
   2. A person planning to assume operation of a child care group home shall obtain a new certificate as specified in R9-3-201 before beginning operation of the child care group home.

F. A certificate holder changing a child care group home’s location shall:
   1. Apply for a new certificate as prescribed in R9-3-201, and
   2. Obtain a new certificate from the Department before beginning operation of the child care group home at the new location.

G. Within 30 calendar days after the date of a change in the business organization information provided under R9-3-201(2)(f), other than a change in ownership, a certificate holder that is a business organization shall send the Department written notice of the change.

Historical Note
New Section made by final rulemaking at 10 A.A.R. 1214, effective September 1, 2004 (Supp. 04-1). Former R9-3-207 renumbered to R9-3-204; new R9-3-204 renumbered from R9-3-205 and amended by exempt rulemaking at 17 A.A.R. 1530, effective September 30, 2011 (Supp. 11-3). Amended by final expedited rulemaking at 28 A.A.R. 1969, with an immediate effective date of September 2, 2020 (Supp. 20-3).

R9-3-207. Denial, Revocation, or Suspension of a Certificate
A. The Department may deny, revoke, or suspend a certificate to operate a child care group home if an applicant or certificate holder:
   1. Provides false or misleading information to the Department;
   2. Is the parent or guardian of a child adjudicated to be a dependent child as defined in A.R.S. § 8-201;
   3. Has been denied a certificate or license to operate a child care group home or child care facility in any state, unless the denial was based on the individual’s failure to complete the certification or licensing process according to a required time-frame;
   4. Has had a certificate or license to operate a child care group home or child care facility revoked or suspended in any state for reasons that relate to endangerment of the health and safety of children;
   5. Has been denied a fingerprint clearance card or has had a fingerprint clearance card suspended or revoked under A.R.S. Title 41, Chapter 12, Article 3.1; or
   6. Fails to substantially comply with any provision in A.R.S. Title 36, Chapter 7.1, Article 4 or this Chapter.

B. In determining whether to deny, suspend, or revoke a certificate, the Department shall consider the threat to the health and safety of enrolled children at a child care group home based on the factors listed in A.R.S. § 36-897.06.

Historical Note
New Section made by exempt rulemaking at 16 A.A.R. 1561, effective July 29, 2010 (Supp. 10-3). Former R9-3-207 renumbered to R9-3-204; new R9-3-204 renumbered from R9-3-205 and amended by exempt rulemaking at 17 A.A.R. 1530, effective September 30, 2011 (Supp. 11-3).

ARTICLE 3. OPERATING A CHILD CARE GROUP HOME

Article 3, consisting of R9-3-301 through R9-3-315, made by final rulemaking at 10 A.A.R. 1214, effective September 1, 2004 (Supp. 04-1).

R9-3-301. Certificate Holder and Provider Responsibilities
A. A certificate holder shall:
   1. Designate a provider who:
      a. Lives in the residence;
      b. Is 21 years of age or older;
      c. Has a high school diploma, high school equivalency diploma, associate degree, or bachelor degree;
      d. Meets one of the following:
CHAPTER 3. DEPARTMENT OF HEALTH SERVICES - CHILD CARE GROUP HOMES

i. Has completed at least three credit hours in child growth and development, nutrition, psychology, or early childhood education;

ii. Has completed at least 60 hours of training in child growth and development, nutrition, psychology, early childhood education, or management of a child care business; or

iii. Has at least 12 months of child care experience; and

e. Has completed Department-provided orientation training that includes the Department’s role in certifying and regulating child care group homes under A.R.S. Title 36, Chapter 7.1, Article 4 and this Chapter;

2. Ensure that each staff member is 16 years of age or older;

3. Ensure that each resident 12 years of age or older and each staff member submits, on or before the starting date of residency, employment, or volunteer services, one of the following as evidence of freedom from infectious active tuberculosis:

a. Documentation of a negative Mantoux skin test or other tuberculosis screening test recommended by the U.S. Centers for Disease Control and Prevention, administered within 12 months before the starting date of residency, employment, or volunteer service, that includes the date and the type of tuberculosis screening test; or

b. If the resident or staff member has had a positive Mantoux skin test or other tuberculosis screening test, a written statement that the resident or staff member is free from infectious active tuberculosis that is signed and dated by a physician, physician assistant, or registered nurse practitioner within six months before the starting date of residency, employment, or volunteer service; and

4. Ensure that the provider:

a. Supervises or assigns an adult staff member to supervise each staff member who is not an adult;

b. Maintains on the premises a file for each staff member containing:
   i. The staff member’s name, date of birth, home address, and telephone number;
   ii. The staff member’s starting date of employment or volunteer service;
   iii. The staff member’s ending date of employment or volunteer service, if applicable;
   iv. The staff member’s written statement attesting to current immunity against measles, rubella, diphtheria, mumps, and pertussis;
   v. The form required in A.R.S. § 36-897.03(B);
   vi. For an adult staff member, a copy of the staff member’s valid fingerprint clearance card issued under A.R.S. Title 41, Chapter 12, Article 3.1;
   vii. Documents required by subsection (A)(3);
   viii. Documentation of the requirements in A.R.S. § 36-897.03(C);
   ix. If applicable:
      1. The form required in A.R.S. § 8-804(I);
      2. Documentation of the submission required in A.R.S. § 8-804(C) and the information received as a result of the submission; and
      3. Documentation of the completion of the Department-provided orientation training specified in subsection (A)(1)(e), if applicable; x. Documentation of the training required in R9-3-302; and
   xi. Documentation of a high school diploma, high school equivalency diploma, associate degree, or bachelor degree, if applicable;

c. Maintains on the premises a file for each resident, for 12 months after the date the resident last resided at the child care group home, containing:
   i. The resident’s name and date of birth;
   ii. The resident’s relationship to the provider;
   iii. The date the resident began residing at the child care group home;
   iv. The date the resident last resided at the child care group home, if applicable;
   v. A written statement by the resident or, if the resident is a minor, the provider attesting to the resident’s current immunity against measles, rubella, diphtheria, mumps, and pertussis;
   vi. If the resident is an adult, the form required in A.R.S. § 36-897.03(B);
   vii. If the resident is an adult, the documents required by R9-3-202(C)(2) or R9-3-202(D); and
   viii. If the resident is 12 years of age or older, the documents required by subsection (A)(3);

d. Prepares a dated attendance record for each day and ensures that each staff member records on the attendance record the staff member’s start time and end time of providing child care services for the child care group home;

e. Maintains on the premises the dated attendance record required in subsection (A)(4)(d) for 12 months after the date on the attendance record;

f. Except as specified in R9-3-408, provides child care services only in areas:
   i. Designated as provided in R9-3-201(2)(f)(i) or R9-3-201(2)(g)(i), or
   ii. Approved under R9-3-205(C);

g. Does not engage in outside employment during hours of operation or operate another business at or out of the residence during hours of operation;

h. Does not allow another staff member to engage in or operate another business at or out of the residence during the staff member’s assigned work hours at the child care group home;

i. Does not allow the operation of another business on the premises during hours of operation unless the operation of the business does not involve persons coming onto the premises during hours of operation because of the business; and

j. Does not allow the cultivation of medical marijuana on the premises.

B. A certificate holder shall ensure that all of the records required to be maintained by this Chapter either are written in English or, if written in a language other than English, include an English translation.

C. A certificate holder shall:
   1. Secure and maintain general liability insurance of at least $100,000 for the child care group home; and
   2. Maintain on the premises documentation of the insurance coverage required in subsection (C)(1).

D. A certificate holder shall ensure that:
   1. While acting on behalf of the certificate holder when the provider is not present at the child care group home, an
A certificate holder shall ensure that a staff member posts in a

person.

A certificate holder shall:

E. A certificate holder shall ensure that a parent, an individual
designated in writing by the parent, or legal guardian of an
enrolled child is allowed immediate access during hours of
operation to the areas of the premises where the enrolled child
is receiving child care services.

F. A certificate holder shall:

1. Prepare a document that includes the following informa-
tion:
   a. The name and contact telephone number of the pro-
      vider;
   b. The hours of operation of the child care group home;
   c. Charges, fees, and payment requirements for child
care services;
   d. Whether medications are administered at the child
care group home and, if so, a description of what the
parent is required to give to the child care group
home;
   e. Whether enrolled children go on field trips under the
supervision of a staff member;
   f. Whether the child care group home provides trans-
portation for enrolled children to or from school, a
school bus stop, or other locations;
   g. The mechanism by which a staff member will verify
that an individual contacting the child care group
home by telephone claiming to be the parent of an
enrolled child is the enrolled child’s parent;
   h. A statement that a parent has access to the areas on
the premises where the parent’s enrolled child is
receiving child care services;
   i. A statement that inspection reports for the child care
group home are available for review at the child care
group home; and
   j. The local address and contact telephone number for
the Department; and

2. Ensure that a staff member provides the document
required in subsection (F)(1) to a parent of an enrolled
child.

G. A certificate holder shall ensure that a staff member posts in a
place that can be conspicuously viewed by individuals enter-
ing or leaving the child care group home:

1. The child care group home certificate;
2. The name of the provider;
3. The name of the staff member designated to act on behalf
of the certificate holder when the provider is not present
at the child care group home;
4. The hours of operation for the child care group home;
5. The weekly activity schedule required in R9-3-
401(D)(4)(b);
6. The amount of time in minutes enrolled children may
watch television, videos, or DVDs at the child care group
home; and

H. A certificate holder shall ensure that a staff member supervises
any individual who is not a staff member and is on the pre-
mises where enrolled children are present.

I. A certificate holder shall ensure that a staff member who has
current training in first aid and CPR is present during hours of
operation when an enrolled child is on the premises or on a trip
away from the premises under the supervision of a staff mem-
ber.

J. A certificate holder shall ensure that if a staff member or resi-
dent lacks documentation of immunization or evidence of
immunity that complies with A.A.C. R9-6-704 for a communi-
cable disease listed in A.A.C. R9-6-702:

1. The staff member or resident is excluded from the child
care group home between the start and end of an outbreak
of the communicable disease at the child care group
home, or
2. The child care group home is closed until the end of an
outbreak at the child care group home.

K. Within 72 hours after changing a provider, a certificate holder
shall send the Department written notice of the change, includ-
ing the name of the new provider.

L. Except as provided in subsections (M) and (N), a certificate
holder shall notify the Department in writing of a planned
change in a child care group home’s hours of operation at least
three calendar days before the date of the planned change,
including:

1. The certificate holder’s name;
2. The child care group home’s certificate number; and
3. The current and intended hours of operation.

M. A certificate holder is not required to notify the Department of
a change in a child care group home’s hours of operation when
the change in the child care group home’s hours of operation is
due to the occurrence of a state or federal holiday on a day of
the week the child care group home regularly provides child
care services.

N. When the premises of a child care group home are left unoccu-
pied during hours of operation or the child care group home is
temporarily closed due to an unexpected event, a certificate
holder shall ensure that a staff member notifies the Department
before leaving the child care group home unoccupied or clos-
ing the child care group home, stating the period of time
during which the child care group home will be unoccupied or
closed.

Historical Note
New Section made by final rulemaking at 10 A.A.R.
1214, effective September 1, 2004 (Supp. 04-1).
Amended by exempt rulemaking at 17 A.A.R. 1530,
effective September 30, 2011 (Supp. 11-3). Amended by
exempt rulemaking at 19 A.A.R. 2607, effective August
1, 2013 (Supp.13-3). Amended by final expedited
rulemaking at 26 A.A.R. 1969, with an immediate effec-
tive date of September 2, 2020 (Supp. 20-3).

R9-3-302. Staff Training

A. Within 10 calendar days after the starting date of employment
or volunteer service, a certificate holder shall provide, and
each staff member shall complete, training for new staff mem-
ers that includes all of the following:

1. Names, ages, and developmental stages of enrolled chil-
dren;
2. Health needs, nutritional requirements, any known aller-
gies, and information about adaptive devices of enrolled
children;
3. Guiding and disciplining children;
36-132. **Department of health services; functions; contracts**

A. The department, in addition to other powers and duties vested in it by law, shall:

1. **Protect the health of the people of the state.**
2. Promote the development, maintenance, efficiency and effectiveness of local health departments or districts of sufficient population and area that they can be sustained with reasonable economy and efficient administration, provide technical consultation and assistance to local health departments or districts, provide financial assistance to local health departments or districts and services that meet minimum standards of personnel and performance and in accordance with a plan and budget submitted by the local health department or districts to the department for approval, and recommend the qualifications of all personnel.
3. Collect, preserve, tabulate and interpret all information required by law in reference to births, deaths and all vital facts, and obtain, collect and preserve information relating to the health of the people of this state and the prevention of diseases as may be useful in the discharge of functions of the department not in conflict with chapter 3 of this title and sections 36-693, 36-694 and 39-122.
4. Operate such sanitariums, hospitals or other facilities assigned to the department by law or by the governor.
5. Conduct a statewide program of health education relevant to the powers and duties of the department, prepare educational materials and disseminate information as to conditions affecting health, including basic information for the promotion of good health on the part of individuals and communities, and prepare and disseminate technical information concerning public health to the health professions, local health officials and hospitals. In cooperation with the department of education, the department of health services shall prepare and disseminate materials and give technical assistance for the purpose of education of children in hygiene, sanitation and personal and public health, and provide consultation and assistance in community organization to counties, communities and groups of people.
6. Administer or supervise a program of public health nursing, prescribe the minimum qualifications of all public health nurses engaged in official public health work, and encourage and aid in coordinating local public health nursing services.
7. Encourage and aid in coordinating local programs concerning control of preventable diseases in accordance with statewide plans that shall be formulated by the department.
8. Encourage and aid in coordinating local programs concerning maternal and child health, including midwifery, antepartum and postpartum care, infant and preschool health and the health of schoolchildren, including special fields such as the prevention of blindness and conservation of sight and hearing.
9. Encourage and aid in the coordination of local programs concerning nutrition of the people of this state.
10. Encourage, administer and provide dental health care services and aid in coordinating local programs concerning dental public health, in cooperation with the Arizona dental association. The department may bill and receive payment for costs associated with providing dental health care services and shall deposit the monies in the oral health fund established by section 36-138.
11. Establish and maintain adequate serological, bacteriological, parasitological, entomological and chemical laboratories with qualified assistants and facilities necessary for routine examinations and analyses and for investigations and research in matters affecting public health.
12. Supervise, inspect and enforce the rules concerning the operation of public bathing places and public and semipublic swimming pools adopted pursuant to section 36-136, subsection I, paragraph 10.
13. Take all actions necessary or appropriate to ensure that bottled water sold to the public and water used to process, store, handle, serve and transport food and drink are free from filth, disease-causing substances and organisms and unwholesome, poisonous, deleterious or other foreign substances. All state agencies and local...
health agencies involved with water quality shall provide to the department any assistance requested by the
director to ensure that this paragraph is effectuated.

14. Enforce the state food, caustic alkali and acid laws in accordance with chapter 2, article 2 of this title, chapter
8, article 1 of this title and chapter 9, article 4 of this title, and collaborate in the enforcement of the federal
food, drug, and cosmetic act (52 Stat. 1040; 21 United States Code sections 1 through 905).

15. Conduct continuing evaluations of state, local and district public health programs, study and appraise state
health problems and develop broad plans for use by the department and for recommendation to other
agencies, professions and local health departments for the best solution of these problems.

16. License and regulate health care institutions according to chapter 4 of this title.

17. Recruit and train personnel for state, local and district health departments.

18. Issue or direct the issuance of licenses and permits required by law.

19. Participate in the state civil defense program and develop the necessary organization and facilities to meet
wartime or other disasters.

20. Subject to the availability of monies, develop and administer programs in perinatal health care, including:
   (a) Screening in early pregnancy for detecting high-risk conditions.
   (b) Comprehensive prenatal health care.
   (c) Maternity, delivery and postpartum care.
   (d) Perinatal consultation, including transportation of the pregnant woman to a perinatal care center when
       medically indicated.
   (e) Perinatal education oriented toward professionals and consumers, focusing on early detection and
       adequate intervention to avert premature labor and delivery.

21. License and regulate the health and safety of group homes for persons with developmental disabilities. The
department shall issue a license to an accredited facility for a period of the accreditation, except that no
licensing period shall be longer than three years. The department is authorized to conduct an inspection of an
accredited facility to ensure that the facility meets health and safety licensure standards. The results of the
accreditation survey shall be public information. A copy of the final accreditation report shall be filed with the
department of health services. For the purposes of this paragraph, "accredited" means accredited by a
nationally recognized accreditation organization.

B. The department may accept from the state or federal government, or any agency of the state or federal government,
and from private donors, trusts, foundations or eleemosynary corporations or organizations grants or donations for
or in aid of the construction or maintenance of any program, project, research or facility authorized by this title, or
in aid of the extension or enforcement of any program, project or facility authorized, regulated or prohibited by this
title, and enter into contracts with the federal government, or an agency of the federal government, and with private
donors, trusts, foundations or eleemosynary corporations or organizations, to carry out such purposes. All monies
made available under this section are special project grants. The department may also expend these monies to
further applicable scientific research within this state.

C. The department, in establishing fees authorized by this section, shall comply with title 41, chapter 6. The
department shall not set a fee at more than the department’s cost of providing the service for which the fee is
charged. State agencies are exempt from all fees imposed pursuant to this section.

D. The department may enter into contracts with organizations that perform nonrenal organ transplant operations and
organizations that primarily assist in the management of end-stage renal disease and related problems to provide, as
payors of last resort, prescription medications necessary to supplement treatment and transportation to and from
treatment facilities. The contracts may provide for department payment of administrative costs it specifically
authorizes.
36-136. Powers and duties of director; compensation of personnel

A. The director shall:
1. Be the executive officer of the department of health services and the state registrar of vital statistics but shall not receive compensation for services as registrar.
2. Perform all duties necessary to carry out the functions and responsibilities of the department.
3. Prescribe the organization of the department. The director shall appoint or remove personnel as necessary for the efficient work of the department and shall prescribe the duties of all personnel. The director may abolish any office or position in the department that the director believes is unnecessary.
4. Administer and enforce the laws relating to health and sanitation and the rules of the department.
5. Provide for the examination of any premises if the director has reasonable cause to believe that on the premises there exists a violation of any health law or rule of this state.
6. Exercise general supervision over all matters relating to sanitation and health throughout this state. When in the opinion of the director it is necessary or advisable, a sanitary survey of the whole or of any part of this state shall be made. The director may enter, examine and survey any source and means of water supply, sewage disposal plant, sewerage system, prison, public or private place of detention, asylum, hospital, school, public building, private institution, factory, workshop, tenement, public washroom, public restroom, public toilet and toilet facility, public eating room and restaurant, dairy, milk plant or food manufacturing or processing plant, and any premises in which the director has reason to believe there exists a violation of any health law or rule of this state.
7. Prepare sanitary and public health rules.
8. Perform other duties prescribed by law.

B. If the director has reasonable cause to believe that there exists a violation of any health law or rule of this state, the director may inspect any person or property in transportation through this state, and any car, boat, train, trailer, airplane or other vehicle in which that person or property is transported, and may enforce detention or disinfection as reasonably necessary for the public health if there exists a violation of any health law or rule.

C. The director, after consultation with the department of administration, may take all necessary steps to enhance the highest and best use of the state hospital property, including contracting with third parties to provide services, entering into short-term lease agreements with third parties to occupy or renovate existing buildings and entering into long-term lease agreements to develop the land and buildings. The director shall deposit any monies collected from contracts and lease agreements entered into pursuant to this subsection in the Arizona state hospital charitable trust fund established by section 36-218. At least thirty days before issuing a request for proposals pursuant to this subsection, the department of health services shall hold a public hearing to receive community and provider input regarding the highest and best use of the state hospital property related to the request for proposals. The department shall report to the joint committee on capital review on the terms, conditions and purpose of any lease or sublease agreement entered into pursuant to this subsection relating to state hospital lands or buildings or the disposition of real property pursuant to this subsection, including state hospital lands or buildings, and the fiscal impact on the department and any revenues generated by the agreement. Any lease or sublease agreement entered into pursuant to this subsection relating to state hospital lands or buildings or the disposition of real property pursuant to this subsection, including state hospital lands or buildings, must be reviewed by the joint committee on capital review.

D. The director may deputize, in writing, any qualified officer or employee in the department to do or perform on the director's behalf any act the director is by law empowered to do or charged with the responsibility of doing.

E. The director may delegate to a local health department, county environmental department or public health services district any functions, powers or duties that the director believes can be competently, efficiently and properly
performed by the local health department, county environmental department or public health services district if:

1. The director or superintendent of the local health agency, environmental agency or public health services district is willing to accept the delegation and agrees to perform or exercise the functions, powers and duties conferred in accordance with the standards of performance established by the director of the department of health services.

2. Monies appropriated or otherwise made available to the department for distribution to or division among counties or public health services districts for local health work may be allocated or reallocated in a manner designed to ensure the accomplishment of recognized local public health activities and delegated functions, powers and duties in accordance with applicable standards of performance. Whenever in the director's opinion there is cause, the director may terminate all or a part of any delegation and may reallocate all or a part of any funds that may have been conditioned on the further performance of the functions, powers or duties conferred.

F. The compensation of all personnel shall be as determined pursuant to section 38-611.

G. The director may make and amend rules necessary for the proper administration and enforcement of the laws relating to the public health.

H. Notwithstanding subsection I, paragraph 1 of this section, the director may define and prescribe emergency measures for detecting, reporting, preventing and controlling communicable or infectious diseases or conditions if the director has reasonable cause to believe that a serious threat to public health and welfare exists. Emergency measures are effective for no longer than eighteen months.

I. The director, by rule, shall:

1. Define and prescribe reasonably necessary measures for detecting, reporting, preventing and controlling communicable and preventable diseases. The rules shall declare certain diseases reportable. The rules shall prescribe measures, including isolation or quarantine, that are reasonably required to prevent the occurrence of, or to seek early detection and alleviation of, disability, insofar as possible, from communicable or preventable diseases. The rules shall include reasonably necessary measures to control animal diseases transmittable to humans.

2. Define and prescribe reasonably necessary measures, in addition to those prescribed by law, regarding the preparation, embalming, cremation, interment, disinterment and transportation of dead human bodies and the conduct of funerals, relating to and restricted to communicable diseases and regarding the removal, transportation, cremation, interment or disinterment of any dead human body.

3. Define and prescribe reasonably necessary procedures that are not inconsistent with law in regard to the use and accessibility of vital records, delayed birth registration and the completion, change and amendment of vital records.

4. Except as relating to the beneficial use of wildlife meat by public institutions and charitable organizations pursuant to title 17, prescribe reasonably necessary measures to ensure that all food or drink, including meat and meat products and milk and milk products sold at the retail level, provided for human consumption is free from unwholesome, poisonous or other foreign substances and filth, insects or disease-causing organisms. The rules shall prescribe reasonably necessary measures governing the production, processing, labeling, storing, handling, serving and transportation of these products. The rules shall prescribe minimum standards for the sanitary facilities and conditions that shall be maintained in any warehouse, restaurant or other premises, except a meat packing plant, slaughterhouse, wholesale meat processing plant, dairy product manufacturing plant or trade product manufacturing plant. The rules shall prescribe minimum standards for any truck or other vehicle in which food or drink is produced, processed, stored, handled, served or transported. The rules shall provide for the inspection and licensing of premises and vehicles so used, and for abatement as public nuisances of any premises or vehicles that do not comply with the rules and minimum
standards. The rules shall provide an exemption relating to food or drink that is:

(a) Served at a noncommercial social event such as a potluck.
(b) Prepared at a cooking school that is conducted in an owner-occupied home.
(c) Not potentially hazardous and prepared in a kitchen of a private home for occasional sale or distribution for noncommercial purposes.
(d) Prepared or served at an employee-conducted function that lasts less than four hours and is not regularly scheduled, such as an employee recognition, an employee fund-raising or an employee social event.
(e) Offered at a child care facility and limited to commercially prepackaged food that is not potentially hazardous and whole fruits and vegetables that are washed and cut on-site for immediate consumption.
(f) Offered at locations that sell only commercially prepackaged food or drink that is not potentially hazardous.

(g) A cottage food product that is not potentially hazardous or a time or temperature control for safety food and that is prepared in a kitchen of a private home for commercial purposes, including fruit jams and jellies, dry mixes made with ingredients from approved sources, honey, dry pasta and roasted nuts. Cottage food products must be packaged at home with an attached label that clearly states the name and registration number of the food preparer, lists all the ingredients in the product and the product's production date and includes the following statement: “This product was produced in a home kitchen that may process common food allergens and is not subject to public health inspection.” If the product was made in a facility for individuals with developmental disabilities, the label must also disclose that fact. The person preparing the food or supervising the food preparation must complete a food handler training course from an accredited program and maintain active certification. The food preparer must register with an online registry established by the department pursuant to paragraph 13 of this subsection. The food preparer must display the preparer's certificate of registration when operating as a temporary food establishment. For the purposes of this subdivision, "not potentially hazardous" means cottage food products that meet the requirements of the food code published by the United States food and drug administration, as modified and incorporated by reference by the department by rule.

(h) A whole fruit or vegetable grown in a public school garden that is washed and cut on-site for immediate consumption.

(i) Produce in a packing or holding facility that is subject to the United States food and drug administration produce safety rule (21 Code of Federal Regulations part 112) as administered by the Arizona department of agriculture pursuant to title 3, chapter 3, article 4.1. For the purposes of this subdivision, "holding", "packing" and "produce" have the same meanings prescribed in section 3-525.

5. Prescribe reasonably necessary measures to ensure that all meat and meat products for human consumption handled at the retail level are delivered in a manner and from sources approved by the Arizona department of agriculture and are free from unwholesome, poisonous or other foreign substances and filth, insects or disease-causing organisms. The rules shall prescribe standards for sanitary facilities to be used in identity, storage, handling and sale of all meat and meat products sold at the retail level.

6. Prescribe reasonably necessary measures regarding production, processing, labeling, handling, serving and transportation of bottled water to ensure that all bottled drinking water distributed for human consumption is free from unwholesome, poisonous, deleterious or other foreign substances and filth or disease-causing organisms. The rules shall prescribe minimum standards for the sanitary facilities and conditions that shall be maintained at any source of water, bottling plant and truck or vehicle in which bottled water is produced, processed, stored or transported and shall provide for inspection and certification of bottled drinking water sources, plants, processes and transportation and for abatement as a public nuisance of any water supply,
label, premises, equipment, process or vehicle that does not comply with the minimum standards. The rules shall prescribe minimum standards for bacteriological, physical and chemical quality for bottled water and for the submission of samples at intervals prescribed in the standards.

7. Define and prescribe reasonably necessary measures governing ice production, handling, storing and distribution to ensure that all ice sold or distributed for human consumption or for the preservation or storage of food for human consumption is free from unwholesome, poisonous, deleterious or other foreign substances and filth or disease-causing organisms. The rules shall prescribe minimum standards for the sanitary facilities and conditions and the quality of ice that shall be maintained at any ice plant, storage and truck or vehicle in which ice is produced, stored, handled or transported and shall provide for inspection and licensing of the premises and vehicles, and for abatement as public nuisances of ice, premises, equipment, processes or vehicles that do not comply with the minimum standards.

8. Define and prescribe reasonably necessary measures concerning sewage and excreta disposal, garbage and trash collection, storage and disposal, and water supply for recreational and summer camps, campgrounds, motels, tourist courts, trailer coach parks and hotels. The rules shall prescribe minimum standards for preparation of food in community kitchens, adequacy of excreta disposal, garbage and trash collection, storage and disposal and water supply for recreational and summer camps, campgrounds, motels, tourist courts, trailer coach parks and hotels and shall provide for inspection of these premises and for abatement as public nuisances of any premises or facilities that do not comply with the rules. Primitive camp and picnic grounds offered by this state or a political subdivision of this state are exempt from rules adopted pursuant to this paragraph but are subject to approval by a county health department under sanitary regulations adopted pursuant to section 36-183.02. Rules adopted pursuant to this paragraph do not apply to two or fewer recreational vehicles as defined in section 33-2102 that are not park models or park trailers, that are parked on owner-occupied residential property for less than sixty days and for which no rent or other compensation is paid. For the purposes of this paragraph, "primitive camp and picnic grounds" means camp and picnic grounds that are remote in nature and without accessibility to public infrastructure such as water, electricity and sewer.

9. Define and prescribe reasonably necessary measures concerning the sewage and excreta disposal, garbage and trash collection, storage and disposal, water supply and food preparation of all public schools. The rules shall prescribe minimum standards for sanitary conditions that shall be maintained in any public school and shall provide for inspection of these premises and facilities and for abatement as public nuisances of any premises that do not comply with the minimum standards.

10. Prescribe reasonably necessary measures to prevent pollution of water used in public or semipublic swimming pools and bathing places and to prevent deleterious health conditions at these places. The rules shall prescribe minimum standards for sanitary conditions that shall be maintained at any public or semipublic swimming pool or bathing place and shall provide for inspection of these premises and for abatement as public nuisances of any premises and facilities that do not comply with the minimum standards. The rules shall be developed in cooperation with the director of the department of environmental quality and shall be consistent with the rules adopted by the director of the department of environmental quality pursuant to section 49-104, subsection B, paragraph 12.

11. Prescribe reasonably necessary measures to keep confidential information relating to diagnostic findings and treatment of patients, as well as information relating to contacts, suspects and associates of communicable disease patients. In no event shall confidential information be made available for political or commercial purposes.

12. Prescribe reasonably necessary measures regarding human immunodeficiency virus testing as a means to
control the transmission of that virus, including the designation of anonymous test sites as dictated by current epidemiologic and scientific evidence.

13. Establish an online registry of food preparers that are authorized to prepare cottage food products for commercial purposes pursuant to paragraph 4 of this subsection. A registered food preparer shall renew the registration every three years and shall provide to the department updated registration information within thirty days after any change.

14. Prescribe an exclusion for fetal demise cases from the standardized survey known as "the hospital consumer assessment of healthcare providers and systems".

J. The rules adopted under the authority conferred by this section shall be observed throughout the state and shall be enforced by each local board of health or public health services district, but this section does not limit the right of any local board of health or county board of supervisors to adopt ordinances and rules as authorized by law within its jurisdiction, provided that the ordinances and rules do not conflict with state law and are equal to or more restrictive than the rules of the director.

K. The powers and duties prescribed by this section do not apply in instances in which regulatory powers and duties relating to public health are vested by the legislature in any other state board, commission, agency or instrumentality, except that with regard to the regulation of meat and meat products, the department of health services and the Arizona department of agriculture within the area delegated to each shall adopt rules that are not in conflict.

L. The director, in establishing fees authorized by this section, shall comply with title 41, chapter 6. The department shall not set a fee at more than the department's cost of providing the service for which the fee is charged. State agencies are exempt from all fees imposed pursuant to this section.

M. After consultation with the state superintendent of public instruction, the director shall prescribe the criteria the department shall use in deciding whether or not to notify a local school district that a pupil in the district has tested positive for the human immunodeficiency virus antibody. The director shall prescribe the procedure by which the department shall notify a school district if, pursuant to these criteria, the department determines that notification is warranted in a particular situation. This procedure shall include a requirement that before notification the department shall determine to its satisfaction that the district has an appropriate policy relating to nondiscrimination of the infected pupil and confidentiality of test results and that proper educational counseling has been or will be provided to staff and pupils.

N. Until the department adopts exemptions by rule as required by subsection I, paragraph 4, subdivision (f) of this section, food and drink are exempt from the rules prescribed in subsection I of this section if offered at locations that sell only commercially prepackaged food or drink that is not potentially hazardous, without a limitation on its display area.

O. Until the department adopts exemptions by rule as required by subsection I, paragraph 4, subdivision (h) of this section, a whole fruit or vegetable grown in a public school garden that is washed and cut on-site for immediate consumption is exempt from the rules prescribed in subsection I of this section.

P. Until the department adopts an exclusion by rule as required by subsection I, paragraph 14 of this section, the standardized survey known as "the hospital consumer assessment of healthcare providers and systems" may not include patients who experience a fetal demise.

Q. For the purposes of this section:
   1. "Cottage food product":
      (a) Means a food that is not potentially hazardous or a time or temperature control for safety food as defined by the department in rule and that is prepared in a home kitchen by an individual who is registered with the department.
(b) Does not include foods that require refrigeration, perishable baked goods, salsas, sauces, fermented and pickled foods, meat, fish and shellfish products, beverages, acidified food products, nut butters or other reduced-oxygen packaged products.

2. "Fetal demise" means a fetal death that occurs or is confirmed in a licensed hospital. Fetal demise does not include an abortion as defined in section 36-2151.

36-897. Definitions

In this article, unless the context otherwise requires:

1. "Child care group home" means a residential facility in which child care is regularly provided for compensation for periods of less than twenty-four hours per day for not less than five children but no more than ten children through the age of twelve years.

2. "Department" means the department of health services.

3. "Provider" means the certificate holder or a person the certificate holder designates in writing who, pursuant to applicable statutes and rules, is to be responsible for direct daily supervision, operation and maintenance of the child care group home.

4. "Substantial compliance" means that the nature or number of violations revealed by any type of inspection or investigation of an applicant for certification as a child care group home or a certified child care group home does not pose a direct risk to the life, health or safety of children.

36-897.01. Certification; application; fees; rules; fingerprinting; renewal; exemption from rule making

A. A child care group home shall be certified by the department. An application for a certificate shall be made on a written or electronic form prescribed by the department and shall contain all information required by the department.

B. If a child care group home is within one-fourth mile of agriculture land, the application shall include the names and addresses of the owners and lessees of any agricultural land within one-fourth mile of the facility. Within ten days after receipt of an application for a certificate, the department shall notify the owners and lessees of agricultural land as listed on the application. The department shall deny a certificate that affects agricultural land regulated pursuant to section 3-365, except that the owner of the agricultural land may agree to comply with the buffer zone requirements of section 3-365. If the owner agrees in writing to comply with the buffer zone requirements and records the agreement in the office of the county recorder as a restrictive covenant running with the title to the land, the department may issue a certificate to the child care group home to be located within the affected buffer zone. The agreement may include any stipulations regarding the child care group home, including conditions for future expansion of the facility and changes in the operational status of the facility that will result in a breach of the agreement. This subsection applies to the renewal of a certificate for a child care group home located in the same location if the child care group home certificate was not previously issued under this subsection.

C. The director, by rule, may establish and collect fees for child care group homes and a late filing fee. Beginning January 1, 2010, ninety per cent of the fees collected pursuant to this section shall be deposited, pursuant to sections 35-146 and 35-147, in the health services licensing fund established by section 36-414 and ten per cent of the fees collected pursuant to this section shall be deposited, pursuant to sections 35-146 and 35-147, in the state general fund.

D. Pursuant to available funding the department shall collect annual fees.

E. Beginning January 1, 2010, subject to the availability of monies, the department may establish a discount program
9 A.A.C. 3 Child Care Group Homes

for certification fees paid by child care group homes, including a public health discount program.

F. The department shall issue an initial certificate if the department determines that the applicant and the applicant's child care group home are in substantial compliance with the requirements of this article and department rules and the facility agrees to carry out a plan acceptable to the director to eliminate any deficiencies.

G. A certificate is valid unless it is revoked or suspended or the licensee does not pay the licensure fee and may be renewed by submitting the certification fee as prescribed by the department pursuant to subsection C of this section.

H. In order to ensure that the equipment and services of a child care group home and the good character of an applicant are conducive to the welfare of children, the department by rule shall establish the criteria for granting, denying, suspending and revoking a certificate.

I. The director shall adopt rules and prescribe forms as may be necessary for the proper administration and enforcement of this article.

J. The certificate shall be conspicuously posted in the child care group home for viewing by parents and the public.

K. Current department inspection reports shall be kept at the child care group home and shall be made available to parents on request.

L. A certificate is not transferable and is valid only for the location occupied at the time it is issued.

M. An application for an initial certificate shall include:
   1. The form that is required pursuant to section 36-897.03, subsection B and that is completed by the applicant.
   2. A copy of a valid fingerprint clearance card issued to the applicant pursuant to section 41-1758.07.

N. The department of health services shall notify the department of public safety if the department of health services receives credible evidence that a person who possesses a valid fingerprint clearance card either:
   1. Is arrested for or charged with an offense listed in section 41-1758.07, subsection B.
   2. Falsified information on any form required by section 36-897.03.

O. Certificate holders may pay fees by installment payments based on procedures established by the department.

P. The department shall review its actual costs to administer this article at least once every two years. If the department determines that its administrative costs are lower than the fees it has collected pursuant to this section, it shall adjust fees.

Q. If the department lowers fees, the department may refund or credit fees to licensees.

R. Fee reductions are exempt from the rule making requirements of title 41, chapter 6.

36-897.02. Standards of care; monitoring

A. The department by rule shall establish standards of care for child care group homes. These rules shall include minimum programmatic, personnel, supervision of children, training, physical environment and financial stability standards.

B. At least two adults shall be present in the child care group home when six to ten children are cared for in the home.

C. For purposes of certification of the child care group home, the provider's own children shall not be counted.

D. The total number of children present in a child care group home at any given time for whom compensation is received shall not exceed ten.

E. The total number of children present in a child care group home at any given time, including children related to the provider, shall not exceed fifteen.

F. The department shall monitor the operation of a child care group home at least two times each year to ensure that the child care group home is meeting department standards of care.
36-897.03. Child care group homes; child care personnel; fingerprints; definition

A. Child care personnel, including volunteers, shall submit the form prescribed in subsection B of this section to the employer and shall have valid fingerprint clearance cards issued pursuant to section 41-1758.07 or shall apply for a fingerprint clearance card within seven working days of employment or beginning volunteer work.

B. Applicants, certificate holders and child care personnel shall attest on forms that are provided by the department that:

1. They are not awaiting trial on or have never been convicted of or admitted in open court or pursuant to a plea agreement committing any of the offenses listed in section 41-1758.07, subsection B or C in this state or similar offenses in another state or jurisdiction.
2. They are not parents or guardians of a child adjudicated to be a dependent child as defined in section 8-201.
3. They have not been denied a certificate to operate a child care group home or a license to operate a child care facility for the care of children in this state or another state or had a license to operate a child care facility or a certificate to operate a child care group home revoked for reasons that relate to the endangerment of the health and safety of children.

C. The provider shall make documented, good faith efforts to contact previous employers of child care personnel to obtain information or recommendations that may be relevant to an individual's fitness to work in a certified child care group home.

D. The director may adopt rules prescribing the exclusion from child care group homes of individuals whose presence may be detrimental to the welfare of children.

E. The forms required by subsection B of this section are confidential.

F. A person who is awaiting trial on or who has been convicted of or who has admitted in open court or pursuant to a plea agreement to committing a criminal offense listed in section 41-1758.07, subsection B or subsection B, paragraph 2 or 3 of this section is prohibited from being employed in any capacity in a child care group home.

G. A person who is awaiting trial on or who has been convicted of or who has admitted in open court or pursuant to a plea agreement to committing a criminal offense listed in section 41-1758.07, subsection C shall not work in a child care group home without direct visual supervision unless the person has applied for and received the required fingerprint clearance card pursuant to section 41-1758 and is registered as child care personnel. A person who is subject to this subsection shall not be employed in any capacity in a child care group home if that person is denied the required fingerprint clearance card.

H. The employer shall notify the department of public safety if the employer receives credible evidence that any child care personnel either:

1. Is arrested for or charged with an offense listed in section 41-1758.07, subsection B.
2. Falsified information on the form required by subsection B of this section.

I. For the purposes of this section, "child care personnel" means all employees of and persons who are eighteen years of age or older and who reside in a child care group home that is certified by the department.

36-897.04. Exemptions

A. This article does not apply to the care given to children by or in:

1. The homes of their own parents.
2. A religious institution conducting a nursery in conjunction with its religious services.
3. A unit of the public school system.
4. A regularly organized private school engaged in an educational program which may be attended in substitution for public school pursuant to section 15-802.
5. Any facility that provides training only in specific subjects, including dancing, drama, music, self-defense or religion.
6. Any facility that provides only recreational or instructional activity to school age children who may come to and go from that facility at their own volition.

B. If regularly organized private schools exempt under subsection A, paragraph 4 of this section provide child care beyond public school hours or for children who are not regularly enrolled in kindergarten programs or grades one through twelve, that portion of the school providing this care shall be considered a child care group home and is subject to this article.

36-897.05. Inspection of child care group homes

A. The department or designated local health departments or its agents may at any time visit, during hours of operation, and inspect a child care group home in order to determine whether it is certified and is being conducted in compliance with applicable law, this article and rules adopted pursuant to this article.
B. The department shall visit each child care group home as often as necessary to assure continued compliance with this article and the rules adopted pursuant to this article. At least one unannounced visit shall be made annually.

36-897.06. Civil penalty; collection

A. The director may impose a civil penalty on a person who violates this article or rules adopted pursuant to this article in an amount of not more than one hundred dollars for each violation. Each day that a violation occurs constitutes a separate violation. The director may issue a notice that includes the proposed amount of the civil penalty assessment. A person may appeal the assessment by requesting an administrative hearing. If a person requests a hearing to appeal an assessment, the director shall not take further action to enforce and collect the assessment until the hearing process is complete. The director shall impose a civil penalty only for those days on which the violation has been documented by the department.
B. In determining the civil penalty pursuant to subsection A, the department shall consider the following:
   1. Repeated violations of statutes or rules.
   2. Patterns of noncompliance.
   3. Types of violations.
   4. Severity of violations.
   5. Potential for and occurrences of actual harm.
   6. Threats to health and safety.
   7. Number of children affected by the violations.
   8. Number of violations.
   9. Size of the facility.
   10. Length of time during which violations have been occurring.
C. If a civil penalty imposed pursuant to subsection A of this section is not paid, the attorney general or a county attorney shall file an action to collect the civil penalty in a justice court or the superior court in the county in which the violation occurred.
D. Civil penalties collected pursuant to subsection A of this section shall be deposited, pursuant to sections 35-146 and 35-147, in the state general fund.
E. The department shall develop an instrument that documents compliance and noncompliance of child care group
homes according to the criteria prescribed in its rules governing child care group home certification. Blank copies of the instrument, which shall be in standardized form, shall be made available to the public.

36-897.07. **Training program**

The director shall establish a training program to provide training for child care group homes and users of child care group home services, technical assistance materials for child care group homes and information to enhance consumer awareness.

36-897.08. **Intermediate sanctions; notification of compliance; hearing**

A. If the director has reasonable cause to believe that a child care group home is in violation of this article or a rule adopted pursuant to this article and that the health or safety of the children is endangered, on written notice to the child care group home the director may impose one or more of the following intermediate sanctions until the child care group home is in substantial compliance:
   1. Immediately restrict admissions to the child care group home.
   2. Terminate specific services that the child care group home may offer.
   3. Reduce the child care group home's capacity.

B. A child care group home sanctioned pursuant to this section shall notify the department in writing when it is in substantial compliance. On receipt of notification the department shall conduct an inspection. If the department determines that the child care group home is in substantial compliance the director shall immediately rescind the sanctions. If the department determines that the child care group home is not in substantial compliance the sanctions remain in effect. The child care group home may then notify the department of substantial compliance not sooner than fourteen days after the date of that inspection. If the department determines on the return inspection that the child care group home is still not in substantial compliance the sanctions remain in effect. Thereafter, a child care group home may notify the department of substantial compliance not sooner than thirty days after the date of the last inspection. A child care group home shall make all notifications of substantial compliance by certified mail. The department shall conduct all inspections required pursuant to this subsection within fourteen days after receipt of notification of substantial compliance. If the department does not conduct an inspection within this time period, the sanctions have no further effect.

C. On written request by a person who has been sanctioned pursuant to this section the director or the director's designee shall conduct a hearing to review the sanctions. A request for a hearing shall be made by certified mail within ten days after receipt of notice of the sanctions. The office of administrative hearings shall conduct an administrative hearing within seven business days after the notice of appeal has been filed with the office of administrative hearings.

D. A hearing conducted pursuant to this section shall comply with the requirements of title 41, chapter 6, article 10.

36-897.09. **Operating without a certificate; notice; hearing; violation; classification**

A. If the department has reasonable cause to believe that a person is operating a child care group home without a certificate, it shall notify that person to cease operation within ten days of receiving the notice. The department shall give notice either by certified mail or by personal service. The notice shall state that the person may make a written request for a hearing before the director or the director's designee pursuant to title 41, chapter 6, article 10.

B. If a person fails to cease operation, the department may request that the county attorney of the county in which the home is located enforce this article. The department may also notify the attorney general who shall immediately
seek a restraining order and an injunction against the home.

C. A person who continues to operate a child care group home without certification ten days after receiving notice pursuant to this section is guilty of a class 1 misdemeanor.

36-897.10. Pending action or sale; effect on licensure

A. The department shall not act on an application for certification of a currently certified child care group home while any enforcement or court action related to child care group home certification is pending against that group home's current certificate holder.

B. The director may continue to pursue any court, administrative or enforcement action against the certificate holder even if the group home is in the process of being sold or transferred to a new owner.

C. The department shall not approve a change in group home ownership unless it determines that there has been a transfer of legal and equitable interests, control and authority in the group home so that persons other than the transferring certificate holder, that certificate holder's agent or other parties exercising authority or supervision over the group home's daily operations or staff are responsible for and have control over the group home.

36-897.11. Injunctions; definition

A. If the department believes that a child care group home is operating under conditions that may cause serious harm to children, the department shall notify the attorney general or the county attorney of the county in which the child care group home is located who shall immediately seek a restraining order and injunction against the home.

B. For the purposes of this section, "serious harm" means a substantial physical injury.

36-897.12. Inspection of records

A. Records maintained by the department for child care group homes are available to the public for review and copying.

B. Personally identifiable information that relates to a child, parent or guardian is confidential. The department shall disclose this information only as follows:
   1. Pursuant to a court order.
   2. Pursuant to a written consent signed by the parent or guardian.
   3. To a law enforcement officer who requires it for official purposes.
   4. To an official of a governmental agency who requires it for official purposes.

C. The department shall enter into the child care group home's case file, contiguous to the form containing the reported violations, those documents that verify correction of reported violations.

36-897.13. Use of sunscreen in child care group homes

A school-age child who attends a child care group home in this state may possess and use a topical sunscreen product without a note or prescription from a licensed health care professional.

46-811. Child care providers; background check requirements
A. The department of economic security and the department of health services may conduct background checks pursuant to the requirements of the child care and development block grant act of 2014 (P.L. 113-186) that are not included in the fingerprint clearance card process established by section 41-1758.02 for:

1. Employees and volunteers of child care providers as defined in section 46-801.

2. All persons who are eighteen years of age or older and who work or reside in the home of a child care home provider as defined in section 46-801.

3. Child care personnel as defined in section 36-897.03.

4. Child care providers as defined in section 41-1967.01.

B. The department of economic security may enter into agreements with other government agencies to conduct the background checks required in subsection A of this section.
DEPARTMENT OF HEALTH SERVICES (Expedited Rulemaking)
Title 9, Chapter 5

MEETING DATE: July 6, 2022

TO: Members of the Governor’s Regulatory Review Council (Council)

FROM: Council Staff

DATE: June 13, 2022

SUBJECT: DEPARTMENT OF HEALTH SERVICES (Expedited Rulemaking)
Title 9, Chapter 5


Summary:

This expedited rulemaking from the Department of Health Services (Department) seeks to amend five (5) rules in Title 9, Chapter 5, Articles 1, 2, and 4 related to child care facilities. Specifically, the Department seeks to clarify requirements for personnel, volunteers, and others providing services for enrolled children who attend licensed child care facilities to ensure the health and safety of the enrolled children. These rules comply with Laws 2020, Ch. 86 that specifies all child care personnel and volunteers shall have a valid fingerprint clearance card issued before starting employment or volunteer work and adds clarification for background checks pursuant to the Child Care and Development Block Grant Act of 2014 (P. L. 113-186) (Block Grant). The Department indicates the current rules contain requirements for fingerprinting checks and state criminal registry verification. To make the rules consistent with the Block Grant, the Department plans to add verification of: the state sex offender registry, the state child abuse and neglect registries and databases, the National Crime Information Center, and the National Sex Offender Registry. The Department believes amending these rules will make the rules consistent with A.R.S.§ 46-811, eliminate confusion related to child care fingerprinting and background check requirements, and ensure the health and safety for enrolled children attending a child care facility.
1. **Do the rules satisfy the criteria for expedited rulemaking pursuant to A.R.S. § 41-1027(A)?**

Pursuant to A.R.S. § 41-1027(A), an agency may only conduct an expedited rulemaking if the rulemaking “does not increase the cost of regulatory compliance, increase a fee or reduce procedural rights of persons regulated…” and meets one of several other criteria. The Department indicates that the following rulemaking does not increase the cost of regulatory compliance, increase a fee, or reduce procedural rights of persons regulated. Furthermore, the Department indicates that the rulemaking adopts requirements implementing Laws 2020, Ch. 86 and amends an outdated rule. Furthermore, the Department indicates the rulemaking provides a public benefit, amends rules made obsolete by legislative action, and is expected to increase the quality of health and safety for children attending licensed child care facilities. As such, the Department indicates that the rulemaking complies with criteria for expedited rulemaking under A.R.S. § 41-1027(A)(4) and (6).

However, Council staff expressed concern that adding requirements for additional background check verification that includes the state sex offender registry, the state child abuse and neglect registries and databases, the National Crime Information Center, and the National Sex Offender Registry, may increase the cost of regulatory compliance to parties regulated by these rules. Council staff raised these concerns with the Department. In response the Department stated,

> [T]he Department does not expect the changes made to the rules to include a background check will increase a cost for a licensee or child care personnel; rather any increase cost related to obtaining a background check is the result of changes made by SB 1504 and the State’s receipt of Block Grant funds. A State that receives funds pursuant to the Block Grant shall require and conduct a criminal background check for child care personnel (including prospective child care staff members) that includes an FBI fingerprint check using the Integrated Fingerprint Identification System. Arizona is receiving Block Grant funds and thus is required to have background checks. See P.L. 113-186 § 658H. Accordingly, the rules simply codify something the State is already required to do. Notwithstanding the foregoing, the Department is currently working with DES, Department of Public Safety (DPS), and Department of Child Safety (DCS) to eliminate duplication of efforts and to ensure that child care personnel and volunteers required to obtain both FPCC and background check documentation do not incur any additional cost.

Additionally, the Department stated,

> The Department does not expect the amended rules to increase costs for licensees, child care personnel, or volunteers since no fees/costs have been added or
changed. The Department has considered that child care personnel and volunteers may incur a minimal cost for time taken to apply online for a background check. Many occupations require various certifications and considered a requirement necessary to ensure employment in a profession of one’s choice; the cost is cost created by one’s choice. The Department expects the benefit of having amended child care rules that significantly increase the health and safety of Arizona children is greater than the cost of these rulemakings.

In light of the Department’s response, Council staff is still concerned that the proposed amendments in this rulemaking increase the cost of regulatory compliance, making this rulemaking ineligible for expedited rulemaking pursuant to A.R.S. § 41-1027(A). Council staff encourages the Council to discuss further with the Department whether this rulemaking satisfies the criteria for expedited rulemaking pursuant to A.R.S. § 41-1027(A).

2. **Are the rules legal, consistent with legislative intent, and within the agency’s statutory authority?**

   The Department cites both general and specific statutory authority for these rules.

3. **Do the rules establish a new fee or contain a fee increase?**

   This rulemaking does not establish a new fee or contain a fee increase.

4. **Does the agency adequately address the comments on the proposed rules and any supplemental proposals?**

   The Department indicates it did not receive public or stakeholder comments related to this rulemaking.

5. **Are the final rules a substantial change, considered as a whole, from the proposed rules and any supplemental proposals?**

   The Department indicates there were no changes to the rules between the Notice of Proposed Expedited Rulemaking published in the Administrative Register and the Notice of Final Expedited Rulemaking now before the Council.

6. **Are the rules more stringent than corresponding federal law and, if so, is there statutory authority to exceed the requirements of federal law?**

   The Department indicates A.R.S. § 46-811 provides the Department authority to require background checks for staff members and volunteers specified in the Child Care and Development Block Grant Act of 2014 (P. L. 113 – 186). The Department in this rulemaking adds background checks consistent with P. L. 113 – 186. The Department states it is not aware of any other federal laws applicable to the subject of this rulemaking.
7. **Do the rules require a permit or license and, if so, does the agency comply with A.R.S. § 41-1037?**

Pursuant to A.R.S. § 41-1037(A), if an agency proposes an amendment to an existing rule that requires the issuance of a regulatory permit, license, or agency authorization, the agency shall use a general permit, as defined by A.R.S. § 41-1001(11), if the facilities, activities or practices in the class are substantially similar in nature unless certain exceptions apply.

The Department, pursuant to A.R.S. § 36-882, is required to provide licensure for child care facilities and, pursuant to A.R.S. § 36-888, the Department retains the authority to deny, revoke, or suspend an applicant or a child care facility licensee’s ability to operate. The Department indicates it does not use a general permit. The Department states that under A.R.S. § 41-1037(A)(3) that a general permit is not applicable.

8. **Does the preamble disclose a reference to any study relevant to the rules that the agency reviewed and either did or did not rely upon?**

The Department did not review or rely on any study in conducting this rulemaking.

9. **Conclusion**

This expedited rulemaking from the Department of Health Services (Department) seeks to amend five (5) rules in Title 9, Chapter 5, Articles 1, 2, and 4 related to child care facilities by adding requirements for background check verification of: the state sex offender registry, the state child abuse and neglect registries and databases, the National Crime Information Center, and the National Sex Offender Registry. The Department believes amending these rules will make them consistent with A.R.S.§ 46-811, eliminate confusion related to child care fingerprinting and background check requirements, and ensure the health and safety for enrolled children attending a child care facility.

Pursuant to A.R.S. § 41-1027(H), an expedited rulemaking becomes effective immediately on filing with the Secretary of State.

As outlined above, Council staff is concerned that adding requirements for additional background check verification that includes the state sex offender registry, the state child abuse and neglect registries and databases, the National Crime Information Center, and the National Sex Offender Registry, may increase the cost of regulatory compliance to parties regulated by these rules. Council staff encourages the Council to discuss further with the Department whether this rulemaking satisfies the criteria for expedited rulemaking pursuant to A.R.S. § 41-1027(A).
May 13, 2022

VIA EMAIL: grre@azdona.gov
Nicole Sornsin, Chair
Governor’s Regulatory Review Council
Arizona Department of Administration
100 N. 15th Avenue, Suite 305
Phoenix, AZ 85007

RE: Department of Health Services, 9 A.A.C. 5, Expedited Rulemaking

Dear Ms. Sornsin:

1. The close of record date: January 20, 2022

2. Explanation of how the expedited rule meets the criteria in A.R.S. § 41-1027(A):
The rulemaking does not increase the cost of regulatory compliance, increase a fee, or reduce procedural rights of persons regulated. The rulemaking adopts requirements implementing Laws 2020, Ch. 86 and amends an outdated rule. The rulemaking provides a public benefit, amends rules made obsolete by legislative action, and is expected to increase the quality of health and safety for children attending licensed child care facilities. The rulemaking complies with criteria for expedited rulemaking under A.R.S. § 41-1027(A)(4) and (A)(6).

3. Whether the rulemaking relates to a five-year-review report and, if applicable, the date the report was approved by the Council:
The changes being made by the rulemaking are not related to a five-year-review report approved by the Council.

The Department certifies that the Preamble of this rulemaking discloses a reference to any study relevant to the rule that the Department reviewed and either did or did not rely on in its evaluation of or justification for the rule.

4. A list of all items enclosed:
   a. Notice of Final Expedited Rulemaking, including the Preamble, Table of Contents, and text of the rule, and
   b. Statutory authority

Douglas A. Ducey | Governor
Don Herrington | Interim Director

150 North 18th Avenue, Suite 500, Phoenix, AZ 85007-3247   P | 602-542-1025   F | 602-542-1062   W | azhealth.gov

Health and Wellness for all Arizonans
The Department’s point of contact for questions about the rulemaking documents is Teresa Koehler at Teresa.Koehler@azdhs.gov.

Sincerely,

[Signature]

Robert Lane
Director's Designee

RL:tk

Enclosures
NOTICE OF FINAL EXPEDITED RULEMAKING
TITLE 9. HEALTH SERVICES
CHAPTER 5. DEPARTMENT OF HEALTH SERVICES
CHILD CARE FACILITIES

PREAMBLE

1. Article, Part, or Section Affected (as applicable)  Rulemaking Action
   R9-5-101.  Amend
   R9-5-201.  Amend
   R9-5-203.  Amend
   R9-5-208.  Amend
   R9-5-402.  Amend

2. Citations to the agency’s statutory rulemaking authority to include the authorizing statute
   (general) and the implementing statute (specific):
   Authorizing statutes: A.R.S. § 36-136(G)
   Implementing statutes: A.R.S. §§ 36-883.02 and 46-811

3. The effective date of the rules:
   The rule is effective the day the Notice of Final Expedited Rulemaking is filed with the Office of
   the Secretary of State.

4. Citations to all related notices published in the Register as specified in R1-1-409(A) that
   pertain to the record of the proposed expedited rule:
   Notice of Rulemaking Docket Opening: 26 A.A.R. 2810, October 30, 2020
   Notice of Rulemaking Docket Opening: 27 A.A.R. 2536, October 29, 2021

5. The agency’s contact person who can answer questions about the rulemaking:
   Name: Thomas Salow, Branch Chief
   Address: Arizona Department of Health Services
   Division of Licensing Services
   150 N. 18th Ave., Suite 400
   Phoenix, AZ  85007
   Telephone: (602) 364-1935
   Fax: (602) 364-4808
   E-mail: Thomas.Salow@azdhs.gov
   or
6. An agency’s justification and reason why a rule should be made, amended, repealed or renumbered, under A.R.S § 41-1027, to include an explanation about the rulemaking:
The Department licenses child care facilities under Arizona Revised Statutes (A.R.S.) Title 36, Chapter 7.1, Article 1, and has adopted rules for child care facilities in Arizona Administrative Code Title 9, Chapter 5. The Department in this rulemaking clarifies requirements for personnel, volunteers, and others providing services for enrolled children who attend licensed child care facilities to ensure the health and safety of the enrolled children. Article 5 rules comply with Laws 2020, Ch. 86 that specifies all child care personnel and volunteers shall have a valid fingerprint clearance card issued before starting employment or volunteer work and adds clarification for background checks pursuant to the Child Care and Development Block Grant Act of 2014 (P. L. 113-186) (Block Grant). Currently, Article 5 rules contain requirements for fingerprinting checks and state criminal registry verification. To make the Article 5 rules consistent with the Block Grant, the Department adds verification of: the state sex offender registry, the state child abuse and neglect registries and databases, the National Crime Information Center, and the National Sex Offender Registry. The Department believes amending Article 5 will make the rules consistent with A.R.S. § 46-811, eliminate confusion related to child care fingerprinting and background check requirements, and ensure the health and safety for enrolled children attending a child care facility. The Department does not expect the rulemaking will increase regulatory compliance, increase a fee, or reduce procedural rights of persons regulated. The proposed amendments conform to rulemaking format and style requirements of the Governor’s Regulatory Review Council and the Office of the Secretary of State.

7. A reference to any study relevant to the rule that the agency reviewed and proposes either to rely on or not to rely on in its evaluation of or justification for the rule, where the public may obtain or review each study, all data underlying each study, and any analysis of each study and other supporting material:
The Department did not review or rely on any study for this rulemaking.
8. A showing of good cause why the rulemaking is necessary to promote a statewide interest if the rulemaking will diminish a previous grant of authority of a political subdivision of this state.

Not applicable

9. A summary of the economic, small business, and consumer impact:

Under A.R.S. § 41-1055(D)(2), the Department is not required to provide an economic, small business, and consumer impact statement.

10. A description of any changes between the proposed expedited rulemaking, including supplemental notices, and the final expedited rulemaking:

Between the proposed expedited rulemaking and the final expedited rulemaking, no changes were made to the rulemaking.

11. Agency's summary of the public or stakeholder comments or objections made about the rulemaking and the agency response to the comments:

No comments were received about this rulemaking.

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

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

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

The Department pursuant to A.R.S. § 36-882 is required to provide licensure for child care facilities and pursuant to A.R.S. § 36-888, the Department retains the authority to deny, revoke, or suspend an applicant or a child care facility licensee’s ability to operate. The Department does not use a general permit. The Department believes that under A.R.S. § 41-1037(A)(3) that a general permit is not applicable.

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

A.R.S. § 46-811 provides the Department authority to require background checks for staff members and volunteers specified in the Child Care and Development Block Grant Act of 2014 (P. L. 113 – 186). The Department in this rulemaking adds background checks consistent with P. L. 113 – 186. The Department is not aware of any other federal laws applicable to the subject of this Article 1 and Article 2 rulemaking.
c. Whether a person submitted an analysis to the agency that compares the rule’s impact of the competitiveness of business in this state to the impact on business in other states:

No business competitiveness analysis was received.

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

Not applicable

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

The rule was not previously made as an emergency rule.

15. The full text of the rule follows:
### TITLE 9. HEALTH SERVICES

#### CHAPTER 5. DEPARTMENT OF HEALTH SERVICES – CHILD CARE FACILITIES

**Sections**

<table>
<thead>
<tr>
<th>Section</th>
<th>Description</th>
</tr>
</thead>
<tbody>
<tr>
<td>R9-5-101</td>
<td>Definitions</td>
</tr>
<tr>
<td>R9-5-201</td>
<td>Facility Licensure</td>
</tr>
<tr>
<td>R9-5-203</td>
<td>Fingerprinting and Central Registry Requirements</td>
</tr>
<tr>
<td>R9-5-208</td>
<td>Changes Affecting a License</td>
</tr>
<tr>
<td>R9-5-402</td>
<td>Staff Records and Reports</td>
</tr>
</tbody>
</table>
ARTICLE 1. GENERAL

R9-5-101. Definitions

In addition to the definitions in A.R.S. § 36-881, the following definitions apply in this Chapter unless otherwise specified:

1. “Abuse” has the same meaning as in A.R.S. § 8-201.
2. “Accident” means an unexpected occurrence that:
   a. Causes injury to an enrolled child,
   b. Requires attention from a staff member, and
   c. May or may not be an emergency.
3. “Accommodation school” has the same meaning as in A.R.S. § 15-101.
4. “Accredited” means approved by the:
   a. New England Commission of Institution of Higher Education,
   b. Middle States Commission of Higher Education,
   c. North Central the Higher Learning Commission,
   d. Northwest Commission on Colleges and Universities,
   e. Commission on Colleges, or
   f. Western Association of Schools and Colleges.
5. “Activity” means an action planned by a licensee and performed by an enrolled child while supervised by a staff member.
6. “Activity area” means a specific indoor or outdoor space or room of a licensed facility that is designated by a licensee for use by an enrolled child for an activity.
7. “Adaptive device” means equipment used to augment an individual’s use of the individual’s arms, legs, sight, hearing, or other physical part or function.
8. “Administrative completeness review time-frame” has the same meaning as in A.R.S. § 41-1072.
9. “Adult” means an individual who is at least 18 years of age.
10. “Age-appropriate” means consistent with a child’s age and age-related stage of physical growth and mental development.
11. “Agency” means any board, commission, department, office, or other administrative unit of the federal government, the state, or a political subdivision of the state.
12. “Applicant” means a person or governmental agency requesting one of the following:
   a. A license, or
   b. Approval of a change affecting a license under R9-5-208.
13. “Application” means the documents that an applicant is required to submit to the Department for licensure or approval of a request for a change affecting a license.

14. “Assistant teacher-caregiver” means a staff member who aids a teacher-caregiver in planning, developing, or conducting child care activities.

15. “Association” means a group of individuals other than a corporation, limited liability company, partnership, joint venture, or public school who has established a governing board and bylaws to operate a facility.

16. “Background check” means results identified in searches according to A.R.S. § 46-811(A) and consistent with the Child Care and Development Block Grant Act of 2014 (Public Law 113-186):
   1. The state sex offender registry within this state and each state where a staff member resided during the preceding five years;
   2. The state-based child abuse and neglect registries and databases within this state and each state where a staff member resided during the preceding five years;
   3. The National Crime Information Center; and

17. “Beverage” means a liquid for drinking, including water.

18. “Business organization” has the same meaning as “entity” in A.R.S. § 10-140.

19. “Calendar day” means each day, not including the day of the act, event, or default from which a designated period of time begins to run, but including the last day of the period unless it is a Saturday, Sunday, or legal holiday, in which case the period runs until the end of the next day that is not a Saturday, Sunday, or legal holiday.

20. “Calendar week” means a seven-day period beginning on Sunday at 12:00 a.m. and ending on Saturday at 11:59 p.m.

21. “C.C.P.” means Certified Childcare Professional, a credential awarded by the National Early Childhood Program Accreditation.

22. “C.D.A.” means Child Development Associate, a credential awarded by the Council for Professional Recognition.

23. “Change in ownership” means a transfer of controlling legal or controlling equitable interest and authority in a facility resulting from a sale or merger of a facility.

24. “Charter school” has the same meaning as in A.R.S. § 15-101.

25. “Child care experience” means an individual’s documented work with children in:
   a. A child care facility or a child care group home that was licensed, certified, or approved by a state in the United States or by one of the Uniformed Services of the United States;
b. A public school, a charter school, a private school, or an accommodation school;

c. A public or private educational institution authorized under the laws of another state where instruction was provided for any grade or combination of grades between pre-kindergarten and grade 12; or

d. One of the following professional fields:
   i. Nursing,
   ii. Social work,
   iii. Psychology,
   iv. Child development, or
   v. A closely-related field.

25-26. “Child care services” means the range of activities and programs provided by a licensee to an enrolled child, including personal care, supervision, education, guidance, and transportation.

26-27. “Child with special needs” means:
   a. A child with a health care provider’s diagnosis and record of a physical or mental condition that substantially limits the child in providing self-care or performing manual tasks or any other major life function such as walking, seeing, hearing, speaking, breathing, or learning;
   b. A child with a “developmental disability” as defined in A.R.S. § 36-551; or
   c. A “child with a disability” as defined in A.R.S. § 15-761.

27-28. “Clean” means to remove dirt or debris by methods such as washing with soap and water, vacuuming, wiping, dusting, or sweeping.

28-29. “Closely-related field” means any educational instruction or occupational experience pertaining to the growth, development, physical or mental care, or education of children.

29-30. “Communicable disease” has the same meaning as in A.A.C. R9-6-101.

30-31. “Compensation” means money or other consideration, including goods, services, vouchers, time, government or public expenditures, government or public funding, or another benefit, that is received as payment.

31-32. “Corporal punishment” means any physical action used to discipline a child that inflicts pain to the body of the child, or that may result in physical injury to the child.

32-33. “CPR” means cardiopulmonary resuscitation.

33-34. “Credit hour” means an academic unit earned at an accredited college or university:
   a. By attending a one-hour class session each calendar week during a semester or equivalent shorter course term, or
b. Completing practical work for a course as determined by the accredited college or university.

34.35. “Designated agent” means an individual who meets the requirements in A.R.S. § 36-889(D).

35.36. “Developmentally-appropriate” means consistent with a child’s physical, emotional, social, cultural, and cognitive development, based on the child’s age and family background and the child’s personality, learning style, and pattern and timing of growth.

36.37. “Discipline” means the on-going process of helping a child develop self-control and assume responsibility for the child’s own actions.

37.38. “Documentation” means information in written, photographic, electronic, or other permanent form.

38.39. “Electronic signature” has the same meaning as in A.R.S. § 41-351(9).

39.40. “Emergency” means a potentially life-threatening occurrence involving an enrolled child or staff member that requires an immediate response or medical treatment.

40.41. “Endanger” means to expose an individual to a situation where physical injury or mental injury to the individual may occur.

41.42. “Enrolled” means placed by a parent and accepted by a licensee for child care services.

42.43. “Evening and nighttime care” means child care services provided between the hours of 8:00 p.m. and 5:00 a.m.

43.44. “Facility” has the same meaning as “child care facility” in A.R.S. § 36-881.

44.45. “Facility director” means an individual who is designated by a licensee as the individual responsible for the daily onsite operation of a facility.

45.46. “Facility premises” means property that is:

a. Designated on an application for a license by the applicant; and

b. Licensed for child care services by the Department under A.R.S. Title 36, Chapter 7.1, Article 1, and this Chapter.

46.47. “Fall zone” means the surface under and around a piece of equipment onto which a child falling from or exiting from the equipment would be expected to land.

47.48. “Field trip” means an activity planned by a staff member for an enrolled child:

a. At a location or area that is not licensed for child care services by the Department, or

b. At a child care facility in which the child is not enrolled.

48.49. “Final construction drawings” means facility plans that include the architectural, structural, mechanical, electrical, fire protection, plumbing, and technical specifications
of the physical plant and the facility premises and that have been approved by local
government for the construction, alteration, or addition of a facility.

49. “Food” means a raw, cooked, or processed edible substance, ice, beverage, or ingredient
used or intended for use or for sale in whole or in part for human consumption, or
chewing gum.

50. “Food preparation” means processing food for human consumption by cooking or
assembling the food, but does not include distributing prepackaged food or whole fruits
or vegetables.

51. “Full-day care” means child care services provided for six or more hours per day between
the hours of 5:00 a.m. and 8:00 p.m.

52. “Governmental agency” has the same meaning as in A.R.S. § 44-7002.

53. “Guidance” means the ongoing direction, counseling, teaching, or modeling of generally
accepted social behavior through which a child learns to develop and maintain the self-
control, self-reliance, and self-esteem necessary to assume responsibilities, make daily
living decisions, and live according to generally accepted social behavior.

54. “Hazard” means a source of endangerment.

55. “Health care provider” means a physician, physician assistant, or registered nurse
practitioner.

56. “High school equivalency diploma” means:
   a. A document issued by the State Board of Education under A.R.S. § 15-702 to an
      individual who passes a general educational development test or meets the
      requirements of A.R.S. § 15-702(B);
   b. A document issued by another state to an individual who passes a general
      educational development test or meets the requirements of a state statute
      equivalent to A.R.S. § 15-702(B); or
   c. A document issued by another country to an individual who has completed that
      country’s equivalent of a 12th grade education, as determined by the Department
      based upon information obtained from American or foreign consulates or
      embassies or other governmental agencies.

57. “Hours of operation” means the specific time during a day for which a licensee is
licensed to provide child care services.

58. “Illness” means physical manifestation or signs of sickness, such as pain, vomiting, rash,
fever, discharge, or diarrhea.

59. “Immediate” or “immediately” means without restriction, delay, or hesitation.
“Inaccessible” means:
a. Out of an enrolled child’s reach, or
b. Locked.

“Infant” means:
a. A child 12 months of age or younger, or
b. A child 18 months of age or younger who is not yet walking.

“Infant care” means child care services provided to an infant.

“Infestation” means the presence of lice, pinworms, scabies, or other parasites.

“Inspection” means:
a. Examination of a facility by the Department to determine compliance with A.R.S. Title 36, Chapter 7.1, Article 1, and this Chapter;
b. Review of facility documents, records, or reports by the Department; or
c. Examination of a facility by a local governmental agency.

“Lesson plan” means a written description of the activities scheduled in each activity area for a day.

“License” means the written authorization issued by the Department to operate a facility in Arizona.

“Licensed applicator” who complies with A.A.C. R3-8-201(C).

“Licensed capacity” means the maximum number of enrolled children for whom a licensee is authorized by the Department to provide child care services in a facility or a part of a facility at any given time.

“Licensee” means a person or governmental agency to whom the Department has issued a license to operate a facility in Arizona.

“Local” means under the jurisdiction of a city or county in Arizona.

“Mat” means a foam pad that has a waterproof cover and is of sufficient size and thickness to accommodate the height, width, and weight of a reclining child’s body.

“Medication” means a substance prescribed by a physician, physician assistant, or registered nurse practitioner or available without a prescription for the treatment or prevention of illness or infestation.

“Menu” means:
a. A written description of the food that a facility provides and serves as a meal or snack, or
b. The combination of food that a facility provides and serves as a meal or snack.

“Motor vehicle” has the same meaning as in A.R.S. § 28-101.
“N.A.C.” means the National Administrator Credential, a credential issued by the National Institute of Child Care Management.

“Name” means, for an individual, the individual’s first name and the individual’s last name.

“Naptime” means any time during hours of operation, other than evening and nighttime hours, that is designated by a licensee for the rest or sleep of enrolled children.

“Neglect” has the same meaning as in A.R.S. § 8-201.

“One-year-old” means a child who is not an infant and at least 12 months of age but not yet two years of age.

“Outbreak” has the same meaning as in A.A.C. R9-6-101.

“Overall time-frame” has the same meaning as in A.R.S. § 41-1072.

“Parent” means:
   a. A natural or adoptive mother or father,
   b. A legal guardian appointed by a court of competent jurisdiction, or
   c. A “custodian” as defined in A.R.S. § 8-201.

“Part-day care” means child care services provided for fewer than six hours per day between the hours of 5:00 a.m. and 8:00 p.m.

“Perishable food” means food that becomes unfit for human consumption if not stored to prevent spoilage.

“Pesticide” has the same meaning as in A.R.S. § 32-3601.

“Pesticide label” means the written, printed, or graphic matter approved by the United States Environmental Protection Agency on, or attached to, a pesticide container.

“Physical injury” means temporary or permanent damage or impairment to a child’s body.

“Physical plant” means a building that houses a facility, or the licensed areas within a building that houses a facility, including the architectural, structural, mechanical, electrical, plumbing, and fire protection elements of the building.

“Physician” means an individual licensed as a doctor of:
   a. Allopathic medicine under A.R.S. Title 32, Chapter 13;
   b. Naturopathic medicine under A.R.S. Title 32, Chapter 14;
   c. Osteopathic medicine under A.R.S. Title 32, Chapter 17;
   d. Homeopathic medicine under A.R.S. Title 32, Chapter 29; or
   e. Allopathic, naturopathic, osteopathic, or homeopathic medicine under the law of another state.
“Physician assistant” means:
   a. An individual who is licensed under A.R.S. Title 32, Chapter 25; or
   b. An individual who is licensed as a physician assistant under the law of another state.

“Private pool” has the same meaning as “private residential swimming pool” in A.A.C. R18-5-201.

“Private school” has the same meaning as in A.R.S. § 15-101.

“Program” means a variety of activities organized and conducted by a staff member.

“Public pool” has the same meaning as “public swimming pool” in A.A.C. R18-5-201.

“Public school” has the same meaning as “school” in A.R.S. § 15-101.

“Registered nurse practitioner” means:
   a. An individual who is licensed and certified as a “registered nurse practitioner” under A.R.S. § 32-1601, or
   b. An individual who is licensed or certified as a registered nurse practitioner under the law of another state.

“Regular basis” means at recurring, fixed, or uniform intervals.

“Responsible party” means an individual or a group of individuals who:
   a. Is assigned by a public school, charter school, or governmental agency; and
   b. Has general oversight of the child care facility.

“Sanitize” means to use heat, chemical agents, or germicidal solutions to disinfect and reduce pathogen counts, including bacteria, viruses, mold, and fungi.

“School-age child” means a child who:
   a. Meets one of the following:
      i. Is five years old on or before January 1 of the current school year, or
      ii. Is five years old on or before January 1 of the most recent school year; and
   b. Meets one of the following:
      i. Attends kindergarten or a higher level program in a public, charter, accommodation, or private school during the current school year;
      ii. Attended kindergarten or a higher level program in a public, charter, accommodation, or private school during the most recent school year;
      iii. Is home-schooled at a kindergarten or higher level during the current school year; or
iv. Was home-schooled at a kindergarten or higher level during the most recent school year.

101-102. “School-age child care” means child care services provided to a school-age child.

102-103. “School campus” means the contiguous grounds of a public, charter, accommodation, or private school, including the buildings, structures, and outdoor areas available for use by children attending the school.

103-104. “School governing board” has the same meaning as “governing board” in A.R.S. § 15-101.

104-105. “Screen time” means the use of electronic media to watch television or to watch a video, a DVD, or a movie at the facility or at another location or the use of electronic media or a computer for game-playing, entertainment, communication, or educational purposes.

105-106. “Semi-public pool” has the same meaning as “semipublic swimming pool” in A.A.C. R18-5-201.

106-107. “Service classification” means one of the following:
   a. Full-day care;
   b. Part-day care;
   c. Evening and nighttime care;
   d. Infant care;
   e. One-year-old child care;
   f. Two-year-old child care;
   g. Three-year-old, four-year-old, and five-year-old child care;
   h. School-age child care; or
   i. Weekend care.

107-108. “Signatory” means an individual who is authorized by a school district governing board, school district superintendent, or governmental agency to sign a document on behalf of the school district governing board, school district superintendent, or governmental agency.

108-109. “Signed” means affixed with an individual’s signature or with a symbol representing an individual’s signature if the individual is unable to write the individual’s name.

109-110. “Sippy cup” means a lidded drinking container that is designed to be leak proof or leak-resistant and from which a child drinks through a spout or straw.
“Space utilization” means the designated use of an area within a facility for specific child care services or activities.

“Staff” or “staff member” means the same as “child care personnel” as defined in A.R.S. § 36-883.02.

“Student-aide” means an individual less than 16 years of age who is participating in an educational, curriculum-based course of study; vocational education; or occupational development program and who, without being compensated by a licensee, is present at a facility to receive instruction from and supervision by staff in the provision of child care services.

“Substantive review time-frame” has the same meaning as in A.R.S. § 41-1072.

“Supervision” means:

a. For an enrolled child, knowledge of and accountability for the actions and whereabouts of the enrolled child, including the ability to see or hear the enrolled child at all times, to interact with the enrolled child, and to provide guidance to the enrolled child; or

b. For an individual other than an enrolled child, knowledge of and accountability for the actions and whereabouts of the individual, including the ability to see and hear the individual when the individual is in the presence of an enrolled child and the ability to intervene in the individual’s actions to prevent harm to enrolled children.

“Swimming pool” has the same meaning as in A.A.C. R18-5-201.

“Teacher-caregiver” means a staff member responsible for developing, planning, and conducting child care activities.

“Teacher-caregiver-aide” means a staff member who provides child care services under the supervision of a teacher-caregiver.

“Training” means child care-related conferences, seminars, lectures, workshops, classes, courses, or instruction.

“Tummy time” means a limited period-of-time no more than 20 minutes used to allow a non-crawling infant:

i. To strengthen the infant’s head, neck, and upper body muscles; and

ii. To increase the infant’s sensory perception, visual and hearing acuity, and social and emotional interaction.

“Volunteer” means a staff member who, without compensation, provides child care services that are the responsibility of a licensee.
“Working day” means a Monday, Tuesday, Wednesday, Thursday, or Friday that is not a state holiday, federal holiday, or a statewide furlough day.

ARTICLE 2. FACILITY LICENSURE

R9-5-201. Application for a License

A. An applicant for a license shall:

1. Be at least 21 years of age;
2. If an individual, be a U.S. citizen or legal resident alien and a resident of Arizona;
3. If a corporation, association, or limited liability company, be a domestic entity or a foreign entity qualified to do business in Arizona;
4. If a partnership, have at least one partner who is a U.S. citizen or legal resident alien and a resident of Arizona;
5. Submit to the Department an application packet containing:
   a. An application on a form provided by the Department that contains:
      i. The applicant’s name;
      ii. The applicant’s date of birth;
      iii. The facility’s name, street address, city, state, zip code, mailing address, and telephone number;
      iv. The requested service classifications;
      v. Whether the applicant agrees to allow the Department to submit supplemental requests for information;
      vi. A statement that the applicant has read and will comply with A.R.S. Title 36, Chapter 7.1, Article 1 and this Chapter;
      vii. A statement that the information provided in the application packet is accurate and complete; and
      viii. The applicant’s signature and date the applicant signed the application;
   b. A copy of the applicant’s:
      i. U.S. passport,
      ii. Birth certificate,
      iii. Naturalization documents, or
      iv. Documentation of legal resident alien status;
   c. A copy of the applicant’s valid fingerprint clearance card, both front and back, issued according to A.R.S. Title 41, Chapter 12, Article 3.1;
   d. A copy of the applicant’s valid background check document according to A.R.S. § 46-811(A):
d. e. A copy of the form required in A.R.S. § 36-883.02(C);

e. f. A certificate issued by the Department showing that the applicant has completed at least four hours of Department-provided training that included the Department’s role in licensing and regulating child care facilities under A.R.S. Title 36, Chapter 7.1, Article 1, and this Chapter;

f. g. Except as provided in subsection (A)(5)(i)(A)(5)(j), a site plan of the facility drawn to scale showing:
   i. The drawing scale;
   ii. The boundary dimensions of the property upon which the facility’s physical plant is located;
   iii. If more than one building is used for the facility, the location and perimeter dimensions of each building;
   iv. The location of each driveway on the property;
   v. The location and boundary dimensions of each parking lot on the property;
   vi. The location and perimeter dimensions of each outdoor activity area;
   vii. The location, type, and height of each fence and gate; and
   viii. If applicable, the location of any swimming pool on the property;

h. i. Except as provided in subsection (A)(5)(i)(A)(5)(j), a floor plan of each building to be used for child care services drawn to scale showing:
   i. The drawing scale;
   ii. The length and width dimensions for each indoor activity area;
   iii. The requested licensed capacity and applicable service classification for each indoor activity area;
   iv. The location of each diaper changing area;
   v. The location of each hand washing, utility, and three-compartment sink, toilet, urinal, and drinking fountain; and
   vi. The location and type of fire alarm system;

j. k. Except as provided in subsection (A)(5)(i)(A)(5)(j):
   i. A copy of a certificate of occupancy issued for the facility by the local jurisdiction;
   ii. Documentation from the local jurisdiction that the facility was approved for occupancy; or
iii. If the documents in subsections (A)(5)(h)(i) and (ii) are not available, the seal of an architect registered as prescribed in A.R.S. § 32-121 on the site plan required in subsection (A)(5)(g) and the floor plan required in subsection (A)(5)(h) verifying compliance with current local building and fire codes, local zoning requirements, and this Chapter;

For an applicant providing child care services to three-year-old, four-year-old, five-year-old, or school-age children in a facility located in a public school, a set of final construction drawings or a school map showing:

i. The location of each school building;

ii. The location and dimensions of each outdoor activity area to be used by enrolled children;

iii. The length and width dimensions for each indoor activity area;

iv. The requested licensed capacity and applicable service classification for each indoor activity area; and

v. The location of each hand-washing sink, toilet, urinal, and drinking fountain to be used by enrolled children;

If the facility is located within one-fourth of a mile of agricultural land:

i. The names and addresses of the owners or lessees of each parcel of agricultural land located within one-fourth mile of the facility, and

ii. A copy of an agreement complying with A.R.S. § 36-882 for each parcel of agricultural land;

The applicable fee in R9-5-206;

If the applicant is a business organization, a form provided by the Department that contains:

i. The name, street address, city, state, and zip code of the business organization;

ii. The type of business organization;

iii. The name, date of birth, title, street address, city, state, and zip code of each controlling person;

iv. A copy of the business organization’s articles of incorporation, articles of organization, partnership documents, or joint venture documents, if applicable;
v. Documentation of good standing issued by the Arizona Corporation Commission and dated no earlier than three months before the date of the application; and

vi. A statement signed by the applicant stating:

(1) That each controlling person has not been denied a certificate or license to operate a child care group home or child care facility in this state or another state, and

(2) That each controlling person has not had a certificate or license to operate a child care group home or child care facility revoked in this state or another state for endangering the health and safety of children;

m-n. If the applicant is a public school, a form provided by the Department that contains:

i. The name of the school district;

ii. The name, title, street address, city, state, and zip code of each responsible party, if the responsible party is an individual, or each individual in the group, if the responsible party is a group of individuals;

iii. A statement signed by the applicant stating:

(1) That each individual in subsection (A)(5)(m)(ii) has not been denied a certificate or license to operate a child care group home or child care facility in this state or another state, and

(2) That each individual in subsection (A)(5)(m)(ii) has not had a certificate or license to operate a child care group home or child care facility revoked in this state or another state for endangering the health and safety of children; and

iv. A letter from the school district governing board or school district superintendent designating a signatory, if applicable;

n-o. If the applicant is a charter school, a form provided by the Department that contains:

i. The name, title, street address, city, state, and zip code of each responsible party, if the responsible party is an individual, or each individual in the group, if the responsible party is a group of individuals;

ii. A statement signed by the applicant stating:
(1) That each individual in subsection (A)(5)(o)(i) has not been denied a certificate or license to operate a child care group home or child care facility in this state or another state, and

(2) That each individual in subsection (A)(5)(o)(i) has not had a certificate or license to operate a child care group home or child care facility revoked in this state or another state for endangering the health and safety of children; and

iii. A letter from the school district governing board in which the charter school is located, the Arizona State Board of Education, or the Arizona State Board for Charter Schools, approving the applicant to operate the charter school; and

o.p. If the applicant is a governmental agency, a form provided by the Department that contains:

i. The name, title, street address, city, state, and zip code of each responsible party, if the responsible party is an individual, or each individual in the group, if the responsible party is a group of individuals;

ii. A statement signed by the applicant stating:

(1) That each individual in subsection (A)(5)(o)(i) has not been denied a certificate or license to operate a child care group home or child care facility in this state or another state, and

(2) That each individual in subsection (A)(5)(o)(i) has not had a certificate or license to operate a child care group home or child care facility revoked in this state or another state for endangering the health and safety of children; and

iii. A letter from the individual in the senior leadership position with the agency designating a signatory.

B. The Department requires a separate license and a separate application for:

1. Each facility owned by the same person at a different location, and

2. Each facility owned by a different person at the same location.

C. The Department does not require a separate application and license for a structure that is:

1. Located so that the structure and the facility:
   a. Share the same street address, or
b. Can be enclosed by a single unbroken boundary line that does not encompass property owned or leased by another,

2. Under the same ownership as the facility, and
3. Intended to be used as a part of the facility.

R9-5-203. Fingerprinting and Central Registry Requirements

Fingerprinting and Background Check

A. A licensee shall ensure that a staff member completes, signs, dates, and submits to the licensee, before the staff member’s starting date of employment or volunteer service:
1. The form required in A.R.S. § 36-883.02(C); and
2. If required by A.R.S. § 8-804, the form in A.R.S. § 8-804(I).

B. A licensee shall maintain documentation of a valid fingerprint clearance card issued under A.R.S. § 41-1758.03 and valid background check document issued under in A.R.S. § 46-811.

B.C. Except as provided in A.R.S. § 41-1758.03, a licensee shall ensure that each staff member submits to the licensee a copy of:
1. The staff member’s valid fingerprint clearance card issued under A.R.S. Title 41, Chapter 12, Article 3.1; or

2. The fingerprint clearance card application that the staff member submitted to the Department of Public Safety under A.R.S. § 41-1758.02 within seven working days after the staff member’s starting date of employment or volunteer service.

Except as provided in A.R.S. § 41-1758.03, a licensee shall ensure that each staff member, before starting date of employment or volunteer service, submits to the licensee a copy of the staff member’s valid fingerprint clearance card, front and back, issued under A.R.S. Title 41, Chapter 12, Article 3.1.

C.D. A licensee shall ensure that each staff member submits to the licensee a copy of the staff member’s valid fingerprint clearance card each time the fingerprint clearance card is issued or renewed. Valid fingerprint clearance card each time the fingerprint clearance card is issued or renewed every six years.

D.E. If a staff member possesses a fingerprint clearance card that was issued before the staff member became a staff member at the facility, a licensee shall:
1. Contact the Department of Public Safety within seven working days after before the individual becomes a staff member to determine whether the fingerprint clearance card is valid; and

2. Document this determination, including the name of the staff member, the date of contact with the Department of Public Safety, and whether the fingerprint clearance card is valid.
F. A licensee shall ensure that each staff member submits to the licensee a copy of the staff member’s valid:

1. Background check document issued under A.R.S. § 46-811(A) within 10 working days after starting date of employment or volunteer service; and
2. Background check document each time a background check is issued or renewed every five years.

E.G. If required by A.R.S. § 8-804, before an individual’s starting date of employment or volunteer service, a licensee shall comply with the submission requirements in A.R.S. § 8-804(C) for the individual.

F.H. A licensee shall not allow an individual to be a staff member if the individual:

1. Has been denied a fingerprint clearance card under A.R.S. Title 41, Chapter 12, Article 3.1 and has not received an interim approval under A.R.S. § 41-619.55;
2. Has been denied a background check document that indicates the individual is not eligible for employment due to violations identified pursuant to A.R.S. § 46-811;
2-3. Receives an interim approval under A.R.S. § 41-619.55 but is subsequently denied a good cause exception under A.R.S. § 41-619.55 and a fingerprint clearance card under A.R.S. Title 41, Chapter 12, Article 3.1;
3-4. Is a parent or guardian of a child adjudicated to be a dependent child as defined in A.R.S. § 8-201;
4-5. Has been denied or had revoked a certificate to operate a child care group home or a license to operate a child care facility for care of children in this state or another state;
5-6. Has been denied or had revoked a certification to work in a child care facility or a child care group home in this state or another state;
6-7. If applicable, has stated on the form required in A.R.S. § 8-804(I) that the individual is currently under investigation for an allegation of abuse or neglect or has a substantiated allegation of abuse or neglect and has not subsequently received a central registry exception according to A.R.S. § 41-619.57; or
7-8. If applicable, is disqualified from employment or volunteer service as a staff member according to A.R.S. § 8-804 and has not subsequently received a central registry exception according to A.R.S. § 41-619.57.

I. Within 30 calendar days after the day of a staff member’s or volunteer’s 18th birthday, the staff member or volunteer shall provide to the licensee copies of a valid fingerprint clearance card and background check document specified in subsection (C).
J. Beginning November 1, 2021, staff members shall comply with A.R.S. § 46-811(A) and subsection (F) by November 1, 2022.

R9-5-208. Changes Affecting a License

A. At least 30 calendar days before the date of a change in a facility’s name, a licensee shall send the Department written notice of the name change and the Department shall issue an amended license that incorporates the name change but retains the anniversary date of the current license.

B. At least 30 calendar days before the date of an intended change in a facility’s service classification, space utilization, or licensed capacity, a licensee shall submit a written request for approval of the intended change to the Department that includes:

1. The licensee’s name;
2. The facility’s name, street address, city, state, zip code, mailing address, and telephone number;
3. The name, telephone number, and fax number of a point of contact for the request;
4. The facility’s license number;
5. The type of change intended:
   a. Service classification,
   b. Space utilization, or
   c. Licensed capacity;
6. A narrative description of the intended change; and
7. The following additional information, as applicable:
   a. If the intended change affects an activity area, the following information about each affected activity area, as applicable:
      i. Identification of the activity area,
      ii. Current and intended square footage,
      iii. Current and intended operating hours,
      iv. Current and intended service classification,
      v. Current and intended licensed capacity, and
      vi. Whether the activity area has or will have a diaper changing area;
   b. If the intended change is to increase licensed capacity, the square footage of the outdoor activity area; and
   c. If the intended change includes an alteration or addition to the physical plant of a licensed facility, the following, as applicable:
      i. If the facility is not located in a public school or if providing child care services to infants, one-year-old children, or two-year-old children in a
facility located in a public school, the information required in R9-5-201(A)(5)(f) and (g) R9-5-201(A)(5)(g) and (h) showing the intended change; or

ii. If the facility is located in a public school and provides child care only for three-year-old, four-year-old, or five-year-old, or school-age children, a set of final construction drawings or a school map, including the information required in R9-5-201(5)(i) R9-5-201(5)(i) showing the intended change.

C. If the intended change in subsection (B) includes an increase in the licensed capacity, a licensee shall submit the fee for an increase in licensed capacity in R9-5-206(C) with the written request for approval.

D. If requesting a diaper changing area outside an infant room or indoor activity area to allow privacy for diapering an enrolled child with special needs, submit a written request for an approval; and

1. For a license application, submit physical plant documents required by R9-5-201(A)(g) R9-5-201(A)(h) that designate the location of the proposed diaper changing area;

2. For a licensed facility, submit a drawing of the proposed diaper changing area to the Department before installing the diaper changing area. Within 30 calendar days after the date of the receipt of the request, the Department shall send written notice to the licensee of approval or disapproval. If the proposed diaper changing area:
   a. Complies with A.R.S. Title 36, Chapter 7.1, Article 1 and this Chapter and provides privacy for the enrolled child with special needs, the Department shall approve the proposed diaper changing area; or
   b. Does not comply with A.R.S. Title 36, Chapter 7.1, Article 1 or this Chapter or provide privacy for the enrolled child with special needs, the Department shall provide the licensee with the requirements necessary for the Department to approve the requested change; and

3. Not use a diaper changing area located outside of an activity area until the Department approves the use of the diaper changing area;

E. The Department shall review a request submitted under subsection (B) according to R9-5-202. If the intended change is in compliance with A.R.S. Title 36, Chapter 7.1, Article 1 and this Chapter and any applicable fee is submitted, the Department shall send the licensee written approval of
the requested change or an amended license that incorporates the change but retains the anniversary date of the current license.

F. A licensee shall not implement any change described under subsection (B) until the Department issues an approval or amended license.

G. At least 30 days before the date of a change in ownership of a facility, a licensee shall send the Department written notice of the change. A new owner shall obtain a new license as prescribed in R9-5-201 before the new owner begins operating the facility.

H. A licensee changing a facility’s location shall apply for a new license as prescribed in R9-5-201.

I. Within 30 calendar days after a change in a controlling person, a licensee shall send the Department written notice of the change that includes:
   1. The name of the licensee;
   2. A description of the change made;
   3. The name, title, street address, city, state, and zip code of each controlling person;
   4. A statement that each controlling person has not been denied a certificate to operate a child care group home or a license to operate a child care facility for the care of children in this state or another state;
   5. A statement that each controlling person has not had a certificate to operate a child care group home or a license to operate a child care facility revoked in this state or another state for reasons that relate to endangerment of the health and safety of children;
   6. A statement that the information provided in the written notice is accurate and complete; and
   7. The signature of the licensee.

J. If the change in subsection (I) is a change in a controlling person who is a designated agent, a licensee shall include a copy of one of the following for the designated agent:
   1. A U.S. passport,
   2. A birth certificate,
   3. Naturalization documents, or
   4. Documentation of legal resident alien status.

K. Within 30 calendar days after changing a responsible party, a licensee shall send the Department written notice of the change that includes:
   1. The name of the licensee;
   2. A description of the change made;
3. The name, title, street address, city, state, and zip code of each responsible party, if the responsible party is an individual, or each individual in the group, if the responsible party is a group of individuals; and

4. A statement signed by the licensee stating:
   a. That each individual in subsection (K)(3) has not been denied a certificate or license to operate a child care group home or child care facility in this state or another state, and
   b. That each individual in subsection (K)(3) has not had a certificate or license to operate a child care group home or child care facility revoked in this state or another state for endangering the health and safety of children.

ARTICLE 4. FACILITY STAFF

R9-5-402. Staff Records and Reports

A. A licensee shall maintain a file for each staff member containing:
   1. The staff member’s name, date of birth, home address, and telephone number;
   2. The staff member’s starting date of employment or volunteer service;
   3. The staff member’s ending date of employment or volunteer service, if applicable;
   4. The name and telephone number of an individual to be notified in case of an emergency;
   5. The staff member’s written statement attesting to current immunity against measles, rubella, diphtheria, mumps, and pertussis;
   6. The form required in A.R.S. § 36-883.02(C);
   7. Documents required by R9-5-203(A)(2) or (B) R9-5-203;
   8. Documents required by R9-5-301;
   9. Documents required by R9-5-401, if applicable;
   10. If applicable:
       a. The form required in A.R.S. § 8-804(I),
       b. Documentation of the submission required in A.R.S. § 8-804 and the information received as a result of the submission, and
       c. Documentation of training provided by a licensee as required by R9-5-403;
   11. A copy of any current license or certification required by A.R.S. Title 36, Chapter 7.1, Article 1, or this Chapter; and
   12. Documentation of the requirements in A.R.S. § 36-883.02(D).

B. A licensee shall ensure that, for a staff member who is currently working at the facility, the staff member’s information required by:
1. Subsections (A)(1) through (11) is maintained in a single location on facility premises, and
2. Subsection (A)(12) is maintained and provided to the Department within two hours of the Department’s request.

C. A licensee shall ensure that, for an individual who is not currently working at the facility, the information required in subsections (A)(1) through (12) is:
   1. Maintained for 12 months after the date the individual last worked at the facility, and
   2. Provided to the Department within two hours of the Department’s request.
GRRC E-mail received June 14, 2022:

[1] How does this not increase the costs of regulatory compliance as stated in A.R.S. § 41-1027(A)?

SB 1504 (Fifty-Fourth Legislature, Second Regular Session) updated fingerprinting requirements for individuals that work with vulnerable populations, such as children. Specifically, SB 1504 added a requirement that child care personnel shall have a valid fingerprint clearance card (FPCC) pursuant to A.R.S. § 41-1758.07 before starting employment or volunteer work. Additionally, SB 1504 authorizes the Department of Economic Security (DES) and the Department of Health Services (DHS) to require background checks pursuant to the Child Care and Development Block Grant Act of 2014 (P.L. 113-186) (Block Grant) that are not included in the FPCC process under A.R.S. § 41-1758.07. The Department does not expect the rule changes related to when a licensee receives a valid FPCC to increase costs for a licensee and child care personnel since the rules do not add or change a fee, and the fee for obtaining a valid FPCC is established and required by the Department of Public Safety who issues FPCCs. Additionally, the Department does not expect the changes made to the rules to include a background check will increase a cost for a licensee or child care personnel; rather any increase cost related to obtaining a background check is the result of changes made by SB 1504 and the State’s receipt of Block Grant funds. A State that receives funds pursuant to the Block Grant shall require and conduct a criminal background check for child care personnel (including prospective child care staff members) that includes an FBI fingerprint check using the Integrated Fingerprint Identification System. Arizona is receiving Block Grant funds and thus is required to have background checks. See P.L. 113-186 § 658H. Accordingly, the rules simply codify something the State is already required to do. Notwithstanding the foregoing, the Department is currently working with DES, Department of Public Safety (DPS), and Department of Child Safety (DCS) to eliminate duplication of efforts and to ensure that child care personnel and volunteers required to obtain both FPCC and background check documentation do not incur any additional cost.

[2] How does this new requirement compare the current requirements found in Title 9, Chapter 3, Article 3 and Title 9, Chapter 5, Article 5

As stated, SB 1504 added a requirement that child care personnel and volunteers shall have and provide a valid FPCC to a licensee before starting employment or volunteer work. Additionally, SB 1504 allows DES and the Department to require that child care personnel and volunteers provide documentation of a valid background check consistent with requirement specified in the Block Grant.

To implement statutes, in the Chapter 3 rules, the Department:

- Adds a definition for “background check certification”;
- Adds a requirement for “documentation of a valid background check”;
- Adds a requirement for a “valid FPCC be provided to a certificate holder before starting date of residency or child care group home employment or volunteer work;
- Removes the requirement for staff members and adult residents to provide a copy of a FPCC application within seven working days after starting date of employment or volunteer work; and
- Amends requirements for a certificate holder to maintain and verify a valid FPCC to include a valid background check.

1 A.R.S. §§ 36-883.02 and 36-897.03 “child care personnel, including volunteers...shall have a valid fingerprint clearance cards issued pursuant...”

2 Background checks: state sex offender registry, the state child abuse and neglect registries and databases, the National Crime Information Center, and the National Sex Offender Registry.
Similarly, in the Chapter 5 rules, the Department:

- Adds a definition for “background check certification”;
- Adds a requirement for “documentation of a valid background check”;
- Adds a requirement for a “valid FPCC be provided to a certificate holder before starting date of residency or child care group home employment or volunteer work;
- Removes requirements for staff members and adult residents to provide a copy of a FPCC application within seven working days after starting date of employment or volunteer work; and
- Amends requirements for a licensee to maintain and verify a valid FPCC to include a valid background check.

In addition to the above, the rules were amended, as necessary, to account for changes to Section titles and the renumbering of subsections and citations. The Department does not expect the amended rules to increase costs for licensees, child care personnel, or volunteers since no fees/costs have been added or changed. The Department has considered that child care personnel and volunteers may incur a minimal cost for time taken to apply online for a background check. Many occupations require various certifications and considered a requirement necessary to ensure employment in a profession of one’s choice; the cost is cost created by one’s choice. The Department expects the benefit of having amended child care rules that significantly increase the health and safety of Arizona children is greater than the cost of these rulemakings.
### TITLE 9. HEALTH SERVICES

#### CHAPTER 5. DEPARTMENT OF HEALTH SERVICES - CHILD CARE FACILITIES


Heading of Chapter permanently changed from “Department of Health Services - Day Care Centers” to “Department of Health Services - Child Care Facilities” effective October 4, 1990 (Supp. 90-4).

Heading of Chapter changed by emergency action from “Department of Health Services - Day Care Centers” to “Department of Health Services - Child Care Facilities” effective July 9, 1990, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 90-3).

#### ARTICLE 1. GENERAL

<table>
<thead>
<tr>
<th>Section</th>
<th>Title</th>
</tr>
</thead>
<tbody>
<tr>
<td>R9-5-101</td>
<td>Definitions .............................................. 3</td>
</tr>
<tr>
<td>R9-5-102</td>
<td>Individuals to Act for Applicant or Licensee Regarding Document, Fingerprinting, and Department-provided Training Requirements .... 6</td>
</tr>
</tbody>
</table>

#### ARTICLE 2. FACILITY LICENSURE

Article 2 consisting of Sections R9-5-201 through R9-5-211 repealed; new Sections R9-5-201 through R9-5-209 adopted; and Article heading amended effective October 17, 1997 (Supp. 97-4).

<table>
<thead>
<tr>
<th>Section</th>
<th>Title</th>
</tr>
</thead>
<tbody>
<tr>
<td>R9-5-201</td>
<td>Application for a License .................................... 7</td>
</tr>
<tr>
<td>R9-5-202</td>
<td>Time-frames ................................................................... 8</td>
</tr>
<tr>
<td>R9-5-203</td>
<td>Fingerprinting and Central Registry Requirements ............... 9</td>
</tr>
<tr>
<td>R9-5-204</td>
<td>Child Care Service Classifications ................................ 10</td>
</tr>
<tr>
<td>R9-5-205</td>
<td>Submission of Licensure Fees ....................................... 10</td>
</tr>
<tr>
<td>R9-5-206</td>
<td>Licensure Fees ...................................................... 10</td>
</tr>
<tr>
<td>R9-5-207</td>
<td>Invalid License ...................................................... 11</td>
</tr>
<tr>
<td>R9-5-208</td>
<td>Changes Affecting a License ......................................... 11</td>
</tr>
<tr>
<td>R9-5-209</td>
<td>Inspections; Investigations ........................................ 12</td>
</tr>
<tr>
<td>R9-5-210</td>
<td>Denial, Revocation, or Suspension of License .................. 12</td>
</tr>
<tr>
<td>R9-5-211</td>
<td>Repealed .................................................................. 12</td>
</tr>
</tbody>
</table>

#### ARTICLE 3. FACILITY ADMINISTRATION

Article 3 consisting of Sections R9-5-301 through R9-5-308 repealed; new Sections R9-5-301 through R9-5-309 adopted; and Article heading amended effective October 17, 1997 (Supp. 97-4).

<table>
<thead>
<tr>
<th>Section</th>
<th>Title</th>
</tr>
</thead>
<tbody>
<tr>
<td>R9-5-301</td>
<td>General Licensee Responsibilities ................................ 13</td>
</tr>
<tr>
<td>R9-5-302</td>
<td>Statement of Child Care Services ................................ 13</td>
</tr>
<tr>
<td>R9-5-303</td>
<td>Posting of Notices .................................................. 14</td>
</tr>
<tr>
<td>R9-5-304</td>
<td>Enrollment of Children ............................................ 15</td>
</tr>
<tr>
<td>R9-5-305</td>
<td>Child Immunization Requirements ................................. 15</td>
</tr>
<tr>
<td>R9-5-306</td>
<td>Admission and Release of Children; Attendance Records .......... 16</td>
</tr>
<tr>
<td>R9-5-307</td>
<td>Suspected or Alleged Child Abuse or Neglect .................... 16</td>
</tr>
<tr>
<td>R9-5-308</td>
<td>Insurance Requirements ............................................ 16</td>
</tr>
<tr>
<td>R9-5-309</td>
<td>Gas and Fire Inspections .......................................... 17</td>
</tr>
<tr>
<td>R9-5-310</td>
<td>Pesticides ............................................................ 17</td>
</tr>
</tbody>
</table>

#### ARTICLE 4. FACILITY STAFF

Article 4 consisting of Sections R9-5-401 through R9-5-404 repealed; new Sections R9-5-401 through R9-5-404 adopted; and Article heading amended effective October 17, 1997 (Supp. 97-4).

<table>
<thead>
<tr>
<th>Section</th>
<th>Title</th>
</tr>
</thead>
<tbody>
<tr>
<td>R9-5-401</td>
<td>Staff Qualifications ........................................... 17</td>
</tr>
<tr>
<td>R9-5-402</td>
<td>Staff Records and Reports ...................................... 18</td>
</tr>
<tr>
<td>R9-5-403</td>
<td>Training Requirements ........................................... 18</td>
</tr>
<tr>
<td>R9-5-404</td>
<td>Staff-to-Children Ratios ......................................... 19</td>
</tr>
</tbody>
</table>

#### ARTICLE 5. FACILITY PROGRAM AND EQUIPMENT

Chapter 5 consisting of Sections R9-5-501 through R9-5-522 repealed; new Sections R9-5-501 through R9-5-518 and Table 1 adopted; and heading amended effective October 17, 1997 (Supp. 97-4).

<table>
<thead>
<tr>
<th>Section</th>
<th>Title</th>
</tr>
</thead>
<tbody>
<tr>
<td>R9-5-501</td>
<td>General Child Care Program, Equipment, and Health and Safety Standards ...................................... 20</td>
</tr>
<tr>
<td>R9-5-502</td>
<td>Supplemental Standards for Infants .............................. 21</td>
</tr>
<tr>
<td>R9-5-503</td>
<td>Standards for Diaper Changing .................................. 23</td>
</tr>
<tr>
<td>R9-5-504</td>
<td>Supplemental Standards for 1-year-old and 2-year-old Children ......................................................... 23</td>
</tr>
<tr>
<td>R9-5-505</td>
<td>Supplemental Standards for 3-year-old, 4-year-old, and 5-year-old Children ............................................. 24</td>
</tr>
<tr>
<td>R9-5-506</td>
<td>Supplemental Standards for School-age Children ............ 24</td>
</tr>
<tr>
<td>R9-5-507</td>
<td>Supplemental Standards for Children with Special Needs ................................................................. 24</td>
</tr>
<tr>
<td>R9-5-508</td>
<td>General Nutrition Standards ...................................... 25</td>
</tr>
<tr>
<td>R9-5-509</td>
<td>General Food Service and Food Handling Standards ............. 26</td>
</tr>
<tr>
<td>R9-5-510</td>
<td>Discipline and Guidance .......................................... 27</td>
</tr>
<tr>
<td>R9-5-511</td>
<td>Sleeping and Napping .............................................. 27</td>
</tr>
<tr>
<td>R9-5-512</td>
<td>Cleaning and Sanitation .......................................... 28</td>
</tr>
<tr>
<td>R9-5-513</td>
<td>Pets and Animals .................................................. 28</td>
</tr>
<tr>
<td>R9-5-514</td>
<td>Accident and Emergency Procedures ............................ 29</td>
</tr>
<tr>
<td>R9-5-515</td>
<td>Illness and Infestation ............................................. 29</td>
</tr>
<tr>
<td>R9-5-516</td>
<td>Medications .......................................................... 30</td>
</tr>
<tr>
<td>R9-5-517</td>
<td>Transportation ..................................................... 31</td>
</tr>
<tr>
<td>R9-5-518</td>
<td>Field Trips .......................................................... 32</td>
</tr>
<tr>
<td>R9-5-519</td>
<td>Repealed .............................................................. 32</td>
</tr>
<tr>
<td>R9-5-520</td>
<td>Repealed .............................................................. 32</td>
</tr>
<tr>
<td>R9-5-521</td>
<td>Repealed .............................................................. 32</td>
</tr>
<tr>
<td>R9-5-522</td>
<td>Repealed .............................................................. 32</td>
</tr>
</tbody>
</table>
ARTICLE 6. PHYSICAL PLANT OF A FACILITY

Article 6 consisting of Sections R9-5-601 through R9-5-614 repealed; new Sections R9-5-601 through R9-5-607 adopted; and Article heading amended effective October 1, 2004 (Supp. 04-1).

Section
R9-5-601. General Physical Plant Standards ..................................................32
R9-5-602. Facility Square Footage Requirements .............................................33
R9-5-603. Outdoor Activity Areas .................................................................33
R9-5-604. Swimming Pools ............................................................................34
R9-5-605. Fire and Safety ...............................................................................35
R9-5-606. Renumbered ...................................................................................35
R9-5-607. Repealed ......................................................................................35
R9-5-608. Repealed ......................................................................................36
R9-5-609. Repealed ......................................................................................36
R9-5-610. Repealed ......................................................................................36
R9-5-611. Repealed ......................................................................................36
R9-5-612. Repealed ......................................................................................36
R9-5-613. Repealed ......................................................................................36
R9-5-614. Repealed ......................................................................................36

ARTICLE 7. REPEALED

Article 7, consisting of Sections R9-5-701 through R9-5-708, repealed by final rulemaking at 10 A.A.R. 1282, effective September 1, 2004 (Supp. 04-1).

Section
R9-5-701. Repealed ......................................................................................36
R9-5-702. Repealed ......................................................................................36
R9-5-703. Repealed ......................................................................................36
R9-5-704. Repealed ......................................................................................36
R9-5-705. Repealed ......................................................................................37
R9-5-706. Repealed ......................................................................................37
R9-5-707. Repealed ......................................................................................37
R9-5-708. Repealed ......................................................................................37

ARTICLE 8. REPEALED

Article 8, consisting of Sections R9-5-801 through R9-5-809, repealed by final rulemaking at 10 A.A.R. 1282, effective September 1, 2004 (Supp. 04-1).

Section
R9-5-801. Repealed ......................................................................................37
R9-5-802. Repealed ......................................................................................37
R9-5-803. Repealed ......................................................................................37
R9-5-804. Repealed ......................................................................................38
R9-5-805. Repealed ......................................................................................38
R9-5-806. Repealed ......................................................................................38
R9-5-807. Repealed ......................................................................................38
R9-5-808. Repealed ......................................................................................38
R9-5-809. Repealed ......................................................................................38

ARTICLE 9. REPEALED

Article 9, consisting of Sections R9-5-901 through R9-5-912, repealed by final rulemaking at 10 A.A.R. 1282, effective September 1, 2004 (Supp. 04-1).

Section
R9-5-901. Repealed ......................................................................................38
R9-5-902. Repealed ......................................................................................39
R9-5-903. Repealed ......................................................................................39
R9-5-904. Repealed ......................................................................................39
R9-5-905. Repealed ......................................................................................39
R9-5-906. Repealed ......................................................................................39
R9-5-907. Repealed ......................................................................................39
R9-5-908. Repealed ......................................................................................39
R9-5-909. Repealed ......................................................................................40
R9-5-910. Repealed ......................................................................................40
R9-5-911. Repealed ......................................................................................40
R9-5-912. Repealed ......................................................................................40

ARTICLE 10. REPEALED

Article 10, consisting of Sections R9-5-1001 through R9-5-1005, repealed by final rulemaking at 10 A.A.R. 1282, effective September 1, 2004 (Supp. 04-1).

Section
R9-5-1001. Repealed ......................................................................................40
R9-5-1002. Repealed ......................................................................................40
R9-5-1003. Repealed ......................................................................................40
R9-5-1004. Repealed ......................................................................................41
R9-5-1005. Repealed ......................................................................................41
R9-5-1006. Repealed ......................................................................................41
CHAPTER 5. DEPARTMENT OF HEALTH SERVICES - CHILD CARE FACILITIES

ARTICLE 1. GENERAL

R9-5-101. Definitions
In addition to the definitions in A.R.S. § 36-881, the following definitions apply in this Chapter unless otherwise specified:

1. “Abuse” has the same meaning as in A.R.S. § 8-201.
2. “Accident” means an unexpected occurrence that:
   a. Causes injury to an enrolled child,
   b. Requires attention from a staff member, and
   c. May or may not be an emergency.
3. “Accommodation school” has the same meaning as in A.R.S. § 15-101.
4. “Accredited” means approved by the:
   a. New England Commission of Institution of Higher Education,
   b. Middle States Commission of Higher Education,
   c. North Central the Higher Learning Commission,
   d. Northwest Commission on Colleges and Universities,
   e. Commission on Colleges, or
   f. Western Association of Schools and Colleges.
5. “Activity area” means an action planned by a licensee and performed by an enrolled child while supervised by a staff member.
6. “Activity area” means a specific indoor or outdoor space or room of a licensed facility that is designated by a licensee for use by an enrolled child for an activity.
7. “Adaptive device” means equipment used to augment an individual’s use of the individual’s arms, legs, sight, hearing, or other physical part or function.
8. “Administrative completeness review time-frame” has the same meaning as in A.R.S. § 41-1072.
9. “Adult” means an individual who is at least 18 years of age.
10. “Age-appropriate” means consistent with a child’s age and age-related stage of physical growth and mental development.
11. “Agency” means any board, commission, department, office, or other administrative unit of the federal government, the state, or a political subdivision of the state.
12. “Applicant” means a person or governmental agency requesting one of the following:
   a. A license, or
   b. Approval of a change affecting a license under R9-5-208.
13. “Application” means the documents that an applicant is required to submit to the Department for licensure or approval of a request for a change affecting a license.
14. “Assistant teacher-caregiver” means a staff member who aids a teacher-caregiver in planning, developing, or conducting child care activities.
15. “Association” means a group of individuals other than a corporation, limited liability company, partnership, joint venture, or public school who has established a governing board and bylaws to operate a facility.
16. “Beverage” means a liquid for drinking, including water.
17. “Business organization” has the same meaning as “entity” in A.R.S. § 10-140.
18. “Calendar day” means each day, not including the day of the act, event, or default from which a designated period of time begins to run, but including the last day of the period unless it is a Saturday, Sunday, or legal holiday, in which case the period runs until the end of the next day that is not a Saturday, Sunday, or legal holiday.
19. “Calendar week” means a seven-day period beginning on Sunday at 12:00 a.m. and ending on Saturday at 11:59 p.m.
20. “C.C.P.” means Certified Childcare Professional, a credential awarded by the National Early Childhood Program Accreditation.
22. “Change in ownership” means a transfer of controlling legal or controlling equitable interest and authority in a facility resulting from a sale or merger of a facility.
23. “Charter school” has the same meaning as in A.R.S. § 15-101.
24. “Child care experience” means an individual’s documented work with children in:
   a. A child care facility or a child care group home that was licensed, certified, or approved by a state in the United States or by one of the Uniformed Services of the United States;
   b. A public school, a charter school, a private school, or an accommodation school;
   c. A public or private educational institution authorized under the laws of another state where instruction was provided for any grade or combination of grades between pre-kindergarten and grade 12;
   d. One of the following professional fields:
      i. Nursing,
      ii. Social work,
      iii. Psychology,
      iv. Child development, or
      v. A closely-related field.
25. “Child care services” means the range of activities and programs provided by a licensee to an enrolled child, including personal care, supervision, education, guidance, and transportation.
26. “Child with special needs” means:
   a. A child with a health care provider’s diagnosis and record of a physical or mental condition that substantially limits the child in providing self-care or performing manual tasks or any other major life function such as walking, seeing, hearing, speaking, breathing, or learning;
   b. A child with a “developmental disability” as defined in A.R.S. § 36-551; or
   c. A “child with a disability” as defined in A.R.S. § 15-761.
27. “Clean” means to remove dirt or debris by methods such as washing with soap and water, vacuuming, wiping, dusting, or sweeping.
28. “Closely-related field” means any educational instruction or occupational experience pertaining to the growth, development, physical or mental care, or education of children.
29. “Communicable disease” has the same meaning as in A.A.C. R9-6-101.
30. “Compensation” means money or other consideration, including goods, services, vouchers, time, government or public expenditures, government or public funding, or another benefit, that is received as payment.
31. “C.P.R.” means cardiopulmonary resuscitation.
32. “Credit hour” means an academic unit earned at an accredited college or university:
   a. By attending a one-hour class session each calendar week during a semester or equivalent shorter course term, or
55. “Health care provider” means a physician, physician assistant, or registered nurse practitioner.

56. “High school equivalency diploma” means:
   a. A document issued by the State Board of Education under A.R.S. § 15-702 to an individual who passes a general educational development test or meets the requirements of A.R.S. § 15-702(B); or
   b. A document issued by another state to an individual who passes a general educational development test or meets the requirements of a state statute equivalent to A.R.S. § 15-702(B); or
   c. A document issued by another country to an individual who has completed that country’s equivalent of a 12th grade education, as determined by the Department based upon information obtained from American or foreign consulates or embassies or other governmental agencies.

57. “Hours of operation” means the specific time during a day for which a licensee is licensed to provide child care services.

58. “Illness” means physical manifestation or signs of sickness, such as pain, vomiting, rash, fever, discharge, or diarrhea.

59. “Immediate” or “immediately” means without restriction, delay, or hesitation.

60. “Inaccessible” means:
   a. Out of an enrolled child’s reach, or
   b. Locked.

61. “Infant” means:
   a. A child 12 months of age or younger, or
   b. A child 18 months of age or younger who is not yet walking.


63. “Infestation” means the presence of lice, pinworms, scabies, or other parasites.

64. “Inspection” means:
   a. Examination of a facility by the Department to determine compliance with A.R.S. Title 36, Chapter 7.1, Article 1, and this Chapter;
   b. Review of facility documents, records, or reports by the Department;
   c. Examination of a facility by a local governmental agency.

65. “Lesson plan” means a written description of the activities scheduled in each activity area for a day.

66. “License” means the written authorization issued by the Department to operate a facility in Arizona.

67. “Licensed applicator” who complies with A.A.C. R3-8-201(C).

68. “Licensed capacity” means the maximum number of enrolled children for whom a licensee is authorized by the Department to provide child care services in a facility or a part of a facility at any given time.

69. “Licensee” means a person or governmental agency to whom the Department has issued a license to operate a facility in Arizona.

70. “Local” means under the jurisdiction of a city or county in Arizona.

b. Completing practical work for a course as determined by the accredited college or university.

34. “Designated agent” means an individual who meets the requirements in A.R.S. § 41-351(4).

35. “Developmentally-appropriate” means consistent with a child’s physical, emotional, social, cultural, and cognitive development, based on the child’s age and family background and the child’s personality, learning style, and pattern and timing of growth.

36. “Discipline” means the on-going process of helping a child develop self-control and assume responsibility for the child’s own actions.

37. “Documentation” means information in written, photographic, electronic, or other permanent form.

38. “Electronic signature” has the same meaning as in A.R.S. § 44-7002.

39. “Emergency” means a potentially life-threatening occurrence involving an enrolled child or staff member that requires an immediate response or medical treatment.

40. “Endanger” means to expose an individual to a situation where physical injury or mental injury to the individual may occur.

41. “Enrolled” means placed by a parent and accepted by a licensee for child care services.

42. “Evening and nighttime care” means child care services provided between the hours of 6:00 p.m. and 6:00 a.m.

43. “Facility” has the same meaning as “child care facility” in A.R.S. § 36-881.

44. “Facility director” means an individual who is designated by a licensee as the individual responsible for the daily onsite operation of a facility.

45. “Facility premises” means property that is:
   a. Designated on an application for a license by the applicant; and
   b. Licensed for child care services by the Department under A.R.S. Title 36, Chapter 7.1, Article 1, and this Chapter.

46. “Fall zone” means the surface under and around a piece of equipment onto which a child falling from or exiting from the equipment would be expected to land.

47. “Field trip” means an activity planned by a staff member for an enrolled child:
   a. At a location or area that is not licensed for child care services by the Department, or
   b. At a child care facility in which the child is not enrolled.

48. “Final construction drawings” means facility plans that include the architectural, structural, mechanical, electrical, fire protection, plumbing, and technical specifications of the physical plant and the facility premises and that have been approved by local government for the construction, alteration, or addition of a facility.

49. “Food” means a raw, cooked, or processed edible substance, ice, beverage, or ingredient used or intended for use or for sale in whole or in part for human consumption, or chewing gum.

50. “Food preparation” means processing food for human consumption by cooking or assembling the food, but does not include distributing prepackaged food or whole fruits or vegetables.

51. “Full-day care” means child care services provided for six or more hours per day between the hours of 5:00 a.m. and 8:00 p.m.

52. “Governmental agency” has the same meaning as in A.R.S. § 44-7002.
9. “Private pool” has the same meaning as “private residential swimming pool” in A.A.C. R18-5-201.
10. “Private school” has the same meaning as in A.R.S. § 15-101.
11. “Program” means a variety of activities organized and conducted by a staff member.
12. “Public pool” has the same meaning as “public swimming pool” in A.A.C. R18-5-201.
14. “Registered nurse practitioner” means:
   a. An individual who is licensed and certified as a “registered nurse practitioner” under A.R.S. § 32-1601, or
   b. An individual who is licensed or certified as a registered nurse practitioner under the law of another state.
15. “Regular basis” means at recurring, fixed, or uniform intervals.
16. “Responsible party” means an individual or a group of individuals who:
   a. Is assigned by a public school, charter school, or governmental agency; and
   b. Has general oversight of the child care facility.
17. “Sanitize” means to use heat, chemical agents, or germicidal solutions to disinfect and reduce pathogen counts, including bacteria, viruses, mold, and fungi.
18. “School-age child” means a child who:
   a. Meets one of the following:
      i. Is five years old on or before January 1 of the current school year, or
      ii. Is five years old on or before January 1 of the most recent school year; and
   b. Meets one of the following:
      i. Attends kindergarten or a higher level program in a public, charter, accommodation, or private school during the current school year;
      ii. Attended kindergarten or a higher level program in a public, charter, accommodation, or private school during the most recent school year;
      iii. Is home-schooled at a kindergarten or higher level during the current school year; and
      iv. Was home-schooled at a kindergarten or higher level during the most recent school year.
19. “School-age child care” means child care services provided to a school-age child.
20. “School campus” means the contiguous grounds of a public, charter, accommodation, or private school, including the buildings, structures, and outdoor areas available for use by children attending the school.
22. “Screen time” means the use of electronic media to watch television or to watch a video, a DVD, or a movie at the facility or at another location or the use of electronic media or a computer for game-playing, entertainment, communication, or educational purposes.
23. “Semi-public pool” has the same meaning as “semipublic swimming pool” in A.A.C. R18-5-201.
24. “Service classification” means one of the following:
   a. Full-day care;
   b. Part-day care;
   c. Evening and nighttime care;
   d. Infant care;
   e. One-year-old child care;
9 A.A.C. 5

CHAPTER 5. DEPARTMENT OF HEALTH SERVICES - CHILD CARE FACILITIES

f. Two-year-old child care;
g. Three-year-old, four-year-old, and five-year-old child care;
h. School-age child care; or
i. Weekend care.
107. “Signatory” means an individual who is authorized by a school district governing board, school district superintendent, or governmental agency to sign a document on behalf of the school district governing board, school district superintendent, or governmental agency.
108. “Signed” means affixed with an individual’s signature or with a symbol representing an individual’s signature if the individual is unable to write the individual’s name.
109. “Sippy cup” means a lidded drinking container that is designed to be leak proof or leak-resistant and from which a child drinks through a spout or straw.
110. “Space utilization” means the designated use of an area within a facility for specific child care services or activities.
111. “Staff” or “staff member” means the same as “child care personnel” as defined in A.R.S. § 36-883.02.
112. “Student-aide” means an individual less than 16 years of age who is participating in an educational, curriculum-based course of study; vocational education; or occupational development program and who, without being compensated by a licensee, is present at a facility to receive instruction from and supervision by staff in the provision of child care services.
113. “Substantive review time-frame” has the same meaning as in A.R.S. § 41-1072.
114. “Supervision” means:
   a. For an enrolled child, knowledge of and accountability for the actions and whereabouts of the enrolled child, including the ability to see or hear the enrolled child at all times, to interact with the enrolled child, and to provide guidance to the enrolled child; or
   b. For an individual other than an enrolled child, knowledge of and accountability for the actions and whereabouts of the individual, including the ability to see and hear the individual when the individual is in the presence of an enrolled child and the ability to intervene in the individual’s actions to prevent harm to enrolled children.
115. “Swimming pool” has the same meaning as in A.A.C. R18-5-201.
116. “Teacher-caregiver” means a staff member responsible for developing, planning, and conducting child care activities.
117. “Teacher-caregiver-aide” means a staff member who provides child care services under the supervision of a teacher-caregiver.
118. “Training” means child care-related conferences, seminars, lectures, workshops, classes, courses, or instruction.
119. “Tummy time” means a limited period-of-time no more than 20 minutes used to allow a non-crawling infant:
   a. To strengthen the infant’s head, neck, and upper body muscles; and
   b. To increase the infant’s sensory perception, visual and hearing acuity, and social and emotional interaction.
120. “Volunteer” means a staff member who, without compensation, provides child care services that are the responsibility of a licensee.
121. “Working day” means a Monday, Tuesday, Wednesday, Thursday, or Friday that is not a state holiday, federal holiday, or a statewide furlough day.

Historical Note
Adopted effective December 12, 1986 (Supp. 86-6).
Amended by adding a new paragraph (16) and renumbering accordingly effective July 7, 1988 (Supp. 88-3).
Amended by exempt rulemaking at 16 A.A.R. 1564, effective September 30, 2010 (Supp. 10-3). Amended by final expedited rulemaking at 24 A.A.R. 3429, effective December 5, 2018 (Supp. 18-4). Amended by final rulemaking at 26 A.A.R. 1265 with an immediate effective date of June 3, 2020 (Supp. 20-2). The reference to the statutory definition for Electronic Signature at R9-5-101(38) has been corrected at the request of the Department (Supp. 20-3).

R9-5-102. Individuals to Act for Applicant or Licensee Regarding Document, Fingerprinting, and Department-provided Training Requirements
When an applicant or licensee is required by this Chapter to provide information on or sign documents, possess a fingerprint clearance card, or complete Department-provided training, the following shall satisfy the requirement on behalf of the applicant or licensee:

1. If the applicant or licensee is an individual, the individual;
2. If the applicant or licensee is a business organization, a designated agent who meets the requirements in A.R.S. § 36-889(D);
3. If the applicant or licensee is a public school, an individual designated in writing as signatory for the public school by the school district governing board or school district superintendent;
4. If the applicant or licensee is a charter school, the person approved to operate the charter school by the school district governing board, the Arizona State Board of Education, or the Arizona State Board for Charter Schools; and
5. If the applicant or licensee is a governmental agency, the individual in the senior leadership position with the agency or an individual designated in writing as signatory by that individual.

Historical Note
New Section made by final rulemaking at 8 A.A.R. 4060, effective November 10, 2002 (Supp. 02-3). Amended by final rulemaking at 10 A.A.R. 1282, effective September 1, 2004 (Supp. 04-1). Amended by exempt rulemaking at
ARTICLE 2. FACILITY LICENSURE

R9-5-201. Application for a License

A. An applicant for a license shall:
   1. Be at least 21 years of age;
   2. If an individual, be a U.S. citizen or legal resident alien and a resident of Arizona;
   3. If a corporation, association, or limited liability company, be a domestic entity or a foreign entity qualified to do business in Arizona;
   4. If a partnership, have at least one partner who is a U.S. citizen or legal resident alien and a resident of Arizona;
   5. Submit to the Department an application packet containing:
      a. An application on a form provided by the Department that contains:
         i. The applicant’s name;
         ii. The applicant’s date of birth;
         iii. The facility’s name, street address, city, state, zip code, mailing address, and telephone number;
         iv. The requested service classifications;
         v. Whether the applicant agrees to allow the Department to submit supplemental requests for information;
         vi. A statement that the applicant has read and will comply with A.R.S. Title 36, Chapter 7.1, Article 1 and this Chapter;
         vii. A statement that the information provided in the application packet is accurate and complete; and
         viii. The applicant’s signature and date the applicant signed the application;
      b. A copy of the applicant’s:
         i. U.S. passport,
         ii. Birth certificate,
         iii. Naturalization documents, or
         iv. Documentation of legal resident alien status;
      c. A copy of the applicant’s valid fingerprint clearance card issued according to A.R.S. Title 41, Chapter 12, Article 3.1;
      d. A copy of the form required in A.R.S. § 36-883.02(C);
      e. A certificate issued by the Department showing that the applicant has completed at least four hours of Department-provided training that included the Department’s role in licensing and regulating child care facilities under A.R.S. Title 36, Chapter 7.1, Article 1, and this Chapter;
      f. Except as provided in subsection (A)(5)(i), a site plan of the facility drawn to scale showing:
         i. The drawing scale;
         ii. The boundary dimensions of the property upon which the facility’s physical plant is located;
         iii. If more than one building is used for the facility, the location and perimeter dimensions of each building;
         iv. The location of each driveway on the property;
         v. The location and boundary dimensions of each parking lot on the property;
         vi. The location and perimeter dimensions of each outdoor activity area;
         vii. The location, type, and height of each fence and gate; and
         viii. If applicable, the location of any swimming pool on the property;
      g. Except as provided in subsection (A)(5)(i), a floor plan of each building to be used for child care services drawn to scale showing:
         i. The drawing scale;
         ii. The length and width dimensions for each indoor activity area;
         iii. The requested licensed capacity and applicable service classification for each indoor activity area;
         iv. The location of each diaper changing area;
         v. The location of each hand washing, utility, toilet, urinal, and drinking fountain; and
         vi. The location and type of fire alarm system;
      h. Except as provided in subsection (A)(5)(j):
         i. A copy of a certificate of occupancy issued for the facility by the local jurisdiction;
         ii. Documentation from the local jurisdiction that the facility was approved for occupancy; or
         iii. If the documents in subsections (A)(5)(h)(i) and (ii) are not available, the seal of an architect registered as prescribed in A.R.S. § 32-121 on the site plan required in subsection (A)(5)(f) and the floor plan required in subsection (A)(5)(g) verifying compliance with current local building and fire codes, local zoning requirements, and this Chapter;
      i. For an applicant providing child care services to three-year-old, four-year-old, five-year-old, or school-age children in a facility located in a public school, a set of final construction drawings or a school map showing:
         i. The location of each school building;
         ii. The location and dimensions of each outdoor activity area to be used by enrolled children;
         iii. The length and width dimensions for each indoor activity area;
         iv. The requested licensed capacity and applicable service classification for each indoor activity area; and
         v. The location of each hand-washing sink, toilet, urinal, and drinking fountain to be used by enrolled children;
      j. If the facility is located within one-fourth of a mile of agricultural land:
         i. The names and addresses of the owners or lessees of each parcel of agricultural land located within one-fourth mile of the facility, and
         ii. A copy of an agreement complying with A.R.S. § 36-882 for each parcel of agricultural land;
      k. The applicable fee in R9-5-206;
      l. If the applicant is a business organization, a form provided by the Department that contains:
         i. The name, street address, city, state, and zip code of the business organization;
         ii. The type of business organization;
         iii. The name, date of birth, title, street address, city, state, and zip code of each controlling person;
         iv. A copy of the business organization’s articles of incorporation, articles of organization, partnership documents, or joint venture documents, if applicable;
v. Documentation of good standing issued by the Arizona Corporation Commission and dated no earlier than three months before the date of the application; and

vi. A statement signed by the applicant stating:
   (1) That each controlling person has not been denied a certificate or license to operate a child care group home or child care facility in this state or another state, and
   (2) That each controlling person has not had a certificate or license to operate a child care group home or child care facility revoked in this state or another state for endangering the health and safety of children; and

m. If the applicant is a public school, a form provided by the Department that contains:
   i. The name of the school district;
   ii. The name, title, street address, city, state, and zip code of each responsible party, if the responsible party is an individual, or each individual in the group, if the responsible party is a group of individuals;
   iii. A letter from the school district governing board or school district superintendent designating a signatory, if applicable;

iv. A letter from the school district governing board or school district superintendent designating a signatory, if applicable;

n. If the applicant is a charter school, a form provided by the Department that contains:
   i. The name, title, street address, city, state, and zip code of each responsible party, if the responsible party is an individual, or each individual in the group, if the responsible party is a group of individuals;
   ii. A statement signed by the applicant stating:
      (1) That each individual in subsection (A)(5)(m)(ii) has not been denied a certificate or license to operate a child care group home or child care facility in this state or another state, and
      (2) That each individual in subsection (A)(5)(m)(ii) has not had a certificate or license to operate a child care group home or child care facility revoked in this state or another state for endangering the health and safety of children; and
   iii. A letter from the individual in the senior leadership position with the agency designating a signatory.

The Department requires a separate license and a separate application for:
1. Each facility owned by the same person at a different location, and
2. Each facility owned by a different person at the same location.

C. The Department does not require a separate application and license for a structure that is:
   1. Located so that the structure and the facility:
      a. Share the same street address, or
      b. Can be enclosed by a single unbroken boundary line that does not encompass property owned or leased by another,
   2. Under the same ownership as the facility, and
   3. Intended to be used as a part of the facility.

Historical Note

R9-5-202. Time-frames
A. The overall time-frame for each type of approval granted by the Department under this Article is listed in Table 2.1. The applicant and the Department may agree in writing to extend the substantive review time-frame and the overall time-frame. An extension of the substantive review time-frame and the overall time-frame may not exceed 25% of the overall time-frame.

B. The administrative completeness review time-frame for each type of approval granted by the Department under this Article is listed in Table 2.1 and begins on the date that the Department receives an application packet.

1. An application packet for a license is not complete until the date, provided to the Department with the application packet or by written notice, that the child care facility is ready for an onsite licensing inspection.

2. The Department shall send a notice of administrative completeness or deficiencies to the applicant within the administrative completeness review time-frame.
A.R.S. § 36-882

45

Title 9
Arizona Administrative Code 9 A.A.C. 5

CHAPTER 5. DEPARTMENT OF HEALTH SERVICES - CHILD CARE FACILITIES

a. A notice of deficiencies shall list each deficiency and the items needed to complete the application packet.

b. The administrative completeness review time-frame and the overall time-frame are suspended from the date that the notice of deficiencies is issued until the date that the Department receives all of the missing items from the applicant.

c. If an applicant for a license or an approval of a change affecting a license fails to submit to the Department all of the items listed in the notice of deficiencies within 180 calendar days after the date that the Department sent the notice of deficiencies, the Department shall consider the application or request for approval withdrawn.

3. If the Department issues a license or other approval to the applicant during the administrative completeness review time-frame, the Department shall not issue a separate written notice of administrative completeness.

C. The substantive review time-frame for each type of approval granted by the Department under this Article is listed in Table 2.1 and begins on the date of the notice of administrative completeness.

1. As part of the substantive review for a license application, the Department shall conduct an inspection that may require more than one visit to the facility.

2. As part of the substantive review for a request for approval of a change affecting a license that requires a change in the use of physical space at the facility, the Department shall conduct an evaluation of the request to determine compliance with applicable rules and statutes that may include an onsite inspection.

3. The Department shall send a license, a written notice of approval, or denial of a license or other request for approval to an applicant within the substantive review time-frame.

4. During the substantive review time-frame, the Department may make one comprehensive written request for additional information, unless the Department and the applicant have agreed in writing to allow the Department to submit supplemental requests for information.

a. If the Department determines that an applicant or a facility is not in substantial compliance with A.R.S. Title 36, Chapter 7.1, Article 1 and this Chapter, the Department shall send a comprehensive written request for additional information that includes a written statement of deficiencies stating each statute and rule upon which noncompliance is based.

b. An applicant shall submit to the Department all of the information requested in the comprehensive written request for additional information and documentation of the corrections required in the statement of deficiencies, if applicable within 120 calendar days after the date of the comprehensive written request for additional information.

c. The substantive review time-frame and the overall time-frame are suspended from the date that the Department issues a comprehensive written request for additional information or a supplemental request for information until the date that the Department receives all of the information requested, including documentation of corrections required in a statement of deficiencies, if applicable.

d. If an applicant fails to submit to the Department all of the information requested in a comprehensive written request for additional information or a supplemental request for information, including documentation of corrections required in a statement of deficiencies, if applicable, within the time prescribed in subsection (C)(4)(b), the Department shall deny the application.

5. The Department shall issue a license or other approval if the Department determines that the applicant and facility are in substantial compliance with A.R.S. Title 36, Chapter 7.1, Article 1 and this Chapter, and the applicant submits documentation of corrections that is acceptable to the Department for any deficiencies.

6. If the Department determines that a license or other approval is to be denied, the Department shall send to the applicant a written notice of denial complying with A.R.S. § 36-888 and stating the reasons for denial and all other information required by A.R.S. §§ 36-888 and 41-1076.

Historical Note

Table 1. Renumbered

Historical Note
New Table made by final rulemaking at 8 A.A.R. 4060, effective November 10, 2002 (Supp. 02-3). Table 1 renumbered to Table 2.1 by exempt rulemaking at 16 A.A.R. 1564, effective September 30, 2010 (Supp. 10-3).

Table 2.1. Time-frames (in calendar days)

<table>
<thead>
<tr>
<th>Type of Approval</th>
<th>Statutory Authority</th>
<th>Overall Time-Frame</th>
<th>Administrative Completeness Review Time-Frame</th>
<th>Substantive Review Time-Frame</th>
</tr>
</thead>
<tbody>
<tr>
<td>License under R9-5-201</td>
<td>A.R.S. § 36-882</td>
<td>120</td>
<td>30</td>
<td>90</td>
</tr>
<tr>
<td>Approval of Change Affecting License under R9-5-208</td>
<td>A.R.S. §§ 36-882 and 36-883</td>
<td>75</td>
<td>30</td>
<td>45</td>
</tr>
</tbody>
</table>

Historical Note
Table 2.1 renumbered from Table 1 and amended by exempt rulemaking at 16 A.A.R. 1564, effective September 30, 2010 (Supp. 10-3). Table 2.1 heading amended by final expedited rulemaking at 24 A.A.R. 3429, effective December 5, 2018 (Supp. 18-4).

R9-5-203. Fingerprinting and Central Registry Requirements

A. A licensee shall ensure that a staff member completes, signs, dates, and submits to the licensee, before the staff member’s starting date of employment or volunteer service:

1. The form required in A.R.S. § 36-883.02(C); and
2. If required by A.R.S. § 8-804, the form in A.R.S. § 8-804(I).
B. Except as provided in A.R.S. § 41-1758.03, a licensee shall ensure that each staff member submits to the licensee a copy of:
1. The staff member’s valid fingerprint clearance card issued under A.R.S. Title 41, Chapter 12, Article 3.1; or
2. The fingerprint clearance card application that the staff member submitted to the Department of Public Safety under A.R.S. § 41-1758.02 within seven working days after the staff member's starting date of employment or volunteer service.
C. A licensee shall ensure that each staff member submits to the licensee a copy of the staff member's valid fingerprint clearance card each time the fingerprint clearance card is issued or renewed.
D. If a staff member possesses a fingerprint clearance card that was issued before the staff member became a staff member at the facility, a licensee shall:
1. Contact the Department of Public Safety within seven working days after the individual becomes a staff member to determine whether the fingerprint clearance card is valid; and
2. Document this determination, including the name of the staff member, the date of contact with the Department of Public Safety, and whether the fingerprint clearance card is valid.
E. If required by A.R.S. § 8-804, before an individual’s starting date of employment or volunteer service, a licensee shall comply with the submission requirements in A.R.S. § 8-804(C) for the individual.
F. A licensee shall not allow an individual to be a staff member if the individual:
1. Has been denied a fingerprint clearance card under A.R.S. Title 41, Chapter 12, Article 3.1 and has not received an interim approval under A.R.S. § 41-619.55;
2. Receives an interim approval under A.R.S. § 41-619.55 but is subsequently denied a good cause exception under A.R.S. § 41-619.55 and a fingerprint clearance card under A.R.S. Title 41, Chapter 12, Article 3.1;
3. Is a parent or guardian of a child adjudicated to be a dependent child as defined in A.R.S. § 8-201;
4. Has been denied or had revoked a certificate to operate a child care group home or a license to operate a child care facility for care of children in this state or another state;
5. Has been denied or had revoked a certification to work in a child care facility or a child care group home in this state or another state;
6. If applicable, has stated on the form required in A.R.S. § 8-804(I) that the individual is currently under investigation for an allegation of abuse or neglect or has a substantiated allegation of abuse or neglect and has not subsequently received a central registry exception according to A.R.S. § 41-619.57; or
7. If applicable, is disqualified from employment or volunteer service as a staff member according to A.R.S. § 8-804 and has not subsequently received a central registry exception according to A.R.S. § 41-619.57.

Historical Note

R9-5-205. Submission of Licensure Fees
A licensee shall submit to the Department, every three years and no more than 60 calendar days before the anniversary date of the facility’s license:
1. A form provided by the Department that contains:
   a. The licensee’s name,
   b. The facility’s name and license number, and
   c. Whether the licensee intends to submit the applicable fee:
      i. With the form, or
      ii. According to the payment plan in subsection (2)(b), and
2. Either:
   a. The applicable fee in R9-5-206, or
   b. One-half of the applicable fee in R9-5-206 with the form and the remainder of the applicable fee due no later than 120 calendar days after the anniversary date of the facility’s license.

Historical Note

R9-5-206. Licensure Fees
A. Except as provided in subsection (B), the fees for an applicant submitting an application or a licensee submitting licensure fees are:
CHAPTER 5. DEPARTMENT OF HEALTH SERVICES - CHILD CARE FACILITIES

1. For a child care facility with a licensed capacity of five to 10 children, $1,000;
2. For a child care facility with a licensed capacity of 11 to 59 children, $4,000; and
3. For a child care facility with a licensed capacity of 60 or more children, $7,800.

B. If an applicant or licensee participates in a Department-approved program, the Department may discount the fee in subsection (A), based on available funding.

C. The fee for a licensee requesting an increase in a facility's licensed capacity is the difference between the applicable fee in this Section for the new licensed capacity and the applicable fee in this Section for the current licensed capacity, prorated from the date the licensee submitted the request for the increase for the number of months remaining before the facility's license anniversary date specified in R9-5-205.

Historical Note

R9-5-207. Invalid License
If a licensee does not submit the licensure fee as required in R9-5-205(2), the facility license is no longer valid and the facility is operating without a license.

Historical Note

R9-5-208. Changes Affecting a License
A. At least 30 calendar days before the date of a change in a facility's name, a licensee shall send the Department written notice of the name change and the Department shall issue an amended license that incorporates the name change but retains the anniversary date of the current license.

B. At least 30 calendar days before the date of an intended change in a facility's service classification, space utilization, or licensed capacity, a licensee shall submit a written request for approval of the intended change to the Department that includes:
1. The licensee's name;
2. The facility's name, street address, city, state, zip code, mailing address, and telephone number;
3. The name, telephone number, and fax number of a point of contact for the request;
4. The facility's license number;
5. The type of change intended:
   a. Service classification,
   b. Space utilization, or
   c. Licensed capacity;
6. A narrative description of the intended change; and
7. The following additional information, as applicable:
   a. If the intended change affects an activity area, the following information about each affected activity area, as applicable:
      i. Identification of the activity area,
      ii. Current and intended square footage,
      iii. Current and intended operating hours,
      iv. Current and intended service classification,
      v. Current and intended licensed capacity, and
      vi. Whether the activity area has or will have a diaper changing area;
   b. If the intended change is to increase licensed capacity, the square footage of the outdoor activity area; and
   c. If the intended change includes an alteration or addition to the physical plant of a licensed facility, the following, as applicable:
      i. If the facility is not located in a public school or if providing child care services to infants, one-year-old children, or two-year-old children in a facility located in a public school, the information required in R9-5-201(A)(5)(f) and (g) showing the intended change;
      ii. If the facility is located in a public school and provides child care only for three-year-old, four-year-old, or five-year-old, or school-age children, a set of final construction drawings or a school map, including the information required in R9-5-201(5)(i) showing the intended change.

C. If the intended change in subsection (B) includes an increase in the licensed capacity, a licensee shall submit the fee for an increase in licensed capacity in R9-5-206(C) with the written request for approval.

D. If requesting a diaper changing area outside an infant room or indoor activity area to allow privacy for diapering an enrolled child with special needs, submit a written request for an approval; and
1. For a license application, submit physical plant documents required by R9-5-201(A)(5)(g) that designate the location of the proposed diaper changing area;
2. For a licensed facility, submit a drawing of the proposed diaper changing area to the Department before installing the diaper changing area. Within 30 calendar days after the date of the receipt of the request, the Department shall send written notice to the licensee of approval or disapproval. If the proposed diaper changing area:
   a. Complies with A.R.S. Title 36, Chapter 7.1, Article 1 and this Chapter and provides privacy for the enrolled child with special needs, the Department shall approve the proposed diaper changing area; or
   b. Does not comply with A.R.S. Title 36, Chapter 7.1, Article 1 or this Chapter or provide privacy for the enrolled child with special needs, the Department shall provide the licensee with the requirements necessary for the Department to approve the requested change; and
3. Not use a diaper changing area located outside of an activity area until the Department approves the use of the diaper changing area;

E. The Department shall review a request submitted under subsection (B) according to R9-5-202. If the intended change is in compliance with A.R.S. Title 36, Chapter 7.1, Article 1 and this Chapter and any applicable fee is submitted, the Department shall send the licensee written approval of the requested
change or an amended license that incorporates the change but retains the anniversary date of the current license.

F. A licensee shall not implement any change described under subsection (B) until the Department issues an approval or amended license.

G. At least 30 days before the date of a change in ownership of a facility, a licensee shall send the Department written notice of the change. A new owner shall obtain a new license as prescribed in R9-5-201 before the new owner begins operating the facility.

H. A licensee changing a facility’s location shall apply for a new license as prescribed in R9-5-201.

I. Within 30 calendar days after a change in a controlling person, a licensee shall send the Department written notice of the change that includes:
   1. The name of the licensee;
   2. A description of the change made;
   3. The name, title, street address, city, state, and zip code of each controlling person;
   4. A statement that each controlling person has not been denied a certificate to operate a child care group home or a license to operate a child care facility for the care of children in this state or another state;
   5. A statement that each controlling person has not had a certificate to operate a child care group home or a license to operate a child care facility revoked in this state or another state for reasons that relate to endangerment of the health and safety of children;
   6. A statement that the information provided in the written notice is accurate and complete; and
   7. The signature of the licensee.

J. If the change in subsection (I) is a change in a controlling person who is a designated agent, a licensee shall include a copy of one of the following for the designated agent:
   1. A U.S. passport,
   2. A birth certificate,
   3. Naturalization documents, or
   4. Documentation of legal resident alien status.

K. Within 30 calendar days after changing a responsible party, a licensee shall send the Department written notice of the change that includes:
   1. The name of the licensee;
   2. A description of the change made;
   3. The name, title, street address, city, state, and zip code of each responsible party, if the responsible party is an individual, or each individual in the group, if the responsible party is a group of individuals; and
   4. A statement signed by the licensee stating:
      a. That each individual in subsection (K)(3) has not been denied a certificate or license to operate a child care group home or child care facility in this state or another state, and
      b. That each individual in subsection (K)(3) has not had a certificate or license to operate a child care group home or child care facility revoked in this state or another state for endangering the health and safety of children.

R9-5-209. Inspections; Investigations

A. A licensee shall allow the Department immediate access to all areas of the facility affecting the health, safety, or welfare of an enrolled child or to which an enrolled child has access during hours of operation.

B. A licensee shall permit the Department to interview each staff member or enrolled child as part of an investigation.

Historical Note

R9-5-210. Denial, Revocation, or Suspension of License

A. The Department may deny, revoke, or suspend a license to operate a facility if an applicant or licensee:
   1. Provides false or misleading information to the Department;
   2. Has been denied a certificate or license to operate a child care group home or child care facility in any state, unless the denial was based on the applicant’s failure to complete the certification or licensing process according to a required time-frame;
   3. Has had a certificate or license to operate a child care group home or child care facility revoked or suspended in any state;
   4. Has been denied a fingerprint clearance card or has had a fingerprint clearance card revoked under A.R.S. Title 41, Chapter 12, Article 3.1;
   5. Fails to substantially comply with any provision in A.R.S. Title 36, Chapter 7.1, Article 1 or this Chapter; or
   6. Substantially complies with A.R.S. Title 36, Chapter 7.1, Article 1 and this Chapter, but refuses to carry out a plan acceptable to the Department to eliminate any deficiencies.

B. In determining whether to deny, suspend, or revoke a license, the Department shall consider the threat to the health and safety of children in a facility based on such factors as:
   1. Repeated violations of statutes or rules,
   2. A pattern of non-compliance,
   3. The type of violation,
   4. The severity of each violation, and
   5. The number of violations.

Historical Note

R9-5-211. Repealed

Historical Note
CHAPTER 5. DEPARTMENT OF HEALTH SERVICES - CHILD CARE FACILITIES

9 A.A.C. 5

Arizona Administrative Code

Title 9

School age and the licensee has obtained and verified written permission from the enrolled child’s parent.

7. A licensee shall maintain the attendance form on facility premises for 12 months after the date of attendance.

B. A licensee shall:

1. Develop, document, and implement policies and procedures to ensure that a staff member maintains daily documentation of the presence of an enrolled child in an activity area that includes a method to account for any temporary absences of the enrolled child from the activity area; and

2. Maintain the documentation of the presence of enrolled children in an activity area required in subsection (B)1 on facility premises for 12 months after the date of the documentation.

Historical Note

R9-5-307. Suspected or Alleged Child Abuse or Neglect
A licensee shall ensure that the licensee or a staff member documents and reports all suspected or alleged cases of child abuse or neglect.

1. The licensee or staff member shall report the suspected or alleged child abuse or neglect to the Arizona Department of Child Safety or to a local law enforcement agency as prescribed in A.R.S. § 13-3620. The licensee or staff member shall also send documentation to the Arizona Department of Child Safety and any local law enforcement agency previously notified within three calendar days of the initial report, and maintain documentation of a child abuse or neglect report on facility premises for 12 months after the date of a report.

2. The licensee or staff member shall report the suspected or alleged child abuse by a staff member to the Department and to a local law enforcement agency as prescribed in A.R.S. § 13-3620. A licensee or staff member shall also send documentation to the Department and to any law enforcement agency previously notified within three calendar days of the initial report, and maintain documentation of a child abuse report on facility premises for 12 months after the date of a report.

C. A licensee shall maintain on facility premises:

1. A current fire inspection report including documentation of any repairs or corrections required by the fire inspection report; and

2. If there are gas pipes that run from a gas meter to an appliance or location on the facility premises, a current gas inspection report; and

3. A gas inspection by a licensed plumber or individual authorized by the local jurisdiction that verifies there are no gas leaks in the gas pipes that run from the gas meter to any appliance or location on facility premises; and

Historical Note

R9-5-308. Pesticides
A. A licensee shall make written pesticide information available to a parent, upon a parent’s request, at least 48 hours before a pesticide application occurs on facility premises, containing:

1. The brand, concentration, rate of application, and any use restrictions required by the label of the herbicide or specific pesticide;

2. The date and time of the pesticide application;

3. The pesticide label; and

4. The name and telephone number of the pesticide business licensee and the name of the licensed applicator providing pesticide services.

B. A licensee is exempt from the provisions in subsection (A), as prescribed by A.R.S. § 36-898(C).

Historical Note

ARTICLE 4. FACILITY STAFF
CHAPTER 5. DEPARTMENT OF HEALTH SERVICES - CHILD CARE FACILITIES

R9-5-401. Staff Qualifications
A licensee shall ensure that staff members meet the following qualifications for employment or volunteer service at a facility:

1. A facility director is 21 years of age or older and provides the licensee with documentation of one of the following:
   a. At least 24 months of child care experience, a high school or high school equivalency diploma, and
      i. Six credit hours or more in early childhood, child development, or a closely-related field from an accredited college or university; or
      ii. At least 60 actual hours of instruction, provided in conferences, seminars, lectures, or workshops in early childhood, child development, or a closely-related field, and an additional 12 hours of instruction, provided in conferences, seminars, lectures, or workshops in the area of program administration, planning, development, or management;
   b. At least 18 months of child care experience; and
      i. An N.A.C., C.D.A., or C.C.P. credential; or
      ii. At least 24 credit hours from an accredited college or university, including at least six credit hours in early childhood, child development, or a closely-related field;
   c. At least six months of child care experience and an associate degree from an accredited college or university in early childhood, child development, or a closely-related field; or
   d. At least three months of child care experience and a bachelor’s degree from an accredited college or university in early childhood, child development, or a closely-related field;

2. A facility director’s designee is 21 years of age or older and provides the licensee with documentation of one of the following:
   a. At least 12 months of child care experience, a high school or high school equivalency diploma; and
      i. Three credit hours or more in early childhood, child development, or a closely-related field from an accredited college or university; or
      ii. At least 30 actual hours of instruction, provided in conferences, seminars, lectures, or workshops in early childhood, child development, or a closely-related field;
   b. At least 12 months of child care experience; and
      i. An N.A.C., C.D.A., or C.C.P. credential; or
      ii. At least 24 credit hours from an accredited college or university, including at least six credit hours in early childhood, child development, or a closely-related field;
   c. At least six months of child care experience and an associate degree from an accredited college or university in early childhood, child development, or a closely-related field; or
   d. At least three months of child care experience and a bachelor’s degree from an accredited college or university in early childhood, child development, or a closely-related field;

3. A teacher-caregiver is 18 years of age or older and provides the licensee with documentation of one of the following:
   a. Six months of child care experience; and
      i. A high school diploma or high school equivalency diploma; or
      ii. At least 12 credit hours from an accredited college or university, including at least six credit hours in early childhood, child development, or a closely-related field;
   b. Associate or bachelor’s degree from an accredited college or university in early childhood, child development, or a closely-related field; or
   c. N.A.C., C.D.A., or C.C.P. credential;

4. An assistant teacher-caregiver is 16 years of age or older and provides the licensee with documentation of one of the following:
   a. Current and continuous enrollment in high school or a high school equivalency class;
   b. High school or high school equivalency diploma;
   c. Enrollment in vocational rehabilitation, as defined in A.R.S. § 23-501;
   d. Employment as a teacher-caregiver aide for 12 months; or
   e. Service as a volunteer in a child care facility for 12 months;

5. A teacher-caregiver aide is 16 years of age or older;

6. A student-aide provides the licensee with documentation of participation in:
   a. An educational, curriculum-based course in child development, parenting, or guidance counseling; or
   b. A vocational education or occupational development program; and

7. A volunteer is 15 years of age or older.

Historical Note
Adopted effective December 12, 1986 (Supp. 86-6). Section repealed; new Section adopted effective October 17, 1997 (Supp. 97-4). R9-5-401(1)(a) has been corrected to reflect staff qualifications on file and as published in the Code Supplement (04-4). Amended by exempt rulemaking at 16 A.A.R. 1564, effective September 30, 2010 (Supp. 10-3).

R9-5-402. Staff Records and Reports
A. A licensee shall maintain a file for each staff member containing:
   1. The staff member’s name, date of birth, home address, and telephone number;
   2. The staff member’s starting date of employment or volunteer service;
   3. The staff member’s ending date of employment or volunteer service;
   4. The name and telephone number of an individual to be notified in case of an emergency;
   5. If applicable:
      a. The form required in A.R.S. § 8-804(I),
      b. Documentation of the submission required in A.R.S. § 8-804 and the information received as a result of the submission, and
      c. Documentation of training provided by a licensee as required by R9-5-403;
   6. If applicable:
      a. The form required in A.R.S. § 36-883.02(C);
      b. A vocational education or occupational development program administration, planning, development, or management;
      c. Service as a volunteer in a child care facility for 12 months;
   7. A copy of any current license or certification required by A.R.S. Title 36, Chapter 7.1, Article 1, or this Chapter; and
R9-5-403. Training Requirements

A. A licensee shall ensure that, for a staff member who is currently working at the facility, the staff member’s information required by:
1. Subsections (A)(1) through (11) is maintained in a single location on facility premises, and
2. Subsection (A)(12) is maintained and provided to the Department within two hours of the Department’s request.

B. A licensee shall ensure that, for a staff member who is currently working at the facility, the information required in subsections (A)(1) through (12) is:
1. Maintained for 12 months after the date the individual last worked at the facility, and
2. Provided to the Department within two hours of the Department’s request.

C. A licensee shall ensure that, for an individual who is not currently working at the facility, the information required in subsections (A)(1) through (12) is:
1. Maintained for 12 months after the date the individual last worked at the facility, and
2. Provided to the Department within two hours of the Department’s request.

Historical Note
Amended by exempt rulemaking at 19 A.A.R. 2612, effective August 1, 2013 (Supp. 13-3). Amended by final expedited rulemaking at 24 A.A.R. 3429, effective December 5, 2018 (Supp. 18-4).

R9-5-403. Training Requirements

A. Within 10 calendar days of the starting date of employment or volunteer service, a licensee shall provide, and each staff member who provides child care services shall complete, training for new staff members that includes all of the following:
1. Facility philosophy and goals;
2. Names and ages of and developmental expectations for enrolled children for whom the staff member will provide child care services;
3. Health needs, nutritional requirements, any known allergies, and information about adaptive devices of enrolled children for whom the staff member will provide child care services;
4. Lesson plans;
5. Child guidance and methods of discipline;
6. Hand washing techniques;
7. Diapering techniques and toileting, if assigned to diaper changing duties;
8. Food preparation, service, sanitation, and storage, if assigned to food preparation;
9. If a staff member is assigned to feeding infants, the preparation, handling, and storage of infant formula and breast milk;
10. Recognition of signs of illness and infestation;
11. Child abuse or neglect detection, prevention, and reporting;
12. Accident and emergency procedures;
13. Staff responsibilities as required by A.R.S. Title 36, Chapter 7.1, Article 1 and this Chapter;
14. Sun safety policies and procedures;
15. Safety in outdoor activity areas;
16. Transportation procedures, if applicable; and
17. Field trip procedures, if applicable.

B. A licensee shall ensure that:
1. Each staff member who provides child care services completes 18 or more actual hours of training every 12 months after the effective date of this Chapter or the staff member’s starting date of employment or volunteer service in at least two topics listed in this subsection:
   a. Child growth and development, including:
      i. Infant growth and development, which may include sudden infant death syndrome prevention;
      ii. Developmental psychology;
      iii. Language development;
      iv. Observation and child assessment;
      v. Developmentally-appropriate activities;
      vi. Child guidance and methods of discipline which may include training on the appropriate techniques to prevent a child from harm or to prevent the child from harming others; and
   b. Health and safety issues, including:
      i. Accident and emergency procedures, including CPR and first aid for infants and children;
      ii. Recognition of signs of illness and infestation;
      iii. Nutrition and developmentally-appropriate eating habits;
      iv. Child abuse detection, reporting, and prevention;
      v. Safety of indoor and outdoor activity areas; and
      vi. Sun safety policies and procedures;
   c. Program administration, planning, development, or management; and
d. Availability of community services and resources, including those available to children with special needs; and
2. As part of the required 18 hours of training in subsection (B)(1):
   a. A staff member who has less than 12 months of child care experience before the staff member’s starting date, completes at least 12 hours in one or more of the topics in subsection (B)(1)(a) in the staff member’s first 12 months at the facility;
   b. A staff member who has 12 months or more of child care experience, completes at least six hours in one or more of the topics in subsection (B)(1)(a) every 12 months after the staff member’s starting date;
   c. A staff member who provides child care services to an infant completes at least six hours in subsection (B)(1)(a) every 12 months after the staff member’s starting date; and
   d. A facility director completes at least six hours in subsection (B)(1)(c) every 12 months after the facility director’s starting date.

C. A licensee shall ensure that documentation of a staff member’s completion of training required by subsection (A) is signed by the facility director and dated.

D. A licensee shall ensure that a staff member submits to the licensee documentation of training received as required by subsection (B) to the licensee as the training is completed.

E. A licensee shall ensure that a staff member required by R9-5-301(G) meets all of the following:
1. The staff member obtains first aid training specific to infants and children;
2. The staff member obtains CPR training specific to infants and children, which includes a demonstration of the staff member’s ability to perform CPR;
3. The staff member maintains current training in first aid and CPR; and
4. The staff member provides the licensee with a copy of the front and back of the current card issued to the staff mem-
E. In addition to maintaining the required staff-to-children ratios, a licensee shall ensure that:

1. Staff members are present on facility premises to perform facility administration, food preparation, food service, and maintenance responsibilities; and
2. Facility maintenance does not depend on the work of enrolled children.

F. If a licensee conducts swimming activities at a swimming pool, the licensee shall ensure that there is a lifeguard on the premises who has current lifeguard certification that includes a demonstration of the lifeguard’s ability to perform CPR. If the lifeguard is a staff member, the staff member cannot be counted in the staff-to-children ratios required by subsection (A).

Historical Note

R9-5-404. Staff-to-Children Ratios

A. A licensee shall ensure that at least the following staff-to-children ratios are maintained at all times when providing child care services to enrolled children:

<table>
<thead>
<tr>
<th>Age Group</th>
<th>Staff: Children</th>
</tr>
</thead>
<tbody>
<tr>
<td>Infants</td>
<td>1:5 or 2:11</td>
</tr>
<tr>
<td>1-year-old children</td>
<td>1:6 or 2:13</td>
</tr>
<tr>
<td>2-year-old children</td>
<td>1:8</td>
</tr>
<tr>
<td>3-year-old children</td>
<td>1:13</td>
</tr>
<tr>
<td>4-year-old children</td>
<td>1:15</td>
</tr>
<tr>
<td>5-year-old children not school-age</td>
<td>1:20</td>
</tr>
<tr>
<td>School-age children</td>
<td>1:20</td>
</tr>
</tbody>
</table>

B. A licensee shall:
1. Determine and maintain the required staff-to-children ratio for each group of enrolled children based on the age of the youngest child in the group;
2. Allow a volunteer qualified as a director, teacher-caregiver, or an assistant teacher caregiver to be counted as staff in staff-to-children ratios; and
3. Not allow a student-aide or an individual qualified as a teacher-caregiver-aide to be counted as staff in staff-to-children ratios.

C. A licensee shall ensure that:
1. When there are six or more enrolled children present in a facility, the following individuals are present in the facility:
   a. A facility director or a director’s designee who meets the requirements in R9-5-401 for a director’s designee, and
   b. One additional staff member;
2. When five or fewer enrolled children are present in a facility, the facility director or director’s designee who meets the requirements in R9-5-401 is present in the facility, and an additional staff member is available by telephone or other equally expeditious means and able to reach the facility within 15 minutes after notification; and
3. When six or more enrolled children are present in a facility, an infant is not placed for supervision with a child who is not an infant.

D. A licensee shall ensure that a staff member assigned to provide child care services to enrolled children does not perform duties that may affect the staff member’s ability to provide child care services to the enrolled children.

E. In addition to maintaining the required staff-to-children ratios, a licensee shall ensure that:
1. Staff members are present on facility premises to perform facility administration, food preparation, food service, and maintenance responsibilities; and
2. Facility maintenance does not depend on the work of enrolled children.

F. If a licensee conducts swimming activities at a swimming pool, the licensee shall ensure that there is a lifeguard on the premises who has current lifeguard certification that includes a demonstration of the lifeguard’s ability to perform CPR. If the lifeguard is a staff member, the staff member cannot be counted in the staff-to-children ratios required by subsection (A).

Historical Note

ARTICLE 5. FACILITY PROGRAM AND EQUIPMENT

R9-5-501. General Child Care Program, Equipment, and Health and Safety Standards

A. A licensee shall ensure that:
1. In addition to complying with the requirements in this Chapter, the health, safety, or welfare of an enrolled child is not placed at risk of harm;
2. Except for an enrolled school-age child, drinking water is provided sufficient for the needs of and accessible to each enrolled child in both indoor and outdoor activity areas;
3. For an enrolled school-age child, if drinking water is not accessible in an indoor or outdoor activity area, drinking water sufficient to meet the individual needs of each enrolled school-aged child is available;
4. An enrolled child is placed in an age-appropriate or developmentally-appropriate group;
5. Indoor activity areas used by enrolled children are decorated with age-appropriate articles such as mirrors, bulletin boards, pictures, and posters;
6. Age-appropriate toys, materials, and equipment are provided to enable each enrolled child to participate in an activity;
7. Storage space is provided in the facility for indoor and outdoor toys, materials, and equipment in areas accessible to enrolled children;
8. Clean clothing is available to an enrolled child when the enrolled child needs a change of clothing;
9. If a staff member places an enrolled child in a feeding chair when feeding the enrolled child:
   a. The feeding chair is constructed to prevent toppling;
   b. The tray or feeding surface of the feeding chair is smooth and free of cracks; and
   c. The staff member:
      i. Cleans the feeding chair before and after each enrolled child’s use;
      ii. Sanitizes the tray or feeding surface before and after each enrolled child’s use; and
      iii. If the feeding chair was manufactured with a safety strap, fastens the feeding chair’s safety strap while the enrolled child is in the feeding chair;
10. At least one indoor activity area in the facility is equipped with at least one cot or mat, a sheet, and a blanket, where an enrolled child can rest quietly away from other enrolled children;
11. Outdoor activities are scheduled to allow not less than 75 square feet for each enrolled child occupying the facility’s outdoor activity area or indoor activity area substituted for outdoor activity area at any time;
9 A.A.C. 5 CHILD CARE FACILITIES

36-136. **Powers and duties of director; compensation of personnel; rules; definition**

A. The director shall:

1. Be the executive officer of the department of health services and the state registrar of vital statistics but shall not receive compensation for services as registrar.
2. Perform all duties necessary to carry out the functions and responsibilities of the department.
3. Prescribe the organization of the department. The director shall appoint or remove personnel as necessary for the efficient work of the department and shall prescribe the duties of all personnel. The director may abolish any office or position in the department that the director believes is unnecessary.
4. Administer and enforce the laws relating to health and sanitation and the rules of the department.
5. Provide for the examination of any premises if the director has reasonable cause to believe that on the premises there exists a violation of any health law or rule of this state.
6. Exercise general supervision over all matters relating to sanitation and health throughout this state. When in the opinion of the director it is necessary or advisable, a sanitary survey of the whole or of any part of this state shall be made. The director may enter, examine and survey any source and means of water supply, sewage disposal plant, sewerage system, prison, public or private place of detention, asylum, hospital, school, public building, private institution, factory, workshop, tenement, public washroom, public restroom, public toilet and toilet facility, public eating room and restaurant, dairy, milk plant or food manufacturing or processing plant, and any premises in which the director has reason to believe there exists a violation of any health law or rule of this state that the director has the duty to administer.
7. Prepare sanitary and public health rules.
8. Perform other duties prescribed by law.

B. If the director has reasonable cause to believe that there exists a violation of any health law or rule of this state, the director may inspect any person or property in transportation through this state, and any car, boat, train, trailer, airplane or other vehicle in which that person or property is transported, and may enforce detention or disinfection as reasonably necessary for the public health if there exists a violation of any health law or rule.

C. The director, after consultation with the department of administration, may take all necessary steps to enhance the highest and best use of the state hospital property, including contracting with third parties to provide services, entering into short-term lease agreements with third parties to occupy or renovate existing buildings and entering into long-term lease agreements to develop the land and buildings. The director shall deposit any monies collected from contracts and lease agreements entered into pursuant to this subsection in the Arizona state hospital charitable trust fund established by section 36-218. At least thirty days before issuing a request for proposals pursuant to this subsection, the department of health services shall hold a public hearing to receive community and provider input regarding the highest and best use of the state hospital property related to the request for proposals. The department shall report to the joint committee on capital review on the terms, conditions and purpose of any lease or sublease agreement entered into pursuant to this subsection relating to state hospital lands or buildings or the disposition of real property pursuant to this subsection,
9 A.A.C. 5 CHILD CARE FACILITIES

including state hospital lands or buildings, and the fiscal impact on the department and any revenues generated by the agreement. Any lease or sublease agreement entered into pursuant to this subsection relating to state hospital lands or buildings or the disposition of real property pursuant to this subsection, including state hospital lands or buildings, must be reviewed by the joint committee on capital review.

D. The director may depute, in writing, any qualified officer or employee in the department to do or perform on the director's behalf any act the director is by law empowered to do or charged with the responsibility of doing.

E. The director may delegate to a local health department, county environmental department or public health services district any functions, powers or duties that the director believes can be competently, efficiently and properly performed by the local health department, county environmental department or public health services district if:

1. The director or superintendent of the local health agency, environmental agency or public health services district is willing to accept the delegation and agrees to perform or exercise the functions, powers and duties conferred in accordance with the standards of performance established by the director of the department of health services.

2. Monies appropriated or otherwise made available to the department for distribution to or division among counties or public health services districts for local health work may be allocated or reallocated in a manner designed to ensure the accomplishment of recognized local public health activities and delegated functions, powers and duties in accordance with applicable standards of performance. Whenever in the director's opinion there is cause, the director may terminate all or a part of any delegation and may reallocate all or a part of any funds that may have been conditioned on the further performance of the functions, powers or duties conferred.

F. The compensation of all personnel shall be as determined pursuant to section 38-611.

G. The director may make and amend rules necessary for the proper administration and enforcement of the laws relating to the public health.

H. Notwithstanding subsection I, paragraph 1 of this section, the director may define and prescribe emergency measures for detecting, reporting, preventing and controlling communicable or infectious diseases or conditions if the director has reasonable cause to believe that a serious threat to public health and welfare exists. Emergency measures are effective for no longer than eighteen months.

I. The director, by rule, shall:

1. Define and prescribe reasonably necessary measures for detecting, reporting, preventing and controlling communicable and preventable diseases. The rules shall declare certain diseases reportable. The rules shall prescribe measures, including isolation or quarantine, that are reasonably required to prevent the occurrence of, or to seek early detection and alleviation of, disability, insofar as possible, from communicable or preventable diseases. The rules shall include reasonably necessary measures to control animal diseases transmittable to humans.

2. Define and prescribe reasonably necessary measures, in addition to those prescribed by law, regarding the preparation, embalming, cremation, interment, disinterment and transportation of dead human bodies and the conduct of funerals, relating to and restricted to communicable diseases and regarding the removal, transportation, cremation, interment or disinterment of any dead human body.
9 A.A.C. 5 CHILD CARE FACILITIES

3. Define and prescribe reasonably necessary procedures that are not inconsistent with law in regard to the use and accessibility of vital records, delayed birth registration and the completion, change and amendment of vital records.

4. Except as relating to the beneficial use of wildlife meat by public institutions and charitable organizations pursuant to title 17, prescribe reasonably necessary measures to ensure that all food or drink, including meat and meat products and milk and milk products sold at the retail level, provided for human consumption is free from unwholesome, poisonous or other foreign substances and filth, insects or disease-causing organisms. The rules shall prescribe reasonably necessary measures governing the production, processing, labeling, storing, handling, serving and transportation of these products. The rules shall prescribe minimum standards for the sanitary facilities and conditions that shall be maintained in any warehouse, restaurant or other premises, except a meat packing plant, slaughterhouse, wholesale meat processing plant, dairy product manufacturing plant or trade product manufacturing plant. The rules shall prescribe minimum standards for any truck or other vehicle in which food or drink is produced, processed, stored, handled, served or transported. The rules shall provide for the inspection and licensing of premises and vehicles so used, and for abatement as public nuisances of any premises or vehicles that do not comply with the rules and minimum standards. The rules shall provide an exemption relating to food or drink that is:

(a) Served at a noncommercial social event such as a potluck.

(b) Prepared at a cooking school that is conducted in an owner-occupied home.

(c) Not potentially hazardous and prepared in a kitchen of a private home for occasional sale or distribution for noncommercial purposes.

(d) Prepared or served at an employee-conducted function that lasts less than four hours and is not regularly scheduled, such as an employee recognition, an employee fund-raising or an employee social event.

(e) Offered at a child care facility and limited to commercially prepackaged food that is not potentially hazardous and whole fruits and vegetables that are washed and cut on-site for immediate consumption.

(f) Offered at locations that sell only commercially prepackaged food or drink that is not potentially hazardous.

(g) Baked and confectionary goods that are not potentially hazardous and that are prepared in a kitchen of a private home for commercial purposes if packaged with a label that clearly states the address of the maker, includes contact information for the maker, lists all the ingredients in the product and discloses that the product was prepared in a home. The label must be given to the final consumer of the product. If the product was made in a facility for individuals with developmental disabilities, the label must also disclose that fact. The person preparing the food or supervising the food preparation must obtain a food handler’s card or certificate if one is issued by the local county and must register with an online registry established by the department pursuant to paragraph 13 of this subsection. For the purposes of this subdivision, "potentially hazardous" means baked and confectionary goods that meet the requirements of the food code published by the United States food and drug administration, as modified and incorporated by reference by the department by rule.

(h) A whole fruit or vegetable grown in a public school garden that is washed and cut on-site for immediate consumption.

5. Prescribe reasonably necessary measures to ensure that all meat and meat products for human consumption handled
9 A.A.C. 5 CHILD CARE FACILITIES

at the retail level are delivered in a manner and from sources approved by the Arizona department of agriculture and are free from unwholesome, poisonous or other foreign substances and filth, insects or disease-causing organisms. The rules shall prescribe standards for sanitary facilities to be used in identity, storage, handling and sale of all meat and meat products sold at the retail level.

6. Prescribe reasonably necessary measures regarding production, processing, labeling, handling, serving and transportation of bottled water to ensure that all bottled drinking water distributed for human consumption is free from unwholesome, poisonous, deleterious or other foreign substances and filth or disease-causing organisms. The rules shall prescribe minimum standards for the sanitary facilities and conditions that shall be maintained at any source of water, bottling plant and truck or vehicle in which bottled water is produced, processed, stored or transported and shall provide for inspection and certification of bottled drinking water sources, plants, processes and transportation and for abatement as a public nuisance of any water supply, label, premises, equipment, process or vehicle that does not comply with the minimum standards. The rules shall prescribe minimum standards for bacteriological, physical and chemical quality for bottled water and for the submission of samples at intervals prescribed in the standards.

7. Define and prescribe reasonably necessary measures governing ice production, handling, storing and distribution to ensure that all ice sold or distributed for human consumption or for the preservation or storage of food for human consumption is free from unwholesome, poisonous, deleterious or other foreign substances and filth or disease-causing organisms. The rules shall prescribe minimum standards for the sanitary facilities and conditions and the quality of ice that shall be maintained at any ice plant, storage and truck or vehicle in which ice is produced, stored, handled or transported and shall provide for inspection and licensing of the premises and vehicles, and for abatement as public nuisances of ice, premises, equipment, processes or vehicles that do not comply with the minimum standards.

8. Define and prescribe reasonably necessary measures concerning sewage and excreta disposal, garbage and trash collection, storage and disposal, and water supply for recreational and summer camps, campgrounds, motels, tourist courts, trailer coach parks and hotels. The rules shall prescribe minimum standards for preparation of food in community kitchens, adequacy of excreta disposal, garbage and trash collection, storage and disposal and water supply for recreational and summer camps, campgrounds, motels, tourist courts, trailer coach parks and hotels and shall provide for inspection of these premises and for abatement as public nuisances of any premises or facilities that do not comply with the rules. Primitive camp and picnic grounds offered by this state or a political subdivision of this state are exempt from rules adopted pursuant to this paragraph but are subject to approval by a county health department under sanitary regulations adopted pursuant to section 36-183.02. Rules adopted pursuant to this paragraph do not apply to two or fewer recreational vehicles as defined in section 33-2102 that are not park models or park trailers, that are parked on owner-occupied residential property for less than sixty days and for which no rent or other compensation is paid. For the purposes of this paragraph, "primitive camp and picnic grounds" means camp and picnic grounds that are remote in nature and without accessibility to public infrastructure such as water, electricity and sewer.

9. Define and prescribe reasonably necessary measures concerning the sewage and excreta disposal, garbage and trash collection, storage and disposal, water supply and food preparation of all public schools. The rules shall prescribe minimum
9 A.A.C. 5 CHILD CARE FACILITIES

standards for sanitary conditions that shall be maintained in any public school and shall provide for inspection of these premises and facilities and for abatement as public nuisances of any premises that do not comply with the minimum standards.

10. Prescribe reasonably necessary measures to prevent pollution of water used in public or semipublic swimming pools and bathing places and to prevent deleterious health conditions at these places. The rules shall prescribe minimum standards for sanitary conditions that shall be maintained at any public or semipublic swimming pool or bathing place and shall provide for inspection of these premises and for abatement as public nuisances of any premises and facilities that do not comply with the minimum standards. The rules shall be developed in cooperation with the director of the department of environmental quality and shall be consistent with the rules adopted by the director of the department of environmental quality pursuant to section 49-104, subsection B, paragraph 12.

11. Prescribe reasonably necessary measures to keep confidential information relating to diagnostic findings and treatment of patients, as well as information relating to contacts, suspects and associates of communicable disease patients. In no event shall confidential information be made available for political or commercial purposes.

12. Prescribe reasonably necessary measures regarding human immunodeficiency virus testing as a means to control the transmission of that virus, including the designation of anonymous test sites as dictated by current epidemiologic and scientific evidence.

13. Establish an online registry of food preparers that are authorized to prepare food for commercial purposes pursuant to paragraph 4 of this subsection.

14. Prescribe an exclusion for fetal demise cases from the standardized survey known as "the hospital consumer assessment of healthcare providers and systems".

J. The rules adopted under the authority conferred by this section shall be observed throughout the state and shall be enforced by each local board of health or public health services district, but this section does not limit the right of any local board of health or county board of supervisors to adopt ordinances and rules as authorized by law within its jurisdiction, provided that the ordinances and rules do not conflict with state law and are equal to or more restrictive than the rules of the director.

K. The powers and duties prescribed by this section do not apply in instances in which regulatory powers and duties relating to public health are vested by the legislature in any other state board, commission, agency or instrumentality, except that with regard to the regulation of meat and meat products, the department of health services and the Arizona department of agriculture within the area delegated to each shall adopt rules that are not in conflict.

L. The director, in establishing fees authorized by this section, shall comply with title 41, chapter 6. The department shall not set a fee at more than the department's cost of providing the service for which the fee is charged. State agencies are exempt from all fees imposed pursuant to this section.

M. After consultation with the state superintendent of public instruction, the director shall prescribe the criteria the department shall use in deciding whether or not to notify a local school district that a pupil in the district has tested positive for the human immunodeficiency virus antibody. The director shall prescribe the procedure by which the
9 A.A.C. 5 CHILD CARE FACILITIES

department shall notify a school district if, pursuant to these criteria, the department determines that notification is warranted in a particular situation. This procedure shall include a requirement that before notification the department shall determine to its satisfaction that the district has an appropriate policy relating to nondiscrimination of the infected pupil and confidentiality of test results and that proper educational counseling has been or will be provided to staff and pupils.

N. Until the department adopts exemptions by rule as required by subsection I, paragraph 4, subdivision (f) of this section, food and drink are exempt from the rules prescribed in subsection I of this section if offered at locations that sell only commercially prepackaged food or drink that is not potentially hazardous, without a limitation on its display area.

O. Until the department adopts exemptions by rule as required by subsection I, paragraph 4, subdivision (h) of this section, a whole fruit or vegetable grown in a public school garden that is washed and cut on-site for immediate consumption is exempt from the rules prescribed in subsection I of this section.

P. Until the department adopts an exclusion by rule as required by subsection I, paragraph 14 of this section, the standardized survey known as "the hospital consumer assessment of healthcare providers and systems" may not include patients who experience a fetal demise.

Q. For the purposes of this section, "fetal demise" means a fetal death that occurs or is confirmed in a licensed hospital. Fetal demise does not include an abortion as defined in section 36-2151.

36-883. Standards of care; rules; classifications

A. The director of the department of health services shall prescribe reasonable rules regarding the health, safety and well-being of the children to be cared for in a child care facility. These rules shall include standards for the following:

1. Adequate physical facilities for the care of children such as building construction, fire protection, sanitation, sleeping facilities, isolation facilities, toilet facilities, heating, ventilation, indoor and outdoor activity areas and, if provided by the facility, transportation safely to and from the premises.

2. Adequate staffing per number and age groups of children by persons qualified by education or experience to meet their respective responsibilities in the care of children.

3. Activities, toys and equipment to enhance the development of each child.

4. Nutritious and well-balanced food.

5. Encouragement of parental participation.

6. Exclusion of any person from the facility whose presence may be detrimental to the welfare of children.

B. The department shall adopt rules pursuant to title 41, chapter 6 and section 36-115.

C. Any rule that relates to educational activities, physical examination, medical treatment or immunization shall include appropriate exemptions for children whose parents object on the ground that it conflicts with the tenets and practices of a recognized church or religious denomination of which the parent or child is an adherent or member.
D. The department of health services shall conduct a comprehensive review of its rules at least once every two years. Before conducting this review, the department shall consult with agencies and organizations that are knowledgeable about the provision of child care facilities to children including:

1. The department of economic security.
2. The department of education.
3. The state fire marshal.
4. The league of Arizona cities and towns.
5. Citizen groups.

E. The department shall designate appropriate classifications and establish corresponding standards pertaining to the type of care offered. These classifications shall include:

1. Facilities offering infant care.
2. Facilities offering specific educational programs.
3. Facilities offering evening and nighttime care.

F. Rules for the operation of child care facilities shall be stated in a way that clearly states the purpose of each rule.

36-883.01. Statement of services

Each child care facility shall annually furnish to the department, and make available to parents on request, an explicit and up-to-date written statement of the services it offers.

36-883.02. Child care personnel; fingerprints; exemptions; definition

A. Except as provided in subsection B of this section, child care personnel, including volunteers, shall submit the form prescribed in subsection C of this section to the employer and shall have valid fingerprint clearance cards issued pursuant to section 41-1758.07 or shall apply for a fingerprint clearance card within seven working days of employment or beginning volunteer work.

B. Exempt from the fingerprinting requirements of subsection A of this section are parents, including foster parents and guardians, who are not employees of the child care facility and who participate in activities with their children under the supervision of and in the presence of child care personnel.

C. Applicants, licensees and child care personnel shall attest on forms that are provided by the department that:

1. They are not awaiting trial on or have never been convicted of or admitted in open court or pursuant to a plea agreement committing any of the offenses listed in section 41-1758.07, subsection B in this state or similar offenses in another state or jurisdiction.
2. They are not parents or guardians of a child adjudicated to be a dependent child as defined in section 8-201.
3. They have not been denied or had revoked a certificate to operate a child care group home or a license to operate a child care facility in this or any other state or that they have not been denied or had revoked a certification to work in a child care facility or child care group home.
9 A.A.C. 5 CHILD CARE FACILITIES

D. Employers of child care personnel shall make documented, good faith efforts to contact previous employers of child care personnel to obtain information or recommendations that may be relevant to an individual's fitness for employment in a child care facility.

E. The forms required by subsection C of this section are confidential.

F. A child care facility shall not allow a person to be employed or volunteer in the facility in any capacity if the person has been denied a fingerprint clearance card pursuant to section 41-1758.07 or has not received an interim approval from the board of fingerprinting pursuant to section 41-619.55, subsection I.

G. The employer shall notify the department of public safety if the employer receives credible evidence that any child care personnel either:

1. Is arrested for or charged with an offense listed in section 41-1758.07, subsection B.
2. Falsified information on the form required by subsection C of this section.

H. For the purposes of this section, "child care personnel" means any employee or volunteer working at a child care facility.

36-883.03 Employer-subsidized child care; immunity from liability

A. An employer that subsidizes child care on a nondiscriminatory basis to its employees through a child care facility licensed pursuant to this article or through a person or facility exempt from licensure pursuant to this article but screened pursuant to section 41-1964 or 46-321 is not liable for damages as a result of an act or omission by the child care facility, person or exempt facility unless the employer is guilty of gross negligence in recommending the child care facility, person or facility or unless the employer is acting as the owner or has an ownership interest in or is an operator of the child care facility or exempt facility.

B. For purposes of this section, an employer is deemed to be subsidizing an employee’s child care costs if the employer pays, either directly or indirectly, at least twenty-five per cent of the cost of the child care service rendered to the employee by the child care facility, person or exempt facility described in subsection A of this section.

36-883.04 Standards of care; rules; enforcement

The director shall prescribe reasonable rules and standards regarding the health, safety and well-being of children cared for in any public school child care program. These rules shall be comparable to the rules and standards prescribed pursuant to section 36-883. The director shall also prescribe rules regarding the enforcement of the standards of care including penalties for noncompliance with these standards. These enforcement and penalty provisions shall be comparable to those existing for private child care facilities.

46-811. Child care providers; background check requirements

A. The department of economic security and the department of health services may conduct background checks pursuant to the requirements of the child care and development block grant act of 2014 (P.L. 113-186) that are not included in the fingerprint clearance card process established by section 41-1758.02 for:
9 A.A.C. 5 CHILD CARE FACILITIES

1. Employees and volunteers of child care providers as defined in section 46-801.

2. All persons who are eighteen years of age or older and who work or reside in the home of a child care home provider as defined in section 46-801.

3. Child care personnel as defined in section 36-897.03.

4. Child care providers as defined in section 41-1967.01.

B. The department of economic security may enter into agreements with other government agencies to conduct the background checks required in subsection A of this section.
DEPARTMENT OF PUBLIC SAFETY (Expedited Rulemaking)
Title 13, Chapter 2


Repeal: R13-2-201, R13-2-301, R13-2-402
MEETING DATE:  July 6, 2022

TO:         Members of the Governor’s Regulatory Review Council (Council)

FROM:       Council Staff

DATE:       June 20, 2022

SUBJECT:    DEPARTMENT OF PUBLIC SAFETY
            Title 13, Chapter 2


Repeal:     R13-2-201,  R13-2-301,  R13-2-402

Summary:

This expedited rulemaking from the Department of Public Safety (Department) relates to rules in Title 13, Chapter 2 regarding Private Investigators. In this expedited rulemaking the Department seeks to address issues identified in the recent Five-Year-Review Report for these rules, which the Council approved on April 7, 2020. This rulemaking would amend and repeal rules that are redundant or otherwise no longer necessary.

The Department received approval from the rulemaking moratorium to initiate this rulemaking on December 15, 2021, and final approval to submit it to the Council on April 13, 2022.
1. **Do the rules satisfy the criteria for expedited rulemaking pursuant to A.R.S. § 41-1027(A)?**

Yes. The Department states that the rules satisfy the criteria for expedited rulemaking pursuant to A.R.S. § 41-1027(A) under (3) (“corrects typographical errors, makes address or name changes or clarifies language of a rule without changing its effect”); (4) (“adopts or incorporates by reference without material change federal statutes or regulations”); (5) (“reduces or consolidates steps, procedures or processes in the rules”); and (6) (“amends or repeals rules that are outdated, redundant or otherwise no longer necessary for the operation of state government”).

2. **Are the rules legal, consistent with legislative intent, and within the agency’s statutory authority?**

Yes. The Department cites both general and specific statutory authority for the rules.

3. **Do the rules establish a new fee or contain a fee increase?**

Not applicable. The Department indicates the rules do not establish a new fee or contain a fee increase.

4. **Does the agency adequately address the comments on the proposed rules and any supplemental proposals?**

Not applicable. The Department indicates they received no written comments.

5. **Are the final rules a substantial change, considered as a whole, from the proposed rules and any supplemental proposals?**

No. The Department did not make any changes to the rules between the Notice of Proposed Expedited Rulemaking and the Notice of Final Expedited Rulemaking.

6. **Are the rules more stringent than corresponding federal law and, if so, is there statutory authority to exceed the requirements of federal law?**

Not applicable. The Department indicates there is no corresponding federal law.

7. **Do the rules require a permit or license and, if so, does the agency comply with A.R.S. § 41-1037?**

Yes. The rules require a license, however, a general permit is not applicable for these rules pursuant to the exception under A.R.S. § 41-1037(2) (“[t]he issuance of an alternative type of permit, license or authorization is specifically authorized by state statute”). A.R.S. § 32-2411 requires a person to be licensed and working for an agency that is licensed pursuant to Article 2 of this Chapter.
8. **Does the preamble disclose a reference to any study relevant to the rules that the agency reviewed and either did or did not rely upon?**

   No. The Department did not review or rely on a study in conducting this expedited rulemaking.

9. **Conclusion**

   In this expedited rulemaking the Department seeks to amend rules that are duplicative to statute or that provide no meaningful clarification to the authorizing statute. If approved, this rulemaking would be effective immediately upon the Department filing the Notice of Final Expedited Rulemaking and Certificate of Approval with the Secretary of State. Council staff recommends approval of this expedited rulemaking.
April 13, 2022

Ms. Nicole Sornsin, Chair
The Governor’s Regulatory Review Council
100 N 15th Ave, Ste 402
Phoenix, AZ 85007

Dear Ms. Sornsin,

The Department of Public Safety submits a Notice of Final Expedited Rulemaking for Arizona Administrative Code Title 13, Public Safety, Chapter 2, Private Investigators, Sections 101 to 105, 201 to 208, 301, 302, 304, 306, 401, 402, 404 for review and approval by the Council.

The following information is provided pursuant to R1-6-201:

1. **Close of Record Date:** The rulemaking record was closed on Wednesday April 6, 2022, pursuant to the Notice of Proposed Expedited Rulemaking following a period for public comment and an oral proceeding. The oral proceeding was held on Tuesday April 5, 2022 with no attendees from the public and no written comments received. Pursuant to A.R.S. § 41-1027 the rulemaking was posted to the Department’s website on February 17, 2022. The notice was filed pursuant to A.R.S. § 41-1047 with the Arizona Rules Oversight Committee on April 13, 2022.

2. **Relation to Five-Year Review Report:** This rulemaking is related to a five-year review approved by the Council on April 7, 2020.

3. **Establishment of new fees:** This rulemaking does not establish new fees.

4. **Establishment of fee increase:** This rulemaking does not establish a fee increase.

5. **Request for immediate effective date under A.R.S. § 41-1032:** The Department is not requesting an immediate effective date.

6. **Evaluations of studies related to the rulemaking:** No external studies related to the rulemaking were evaluated.
7. **Necessity of Full-time Employees:** The rulemaking does not require an increase in full-time employees to implement the rules.

8. **List of Documents:**
   
a. *Notice of Final Expedited Rulemaking* including the Preamble and rule text.

b. Department's rulemaking waiver request letter.

c. Governor's Office rulemaking waiver approvals.

d. Copies of letters to the legislature pursuant to expedited rulemaking.

e. Evidence of posting to the website.

Sincerely,

[Signature]

Colonel Heston Silbert
Director

Enc. 10
NOTICE OF FINAL EXPEDITED RULEMAKING
TITLE 13. PUBLIC SAFETY
CHAPTER 2. PRIVATE INVESTIGATORS

PREAMBLE

1. **Article, Part, or Section Affected (as applicable)** | **Rulemaking Action**
---|---
R13-2-101 | Amend
R13-2-102 | Amend
R13-2-103 | Amend
R13-2-104 | Amend
R13-2-105 | Amend
R13-2-201 | Repeal
R13-2-202 | Amend
R13-2-203 | Amend
R13-2-204 | Amend
R13-2-205 | Amend
R13-2-206 | Amend
R13-2-207 | Amend
R13-2-208 | Amend
R13-2-301 | Repeal
R13-2-302 | Amend
R13-2-304 | Amend
R13-2-306 | Amend
R13-2-401 | Amend
R13-2-402 | Repeal
R13-2-404 | Amend

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

   - **Authorizing statute:** A.R.S. § 41-1713(A)(4)
   - **Implementing statute:** A.R.S. § 32-2402(D)
3. **The effective date of the rules:**

   The effective date is as prescribed in A.R.S. § 41-1027(H).

   a. **If the agency selected a date earlier than the 60 days effective date as specified in A.R.S. § 41-1032(A), include the earlier date and state the reason or reasons the agency selected the earlier effective date as provided in A.R.S. § 41-1032(A)(1) through (5):**

      The Department does not select an earlier date.

   b. **If the agency selected a date later than the 60 days effective date as specified in A.R.S. § 41-1032(A), include the later date and state the reason or reasons the agency selected the earlier effective date as provided in A.R.S. § 41-1032(A)(B):**

      The Department does not select a later date.

4. **Citations to all related notices published in the Register as specified in R1-1-409(A) that pertain to the record of the proposed rule:**


   Pursuant to A.R.S. § 41-1027, the Notice of Proposed Expedited Rulemaking was posted to the Department’s website on February 17, 2022.

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

   Name: Michelle Riley, Licensing Manager

   Address: Arizona Department of Public Safety
   POB 6638, MD1280
   Phoenix, AZ 85005-6638

   Telephone: (602) 223-2862
   E-mail: mriley@azdps.gov

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

   The rules qualify under A.R.S. § 41-1027(A) by (3) correcting typographical errors, makes address or name changes or clarifies language of a rule without changing its effect. (4) Adopts or incorporates by reference without material change federal statutes or regulations. (5) Reduces or consolidates steps, procedures or processes in the rules. (6) Amends or repeals rules that are outdated, redundant or otherwise no longer necessary for the operation of state
government. The exact changes to each rules are listed as follows:

R13-2-101. The incorporated by reference information in Paragraph 2 was updated and the definition statutory reference for delinquent in Paragraph 4 was updated.

R13-2-102. The rule is amended to include credit card payments. The rule change does not increase the cost of regulatory compliance, increase a fee or reduce procedural rights and amends a rule that is outdated. Outdated forms of payment include checks and cash. Updating the rule to include credit card payment facilitates online application and payment improving the licensing process for applicants.

R13-2-103. The word associate was deleted from Paragraph (A)(3) as it is duplicative to A.R.S. § 32-2425(E) which states all new associates shall submit applications on forms prescribed by the Department. In Paragraph (B), specific addresses, telephone and website information is provided.

R13-2-104. Paragraph (A) was repealed as the text is duplicative to A.R.S. § 32-2461. Portions of Paragraph (B)(1,2,3,5,7) were repealed as the text is duplicative to A.R.S. § 32-2461; only the date of birth and the employer’s agency name and license number are more specific than the statute. Paragraph (G) was amended to include a specific address and website methods of notification. Rule 104 was renumbered accordingly.

R13-2-105(C)(3). A typographical error in the rule reference was corrected.

R13-2-201 was repealed as it is not necessary. Arizona Revised Statutes are the governing documents and there is no reason to repeat the statutes in rule when the text of the rule provides no substantive clarification or additional requirements. Applicants should always rely on the statutes first and the administrative rules secondarily for clarifying information.

R13-2-202. Paragraph (A) was amended to include specific addresses and update the statutory references. Paragraph (A)(4) was amended to remove the notary requirement as it is
not possible to notarize an online submission. Paragraph (A)(6) was repealed as the text is duplicative to A.R.S. § 32-2422(C). Paragraph (A)(7)(b) was amended to remove the information related to the fingerprints and photographs as it is duplicative to R13-2-202(A)(2,5). Paragraph (C) corrects a typographical error with the rule reference.

R13-2-203. Paragraph (A) was amended as the text was duplicative to A.R.S. § 32-2425(C). With the deletion of the first and second sentences, a clarifying sentence that does not change the substantive content was added. Paragraph (B) was repealed as the text is duplicative to A.R.S. § 32-2425(C). Portions of Paragraph (D) were amended as the text was duplicative to A.R.S. § 32-2425(A) and the date was clarified to reference to the Department. Paragraph (F) was repealed as the text was duplicative to A.R.S. § 32-2425(F). Paragraph (G) was repealed as the text was duplicative to A.R.S. § 32-2425(D).

R13-2-204. A portion of Paragraph (C) was removed as the text was duplicative to A.R.S. § 32-2407(B). Paragraph (D) was repealed as the text was duplicative to A.R.S. 32-2407(B).

R13-2-205. Paragraph (A) was repealed as the text was duplicative to A.R.S. § 32-2426(A,C). Paragraph (D) was repealed as the text was duplicative to A.R.S. § 32-2453(B). Paragraph (E) was repealed as the text was duplicative to A.R.S. § 32-2425(D).

R13-2-206. Paragraph (B) was amended to remove unnecessary text. Meeting statutory and rule requirements are a given and a separate requirement. There is no reason to include extraneous text to repeatedly reference statutes or rules in all cases.

R13-2-207. Paragraph (A) was repealed as the text is duplicative to A.R.S. § 32-2401(20). A portion of Paragraph (C) was amended to remove text duplicative and redundant to A.R.S. § 32-2441.

R13-2-208. Paragraph (B) was repealed as the text is duplicative to A.R.S. § 32-2457(A)(3).

R13-2-301. The entire rule is repealed. The rule is entirely duplicative to A.R.S. § 32-2441
and does not provide any additional clarifications or requirements.

R13-2-302. Paragraph (A) was amended to include specific addresses. Unnecessary references were removed. Paragraph (B) was amended to remove the List, A, B, and C documents. The Department does not have statutory authority to verify the applicant’s status and therefore should not be prescribing a limiting list of approved forms. Substantial federal and state law on employment verification already exists and employers and applicants should follow those applicable statutes.

R13-2-304 and R13-2-306. The rule was amended to specify specific addresses and instructions to notify the Department.

R13-2-401. A portion of Paragraph A was removed as it is duplicative to text in A.R.S. §§ 32-2422(D) which grants authority to deny, 32-2441 has no authority to deny but 32-2459 covers 32-2441 and 32-2422 granting authority to deny. Paragraph (A) received clarifying language to specify and make clear it is referencing the Private Investigator and Security Guard Hearing Board without changing the substantive content of the rule. Paragraph (B)(1,2,4,5,6) were repealed as the paragraphs exceed the Department’s authority and creates conflicting hearing standards regulated by the Private Investigator and Security Guard Hearing Board in 13 A.A.C. 12. The Board has statutory authority to conduct the hearings and supersedes the Department’s rules on this issue. Paragraph (C) was repealed as the Department has difficulty enforcing this provision and does not enforce the provision. There are circumstances in which the factor causing the applicant to be unqualified; such as, necessary experience, will be cured in less than six months. There are other circumstances; such as a criminal record, which will not be cured in six months. It is the Department’s policy to suggest to the applicant the amount of time that needs to elapse before a reapplication is made. Therefore, removing the six-month requirement will ameliorate the re-application process for the applicant potentially allowing a license to be issued quicker than the restrictive six-month timeframe.

R13-2-402. The entire rule is repealed. The rule is duplicative to A.R.S. § 32-2457(F)(2). The
rule text is but one of several possible actions the Board may recommend to the Director. Additionally, text allowing a licensee to continue to operate blanketly does not meet the statutory authorization in A.R.S. § 32-2457(A,B,C,D,E) to evaluate and issue a probation that is best adapted to the particular situation limiting the Department’s ability to take action. The statute sufficiently stands on its own with no further clarification required in rule.

R13-2-404. Portions of Paragraph (A) were repealed as the text is duplicative to A.R.S. § 32-2456(B,F). Paragraph (C) was repealed as it is an unnecessary statutory reference where the paragraph provides no clarifications.

The Department received a rulemaking moratorium waiver from the Governor’s Office on December 15, 2021 and April 13, 2022 pursuant to Executive Order.

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

8. **A showing of good cause why the rulemaking is necessary to promote a statewide interest if the rule will diminish a previous grant of authority of a political subdivision of this state:**
   The rulemaking does not diminish previous grants of authority.

9. **A summary of the economic, small business, and consumer impact:**
   Under A.R.S. § 41-1027, the expedited rulemaking is exempt from this requirement.

10. **A description of any changes between the proposed rulemaking, to include supplemental notices, and the final rulemaking:**
    There are no changes between the proposed rulemaking and the final rulemaking.

11. **An agency’s summary of the public or stakeholder comments made about the rulemaking and the agency response to the comments:**
    A public comment meeting was held on April 5, 2022 with no members of the public attending. Pursuant to the Notice of Proposed Expedited Rulemaking, no written comments were received by the close of record on April 6, 2022.
12. All agency’s shall list other matters prescribed by statute applicable to the specific agency or to any specific rule or class of rules. Additionally, an agency subject to Council review under A.R.S. §§ 41-1052 and 41-1055 shall respond to the following questions:

a. Whether the rule requires a permit, whether a general permit is used, and if not, the reason why a general permit is not used:
   A general permit is not used. A.R.S. § 32-2411 requires a person to be individually licensed and working for an agency that is licensed pursuant to Article 2 of the Chapter. Additionally, Article 3 specifies registration certificates for associate and employee registration.

b. Whether a federal law is applicable to the subject of the rule, whether the rule is more stringent than federal law, and if so, citation to the statutory authority to exceed the requirements of federal law:
   There is no applicable federal law.

c. Whether a person submitted an analysis to the agency that compares the rule’s impact of the competitiveness of business in this state to the impact on business in other states:
   The Department did not receive any such analysis.

13. A list of any incorporated by reference material as specified in A.R.S. § 41-1028 and its location in the rules:
   Section R13-2-101(2) incorporates by reference the latest edition of the Federal Bureau of Investigation’s applicant fingerprint card.

14. Whether the rule previously made, amended, or repealed as an emergency rule. If so, cite the notice published in the Register as specified in R1-4-409(A). Also, the agency shall state where the text was changed between the emergency and the final rulemaking packages:
   The rule was not previously made, amended, or repealed as an emergency rule.

15. The full text of the rules follows:
R13-2-101. Definitions

In addition to the definitions in A.R.S. § 32-2401, the following definitions apply to this Chapter:

1. “Branch office certificate” means a document issued by the Department to the qualifying party, authorizing the qualifying party to conduct the business of private investigations in this state at a location other than the principal place of business shown on the agency license.


3. “Corporation” or “domestic corporation” has the same meaning as in A.R.S. § 10-140.

4. “Delinquent” means an application is submitted after the license expiration date but before the expiration of the 90-day grace period as described in R13-2-204(C) A.R.S. § 32-2407(B).

5. “Foreign corporation” means a corporation for profit that is incorporated under a law other than the law of Arizona.

6. “Limited liability corporation” has the same meaning as corporation.
7. “Partnership” is an association of two or more persons who are co-owners of a business for profit organized in accordance with A.R.S. Title 29, Partnerships.

8. “Probation” means a period during which an agency or individual that has violated A.R.S. Title 32 Chapter 24 is allowed to demonstrate the ability to meet licensure requirements before the Department takes another administrative action, such as suspension or revocation.

9. “Sole proprietor” means the only owner of a business operated for profit.

R13-2-102. Application and Processing Fees

A. The application and processing fees are:
   1. Original agency license application, $250;
   2. Agency license, $400;
   3. Application for renewal of an agency license, $250;
   4. Agency restructure, $100;
   5. Agency delinquent renewal application, $100;
   6. Reinstatement of agency license, $250;
   7. Associate or employee registration certificate application, $50;
   8. Associate or employee registration certificate renewal, $50;
   9. Associate or employee registration delinquency, $10;
   10. Associate or employee registration reinstatement, $25;
   11. Replacement identification card, $10;
   12. Additional employer form, $10; and
   13. Fingerprint and digital photo fee (optional), $15.

B. In addition to any fees in subsections (A)(1), (A)(3), (A)(7), (A)(8), and (A)(12) the Department shall collect a fee in an amount necessary to cover the cost of noncriminal justice fingerprint processing for criminal history record checks under A.R.S. § 41-1750(J).

C. A person shall pay a fee by cash, cashier’s check, certified check, credit card or money order made payable to the Arizona Department of Public Safety. All fees are non-refundable except if A.R.S. § 41-1077 applies.
R13-2-103. Application Forms
A. The Department shall provide and an applicant shall use application forms for:
   1. Agency license application;
   2. Agency license renewal;
   3. Employee or associate registration certificate application; and
   4. Employee or associate registration renewal application.
B. Application forms may be obtained in person at the Phoenix Licensing Unit office 2222 W
   Encanto Blvd, Phoenix, AZ 85009, by mail request to Arizona DPS Licensing Unit POB
   6638, Mail Drop 3140, Phoenix, AZ 85005-6638, the Department’s website www.azdps.gov,
   or by telephone (602) 223-2361. An applicant may duplicate application forms.

R13-2-104. Identification Cards
A. The Department shall provide a qualified applicant with an identification card for an:
   1. Agency license;
   2. Associate registration certificate, or
   3. Employee registration certificate.
B. The Department shall include on the identification card the applicant’s:
   1. Name,
   2. Photograph,
   3. Physical description,
   4. Date of birth, and
   5. Registration certificate number,
   6. Employer’s agency name and license number, and
   7. Card’s expiration date.
C. A licensee or certificate holder shall not assign or transfer an identification card. An
   identification card is valid only during the effective dates of the license or certificate under
   which the card has been issued, and for only as long as the card holder is employed by or
   associated with the agency licensee.
D. A licensee or certificate holder shall not display a badge or shield in conjunction with
   performing the duties of a private investigator.
E.D. An employee employed by more than one licensee shall obtain an identification card for each license under which the employee is employed.

F. Upon termination of employment with an agency licensee, the employee shall surrender the employee’s identification card to the agency’s qualifying party or designee. The agency’s qualifying party shall send the identification card to the Department within five business days of the employee surrendering the license. If the employee fails to surrender the card to the qualifying party, the qualifying party shall notify the Department, in writing, within five business days of the employee’s termination of employment.

G.E. If an identification card is lost or stolen, the holder of the card shall notify the Department immediately in writing by mail request to Arizona DPS Licensing Unit, POB 6638, Mail Drop 3140, Phoenix, AZ 85005-6638 or the Department’s website www.azdps.gov. The Department shall issue a duplicate identification card upon submission of the required fee.

H.F. The Department shall not approve a fictitious name for use on an identification card.

R13-2-105. Time-frames for Making Licensing and Registration Determinations

A. The Department shall make a determination on the issuance, renewal, reinstatement, or restructure of an agency license, associate or employee registration certificate, or branch office certificate within 15 business days of the submission of an application, as follows:
   1. Five days for administrative completeness review, and
   2. Ten days for substantive review.

B. The administrative completeness review time-frame, as described in A.R.S. § 41-1072(1) and listed in subsection (A)(1), begins on the date the Department receives an application.
   1. If the application is not administratively complete when received, the Department shall send a notice of deficiency to the applicant. The deficiency notice shall state the documents and information needed to complete the application.
   2. Within 45 days from the date of the deficiency notice, the applicant shall submit to the Department the missing documents and information. The time-frame for the Department to finish the administrative completeness review is suspended from the date of the deficiency notice until the date the Department receives the missing documents and information.
3. If the applicant fails to provide the missing documents and information within the time
provided, the Department shall close the applicant’s file, and the Department considers
the application suspended. The Department shall not take further action until the required
documentation or information and, if applicable, reinstatement fees are received.

C. The substantive review time-frame, as described in A.R.S. § 41-1072(3) and listed in
subsection (A)(2), begins on the date the Department determines an application is
administratively complete.

1. During the substantive review time-frame, the Department may make one comprehensive
written request for additional information. The Department and applicant may mutually
agree in writing to allow the Department to submit supplemental requests for additional
information.

2. The applicant shall submit to the Department the additional information to complete the
application within 45 days from the date of the Department’s request. The time-frame for
the Department to complete the substantive review of the application is suspended from
the date of the request for additional information until the Department receives the
additional information.

3. Unless the Department and applicant by mutual written agreement extend the 45day
period, the Department shall close the file of an applicant who fails to submit the
additional information within 45 days. An applicant whose file is closed and who wants
to be licensed or certified shall apply again under R13-2-202 or R13-2-302.

4. When the substantive review is complete, the Department shall inform the applicant in
writing of its decision whether to license or register the applicant.

   a. The Department shall deny a license or registration if it determines that the applicant
does not meet all substantive criteria required by statute and rule. An applicant who is
denied certification may appeal the Department’s decision under A.R.S. § 41-1092 et
seq.

   b. The Department shall grant a license or registration if it determines that the applicant
meets all substantive criteria for licensure or certification required by statute and rule.
ARTICLE 2. AGENCY LICENSES

Section
R13-2-201. Agency License Eligibility
R13-2-202. Submission of Application for an Agency License
R13-2-203. Issuance of Agency License
R13-2-204. Agency License Renewal
R13-2-205. Branch Office Certificate
R13-2-206. Change of Qualifying Party
R13-2-207. Restructure of an Agency
R13-2-208. Business and Employee Names

R13-2-201. Agency License Eligibility

The qualifying party for an agency license shall meet all requirements under A.R.S. § 32-2422. All other partners or corporate officers of the agency shall register as associates and meet the requirements under A.R.S. § 32-2441.

R13-2-202. Submission of Application for an Agency License

A. Applications for an agency license may be presented in person at the Arizona Department of Public Safety Licensing office at 2222 W Encanto Blvd, Phoenix, AZ 85009, or by mail to Arizona DPS Licensing Unit POB 6638, MD3140, Phoenix, AZ 85005-6638 or the Department’s website www.azdps.gov. A qualifying party submitting an application shall ensure that the application consists of:

1. A complete application form with the information required under A.R.S. §§ 32-2423, 32-2422 and the qualifying party’s notarized signature;
2. Properly completed fingerprint card with classifiable fingerprints of the qualifying party;
3. Fees prescribed in R13-2-102;
4. Legible, notarized copy of a government-issued photo identification document for the qualifying party, such as a state identification card or motor vehicle driver license;
5. Two color photographs of the qualifying party suitable for use in making an identification card, such as passport photos or 1" x 1 1/4" facial photos;
6. Exact details as to the character and nature of the qualifying party’s required experience under A.R.S. § 32-2422.

7. If other than a sole proprietorship:
   a. Partnership agreement, articles of organization, or articles of incorporation;
   b. Applications for associate registration certificates under R13-2-302 completed by all officers, members, managers, and directors of the agency accompanied by classifiable fingerprints and two color photographs suitable for use in making an identification card such as passport photos or 1" x 1 1/4" facial photos;

8. If a foreign corporation, evidence of Arizona Corporation Commission approval to transact business in Arizona;

9. The name under which the agency will do business. The Department shall not issue a license to a corporation or limited liability corporation using a DBA unless registered with the Arizona Secretary of State’s Office for approval of the trade name and the agency submits a copy of the registration to the Department.

B. Sole proprietorships and partnerships may, but are not required to, register trade names.

C. If applicable equipment and personnel are available, and if the applicant makes a request, the Department personnel shall take an applicant’s photographs and fingerprints upon submission of the application and payment of appropriate fees as listed in R13-2-102.

R13-2-203. Issuance of Agency License

A. The Department shall notify an applicant when an agency license is ready for issuance. The applicant has 90 days from the date of notification to: The application is considered complete when the applicant satisfies the following:
   1. Pay applicable license fees;
   2. Provide a complete and accurate two-year surety bond; and
   3. For those agencies that will have employees, provide a certificate of worker’s compensation insurance.

B. If the applicant does not provide the required information within 90 days, the Department shall deny the application and all fees shall be forfeited.
An applicant for an agency license or renewal may request to pick up the license at the Department’s office in Phoenix. If no request is made, the Department shall send the license to the mailing address of the applicant.

Each agency license shall contain the name and physical address of the licensed business and the number of the license. The issue date on the license is the date the two-year surety bond starts, which is not to be earlier than the Department’s date of notification under subsection (A). The license expires two years after issuance.

The licensee shall post the license in a conspicuous place in the principal business office.

A licensee shall not assign or transfer the license.

A licensee shall notify the Department in writing within 15 business days of any change of address of the principal office.

If a licensee wishes to surrender the license before the expiration date, the Department shall not refund the license fee or any part of the license fee.

R13-2-204. Agency License Renewal

A qualifying party may submit a renewal application to the Department up to 60 days before the expiration date on the agency license.

The qualifying party shall provide, with the renewal application, the information required under R13-2-202 for the renewal of registration certificates for all associates or employees of the agency.

If an agency license is not renewed before the expiration date, the qualifying party and all partners, members, officers, associates and employees shall cease performing investigative activities subject to regulation under A.R.S. Title 32, Chapter 24, until the date the license is renewed. The qualifying party shall ensure that all identification cards with the elapsed agency license number are returned to the Department within five business days of the date the license expires.

The Department shall not renew an agency license if the application is filed more than 90 days after the expiration date. If more than 90 days have elapsed, the qualifying party who wishes to resume investigative work as a licensee shall reapply under R13-2-202.
R13-2-205. Branch Office Certificate
A. An agency licensee shall obtain a branch office certificate for any place of business other than the principal place of business by request to the Department in writing.
B. A. The branch office certificate contains the name, agency license number, license expiration date, and address of the branch office.
C. B. A branch office certificate expires on the date the agency license expires and is renewed when the agency license is renewed.
D. A licensee shall post a branch office certificate in a conspicuous place in the branch office.
E. An agency shall notify the Department in writing within 15 business days of any address change for the branch office.

R13-2-206. Change of Qualifying Party
A. If a qualifying party leaves an agency, the agency shall cease operations.
B. If the agency desires to resume operations, a qualifying party shall submit an application for a new agency license under R13-2-202 and meet the requirements under R13-2-201. The Department shall grant the license if the qualifying party meets the requirements of R13-2-201.

R13-2-207. Restructure of an Agency
A. A restructure of an agency occurs when there is a change in business legal status.
B. A. If the restructure occurs at the time of renewal, the Department shall waive the restructure fee.
C. B. If the restructure occurs at any time other than time of renewal, the agency shall pay the restructure fee. An application for restructure shall be submitted for the qualifying party and any new associates. Any new associates shall register and meet the requirements under A.R.S. § 32-2441.
D. C. To change a sole proprietorship to a partnership, the applicant shall provide a partnership agreement with notarized signatures of the partners.
E. D. To change a corporation to a partnership, the applicant shall provide documentation of the dissolving of the corporation and a partnership agreement with notarized signatures of the partners.
F.E. To change a sole proprietorship or partnership to a corporation the applicant shall provide the Articles of Incorporation bearing the approval stamp of the Arizona Corporation Commission. If the change is to a foreign corporation, the applicant shall submit documentation of Arizona Corporation Commission approval for the foreign corporation to transact business in Arizona.

G.F. To change a partnership to a sole proprietorship, the applicant shall provide documentation of the dissolving of the partnership.

R13-2-208. Business and Employee Names

A. The Department shall not grant a license to an agency with a name that includes “United States,” “U.S.,” “Federal,” or “State of Arizona,” or a name that associates the business with any governmental or law enforcement agency. The Department shall not grant a license to an individual or partnership that has a name with the word “corporation,” “corp.,” “incorporated,” “Inc.,” or “L.L.C.” unless corporate or limited liability corporation papers have been filed with the Corporation Commission. The Department shall not approve a new business name that is similar to a business name of a currently licensed firm.

B. An agency licensee and the licensee’s associates and employees shall do business and present themselves under the name used on the licensee’s application and the associate’s or employee’s identification card.

C.B. An agency licensee shall do all business under the name and address that is on file with the Department and noted on the license. The licensee shall include its name and license number on all letterhead and business cards, advertising, contracts entered into with clients, and agency correspondence.
ARTICLE 3. REGISTRATION CERTIFICATES

Section
R13-2-301. Employee and Associate Registration Certificate Eligibility
R13-2-302. Application for Registration Certificate
R13-2-304. Lost or Stolen Registration Certificate or Identification Card
R13-2-306. Change in Name of Registrant

R13-2-301. Employee and Associate Registration Certificate Eligibility
An applicant for an associate or employee registration shall meet the requirements of A.R.S. § 32-2441.

R13-2-302. Application for Registration Certificate
A. Applications for associate and employee registration certificates may be presented in person at the Department’s licensing office in 2222 W Encanto Blvd, Phoenix, AZ 85009, or by mail to the Phoenix office POB 6638, MD3140, Phoenix, AZ 85005-6638 or the Department’s website www.azdps.gov.

B. The applicant’s employer shall verify all information provided by the applicant and verify proof of U.S citizenship or legal resident status with authorization to seek employment, by examining either one document from List A of U.S. DOJ Form I-9 or one document from List B and one document from List C. After verification, the employer or the applicant may submit an application.

C. In addition to providing documentation of the requirements of A.R.S. § 32-2442, the employer shall ensure that each application includes:
1. A properly completed application form,
2. Two color photographs suitable for use in making an identification card such as passport photos or 1” x 1 1/4” facial photos, and
3. One properly completed fingerprint card with classifiable fingerprints.

D. If applicable equipment and personnel are available, and if the applicant makes a request, the Department personnel shall take an applicant’s photographs and fingerprints upon submission of the application and payment of appropriate fees as listed in R132102.
E. An associate or employee registrant shall conduct business and be identified under the name used on the application and the registration certificate. The Department shall not approve a fictitious name for use on an associate or employer registration certificate.

F. If an applicant is employed by more than one agency, the applicant shall submit an application with the words “Additional Employer” written across the top of the application, submit the fee under R13-2-102, and meet the requirements of this Section. If the applicant has submitted a fingerprint card to the Department within less than 365 days, no fingerprint card is required for the Additional Employer application. If the applicant has not submitted a fingerprint card within less than 365 days, the applicant shall submit a new fingerprint card with the application. A licensee or registrant shall provide a new fingerprint card at least every two years.

R13-2-304. Lost or Stolen Registration Certificate or Identification Card

If a registration certificate or identification card is lost or stolen, the registrant shall notify the Department immediately by mail to the Arizona DPS Licensing Unit, POB 6638, MD3140, Phoenix, AZ 85005-6638, the Department’s website www.azdps.gov or by telephone (602) 223-2361 and request a new registration certificate or identification card, provide a 1” x 1 1/4” inch photo for the identification card photos as specified in R13-2-202(A)(5) and pay the fee under R13-2-102 for a replacement card.

R13-2-306. Change in Name of Registrant

A registrant whose name has changed shall notify the Department in writing within 30 days of the name change and may request a new identification card. The registrant may mail the notification to the Arizona DPS Licensing Unit, POB 6638, MD3140, Phoenix, AZ 85005-6638 or submit the notification through the Department’s website www.azdps.gov. If the registrant comes to the Department in person at 2222 W Encanto Blvd, Phoenix, AZ 85009, the registrant shall present to the Department a government-issued photo identification card with the new name or court documents recording the name change and the fees under R13-2-102. If the registrant sends a request by mail or Internet, the registrant shall mail to provide the Department certified, notarized copies of any court documents with a 4” x 1 1/4” inch photo for the identification card photo as specified in R13-2-202(A)(5) and the applicable fee under R13-2-102.
ARTICLE 4. REGULATION

Section
R13-2-401. Denial of Agency License or Registration Certificate
R13-2-402. Probation of Agency License or Registration Certificate
R13-2-404. Complaints

R13-2-401. Denial of Agency License or Registration Certificate
A. The Department shall deny an applicant for an agency license or registration certificate if the Department determines that the applicant does not meet the requirements of A.R.S. §§ 32-2422 or 32-2441, or there are grounds for denial under A.R.S. § 322459. The Department shall notify the applicant of the reason for the denial by mail to the address listed on file at the Department. The Department shall include in the notification a statement advising the applicant that if the applicant contests denial, the applicant may do so by requesting a hearing with the Private Investigator and Security Guard Hearing Board in writing within 30 days of receiving the notification letter.
B. When the Department receives a request for a hearing:
1. The applicant will be notified of the date and the time of the hearing;
2. The Department shall set the date for hearing at least 30 days after the date of the notification letter;
3. The applicant may request an informal settlement conference under A.R.S. § 41-1092.06 by submitting the request in writing within 20 days of the scheduled hearing date;
4. The hearing will be held before the Private Investigator and Security Guard Hearing Board;
5. If the applicant does not appear at the hearing, the hearing may be held in the applicant’s absence, and the applicant shall be notified by certified mail of the hearing findings; and
6. The hearing board shall prepare recommendations for the Director. The Director may adopt the recommendations in their entirety, modify them, or may decide the case upon the record.
C. A denied applicant may reapply no earlier than six months from the date of denial.

R13-2-402. Probation of Agency License or Registration Certificate
Upon recommendation of the Private Investigator and Security Guard Hearing Board, the Director may fix a period and terms of probation to protect the public health and safety and to rehabilitate or educate the licensee or registrant. A licensee may continue to operate and a registrant may continue to perform the duties of a private investigator during the period of probation, subject to the terms established by the Director.

R13-2-404. Complaints
A. A person may make a written complaint against an entity or person regulated under this Chapter by filing the complaint with the Department. If the complaint involves an alleged violation of Arizona Revised Statutes, the Department shall investigate to ascertain whether a violation of the statute has occurred. The Department may forward a copy of the complaint to the entity or person against whom the complaint has been lodged and request the person to respond to the complaint as part of the investigation.

B. At the conclusion of the investigation, the Department shall forward a copy of the complaint, upon request, to the entity or person against whom the complaint has been lodged.

C. When an investigation is concluded, the Director may take an action listed in A.R.S. § 32-2457.
41-1713. Powers and duties of director; authentication of records

A. The director of the department shall:

1. Be the administrative head of the department.

2. Subject to the merit system rules, appoint, suspend, demote, promote or dismiss all other classified employees of the department on the recommendation of their respective division superintendent. The director shall determine and furnish the law enforcement merit system council established by section 41-1830.11 with a table of organization. The superintendent of each division shall serve at the concurrent pleasure of the director and the governor.

3. Except as provided in sections 12-119, 41-1304 and 41-1304.05, employ officers and other personnel as the director deems necessary for the protection and security of the state buildings and grounds in the governmental mall described in section 41-1362, state office buildings in Tucson and persons who are on any of those properties. Department officers may make arrests and issue citations for crimes or traffic offenses and for any violation of a rule adopted under section 41-796. For the purposes of this paragraph, security does not mean security services related to building operation and maintenance functions provided by the department of administration.

4. Make rules necessary for the operation of the department.

5. Annually submit a report of the work of the department to the governor and the legislature, or more often if requested by the governor or the legislature.

6. Appoint a deputy director with the approval of the governor.

7. Adopt an official seal that contains the words "department of public safety" encircling the seal of this state as part of its design.

8. Investigate, on receipt, credible evidence that a licensee or registrant has been arrested for, charged with or convicted of an offense that would preclude the person from holding a license or registration certificate issued pursuant to title 32, chapter 26.

9. Cooperate with the Arizona-Mexico commission in the governor's office and with researchers at universities in this state to collect data and conduct projects in the United States and Mexico on issues that are within the scope of the department's duties and that relate to quality of life, trade and economic development in this state in a manner that will help the Arizona-Mexico commission to assess and enhance the economic competitiveness of this state and of the Arizona-Mexico region.

10. Adopt and administer the breath, blood or other bodily substances test rules pursuant to title 28, chapter 4.

11. Develop procedures to exchange information with the department of transportation for any purpose related to sections 28-1324, 28-1325, 28-1326, 28-1462 and 28-3318.

12. Collaborate with the state forester in presentations to legislative committees on issues associated with wildfire prevention, suppression and emergency management as provided by section 37-1302, subsection B.

B. The director may:

1. Issue commissions to officers of the department.

2. Request the cooperation of the utilities, communication media and public and private agencies and any sheriff or other peace officer in any county or municipality, within the limits of their respective jurisdictions when necessary, to aid and assist in the performance of any duty imposed by this chapter.
3. Cooperate with any public or private agency or person to receive or give necessary assistance and may contract for such assistance subject to legislative appropriation controls.

4. Utilize the advice of the board and cooperate with sheriffs, local police and peace officers within the state for the prevention and discovery of crimes, the apprehension of criminals and the promotion of public safety.

5. Acquire in the name of the state, either in fee or lesser estate or interest, all real or any personal property that the director considers necessary for the department's use, by purchase, donation, dedication, exchange or other lawful means. All acquisitions of personal property pursuant to this paragraph shall be made as prescribed in chapter 23 of this title unless otherwise provided by law.

6. Dispose of any property, real or personal, or any right, title or interest in the property, when the director determines that the property is no longer needed or necessary for the department's use. Disposition of personal property shall be as prescribed in chapter 23 of this title. The real property shall be sold by public auction or competitive bidding after notice published in a daily newspaper of general circulation, not less than three times, two weeks before the sale and subject to the approval of the director of the department of administration. When real property is sold, it shall not be sold for less than the appraised value as established by a competent real estate appraiser. Any monies derived from the disposal of real or personal property shall be deposited, pursuant to sections 35-146 and 35-147, in the Arizona highway patrol fund as authorized by section 41-1752, subsection B, paragraph 6.

7. Sell, lend or lease personal property directly to any state, county or local law enforcement agency. Personal property may be sold or leased at a predetermined price without competitive bidding. Any state, county or local law enforcement agency receiving personal property may not resell or lease the property to any person or organization except for educational purposes.

8. Dispose of surplus property by transferring the property to the department of administration for disposition to another state budget unit or political subdivision if the state budget unit or political subdivision is not a law enforcement agency.

9. Lease or rent personal property directly to any state law enforcement officer for the purpose of traffic safety, traffic control or other law enforcement related activity.

10. Sell for one dollar, without public bidding, the department issued handgun or shotgun to a department officer on duty related retirement pursuant to title 38, chapter 5, article 4. Any monies derived from the sale of the handgun or shotgun to the retiring department officer shall be deposited, pursuant to sections 35-146 and 35-147, in the Arizona highway patrol fund as authorized by section 41-1752, subsection B, paragraph 6.

11. Conduct state criminal history records checks for the purpose of updating and verifying the status of current licensees or registrants who have a license or certificate issued pursuant to title 32, chapter 26. The director shall investigate, on receipt, credible evidence that a licensee or registrant has been arrested for, charged with or convicted of an offense that would preclude the person from holding a registration certificate issued pursuant to title 32, chapter 26.

12. Grant a maximum of two thousand eighty hours of industrial injury leave to any sworn department employee who is injured in the course of the employee's duty, any civilian department employee who is injured in the course of performing or assisting in law enforcement or hazardous duties or any civilian department employee who was injured as a sworn department employee rehired after August 9, 2001 and would have been eligible pursuant to this paragraph and whose work-related injury prevents the employee from performing the normal duties of that employee's classification. This industrial injury leave is in addition to any vacation or sick leave earned or granted to the employee and does not affect the employee's eligibility for any other benefits, including workers' compensation. The employee is not eligible for payment pursuant to section 38-615 of industrial injury leave that is granted pursuant to this paragraph. Subject to approval by the law enforcement merit system council, the director shall adopt rules and procedures regarding industrial injury leave hours granted pursuant to this paragraph.
13. Sell at current replacement cost, without public bidding, the department issued badge of authority to an officer of the department on the officer's promotion or separation from the department. Any monies derived from the sale of the badge to an officer shall be deposited, pursuant to sections 35-146 and 35-147, in the department of public safety administration fund to offset replacement costs.

C. The director and any employees of the department that the director designates in writing may use the seal adopted pursuant to subsection A, paragraph 7 of this section to fully authenticate any department records and copies of these records. These authenticated records or authenticated copies of records shall be judicially noticed and shall be received in evidence by the courts of this state without any further proof of their authenticity.
32-2402. Administration by director; duty to keep records; rules; criminal history records checks

A. The director of the department of public safety shall administer this chapter.

B. The department shall keep a record of:

1. All applications for licenses or registrations under this chapter.

2. All bonds and proof of workers' compensation required to be filed.

3. Whether a license, registration certificate, renewal license or renewal registration certificate has been issued under each application and bond.

4. If a license or registration certificate is revoked, suspended, cancelled or denied or if a licensee or registrant is placed on probation, the date of filing the order for revocation, suspension, cancellation, denial or probation.

5. All individuals, firms, partnerships, associations or corporations that have had a license or registration revoked, suspended or cancelled or that have been placed on probation and a written record of complaints filed against licensees and registrants.

C. The department shall maintain all records kept pursuant to subsection B of this section for at least five years. The records, except the financial statement of licensees, are open to inspection as public records.

D. The director shall adopt and enforce rules that are not in conflict with the laws of this state and that are necessary to enforce this chapter.

E. The director may conduct periodic criminal history records checks pursuant to section 41-1750 for the purpose of updating the licensing and registration status of current license and registration holders.
DEPARTMENT OF ENVIRONMENTAL QUALITY
Title 18, Chapter 1

Amend: Table 10
GOVERNOR’S REGULATORY REVIEW COUNCIL
ATTORNEY MEMORANDUM - REGULAR RULEMAKING

MEETING DATE: July 6, 2022

TO: Members of the Governor’s Regulatory Review Council (Council)

FROM: Council Staff

DATE: May 31, 2022

SUBJECT: DEPARTMENT OF ENVIRONMENTAL QUALITY
Title 18, Chapter 1, Department of Environmental Quality - Administration

Amend: Table 10

Summary:

This regular rulemaking from the Department of Environmental Quality relates to a Table in Title 18, Chapter 1, regarding Underground Injection Control (UIC). This rulemaking is part of a series of rulemakings the Department is doing on UIC rules. The Department provides a detailed justification for this rulemaking and information about the UIC program in Arizona in its Preamble.

In this rulemaking, the Department is seeking to amend Table 10 (Water Permit Licensing Time-Frames) to add licensing time-frames for various classes of UIC permits. The Department received an exception from the rulemaking moratorium to initiate this rulemaking on May 7, 2018 and final approval to submit it to the Council on May 31, 2022.
1. **Are the rules legal, consistent with legislative intent, and within the agency’s statutory authority?**

   Yes. The Department cites both general and specific statutory authority for the Table it seeks to amend.

2. **Do the rules establish a new fee or contain a fee increase?**

   This rulemaking is part of a package of related rulemakings, one of which contains a fee increase. However, this particular rulemaking that seeks to amend a Table does not establish a new fee or contain a fee increase. Rather, this rulemaking adds licensing time-frames for various types of Underground Injection Control (UIC) permits.

3. **Does the preamble disclose a reference to any study relevant to the rules that the agency reviewed and either did or did not rely upon?**

   The Department did not review or rely on a study in conducting this regular rulemaking.

4. **Summary of the agency’s economic impact analysis:**

   The rulemaking addressed in the Department’s Economic, Small Business, and Consumer Impact Statement consists of 72 new sections, as well as amendments to existing sections at 18 A.A.C. 9, Articles 1 and 6, 18 A.A.C. 1, Article 5, and 18 A.A.C. 14, Article 1 in order to adopt the Federal Safe Drinking Water Act’s (SDWA) Underground Injection Control Program (UIC) under the relevant regulation in 40 C.F.R. Parts 144 through 146 within the State of Arizona as required under A.R.S. §§ 49-203(A)(6), 49-257.01. The Arizona statutes mandate that the Department establish the UIC program through rule. 42 U.S.C. 300h et seq. authorizes the Environmental Protection Agency to grant states primary enforcement authority or primacy over the UIC program upon the adoption of the program in rule at the state level (see 40 CFR 145.22(a)(5)).

   The Department states that Arizona’s program adoption will allow primacy to rest with the Department, which is entirely focused on, and knowledgeable of, Arizona’s unique geology and climate; and who deeply understand Arizona’s environment, economy, and community. Additionally, program adoption will allow the Department to issue better permits faster, and eliminate duplicative regulation, permitting, and permittee fees between the Federal and state programs.

5. **Has the agency analyzed the costs and benefits of the rulemaking and determined that the rules impose the least burden and costs to those who are regulated?**

   The Department states that the purpose of this rulemaking is to adopt the SDWA-UIC program in Arizona rule in order to lay the groundwork for state administration of the program as required in A.R.S. §§ 49-203(A)(6) and 49-257.01. There are no less intrusive or less costly alternative methods of achieving the purpose of the rulemaking.
6. **What are the economic impacts on stakeholders?**

The primary costs of this rulemaking will be borne by UIC well permit holders and UIC wells authorized by rule. This includes in-situ copper mines, salt mines, municipal aquifer storage and recharge wells, extraction wells, carbon sequestration wells and a host of other injection wells.

There will be an increase in permitting costs due to the Department’s fee-for-service model. The fee-for-service model institutes the charging of permittees for a significant portion of the funding needed to support the implementation of the regulatory program. The Department further states that despite the increase in permitting fees, such as annual fees, the beneficial impact to the stakeholders include permits and amendments being issued faster and the elimination of duplicative regulation, permitting, and permittee fees as a result of eliminating one of the two applicable regulatory programs for UIC permittees. The Department stands to benefit from this increase in fees by fulfilling a requirement of primacy. The stakeholders and the general public stand to benefit through the assurance provided that high-risk drywells in the state are being physically inspected from time to time, as opposed to rarely, as was the frequency of inspection before the UIC program primacy.

The Department believes that this program will protect the environment and will result in a positive impact for all stakeholders. Further, it believes that individuals with a better understanding of Arizona’s geology and climate will be developing and maintaining these permits, which will lead to better protection of the environment, which supports the economy and the community.

7. **Are the final rules a substantial change, considered as a whole, from the proposed rules and any supplemental proposals?**

The Department did not make any changes to the Table between the Notice of Proposed Rulemaking and the Notice of Final Rulemaking.

8. **Does the agency adequately address the comments on the proposed rules and any supplemental proposals?**

As indicated in Item 11 of the Preamble, the Department received three comments on this rulemaking. The Department adequately responded to the comments it received.

9. **Do the rules require a permit or license and, if so, does the agency comply with A.R.S. § 41-1037?**

The Table being amended does not require a permit, although it references licensing timeframes.
10. **Are the rules more stringent than corresponding federal law and, if so, is there statutory authority to exceed the requirements of federal law?**

As the Department indicates in Item 12b of the Preamble, federal law is applicable to the UIC program, which is authorized under federal law. However, the licensing time frames that are the subject of this rulemaking do not have any corresponding federal law.

11. **Conclusion**

In this regular rulemaking, the Department seeks to amend a Table to add licensing time-frames for various types of UIC permits. The Department is seeking the standard 60-day delayed effective date for this rulemaking. Council staff recommends approval of this rulemaking.
May 17, 2022

Nicole Sornsin, Chair
Governor’s Regulatory Review Council
100 N. 15th Ave., #305
Phoenix, AZ 85007

Re: Rulemaking for Title 18. Environmental Quality, Chapter 1. Department of Environmental Quality-Administration, Article 5; Title 18. Environmental Quality, Chapter 9. Department of Environmental Quality-Water Pollution Control, Articles 1 and 6; Title 18. Environmental Quality, Chapter 14. Department of Environmental Quality-Permit and Compliance Fees, Article 1.

Dear Chair Sornsin:

The Arizona Department of Environmental Quality (ADEQ) hereby submits three (3) Notices of Final Rulemaking to the Governor’s Regulatory Review Council (GRRC) for its consideration and approval at the Council meeting scheduled for July 6, 2022. This rulemaking supports ADEQ’s primacy pursuit of the Safe Drinking Water Act’s Underground Injection Control program.

The following information is provided for your use in reviewing the enclosed rules for approval pursuant to A.R.S. § 41-1052 and A.A.C. R1-6-201:

I. Information Required by A.A.C. R1-6-201(A)

   a. The public record closed for all rules on February 14, 2022 at 11:59 p.m.
   b. The rulemaking activity does not relate to a five-year review report.
   c. The rulemaking activity does establish a new fee; please see A.R.S. § 49-203(A)(9) for authority.
   d. Fees proposed to be established through this rulemaking have no state precedent. However, the analogous Federally-administered program, unto which ADEQ is pursuing primacy over, did not have fees.
   e. An immediate effective date is not requested.
   f. The Department certifies that the preamble discloses reference to any study relevant to the rule that the agency reviewed and either did or did not rely on in the agency’s evaluation of or justification for the rule.
g. The Department's preparer of the economic, small business, and consumer impact statement will notify the Joint Legislative Budget Committee of the number of new full-time employees necessary to implement and enforce the rule before the rule is approved by the council, pursuant to A.R.S. § 41-1055(B)(3)(a).

h. A list of documents enclosed under A.A.C. R1-6-201(A)(2) through (8), which are enclosed as electronic copies:
   1. This cover letter.
   2. Three Notices of Final Rulemaking (NFRMs), including the preamble, table of contents, and text of each rule. The preambles contain:
      a. an economic, small business, and consumer impact statement that contains the information required by A.R.S. § 41-1055;
      b. comments received by the agency, both written and oral, concerning the proposed rule;
      c. the general and specific statutes authorizing the rule, including relevant statutory definitions;
   3. No analyses were submitted to the agency regarding the rule’s impact on the competitiveness of businesses in this state as compared to the competitiveness of businesses in other states;
   4. No material is incorporated by reference in this rulemaking;
   5. A list of statutes or other rules referred to in the definitions.

Thank you for your timely review and approval. Please contact Jon Rezabek, Legal Specialist, Water Quality Division, 602-771-8219 or rezabek.jon@azdeq.gov, if you have any questions.

Sincerely,

Misael Cabrera, P.E.
Director

Enclosures
NOTICE OF FINAL RULEMAKING

TITLE 18. ENVIRONMENTAL QUALITY
CHAPTER 1. DEPARTMENT OF ENVIRONMENTAL QUALITY
ADMINISTRATION

PREAMBLE

1. Article, Part, or Section Affected (as applicable) Rulemaking Action
   Table 10 Amend

2. Citations to the agency’s statutory rulemaking authority to include the authorizing statute (general) and the implementing statute (specific):
   Authorizing statute: A.R.S. §§ 49-203(A)(6)
   Implementing statute: A.R.S. § 49-257.01

3. The effective date for the rules:
   [SEC. OF STATE TO FILL IN]

4. Citations to all related notices published in the Register as specified in R1-1-409(A) that pertain to the record of the final rulemaking package:
   Notice of Rulemaking Docket Openings: 25 A.A.R. 2491 (September, 27, 2019)
   26 A.A.R. 2003 (September 25, 2020)
   27 A.A.R. 1592 (October 1, 2021)
   Notice of Proposed Rulemaking: 28 A.A.R. 16 (January 7, 2022)

5. The agency’s contact person who can answer questions about the rulemaking:
   Name: Jon Rezabek
   Address: Arizona Department of Environmental Quality
   Water Quality Division
   1110 W. Washington Street
   Phoenix, Arizona 85007
   Telephone: (602) 771-8219
   E-mail: rezabek.jon@azdeq.gov
   Website: https://azdeq.gov/UIC

6. An agency’s justification and reason why a rule should be made, amended, repealed or renumbered, to include an explanation about the rulemaking:
   General Explanation of this Rulemaking:
   The Arizona Department of Environmental Quality (ADEQ) is required under A.R.S. §§ 49-203(A)(6) and 49-257.01(A) to adopt a permit program for underground injection control (UIC), as administered under the Safe Drinking Water Act (SDWA; 42 U.S.C. § 300h et seq.). Per the conditional enactment in proposed rule R18-9-A602(A), any UIC rules promulgated by the State of Arizona shall not have the force and effect of law until the U.S. Environmental Protection Agency (EPA) approves the transfer of primary enforcement authority (referred to herein as “Primacy”) through EPA’s publication of a final rule granting ADEQ Primacy in the Federal Register (see 40 CFR § 145.31). ADEQ first attempted this process in the late 1990s; but those efforts ultimately failed due to insufficient statutory and regulatory authority to develop the program. In 2018 Senate Bill 1494 was passed, giving ADEQ the requisite statutory authority to promulgate a state-level UIC program as required to obtain primacy approval.

   In this action, ADEQ proposes new regulatory framework to articulate compliance expectations, mandate regulatory duties, and identify certain rights of those regulated through the Arizona UIC program. On May 7, 2018, the Governor’s Office approved an exemption to the rulemaking moratorium in Executive Order 2018-02 so ADEQ can proceed with this rulemaking.

   Associated Rulemakings
The Arizona UIC program is a regulatory program with associated fees and licensing time frames (LTF). A.A.C. R1-1-103(D)(4) states, “...an agency shall file only one Chapter per notice for any rulemaking activity.” In adherence to the rule, the program component of the Arizona UIC program, which amends A.A.C. Title 18, Chapter 9, is a separate Notice of Proposed Rulemaking filed contemporaneously with this rulemaking, which amends A.A.C. Title 18, Chapter 1. Furthermore, the Arizona UIC program amendments to the ADEQ water quality fee rules (A.A.C. Title 18, Chapter 14) has also been filed contemporaneously with the program and LTF amendments.

**What is Underground Injection?**

An injection well is used to place fluid underground into porous geologic formations. These underground formations may range from deep sandstone or limestone, to a shallow soil layer. Injected fluids may include water, wastewater, brine (salt water), or water mixed with chemicals.

**What is a well?**

A well is a bored, drilled, or driven shaft whose depth is greater than the largest surface dimension; or a dug hole whose depth is greater than the largest surface dimension; or, an improved sinkhole; or a subsurface fluid distribution system.

**What does the Federal UIC program do?**

The UIC program protects Underground Sources of Drinking Water (USDW) through the regulation of injection wells. USDWs are:

- aquifers or portions of aquifers that:
  1. supply public water systems; or
  2. contain a sufficient quantity of ground water to supply a public water system; and
     a. currently supply drinking water for human consumption, or
     b. contain fewer than 10,000 mg/l total dissolved solids; and
  3. are not aquifers exempted under the UIC program.

**How does the UIC program protect USDWs?**

The UIC program requires injected fluids stay within the well or the intended injection zone. The program also regulates fluids that are directly or indirectly injected into a USDW by prohibiting the movement of fluid containing any contaminant into USDWs, if the presence of that contaminant may cause a violation of any primary drinking water regulation or may otherwise adversely affect the health of persons.

**What are the different well classifications in the UIC program?**

**Class I**

Class I wells are used to inject hazardous and non-hazardous wastes into deep, isolated rock formations. Class I wells are disposal wells used by the petroleum refining, metal production, chemical production, pharmaceutical production, commercial disposal, food production and municipal wastewater treatment industries (amongst others) to dispose. These deep well injections release fluids into formations below USDWs, usually formations separated by multiple geologic strata from USDWS and often times at depths thousands of feet below the surface.

**Class II**

Class II wells are used exclusively to inject fluids associated with oil and natural gas production. Class II wells fall into one of the following three categories: disposal wells, enhanced recovery wells and hydrocarbon storage wells. Class II fluids are primarily brines (salt water) that are brought to the surface while producing oil and gas. Brines are separated from hydrocarbons at the surface and reinjected into the same or similar underground formations for disposal. Enhanced recovery wells utilize fluids consisting of brine, freshwater, steam, polymers, or carbon dioxide that are injected into oil-bearing formations to recover residual oil and in limited applications, natural gas. Hydrocarbon storage wells inject liquid hydrocarbons into underground formations (such as salt caverns) where they are stored, generally, as part of the U.S. Strategic Petroleum Reserve.

**Class III**
Class III wells are used to inject fluids for the purpose of dissolving and then extracting minerals. Production wells, which bring mining fluids to the surface, are not regulated under the UIC program. Class III wells are used to mine Uranium, Salt, Copper and Sulfur. Class III injection requirements isolate fluids from underground sources of drinking water.

Class IV
Class IV wells are used to inject hazardous or radioactive wastes into or above a geologic formation that contains a USDW. In 1984, EPA banned the use of Class IV injection wells. ADEQ will continue this ban upon primacy. These wells may only operate as part of an EPA or state authorized ground water clean-up action. Less than 32 waste clean-up sites with Class IV wells exist in the United States.

Class V
Class V wells are used to inject non-hazardous fluids underground. Most Class V wells are used to dispose of wastes into or above USDWs. This disposal can pose a threat to ground water quality if not managed properly. The different types of Class V wells pose various threats. Most Class V wells are shallow disposal systems that depend on gravity to drain fluids directly in the ground. Over 20 well subtypes fall into the Class V category. There are more than 650,000 Class V wells estimated to operate in the United States. Most of these Class V wells are unsophisticated shallow disposal systems such as stormwater drainage wells, septic system leach fields and agricultural drainage wells.

Class VI
Class VI wells are used to inject carbon dioxide (CO2) into deep rock formations. This long-term underground storage is called geologic sequestration (GS). Geologic sequestration refers to technologies to reduce CO2 emissions to the atmosphere and mitigate climate change.

Stakeholder Composition
Arizona currently has five (5) individual EPA UIC program permits operating within the state boundaries (not including Indian lands), all of which are for Class III wells for the purpose of extracting salts and copper. The three companies operating the five permits are Morton Salt, Inc., Excelsior Mining Arizona, Inc. and Florence Copper, Inc.

The UIC program applies to a large number of Class V injection wells through the programs “authorization by rule.” Class V authorization by rule includes initial inventorying, operators meeting a set of criteria, including a general standard to not cause fluids to move in such a way where a USDW would receive a pollutant above the standards in Table 1. Examples of Arizona Class V wells include drywells, aquifer storage recharge wells, septic systems serving greater than 20 people per day or that have a design flow of over 3,000 gallons per day and stimulation injection wells for the purpose of inert gas extraction (See proposed rule R18-9-A604(E) in Section 13 below for more examples of Class V wells). Furthermore, through stakeholder outreach, ADEQ has become aware of Arizona municipalities that are interested in developing Class I municipal wastewater disposal wells.

What has been the stakeholder process thus far for this rulemaking?
Statutory authority for program pursuit was passed into law through Senate Bill 1494 in 2018 at A.R.S. §§ 49-257 and 49-257.01. An exemption memo was received from the Governor’s Office in May of 2018. Since those events, ADEQ has been reaching out to UIC stakeholders throughout the state in a pre-rulemaking process known internally as “informal rulemaking”. Informal rulemaking involves developing and setting internal goals for what the rulemaking should achieve. ADEQ has held nine (9) stakeholder meetings, either presenting to stakeholders, receiving stakeholder input or both. Tribal consultation presentations were conducted three times in May 2019. Tribal correspondence has been addressed throughout the informal rulemaking phase as well.

The nine stakeholder meetings were designed to inform the regulated community of ADEQ’s progress in pursuing Primacy, as well as, explaining and presenting drafts of the state rules being developed for the ultimate purpose of administering the program. In November 2019 and November 2020, stakeholders were given access to drafts of the “program rule”. Afterwards, ADEQ solicited hundreds of comments from the regulated community, addressing and analyzing each one. Some comments led to changes in rule language, while others were determined to be inapplicable or unnecessary. All comments received were considered and are
appreciated by the Agency. A repository of materials and events can be viewed on ADEQ’s “Stakeholder Materials” page for the UIC rulemaking. That webpage can be found here: https://azdeq.gov/UIC

Choosing LTFs for the UIC Program
The LTFs that are proposed in this rulemaking (pursuant to A.R.S. §§ 41-1072 et seq.) are in accordance with those established for the Aquifer Protection Permits (See Table 10. Water Permit Licensing Time-frames). UIC permit applications that ADEQ does not anticipate being significantly complicated (Classes II, III and V) are provided 35 days for the administrative completeness review and 186 days for the substantive review. This makes the overall time frame 221 days. If a public hearing is required, 45 days are added to the substantive review and the overall time frame, making 231 and 266 days, respectively. UIC permit applications that ADEQ anticipates being significantly complicated (Area Permits, Classes I and VI) are provided 35 days for the administrative completeness review and 249 days for the substantive review. This makes the overall time frame 284 days. If a public hearing is required, 45 days are added to the substantive review and the overall time frame, making 294 and 329 days, respectively. UIC Modifications are provided the same LTFs as a normal application would be allotted.

ADEQ is exploring the regulation of drywells under the UIC program as Class V wells “authorized by rule.” At primacy, ADEQ will take administrative and enforcement authority over the UIC program, including Class V regulation of drywells.

In discussion with UIC stakeholders, it was determined that a review of the revenues collected from the UIC program’s fees should take place once every three years in order to ensure that enough revenue is being collected to properly administer the program and to make sure the fees are equitable by putting the least amount of burden on the stakeholders. To that end, R18-14-115 is proposed in this rulemaking.

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

8. A showing of good cause why the rulemaking is necessary to promote a statewide interest if the rulemaking will diminish a previous grant of authority of a political subdivision of this state:
   Not applicable.

9. The economic, small business, and consumer impact statement:
   This Economic, Small Business, and Consumer Impact Statement has been prepared to meet the requirements of A.R.S. § 41-1055.

   A. An identification of the rulemaking:
   The rulemaking addressed by this Economic, Small Business, and Consumer Impact Statement (EIS) consists of 72 new sections, as well as amendments to existing sections, made by the Arizona Department of Environmental Quality (ADEQ) to 18 A.A.C. 9, Articles 1 and 6, 18 A.A.C. 1, Article 5 and 18 A.A.C. 14, Article 1 in order to adopt the Federal Safe Drinking Water Act’s (SDWA) Underground Injection Control Program (UIC) under the relevant regulation in 40 C.F.R. Parts 144 through 146 within the State of Arizona as required under A.R.S. §§ 49-203(A)(6), 49-257.01.

   Arizona Revised Statutes §§ 49-203(A)(6) and 49-257.01 mandate that ADEQ establishes the UIC Program through rule. Federal statute at 42 United States Code 300h et seq. authorizes EPA to grant states primary enforcement authority or primacy over the UIC program upon the adoption of the program in rule at the state level (see 40 CFR 145.22(a)(5)).

   Control of underground injection conducted in the industrial, municipal and residential sectors is necessary in order to protect Arizona’s underground sources of drinking water (USDWs) or aquifers. In Arizona, the UIC program has been administered by the Environmental Protection Agency (EPA) for decades. Currently 5 Federal UIC permits are in effect, along with thousands of UIC Class V wells that are authorized by rule.

   Arizona’s program adoption will allow primacy to rest with ADEQ who is entirely focused on, and knowledgeable of, Arizona’s unique geology and climate; and who deeply understand Arizona’s environment, economy, and community. Additionally, program adoption will allow ADEQ to issue better
permits, faster, and eliminate duplicative regulation, permitting, and permittee fees between the Federal and state programs. Adoption of this program will supplement Arizona’s already existing groundwater safeguards, taking a place in conjunction with the Aquifer Protection Permit Program.

B. A summary of the EIS:

**General Impacts**

The primary costs of this rulemaking will be borne by UIC well permit holders and UIC wells authorized by rule. This includes in-situ copper mines, salt mines, municipal aquifer storage and recharge wells, extraction wells, carbon sequestration wells and a host of other injection wells.

There will be an increase in permitting costs due to ADEQ’s fee-for-service model. The fee-for-service model institutes the charging of permittees for a significant portion of the funding needed to support the implementation of the regulatory program. The Federal UIC program operates off of a general fund model, where permittees are not charged and the cost of implementation of the regulatory program comes from specific, legislatively approved funds (usually with an origin in government tax revenue). Many of ADEQ’s programs were changed after the 2008 recession from a general fund model to fee-for-service model. The difference between the fee-for-service model and the general fund model is the reason the regulatory program within this rulemaking will impose a financial burden upon the permittees.

Despite the increase in permitting fees, such as annual fees, the beneficial impact to the stakeholders include permits and amendments being issued faster and the elimination of duplicative regulation, permitting, and permittee fees as a result of eliminating one of the two applicable regulatory programs for UIC permittees. ADEQ stands to benefit from this increase in fees by fulfilling a requirement of primacy. The stakeholders and the general public stand to benefit through the assurance provided that high-risk drywells in the state are being physically inspected from time to time, as opposed to rarely, as was the frequency of inspection before the ADEQ UIC program primacy.

A positive impact for all stakeholders is the protection of the environment that the program this rulemaking supports will bring. Individuals with a better understanding of Arizona’s geology and climate will be developing and maintaining these permits, which will lead to better protection of the environment, which supports the economy, which supports the community.

**Specific Impacts**

While the three existing UIC permittees in the state of Arizona will see an increase in regulatory cost of conducting their business, they stand to benefit greatly in having the program administered in-state through speedier application review and permit services, the elimination of duplicative regulation between the Federal and state governments and local access to ADEQ expertise, personnel and customer service. Despite the increase in regulatory cost, the existing permittees support ADEQ’s adoption of the program.

Drywell regulation in Arizona will be transitioned from dual regulation between the Federal and state governments to a singular, UIC Class V authorization by rule through a simple inventory. Arizona’s more than 65,000 registered drywells will be transitioned into the UIC Class V well inventory without a charge. The former drywell registration fee of $100 will be increased to $200 per UIC Class V inventory.

The reason for this increase to the Drywell fees is to supplement the funds necessary to support the implementation of the Class V portion of the UIC program. This includes an EPA requirement for ADEQ to assume the inspection of responsibilities for Class V wells in the state.

**Stakeholder Process**

ADEQ and Arizona’s UIC stakeholders spent many hours negotiating the fees for the UIC program in this rulemaking. The transparent and collaborative process rendered a balanced set of fees, whereupon the needs of all parties were met and the support of the stakeholders in adopting the program was preserved.

C. Identification of the persons who will be directly affected by, bear the costs of, or directly benefit from the rules:
This rulemaking will affect state government agencies, political subdivisions, and privately-owned businesses. Additionally, the rulemaking will impact the general public.

ADEQ has identified the following list of affected persons:

State government agencies
State agencies benefit from the rulemaking due to the rulemaking supporting the environment, the community, and industry.

- ADEQ
- Arizona Department of Water Resources
- Arizona Department of Agriculture

Political subdivisions
Political subdivisions benefit from the rulemaking due to the rulemaking supporting the environment, the community, and industry. Additional benefits include faster, better permits facilitating the installation of Drywells as needed and the development of groundwater treatment facilities to support Arizona’s growing potable water needs. As permittees, political subdivisions will also bear the increased cost of the new permitting fee schedule.

- Counties
- Municipalities
- Domestic Water Improvement Districts

Privately-Owned Businesses
Privately-owned businesses will benefit from faster, better permits reducing the costs of delays to permit issuance. As permittees, political subdivisions will also bear the increased cost of the new permitting fee schedule.

- Mines
- Mineral Extraction Companies
- Businesses which utilize drywells

The General Public
The general public will benefit from the environmental protection of better permits being issued by an agency with expertise specific to the permitting actions occurring in Arizona’s climate and geology. Additional benefits will be derived through the benefits industry derives which in turn supports the community and the general public.

D. Cost/benefit analysis
1. Part I - Cost/Benefit Stakeholder Matrix:

<table>
<thead>
<tr>
<th>Minimal</th>
<th>Moderate</th>
<th>Substantial</th>
<th>Significant</th>
</tr>
</thead>
<tbody>
<tr>
<td>$10,000 or less</td>
<td>$10,001 to $1,000,000</td>
<td>$1,000,001 or more</td>
<td>Cost/Burden cannot be calculated, but the Department expects it to be important to the analysis.</td>
</tr>
<tr>
<td>Description of Affected Groups</td>
<td>Description of Effect</td>
<td>Increased Cost / Decreased Revenue</td>
<td>Decreased Cost / Increased Revenue</td>
</tr>
<tr>
<td>-------------------------------</td>
<td>---------------------------------------------------------------------------------------</td>
<td>-----------------------------------</td>
<td>-----------------------------------</td>
</tr>
<tr>
<td>A. State and Local Government Agencies</td>
<td>Costs of supporting and implementing a new regulatory program</td>
<td>Moderate</td>
<td>Significant</td>
</tr>
<tr>
<td></td>
<td>Ensuring underground sources of drinking water supply or aquifers are better protected from pollution.</td>
<td></td>
<td>Signiﬁcant</td>
</tr>
<tr>
<td></td>
<td>Compliance with state and federal law.</td>
<td></td>
<td>Significant</td>
</tr>
<tr>
<td></td>
<td>Support of ADEQ’s mission to protect and enhance public health and the environment.</td>
<td></td>
<td>Significant</td>
</tr>
<tr>
<td>Political Subdivisions</td>
<td>Tax revenues and indirect beneﬁts of clean underground sources of drinking water supply</td>
<td></td>
<td>Significant</td>
</tr>
<tr>
<td></td>
<td>Regulation of desalination disposal kept local</td>
<td></td>
<td>Significant</td>
</tr>
<tr>
<td></td>
<td>Cost savings due to the elimination of duplicative regulatory programs (Federal UIC becomes State UIC, UIC permittees no longer applicable to APP)</td>
<td>Significant</td>
<td></td>
</tr>
<tr>
<td>B. Privately Owned Businesses</td>
<td>Cost savings due to elimination of duplicative regulatory programs (Federal UIC becomes State UIC, UIC permittees no longer applicable to APP)</td>
<td>Moderate</td>
<td>Significant</td>
</tr>
<tr>
<td></td>
<td>Permits and Permit Amendments issued faster</td>
<td></td>
<td>Significant</td>
</tr>
<tr>
<td></td>
<td>Localized access to ADEQ’s expertise, personnel and customer service, as well as a streamlined permitting process, and a reduction in cost through the elimination of duplicative regulation between Federal and state programs.</td>
<td></td>
<td>Significant</td>
</tr>
<tr>
<td>General Public</td>
<td>Ensuring underground sources of drinking water supply or aquifers are better protected from pollution.</td>
<td></td>
<td>Significant</td>
</tr>
<tr>
<td></td>
<td>ADEQ employees developing Arizona-speciﬁc permits, leading to a better protection of the environment, which supports the economy, which supports the community.</td>
<td></td>
<td>Significant</td>
</tr>
</tbody>
</table>

2. **Part II - Individual Stakeholder Summaries/Calculations:**
This section outlines ADEQ’s analyses of the estimated costs and beneﬁts of this rulemaking, made after consultation with ADEQ staff, as well as knowledgeable individuals in the area of groundwater protection.
and underground injection control.

**ADEQ**
ADEQ will incur moderate costs as a result of implementing this rulemaking and administering the program. The rulemaking process itself requires staff time for technical review, rule composition, and public input. In order to support the administration of the UIC program, ADEQ plans on hiring 3.2 new full-time employees (FTE). These 3.2 FTEs will be split primarily between permit specialist positions, inspectors and other administrative duties. Funding those positions will incur moderate costs to ADEQ annually which will be offset by permit service fees, annual fees, inventory fees, well fees and an EPA work grant.

This rulemaking will create significant benefit to ADEQ in its fulfillment of the legislative mandates at A.R.S. §§ 49-203(A)(6) and 49-257.01. Given ADEQ’s mission to protect human health and the environment, the Department acknowledges the benefits to stakeholders that will flow from the implementation of this program, including a streamlined permitting process and a reduction in cost through the elimination of duplicative regulation between Federal and state programs. Upon adoption of the program, stakeholders who would have in the past had to file dual applications, comply with dual regulatory programs, file a dual set of ongoing reports and pay for consulting costs for dual permits will see all of those obligations consolidated into one, localized state program and permit. This fact stands to save the regulated community time, money and hardship.

The Number of New, Full-Time Employees Necessary to Implement and Enforce the Proposed Rule
3.2

**Political Subdivisions**
Political subdivisions are likely to see minimal costs and minimal benefit from this rulemaking. As mentioned above, municipalities have shown interest in applying for Class I disposal well permits; however, none have been applied for at the time of this rulemaking. Until political subdivisions apply for UIC permits, they will see no costs due to this rulemaking and the UIC program. However, political subdivisions are interested in the disposal of brine from prospective desalinization plants. This rulemaking stands to localize brine disposal regulation, which would bring benefit to prospective stakeholders. Municipalities also often own a multitude of dry wells, which are to be regulated under the UIC program’s Class V wells.

The UIC program exists currently, administered by the Federal government, until ADEQ achieves primary enforcement authority over the program. As is stated above, the EPA administered program is funded through an approved budget from a Federal general fund. ADEQ’s funding for UIC program administration will be realized through a fee-for-service model. The fee-for-service model institutes the charging of applicants and permittees for a significant portion of the funding necessary to support the regulatory program and the personnel necessary to staff it. Many of ADEQ’s programs are structured this way. The Federal UIC program does not charge applicants, but rather derives its approved funds from a Federal general fund. The difference between the fee-for-service model and the general fund model is the reason the regulatory program within this rulemaking will impose a potentially minimal financial burden upon political subdivisions.

However, when the political subdivisions choose to engage with the UIC program that is the subject of this rulemaking, the benefits include a streamlined permitting process, and a reduction in cost through the elimination of duplicative regulation between Federal and state programs. Upon adoption of the program stakeholders who would have in the past had to file dual applications, comply with dual regulatory programs, file a dual set of ongoing reports and pay for consulting costs for dual permits will see all of those obligations consolidated into one, localized state program. This fact stands to save the regulated community time, money and hardship.

**Privately-Owned Business**
Privately-owned business is likely to see moderate cost and moderate benefit from this rulemaking. The disparity between EPA’s general fund program model and ADEQ’s fee-for-service model will incur potentially moderate costs to privately-owned businesses, especially the businesses that currently have UIC permits.
However, and as mentioned above, the benefits to privately-owned businesses include a streamlined permitting process, and a reduction in cost through the elimination of duplicative regulation between Federal and state programs. Upon adoption of the program, stakeholders who would have in the past had to file dual applications, comply with dual regulatory programs, file a dual set of ongoing reports and pay for consulting costs for dual permits will see all of those obligations consolidated into one, localized state program. This fact stands to save the regulated community time, money and hardship.

**General Public**
The general public could see significant benefit from this rulemaking. The UIC program that is the subject of this rulemaking aims to protect underground sources of drinking water supply or aquifers, many of which provide drinking water to Arizonans. The price of treating contaminated water or having to resort to other sources of water for drinking water supply is potentially significant. Furthermore, a positive impact for all stakeholders is the protection of the environment that the program this rulemaking supports will bring. Individuals with a better understanding of Arizona’s geology and climate will be developing and maintaining these permits, which will lead to better protection of the environment, which supports the economy, which supports the community.

**E. A general description of the probable impact on private and public employment in business agencies, and political subdivisions of this state directly affected by the rulemaking:**
ADEQ estimates that, for the most part, this rulemaking will not have an impact on public or private employment. However, and as mentioned above, all UIC permittees, whether public or private, stand to benefit through the state establishment of a streamlined permitting process, and a reduction in cost through the elimination of duplicative regulation between Federal and state programs. Upon adoption of the program, stakeholders who would have in the past had to file dual applications, comply with dual regulatory programs, file a dual set of ongoing reports and pay for consulting costs for dual permits will see all of those obligations consolidated into one, localized state program. This fact stands to save the regulated community time, money and hardship. Arizona environmental consultants may see a minimal detriment due to the streamlining of environmental compliance for companies using injection wells.

**F. A statement of the probable impact of the rules on small business:**
In this EIS, ADEQ uses the term “small business” consistent with A.R.S. § 41-1001(21), which defines a “small business” as a concern, including its affiliates, which is independently owned and operated, which is not dominant in its field and which employs fewer than one hundred full-time employees or which had gross annual receipts of less than four million dollars in its last fiscal year.

1. **An identification of the small business subject to the rules:**
   Among the stakeholders listed above, only a few meet the definition of small business as set forth in A.R.S. § 41-1001(21). For example, ADEQ estimates that all three current UIC permit holders in Arizona are not small businesses. However, ADEQ has recorded with frequency around 1,000 drywell registrations annually. Drywells will be regulated under the Class V UIC program upon primacy. Small businesses will constitute a significant portion of the approximately 1,000 drywell inventories ADEQ expects annually upon primacy. In terms of UIC Class V drywell inventorying, some small businesses will be affected in a minimally negative manner by this rulemaking. However, the rulemaking intends to institute some UIC Class V inspections, including drywells, which could prove minimally beneficial to certain small businesses.

2. **The administrative and other costs required for compliance with the rules:**
   Compliance costs associated with this rulemaking will vary based on the stakeholder involved. ADEQ’s examination of compliance costs for UIC well owners regulated through a permit or an authorization by rule is addressed in the cost benefit analysis above.

3. **A description of the methods that the agency may use to reduce the impact on small businesses, as required in A.R.S. § 41-1035:**
   a. Establishing less stringent compliance or reporting requirements in the rule for small businesses:
Under the SDWA, small businesses are not given special treatment when it comes to compliance or reporting requirements. In order to be eligible for EPA’s transfer of primary enforcement authority of the program from Federal to State, the Federal SDWA-UIC program must be at least as stringent as the Federal program.

b. Establishing less stringent schedules or deadlines in the rule for compliance or reporting requirements for small businesses:
Under the SDWA, small businesses are not given special treatment when it comes to the stringency of schedules or deadlines for compliance and reporting. Please reference subsection (F)(3)(a) above for more explanation.

c. Consolidating or simplifying the rule’s compliance or reporting requirements for small businesses:
Under the SDWA, small businesses are not given special treatment when it comes to compliance and reporting requirements. Please reference subsection (F)(3)(a) above for more explanation.

d. Establishing performance standards for small businesses to replace design or operational standards in the rule:
Under the SDWA, small businesses are not given special treatment when it comes to design or operational standards. Please reference subsection (F)(3)(a) above for more explanation.

e. Exempting small businesses from any or all requirements of the law:
Under the SDWA, small businesses are not given special treatment when it comes to requirements. Please reference subsection (F)(3)(a) above for more explanation.

4. The probable costs and benefits to private persons and consumers who are directly affected by the rules:
As is stated above in this EIS, the SDWA-UIC program in currently in effect, administered by the Federal government’s EPA. This rulemaking is designed to support the primary enforcement authority or primacy application ADEQ has been mandated to pursue according to A.R.S. §§ 49-203(A)(6) and 49-257.01. The existing regulated parties in Arizona include three UIC Class III permittees and tens of thousands of UIC Class V wells (mostly drywells). Also stated above is the disparity in funding mechanisms between EPA’s current administration of the program and ADEQ’s proposed funding mechanisms in administration (EPA: General Fund based; ADEQ: Fee-For-Service based). Despite the new fees associated with Arizona’s potential primacy, the state’s UIC stakeholders have shown support for ADEQ’s primacy pursuit. The reason for their support is the consolidation of Federal and state regulatory obligations into one, localized state program. The benefits to these private entities include the elimination of the necessity to file dual applications, to comply with dual regulatory programs, to file a dual set of ongoing reports and to pay for consulting costs for dual permits. Further benefits include the local access to ADEQ’s expertise, personnel and customer service, a streamlined permitting process, and a reduction in cost through the elimination of duplicative regulation between Federal and state programs.

UIC applicants and permittees will be subject to a water quality protection service fee of $145 an hour for application review, permit writing and other, similar services. The maximum fee for a single licensing time frame for UIC Area and Classes I, II, III and V permits are set at $200,000. UIC Area and Classes I, II, III and V permit modification and/or permit renewal are set at a maximum of $150,000. UIC Class VI permits maximum fee proposal is “no max”. The reason why no maximum fee has been proposed for UIC Class VI is because of its complicated and unknown nature. Arizona does not have any Class VI carbon sequestration wells and the entire country only has a few in operation. ADEQ believes there is no basis for proposing a maximum on UIC Class VI wells at this time.

UIC permittees will be subject to Annual and Flat Fees, which were determined by considering the necessary revenue needed to support the administration of the program while putting the least burden possible on the stakeholders. Other factors include input from the APP program, other states’ UIC programs and directly affected stakeholders.
Drywell regulation in Arizona will be transitioned from a state statutorily based regulatory program to regulation under the UIC program’s Class V wells. Arizona’s more than 65,000 registered drywells will be transitioned into the UIC Class V well inventory without a charge. However, there will be a cost increase between new drywell registration fees associated with the state statutory program and new inventory fees in the state-administered UIC program. Registration fees are $100 per registration, where inventory fees will be $200 per inventory. The reason for this increase is to supplement the funds necessary to support the administration of the Class V portion of the UIC program, including the commencement of more regular inspection of high-risk drywells in Arizona. A condition of EPA granting ADEQ primacy to administer the UIC program is the inspection of a small portion of the UIC Class V wells in the state. In order to meet this requirement, ADEQ has increased the fee required to inventory a drywell in the state.

In discussion with UIC stakeholders, it was determined that a review of the revenues collected from the UIC program’s fees should take place once every three years in order to ensure that enough revenue is being collected to properly administer the program and that the fees are equitable by putting the least amount of burden on the stakeholders. To that end, R18-14-115 is proposed in this rulemaking.

G. A statement of the probable effect on state revenues:
This rulemaking will not result in a significant increase, nor decrease in state revenues. Increased and decreased costs to ADEQ are expected to be minimal, as explained above in the analysis of costs and benefits to ADEQ. Because the UIC permittees in Arizona were permitted through the UIC program as administered by the EPA, ADEQ does not anticipate a significant decrease in business activity in the state or a corresponding loss of state tax revenues.

H. A description of any less intrusive or less costly alternative methods of achieving the purpose of the rulemaking:
The purpose of this rulemaking is to adopt the SDWA-UIC program in Arizona rule in order to lay the groundwork for state administration of the program as required by the legislature through A.R.S. §§ 49-203(A)(6) and 49-257.01. There are no less intrusive or less costly alternative methods of achieving the purpose of the rulemaking.

I. A description of any data on which the rule is based with a detailed explanation of how the data was obtained and why the data is acceptable data:
The SDWA allows states to apply for primary enforcement authority in the administration of the UIC regulatory program (see 42 United States Code 300h et seq.). The Arizona legislature mandated pursuit of the SDWA-UIC program through the passage of the following statutes, A.R.S. §§ 49-203(A)(6) and 49-257.01. In order to achieve primacy, one requirement of a state is to put rules in place for the program to operate through (see 40 Code of Federal Regulations 145.22(a)(5)). These rules must be at least as stringent as the Federal UIC program rules in order for EPA to consider a state’s primacy application. The rules must also be no more stringent than the analogous Federal rule, per Arizona state law (see A.R.S. § 49-104(16)). Given those parameters, the language for the rules in this rulemaking came largely from 40 CFR Parts 144, 145 and 146 and to a lesser extent, 40 CFR Parts 124, 141 and 142.

10. A description of any changes between the proposed rulemaking, including supplemental notices, and the final rulemaking:
No changes.

11. An agency’s summary of the public or stakeholder comments made about the rulemaking and the agency response to the comments:
Comment 1: Resource Extraction Industry Member – Class VI Licensing Time Frames
What time frame is anticipated for the Class VI application?
ADEQ Response 1:
ADEQ appreciates the comment. Class VI Carbon Sequestration applications are considered to be significantly complicated in nature. In the proposed UIC Licensing Time Frame rules, Class VI applications (along with Area and Class I applications) have been allotted more licensing time than the not significantly complicated group of classes (Class II, III and V). The significantly complicated group has been allotted 35 days for administrative completeness, 249 for substantive review and 284 days for the overall time frame. The not significantly complicated group has been allotted 35 days for administrative completeness, 186 for substantive review and 221 days for the overall time frame.

Comment 2: Tribal Interest Group
The proposed Licensing Time Frame rules do not explain what is meant by “significantly complicated” versus “not significantly complicated” or how this determination was reached.

ADEQ Response 2:
ADEQ appreciates the comment. The UIC program regulates six classes of injection wells which are based on the characteristics of the fluids injected and the placement of the injectate in relation to Underground Sources of Drinking Water (USDW). Well construction, injection depth, design requirements, and operating techniques vary among well classes. Some wells are used to inject fluids into formations below USDWs, while others involve injection into or above USDWs. The proposed rules set out specific permitting and performance standards for each class of wells. In determining the licensing time frames for the prospective UIC applications, these factors were considered.

ADEQ categorized the prospective UIC applications by class into two categories, “significantly complicated” and “not significantly complicated”. Area, Class I, and Class VI wells are categorized as “significantly complicated”, while Class II, Class III, and Class Vs were determined to be “not significantly complicated”. The following facts were relied upon in distinguishing “significantly complicated” prospective UIC applications from the “not significantly complicated”:

1. Area Permits
   a. Comprised of multiple injection wells.
   b. Increased aquifer stresses induced by multiple injection wells.
   c. Larger Area of Review and zone of endangering influence due to the induced aquifer stress.
   d. Delineation of the Area of Review would likely require numerical groundwater modeling.
   e. Area Class III solution mining wells require hydraulic capture of lixiviant and pregnant leachate solution to prevent migration into USDWs.
   f. Monitoring networks are often a function of the Area of Review and complexity of the hydrogeology.
   g. Class III Area Permits may require an Aquifer Exemption and subsequent aquifer restoration for closure. This closure strategy will require sophisticated geochemical modeling and long-term closure and post closure monitoring.

2. Class I wells are typically deep wells that inject waste into formations below a USDW.
   a. Class I wells allow injection far below the lowermost USDW (injection zones typically range from 1,700 to more than 10,000 feet in depth).
   b. The well design for injection is complex due to the depth of the injection, high injection pressures, and often complex geochemical reactions associated with the injectate and formation water.
   c. In Arizona, Class I wells are authorized to inject non-hazardous industrial waste, municipal wastewater, and radioactive waste. Hazardous waste injection is prohibited in Arizona.
   d. A Class I well requires a multilayered well design to prevent fluids from entering USDWs.
   e. Operation, monitoring, and testing is critical for ensuring that injected wastewater is fully confined. These functions become more complex at greater well depths.
   f. Seismic hazards must be thoroughly evaluated due to the deeper injection zone.

3. Class VI wells are used to sequester carbon in deep geologic formations.
   a. Although CO2 is initially captured as a gas, it is compressed into a supercritical fluid (a relatively dense fluid intermediate to a gas and a liquid) before injection and remains in that state due to high pressures in the underground formation.
   b. The CO2 is injected through specially designed wells into geologic formations, typically a half a mile or more below the Earth's surface.
b. CO2 can be physically trapped in the pore space, trapped through a chemical reaction of the CO2 with rock and water, dissolved into the existing fluid within the formation, or absorbed onto organic material or go through other chemical transformations. Geologic sequestration may take place over hundreds of years after injection, ultimately resulting in permanent storage of the CO2.

c. The well design for injection is complex due to the depth of injection, high injection pressures, and often complex geochemical reactions associated with the injectate and formation water.

d. Mechanical integrity testing must be performed routinely to verify long-term well stability and operations.

e. Complex reservoir modeling must be conducted to determine the long-term storage capacity of a given geologic formation.

f. Groundwater monitoring can also be complex due to the longevity of the sequestration operations and area of influence of the injectate.

Comment 3: Tribal Interest Group
Arizona law requires strict compliance with LTFs and issues penalties for exceedances. Additionally, EPA’s current guidance (see EPA’s informational webpage on Class V wells; see also 40 C.F.R. § 146.5(e); see also 40 C.F.R. 144.81) notes that by regulation, Class V wells can actually be complex under certain circumstances. This should be reflected in ADEQ’s UIC Program as well.

ADEQ Response 3:
ADEQ appreciates the comment. Arizona law requires state agencies that issue licenses to comply with licensing time frames (LTFs) (see A.R.S. § 41-1072 et seq.). While there may be complex Class V permits, ADEQ does not feel the additional time that comes with the "complex" category is needed.

12. All agencies shall list other matters prescribed by statute applicable to the specific agency or to any specific rule or class of rules. Additionally, an agency subject to Council review under A.R.S. §§ 41-1052 and 41-1055 shall respond to the following questions:
The following statutes contain therein prescribed matters applicable to the rules in this rulemaking: A.R.S. §§ 49-203(A)(6) and (9); 49-257; 49-257.01.

a. Whether the rule requires a permit, whether a general permit is used and if not, the reasons why a general permit is not used:
The subject matter of this Notice of Proposed Rulemaking does not require permits, but does reference permits. See Section 12(A) in the Notice of Proposed Rulemaking for Title 18, Chapter 9, Article 6 filed contemporaneously with this Notice of Proposed Rulemaking for a discussion on permits and general permits for Arizona’s UIC Program.

b. Whether a federal law is applicable to the subject of the rule, whether the rule is more stringent than federal law and if so, citation to the statutory authority to exceed the requirements of federal law:
Federal law is applicable to the UIC program. The UIC is a program authorized under the SDWA (see 42 U.S.C. § 300h et seq.), originally administered by EPA. The UIC program administration can be transferred from EPA to a state through a delineated process known as Primacy (see 42 U.S.C. § 300h-1). However, the addition of LTFs in 18 A.A.C. 1 for the purposes of the UIC program has no corresponding federal law.

c. Whether a person submitted an analysis to the agency that compares the rule’s impact of the competitiveness of business in this state to the impact on business in other states:
No comparative analyses were submitted.

13. A list of any incorporated by reference material as specified in A.R.S. § 41-1028 and its location in the rules:
No material was incorporated by reference in this rulemaking under A.R.S. § 41-1028, nor otherwise.

14. Whether the rule was previously made, amended, or repealed as an emergency rule. If so, cite the notice published in the Register as specified in R1-1-409(A). Also, the agency shall state where the text was changed between the emergency and the final rulemaking packages:
Not applicable.

15. The full text of the rules follows:

TITLE 18. ENVIRONMENTAL QUALITY

CHAPTER 1. DEPARTMENT OF ENVIRONMENTAL QUALITY
ADMINISTRATION

ARTICLE 5. LICENSING TIME-FRAMES

Section
Table 10. Water Permit Licensing Time-frames (Business Days)
ARTICLE 5. LICENSING TIME-FRAMES

Table 10. Water Permit Licensing Time-Frames (Business Days)

<table>
<thead>
<tr>
<th>Permits</th>
<th>Authority</th>
<th>Administrative Completeness Review</th>
<th>Substantive Review</th>
<th>Overall Time-Frame</th>
</tr>
</thead>
<tbody>
<tr>
<td>AQUIFER PROTECTION PERMITS</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Individual Permit</td>
<td>A.R.S. §§ 49-203, 49-242 18 A.A.C. 9, Article 2</td>
<td>35</td>
<td>186</td>
<td>221</td>
</tr>
<tr>
<td>No public hearing</td>
<td></td>
<td></td>
<td>231(^1)</td>
<td>221</td>
</tr>
<tr>
<td>Public hearing</td>
<td></td>
<td></td>
<td></td>
<td>266</td>
</tr>
<tr>
<td>Complex Individual Permit</td>
<td>A.R.S. §§ 49-203, 49-242 18 A.A.C. 9, Article 2</td>
<td>35</td>
<td>249</td>
<td>284</td>
</tr>
<tr>
<td>No public hearing</td>
<td></td>
<td></td>
<td>294(^1)</td>
<td>329</td>
</tr>
<tr>
<td>Public hearing</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Individual Permit Significant Amendment</td>
<td>A.R.S. §§ 49-203, 49-242 18 A.A.C. 9, Article 2</td>
<td>35</td>
<td>186</td>
<td>221</td>
</tr>
<tr>
<td>No public hearing</td>
<td></td>
<td></td>
<td>231(^1)</td>
<td>266</td>
</tr>
<tr>
<td>Public hearing</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Complex Individual Permit Significant Amendment</td>
<td>A.R.S. §§ 49-203, 49-242 18 A.A.C. 9, Article 2</td>
<td>35</td>
<td>249</td>
<td>284</td>
</tr>
<tr>
<td>No public hearing</td>
<td></td>
<td></td>
<td>294(^1)</td>
<td>329</td>
</tr>
<tr>
<td>Public hearing</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Individual Permit Other Amendment</td>
<td>A.R.S. §§ 49-203, 49-242 18 A.A.C. 9, Article 2</td>
<td>35</td>
<td>100</td>
<td>135</td>
</tr>
<tr>
<td>Temporary Individual Permit</td>
<td>A.R.S. §§ 49-203, 49-242 18 A.A.C. 9, Article 2</td>
<td>35</td>
<td>145</td>
<td>180</td>
</tr>
<tr>
<td>Type 3 General Permit</td>
<td>A.R.S. § 49-245 A.A.C. R18-9-D301 through R18-9-D307</td>
<td>21</td>
<td>60</td>
<td>81</td>
</tr>
<tr>
<td>4.01 General Permit</td>
<td>A.R.S. § 49-245 A.A.C. R18-9-E301</td>
<td>42</td>
<td>53</td>
<td>95(^2)</td>
</tr>
<tr>
<td>300 services or less</td>
<td></td>
<td></td>
<td>94</td>
<td>136(^2)</td>
</tr>
<tr>
<td>More than 300 services</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>4.02, 4.03, 4.13, 4.14, 5.15, and 4.16 General Permits</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>4.23 General Permit</td>
<td>A.R.S. § 49-245 A.A.C. R18-9-E323</td>
<td>42</td>
<td>94</td>
<td>136(^2)</td>
</tr>
<tr>
<td>Standard Combined</td>
<td>A.R.S. § 49-245 A.A.C. R18-9-E302 through R18-9-E323</td>
<td>42</td>
<td>53</td>
<td>95(^2)</td>
</tr>
<tr>
<td>Two or three Type 4 General Permits</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Complex Combined</td>
<td>A.R.S. § 49-245 A.A.C. R18-9-E302 through R18-9-E323</td>
<td>42</td>
<td>94</td>
<td>136(^2)</td>
</tr>
<tr>
<td>Four or more Type 4 General Permits</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>SUBDIVISION APPROVALS</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Subdivision</td>
<td>A.R.S. § 49-104(B)(11) A.A.C. R18-5-408</td>
<td>21</td>
<td>46</td>
<td>67</td>
</tr>
<tr>
<td>Individual facilities</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Subdivision</td>
<td>A.R.S. § 49-104(B)(11) A.A.C. R18-5-403</td>
<td>21</td>
<td>37</td>
<td>58</td>
</tr>
<tr>
<td>Community facilities</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>RECLAIMED WATER PERMITS</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Permit Type</td>
<td>No public hearing</td>
<td>Public hearing</td>
<td>A.R.S.</td>
<td>A.A.C.</td>
</tr>
<tr>
<td>-------------</td>
<td>-------------------</td>
<td>----------------</td>
<td>--------</td>
<td>--------</td>
</tr>
<tr>
<td>Individual Permit</td>
<td>35</td>
<td>186</td>
<td>49-203</td>
<td>R18-9-702</td>
</tr>
<tr>
<td>Complex Individual Permit</td>
<td>35</td>
<td>249</td>
<td>49-203</td>
<td>R18-9-702</td>
</tr>
<tr>
<td>Type 3 General Permit</td>
<td>21</td>
<td>60</td>
<td>49-203</td>
<td>A.A.C. R18-9-717, R18-9-718, R18-9-719</td>
</tr>
</tbody>
</table>

**ARIZONA POLLUTANT DISCHARGE ELIMINATION SYSTEM (AZPDES) PERMITS**

<table>
<thead>
<tr>
<th>Permit Type</th>
<th>No public hearing</th>
<th>Public hearing</th>
<th>A.R.S.</th>
<th>A.A.C.</th>
<th>Part</th>
<th>Code</th>
</tr>
</thead>
<tbody>
<tr>
<td>Individual Permit Major Facility</td>
<td>35</td>
<td>249</td>
<td>49-255.01</td>
<td>A.A.C. 9, Article 9, Part B</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Individual Permit Minor Facility</td>
<td>35</td>
<td>186</td>
<td>49-255.01</td>
<td>A.A.C. 9, Article 9, Part B</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Individual Permit Stormwater / Construction Activities</td>
<td>35</td>
<td>126</td>
<td>49-255.01</td>
<td>A.A.C. 9, Article 9, Part B</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Individual Permit Major Modification</td>
<td>35</td>
<td>186</td>
<td>49-255.01</td>
<td>A.A.C. 9, Article 9, Part B</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

**LAND APPLICATION OF BIOSOLIDS REGISTRATIONS**

<table>
<thead>
<tr>
<th>Permit Type</th>
<th>No public hearing</th>
<th>Public hearing</th>
<th>A.R.S.</th>
<th>A.A.C.</th>
</tr>
</thead>
<tbody>
<tr>
<td>Biosolids Applicator Registration Request Acknowledgment</td>
<td>15</td>
<td>0</td>
<td>49-255.03</td>
<td>R18-9-1004</td>
</tr>
</tbody>
</table>

**UNDERGROUND INJECTION CONTROL PERMITS**

<table>
<thead>
<tr>
<th>Permit Type</th>
<th>No public hearing</th>
<th>Public hearing</th>
<th>A.R.S.</th>
<th>A.A.C.</th>
<th>Part</th>
<th>Code</th>
</tr>
</thead>
<tbody>
<tr>
<td>Area Permit and Modification</td>
<td>35</td>
<td>249</td>
<td>49-203, 49-257.01</td>
<td>R18-9-C624</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Class I Well Permit and Modification</td>
<td>35</td>
<td>249</td>
<td>49-203, 49-257.01</td>
<td>A.A.C. R18-9-C616</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Class II Well Permit and Modification</td>
<td>35</td>
<td>186</td>
<td>49-203, 49-257.01</td>
<td>A.A.C. R18-9-C616</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Class III Well Permit and Modification</td>
<td>35</td>
<td>186</td>
<td>49-203, 49-257.01</td>
<td>A.A.C. R18-9-C616</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Class V Well Individual Permit and Modification</td>
<td>35</td>
<td>186</td>
<td>49-203, 49-257.01</td>
<td>A.A.C. R18-9-C616</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Class VI Well Permit and Modification</td>
<td>18 A.A.C. 9, Article 6, Part I</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>--------------------------------------</td>
<td>----------------------------------</td>
<td>---</td>
<td>---</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Public hearing</td>
<td>A.R.S. §§ 49-203, 49-257.01 A.A.C. R18-9-C616 18 A.A.C. 9, Article 6, Part I</td>
<td>35</td>
<td>249</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>No public hearing</td>
<td></td>
<td>35</td>
<td>294</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Public hearing</td>
<td></td>
<td>284</td>
<td>329</td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

1. A request for a public hearing allows the Department 60 days to publish the notice of public hearing and for the official comment period. Forty-five business days are added to the substantive review time-frame.

2. Each request for an alternative design, installation, or operational feature under R18-9-A312(G) to a Type 4 General Permit adds eight business days to the substantive review time-frame.

3. EPA reserves the right, under 40 CFR 123.44, to take 90 days to supply specific grounds for objection to a draft or proposed permit when a general objection is filed within the review period. The first 30 days run concurrently with the Department’s official comment period. Forty-five business days will be added to the substantive review time-frame to allow for the EPA review.

4. If a request for a variance is submitted to the Department, 40 CFR 124.62 requires that specific variances are subject to review by EPA. Under 40 CFR 123.44, EPA reserves the right to take 90-days to approve or deny the variance. Sixty-four business days will be added to the substantive review time-frame to allow for the EPA review.

5. “Major facility” means any NPDES “facility or activity” classified as such by the EPA in conjunction with the Director.

6. “Minor facility” means any facility that is not classified as a major facility.
The economic, small business, and consumer impact statement:
This Economic, Small Business, and Consumer Impact Statement has been prepared to meet the requirements of A.R.S. § 41-1055.

A. An identification of the rulemaking:
The rulemaking addressed by this Economic, Small Business, and Consumer Impact Statement (EIS) consists of 72 new sections, as well as amendments to existing sections, made by the Arizona Department of Environmental Quality (ADEQ) to 18 A.A.C. 9, Articles 1 and 6, 18 A.A.C. 1, Article 5 and 18 A.A.C. 14, Article 1 in order to adopt the Federal Safe Drinking Water Act’s (SDWA) Underground Injection Control Program (UIC) under the relevant regulation in 40 C.F.R. Parts 144 through 146 within the State of Arizona as required under A.R.S. §§ 49-203(A)(6), 49-257.01.

Arizona Revised Statutes §§ 49-203(A)(6) and 49-257.01 mandate that ADEQ establishes the UIC Program through rule. Federal statute at 42 United States Code 300h et seq. authorizes EPA to grant states primary enforcement authority or primacy over the UIC program upon the adoption of the program in rule at the state level (see 40 CFR 145.22(a)(5)).

Control of underground injection conducted in the industrial, municipal and residential sectors is necessary in order to protect Arizona’s underground sources of drinking water (USDWs) or aquifers. In Arizona, the UIC program has been administered by the Environmental Protection Agency (EPA) for decades. Currently 5 Federal UIC permits are in effect, along with thousands of UIC Class V wells that are authorized by rule.

Arizona’s program adoption will allow primacy to rest with ADEQ who is entirely focused on, and knowledgeable of, Arizona’s unique geology and climate; and who deeply understand Arizona’s environment, economy, and community. Additionally, program adoption will allow ADEQ to issue better permits, faster, and eliminate duplicative regulation, permitting, and permittee fees between the Federal and state programs. Adoption of this program will supplement Arizona’s already existing groundwater safeguards, taking a place in conjunction with the Aquifer Protection Permit Program.

B. A summary of the EIS:
General Impacts
The primary costs of this rulemaking will be borne by UIC well permit holders and UIC wells authorized by rule. This includes in-situ copper mines, salt mines, municipal aquifer storage and recharge wells, extraction wells, carbon sequestration wells and a host of other injection wells.

There will be an increase in permitting costs due to ADEQ’s fee-for-service model. The fee-for-service model institutes the charging of permittees for a significant portion of the funding needed to support the implementation of the regulatory program. The Federal UIC program operates off of a general fund model, where permittees are not charged and the cost of implementation of the regulatory program comes from specific, legislatively approved funds (usually with an origin in government tax revenue). Many of ADEQ’s programs were changed after the 2008 recession from a general fund model to fee-for service model. The difference between the fee-for-service model and the general fund model is the reason the regulatory program within this rulemaking will impose a financial burden upon the permittees.

Despite the increase in permitting fees, such as annual fees, the beneficial impact to the stakeholders include permits and amendments being issued faster and the elimination of duplicative regulation, permitting, and permittee fees as a result of eliminating one of the two applicable regulatory programs for UIC permittees. ADEQ stands to benefit from this increase in fees by fulfilling a requirement of primacy. The stakeholders and the general public stand to benefit through the assurance provided that high-risk drywells in the state are being physically inspected from time to time, as opposed to rarely, as was the frequency of inspection before the ADEQ UIC program primacy.

A positive impact for all stakeholders is the protection of the environment that the program this rulemaking supports will bring. Individuals with a better understanding of Arizona’s geology and climate will be developing and maintaining these permits, which will lead to better protection of the environment, which supports the economy, which supports the community.
Specific Impacts
While the three existing UIC permittees in the state of Arizona will see an increase in regulatory cost of conducting their business, they stand to benefit greatly in having the program administered in-state through speedier application review and permit services, the elimination of duplicative regulation between the Federal and state governments and local access to ADEQ expertise, personnel and customer service. Despite the increase in regulatory cost, the existing permittees support ADEQ’s adoption of the program.

Drywell regulation in Arizona will be transitioned from dual regulation between the Federal and state governments to a singular, UIC Class V authorization by rule through a simple inventory. Arizona’s more than 65,000 registered drywells will be transitioned into the UIC Class V well inventory without a charge. The former drywell registration fee of $100 will be increased to $200 per UIC Class V inventory.

The reason for this increase to the Drywell fees is to supplement the funds necessary to support the implementation of the Class V portion of the UIC program. This includes an EPA requirement for ADEQ to assume the inspection of responsibilities for Class V wells in the state.

Stakeholder Process
ADEQ and Arizona’s UIC stakeholders spent many hours negotiating the fees for the UIC program in this rulemaking. The transparent and collaborative process rendered a balanced set of fees, whereupon the needs of all parties were met and the support of the stakeholders in adopting the program was preserved.

C. Identification of the persons who will be directly affected by, bear the costs of, or directly benefit from the rules:
This rulemaking will affect state government agencies, political subdivisions, and privately-owned businesses. Additionally, the rulemaking will impact the general public.

ADEQ has identified the following list of affected persons:

State government agencies
State agencies benefit from the rulemaking due to the rulemaking supporting the environment, the community, and industry.

- ADEQ
- Arizona Department of Water Resources
- Arizona Department of Agriculture

Political subdivisions
Political subdivisions benefit from the rulemaking due to the rulemaking supporting the environment, the community, and industry. Additional benefits include faster, better permits facilitating the installation of Drywells as needed and the development of groundwater treatment facilities to support Arizona’s growing potable water needs. As permittees, political subdivisions will also bear the increased cost of the new permitting fee schedule.

- Counties
- Municipalities
- Domestic Water Improvement Districts

Privately-Owned Businesses
Privately-owned businesses will benefit from faster, better permits reducing the costs of delays to permit issuance. As permittees, political subdivisions will also bear the increased cost of the new permitting fee schedule.

- Mines
- Mineral Extraction Companies
- Businesses which utilize drywells
The General Public

The general public will benefit from the environmental protection of better permits being issued by an agency with expertise specific to the permitting actions occurring in Arizona’s climate and geology. Additional benefits will be derived through the benefits industry derives which in turn supports the community and the general public.

D. Cost/benefit analysis

1. Part I - Cost/Benefit Stakeholder Matrix:

<table>
<thead>
<tr>
<th>Description of Affected Groups</th>
<th>Description of Effect</th>
<th>Increased Cost / Decreased Revenue</th>
<th>Decreased Cost / Increased Revenue</th>
</tr>
</thead>
<tbody>
<tr>
<td>Minimal</td>
<td>Moderate</td>
<td>Substantial</td>
<td>Significant</td>
</tr>
<tr>
<td>$10,000 or less</td>
<td>$10,001 to $1,000,000</td>
<td>$1,000,001 or more</td>
<td>Cost/Burden cannot be calculated, but the Department expects it to be important to the analysis.</td>
</tr>
</tbody>
</table>

A. State and Local Government Agencies

ADEQ
- Costs of supporting and implementing a new regulatory program
- Ensuring underground sources of drinking water supply or aquifers are better protected from pollution.
- Compliance with state and federal law.
- Support of ADEQ’s mission to protect and enhance public health and the environment.

- Moderate
- Significant

Political Subdivisions
- Tax revenues and indirect benefits of clean underground sources of drinking water supply
- Regulation of desalination disposal kept local
- Cost savings due to the elimination of duplicative regulatory programs (Federal UIC becomes State UIC, UIC permittees no longer applicable to APP)

- Significant

B. Privately Owned Businesses

Privately-Owned Business
- Cost savings due to elimination of duplicative regulatory programs (Federal UIC becomes State UIC, UIC permittees no longer applicable to APP)
- Permits and Permit Amendments issued faster

- Moderate
- Significant
Localized access to ADEQ’s expertise, personnel and customer service, as well as a streamlined permitting process, and a reduction in cost through the elimination of duplicative regulation between Federal and state programs.

Significant

General Public

Ensuring underground sources of drinking water supply or aquifers are better protected from pollution.

Significant

ADEQ employees developing Arizona-specific permits, leading to a better protection of the environment, which supports the economy, which supports the community.

Significant

2. **Part II - Individual Stakeholder Summaries/Calculations:**

This section outlines ADEQ’s analyses of the estimated costs and benefits of this rulemaking, made after consultation with ADEQ staff, as well as knowledgeable individuals in the area of groundwater protection and underground injection control.

**ADEQ**

ADEQ will incur moderate costs as a result of implementing this rulemaking and administering the program. The rulemaking process itself requires staff time for technical review, rule composition, and public input. In order to support the administration of the UIC program, ADEQ plans on hiring 3.2 new full-time employees (FTE). These 3.2 FTEs will be split primarily between permit specialist positions, inspectors and other administrative duties. Funding those positions will incur moderate costs to ADEQ annually which will be offset by permit service fees, annual fees, inventory fees, well fees and an EPA work grant.

This rulemaking will create significant benefit to ADEQ in its fulfillment of the legislative mandates at A.R.S. §§ 49-203(A)(6) and 49-257.01. Given ADEQ’s mission to protect human health and the environment, the Department acknowledges the benefits to stakeholders that will flow from the implementation of this program, including a streamlined permitting process and a reduction in cost through the elimination of duplicative regulation between Federal and state programs. Upon adoption of the program, stakeholders who would have in the past had to file dual applications, comply with dual regulatory programs, file a dual set of ongoing reports and pay for consulting costs for dual permits will see all of those obligations consolidated into one, localized state program and permit. This fact stands to save the regulated community time, money and hardship.

The Number of New, Full-Time Employees Necessary to Implement and Enforce the Proposed Rule

3.2

**Political Subdivisions**

Political subdivisions are likely to see minimal costs and minimal benefit from this rulemaking. As mentioned above, municipalities have shown interest in applying for Class I disposal well permits; however, none have been applied for at the time of this rulemaking. Until political subdivisions apply for UIC permits, they will see no costs due to this rulemaking and the UIC program. However, political subdivisions are interested in the disposal of brine from prospective desalination plants. This rulemaking stands to localize brine disposal regulation, which would bring benefit to prospective stakeholders. Municipalities also often own a multitude of dry wells, which are to be regulated under the UIC program’s Class V wells.

The UIC program exists currently, administered by the Federal government, until ADEQ achieves primary enforcement authority over the program. As is stated above, the EPA administered program is funded through an approved budget from a Federal general fund. ADEQ’s funding for UIC program administration will be realized through a fee-for-service model. The fee-for-service model institutes the charging of applicants and permittees for a significant portion of the funding necessary to support the regulatory program and the personnel necessary to staff it. Many of ADEQ’s programs are structured this way. The Federal UIC program
does not charge applicants, but rather derives its approved funds from a Federal general fund. The difference between the fee-for-service model and the general fund model is the reason the regulatory program within this rulemaking will impose a potentially minimal financial burden upon political subdivisions.

However, when the political subdivisions choose to engage with the UIC program that is the subject of this rulemaking, the benefits include a streamlined permitting process, and a reduction in cost through the elimination of duplicative regulation between Federal and state programs. Upon adoption of the program stakeholders who would have in the past had to file dual applications, comply with dual regulatory programs, file a dual set of ongoing reports and pay for consulting costs for dual permits will see all of those obligations consolidated into one, localized state program. This fact stands to save the regulated community time, money and hardship.

**Privately-Owned Business**

Privately-owned business is likely to see moderate cost and moderate benefit from this rulemaking. The disparity between EPA’s general fund program model and ADEQ’s fee-for-service model will incur potentially moderate costs to privately-owned businesses, especially the businesses that currently have UIC permits.

However, and as mentioned above, the benefits to privately-owned business include a streamlined permitting process, and a reduction in cost through the elimination of duplicative regulation between Federal and state programs. Upon adoption of the program, stakeholders who would have in the past had to file dual applications, comply with dual regulatory programs, file a dual set of ongoing reports and pay for consulting costs for dual permits will see all of those obligations consolidated into one, localized state program. This fact stands to save the regulated community time, money and hardship.

**General Public**

The general public could see significant benefit from this rulemaking. The UIC program that is the subject of this rulemaking aims to protect underground sources of drinking water supply or aquifers, many of which provide drinking water to Arizonans. The price of treating contaminated water or having to resort to other sources of water for drinking water supply is potentially significant. Furthermore, A positive impact for all stakeholders is the protection of the environment that the program this rulemaking supports will bring. Individuals with a better understanding of Arizona’s geology and climate will be developing and maintaining these permits, which will lead to better protection of the environment, which supports the economy, which supports the community.

**E. A general description of the probable impact on private and public employment in business agencies, and political subdivisions of this state directly affected by the rulemaking:**

ADEQ estimates that, for the most part, this rulemaking will not have an impact on public or private employment. However, and as mentioned above, all UIC permittees, whether public or private, stand to benefit through the state establishment of a streamlined permitting process, and a reduction in cost through the elimination of duplicative regulation between Federal and state programs. Upon adoption of the program, stakeholders who would have in the past had to file dual applications, comply with dual regulatory programs, file a dual set of ongoing reports and pay for consulting costs for dual permits will see all of those obligations consolidated into one, localized state program. This fact stands to save the regulated community time, money and hardship. Arizona environmental consultants may see a minimal detriment due to the streamlining of environmental compliance for companies using injection wells.

**F. A statement of the probable impact of the rules on small business:**

In this EIS, ADEQ uses the term “small business” consistent with A.R.S. § 41-1001(21), which defines a “small business” as a concern, including its affiliates, which is independently owned and operated, which is not dominant in its field and which employs fewer than one hundred full-time employees or which had gross annual receipts of less than four million dollars in its last fiscal year.

1. **An identification of the small business subject to the rules:**
Among the stakeholders listed above, only a few meet the definition of small business as set forth in A.R.S. § 41-1001(21). For example, ADEQ estimates that all three current UIC permit holders in Arizona are not small businesses. However, ADEQ has recorded with frequency around 1,000 drywell registrations annually. Drywells will be regulated under the Class V UIC program upon primacy. Small businesses will constitute a significant portion of the approximately 1,000 drywell inventories ADEQ expects annually upon primacy. In terms of UIC Class V drywell inventories, some small businesses will be affected in a minimally negative manner by this rulemaking. However, the rulemaking intends to institute some UIC Class V inspections, including drywells, which could prove minimally beneficial to certain small businesses.

2. **The administrative and other costs required for compliance with the rules:**
   Compliance costs associated with this rulemaking will vary based on the stakeholder involved. ADEQ’s examination of compliance costs for UIC well owners regulated through a permit or an authorization by rule is addressed in the cost benefit analysis above.

3. **A description of the methods that the agency may use to reduce the impact on small businesses, as required in A.R.S. § 41-1035:**
   a. *Establishing less stringent compliance or reporting requirements in the rule for small businesses:*
      Under the SDWA, small businesses are not given special treatment when it comes to compliance or reporting requirements. In order to be eligible for EPA’s transfer of primary enforcement authority of the program from Federal to State, the Federal SDWA-UIC program must be at least as stringent as the Federal program.
   b. *Establishing less stringent schedules or deadlines in the rule for compliance or reporting requirements for small businesses:*
      Under the SDWA, small businesses are not given special treatment when it comes to the stringency of schedules or deadlines for compliance and reporting. Please reference subsection (F)(3)(a) above for more explanation.
   c. *Consolidating or simplifying the rule's compliance or reporting requirements for small businesses:*
      Under the SDWA, small businesses are not given special treatment when it comes to compliance and reporting requirements. Please reference subsection (F)(3)(a) above for more explanation.
   d. *Establishing performance standards for small businesses to replace design or operational standards in the rule:*
      Under the SDWA, small businesses are not given special treatment when it comes to design or operational standards. Please reference subsection (F)(3)(a) above for more explanation.
   e. *Exempting small businesses from any or all requirements of the law:*
      Under the SDWA, small businesses are not given special treatment when it comes to requirements. Please reference subsection (F)(3)(a) above for more explanation.

4. **The probable costs and benefits to private persons and consumers who are directly affected by the rules:**
   As is stated above in this EIS, the SDWA-UIC program in currently in effect, administered by the Federal government’s EPA. This rulemaking is designed to support the primary enforcement authority or primacy application ADEQ has been mandated to pursue according to A.R.S. §§ 49-203(A)(6) and 49-257.01. The existing regulated parties in Arizona include three UIC Class III permittees and tens of thousands of UIC Class V wells (mostly drywells). Also stated above is the disparity in funding mechanisms between EPA’s current administration of the program and ADEQ’s proposed funding mechanisms in administration (EPA: General Fund based; ADEQ: Fee-For-Service based). Despite the new fees associated with Arizona’s potential primacy, the state’s UIC stakeholders have shown support for ADEQ’s primacy pursuit. The reason for their support is the consolidation of Federal and state regulatory obligations into one, localized state program. The benefits to these private entities include the elimination of the necessity to file dual applications, to comply with dual regulatory programs, to file a dual set of ongoing reports and to pay for consulting costs for dual permits. Further benefits include the local access to ADEQ’s expertise, personnel and
customer service, a streamlined permitting process, and a reduction in cost through the elimination of duplicative regulation between Federal and state programs.

UIC applicants and permittees will be subject to a water quality protection service fee of $145 an hour for application review, permit writing and other, similar services. The maximum fee for a single licensing time frame for UIC Area and Classes I, II, III and V permits are set at $200,000. UIC Area and Classes I, II, III and V permit modification and/or permit renewal are set at a maximum of $150,000. UIC Class VI permits maximum fee proposal is “no max”. The reason why no maximum fee has been proposed for UIC Class VI is because of its complicated and unknown nature. Arizona does not have any Class VI carbon sequestration wells and the entire country only has a few in operation. ADEQ believes there is no basis for proposing a maximum on UIC Class VI wells at this time.

UIC permittees will be subject to Annual and Flat Fees, which were determined by considering the necessary revenue needed to support the administration of the program while putting the least burden possible on the stakeholders. Other factors include input from the APP program, other states’ UIC programs and directly affected stakeholders.

Drywell regulation in Arizona will be transitioned from a state statutorily based regulatory program to regulation under the UIC program’s Class V wells. Arizona’s more than 65,000 registered drywells will be transitioned into the UIC Class V well inventory without a charge. However, there will be a cost increase between new drywell registration fees associated with the state statutory program and new inventory fees in the state-administered UIC program. Registration fees are $100 per registration, where inventory fees will be $200 per inventory. The reason for this increase is to supplement the funds necessary to support the administration of the Class V portion of the UIC program, including the commencement of more regular inspection of high-risk drywells in Arizona. A condition of EPA granting ADEQ primacy to administer the UIC program is the inspection of a small portion of the UIC Class V wells in the state. In order to meet this requirement, ADEQ has increased the fee required to inventory a drywell in the state.

In discussion with UIC stakeholders, it was determined that a review of the revenues collected from the UIC program’s fees should take place once every three years in order to ensure that enough revenue is being collected to properly administer the program and to that the fees are equitable by putting the least amount of burden on the stakeholders. To that end, R18-14-115 is proposed in this rulemaking.

G. A statement of the probable effect on state revenues:
This rulemaking will not result in a significant increase, nor decrease in state revenues. Increased and decreased costs to ADEQ are expected to be minimal, as explained above in the analysis of costs and benefits to ADEQ. Because the UIC permittees in Arizona were permitted through the UIC program as administered by the EPA, ADEQ does not anticipate a significant decrease in business activity in the state or a corresponding loss of state tax revenues.

H. A description of any less intrusive or less costly alternative methods of achieving the purpose of the rulemaking:
The purpose of this rulemaking is to adopt the SDWA-UIC program in Arizona rule in order to lay the groundwork for state administration of the program as required by the legislature through A.R.S. §§ 49-203(A)(6) and 49-257.01. There are no less intrusive or less costly alternative methods of achieving the purpose of the rulemaking.

I. A description of any data on which the rule is based with a detailed explanation of how the data was obtained and why the data is acceptable data:
The SDWA allows states to apply for primary enforcement authority in the administration of the UIC regulatory program (see 42 United States Code 300h et seq.). The Arizona legislature mandated pursuit of the SDWA-UIC program through the passage of the following statutes, A.R.S. §§ 49-203(A)(6) and
49-257.01. In order to achieve primacy, one requirement of a state is to put rules in place for the program to operate through (see 40 Code of Federal Regulations 145.22(a)(5)). These rules must be at least as stringent as the Federal UIC program rules in order for EPA to consider a state’s primacy application. The rules must also be no more stringent than the analogous Federal rule, per Arizona state law (see A.R.S. § 49-104(16)). Given those parameters, the language for the rules in this rulemaking came largely from 40 CFR Parts 144, 145 and 146 and to a lesser extent, 40 CFR Parts 124, 141 and 142. A table showing specific analogous Federal regulations to the rules in this rulemaking can be found in section 6 of the Preamble above.
when the individual is exposed to both internal and external radiation (see §20.1292).

When an individual is exposed to radioactive materials which fall under several of the translocation classifications (i.e., Class D, Class W, or Class Y) of the same radionuclide, the exposure may be evaluated as if it were a mixture of different radionuclides.

It should be noted that the classification of a compound as Class D, W, or Y is based on the chemical form of the compound and does not take into account the radiological half-life of different radioisotopes. For this reason, values are given for Class D, W, and Y compounds, even for very short-lived radionuclides.

TABLE 2
The columns in table 2 of this appendix captioned “Effluents,” “Air,” and “Water,” are applicable to the assessment and control of dose to the public, particularly in the implementation of the provisions of §20.1302. The concentration values given in columns 1 and 2 of table 2 are equivalent to the radionuclide concentrations which, if inhaled or ingested continuously over the course of a year, would produce a total effective dose equivalent of 0.05 rem (50 millirem or 0.5 millisieverts).

Consideration of non-stochastic limits has not been included in deriving the air and water effluent concentration limits because non-stochastic effects are presumed not to occur at the dose levels established for individual members of the public. For radionuclides, where the non-stochastic limit was governing in deriving the occupational DAC, the stochastic ALI was used in deriving the corresponding airborne effluent limit in table 2. For this reason, the DAC and airborne effluent limits are not always proportional as was the case in appendix B to §20.1–20.601.

The air concentration values listed in table 2, column 1, were derived by one of two methods. For those radionuclides for which the stochastic limit is governing, the occupational stochastic inhalation ALI was divided by 2.4 × 10^5 ml, relating the inhalation ALI to the DAC, as explained above, and then divided by a factor of 300. The factor of 300 includes the following components: a factor of 50 to relate the 5-rem annual occupational dose limit to the 0.1-rem limit for members of the public, a factor of 3 to adjust for the difference in exposure time and the inhalation rate for a worker and that for members of the public; and a factor of 2 to adjust the occupational values (derived for adults) so that they are applicable to other age groups.

For those radionuclides for which submersion (external dose) is limiting, the occupational DAC in table 1, column 3, was divided by 219. The factor of 219 is composed of a factor of 50, as described above, and a factor of 4.38 relating occupational exposure for 2,000 hours per year to full-time exposure (8,760 hours per year). Note that an additional factor of 2 for age considerations is not warranted in the submersion case.

The water concentrations were derived by taking the most restrictive occupational stochastic oral ingestion ALI and dividing by 7.3 × 10^5. The factor of 7.3 × 10^5 (ml) includes the following components: the factors of 50 and 2 described above and a factor of 7.3 × 10^5 (ml) which is the annual water intake of “Reference Man.”

Note 2 of this appendix provides groupings of radionuclides which are applicable to unknown mixtures of radionuclides. These groupings (including occupational inhalation ALIs and DACs, air and water effluent concentrations and sewerage) require demonstrating that the most limiting radionuclides in successive classes are absent. The limit for the unknown mixture is defined when the presence of one of the listed radionuclides cannot be definitely excluded either from knowledge of the radionuclide composition of the source or from actual measurements.

TABLE 3 “SEWER DISPOSAL”
The monthly average concentrations for release to sanitary sewers are applicable to the provisions in §20.2003. The concentration values were derived by taking the most restrictive occupational stochastic oral ingestion ALI and dividing by 7.3 × 10^5 (ml). The factor of 7.3 × 10^5 (ml) is composed of a factor of 7.3 × 10^5 (ml), the annual water intake by “Reference Man,” and a factor of 10, such that the concentrations, if the sewage released by the licensee were the only source of water ingested by a reference man during a year, would result in a committed effective dose equivalent of 0.5 rem.

LIST OF ELEMENTS

<table>
<thead>
<tr>
<th>Name</th>
<th>Atomic Symbol</th>
<th>Atomic No.</th>
</tr>
</thead>
<tbody>
<tr>
<td>Ac 89</td>
<td>Actinium</td>
<td>Ac</td>
</tr>
<tr>
<td>Al 13</td>
<td>Aluminum</td>
<td>Al</td>
</tr>
<tr>
<td>Am 95</td>
<td>Americium</td>
<td>Am</td>
</tr>
<tr>
<td>Sb 51</td>
<td>Antimony</td>
<td>Sb</td>
</tr>
<tr>
<td>As 18</td>
<td>Arsenic</td>
<td>As</td>
</tr>
<tr>
<td>Ba 56</td>
<td>Barium</td>
<td>Ba</td>
</tr>
<tr>
<td>Br 97</td>
<td>Bromine</td>
<td>Br</td>
</tr>
<tr>
<td>Cs 55</td>
<td>Cesium</td>
<td>Cs</td>
</tr>
<tr>
<td>Cr 17</td>
<td>Chromium</td>
<td>Cr</td>
</tr>
<tr>
<td>C 6</td>
<td>Carbon</td>
<td>C</td>
</tr>
<tr>
<td>Cl 35</td>
<td>Chlorine</td>
<td>Cl</td>
</tr>
<tr>
<td>Name</td>
<td>Atomic Symbol</td>
<td>Atomic No.</td>
</tr>
<tr>
<td>------------</td>
<td>---------------</td>
<td>------------</td>
</tr>
<tr>
<td>Cobalt</td>
<td>Co</td>
<td>27</td>
</tr>
<tr>
<td>Copper</td>
<td>Cu</td>
<td>29</td>
</tr>
<tr>
<td>Curium</td>
<td>Cm</td>
<td>96</td>
</tr>
<tr>
<td>Dysprosium</td>
<td>Dy</td>
<td>66</td>
</tr>
<tr>
<td>Einsteinium</td>
<td>Es</td>
<td>99</td>
</tr>
<tr>
<td>Erbium</td>
<td>Er</td>
<td>68</td>
</tr>
<tr>
<td>Europium</td>
<td>Eu</td>
<td>63</td>
</tr>
<tr>
<td>Fermium</td>
<td>Fm</td>
<td>100</td>
</tr>
<tr>
<td>Fluorine</td>
<td>F</td>
<td>9</td>
</tr>
<tr>
<td>Francium</td>
<td>Fr</td>
<td>87</td>
</tr>
<tr>
<td>Gadolinium</td>
<td>Gd</td>
<td>64</td>
</tr>
<tr>
<td>Gallium</td>
<td>Ga</td>
<td>31</td>
</tr>
<tr>
<td>Germanium</td>
<td>Ge</td>
<td>32</td>
</tr>
<tr>
<td>Gold</td>
<td>Au</td>
<td>79</td>
</tr>
<tr>
<td>Holmium</td>
<td>Hf</td>
<td>72</td>
</tr>
<tr>
<td>Holmium</td>
<td>Ho</td>
<td>67</td>
</tr>
<tr>
<td>Hydrogen</td>
<td>H</td>
<td>1</td>
</tr>
<tr>
<td>Indium</td>
<td>In</td>
<td>49</td>
</tr>
<tr>
<td>Iodine</td>
<td>I</td>
<td>53</td>
</tr>
<tr>
<td>Iridium</td>
<td>Ir</td>
<td>77</td>
</tr>
<tr>
<td>Iron</td>
<td>Fe</td>
<td>26</td>
</tr>
<tr>
<td>Krypton</td>
<td>Kr</td>
<td>36</td>
</tr>
<tr>
<td>Lanthanum</td>
<td>La</td>
<td>57</td>
</tr>
<tr>
<td>Lead</td>
<td>Pb</td>
<td>82</td>
</tr>
<tr>
<td>Lutetium</td>
<td>Lu</td>
<td>71</td>
</tr>
<tr>
<td>Magnesium</td>
<td>Mg</td>
<td>12</td>
</tr>
<tr>
<td>Manganese</td>
<td>Mn</td>
<td>25</td>
</tr>
<tr>
<td>Mendelevium</td>
<td>Md</td>
<td>101</td>
</tr>
<tr>
<td>Mercury</td>
<td>Hg</td>
<td>80</td>
</tr>
<tr>
<td>Molybdenum</td>
<td>Mo</td>
<td>42</td>
</tr>
<tr>
<td>Neodymium</td>
<td>Nd</td>
<td>60</td>
</tr>
<tr>
<td>Neptunium</td>
<td>Np</td>
<td>93</td>
</tr>
<tr>
<td>Nickel</td>
<td>Ni</td>
<td>28</td>
</tr>
<tr>
<td>Niobium</td>
<td>Nb</td>
<td>41</td>
</tr>
<tr>
<td>Nitrogen</td>
<td>N</td>
<td>7</td>
</tr>
<tr>
<td>Osmium</td>
<td>Os</td>
<td>76</td>
</tr>
<tr>
<td>Oxygen</td>
<td>O</td>
<td>8</td>
</tr>
<tr>
<td>Palladium</td>
<td>Pd</td>
<td>46</td>
</tr>
<tr>
<td>Phosphorus</td>
<td>P</td>
<td>15</td>
</tr>
<tr>
<td>Platinum</td>
<td>Pt</td>
<td>78</td>
</tr>
<tr>
<td>Plutonium</td>
<td>Pu</td>
<td>94</td>
</tr>
<tr>
<td>Potassium</td>
<td>K</td>
<td>19</td>
</tr>
<tr>
<td>Praseodymium</td>
<td>Pr</td>
<td>59</td>
</tr>
<tr>
<td>Promethium</td>
<td>Pm</td>
<td>61</td>
</tr>
<tr>
<td>Protactinium</td>
<td>Pa</td>
<td>91</td>
</tr>
<tr>
<td>Radium</td>
<td>Ra</td>
<td>88</td>
</tr>
<tr>
<td>Radon</td>
<td>Ra</td>
<td>86</td>
</tr>
<tr>
<td>Rhenium</td>
<td>Re</td>
<td>75</td>
</tr>
<tr>
<td>Rhodium</td>
<td>Rh</td>
<td>45</td>
</tr>
<tr>
<td>Rubidium</td>
<td>Rb</td>
<td>37</td>
</tr>
<tr>
<td>Ruthenium</td>
<td>Ru</td>
<td>44</td>
</tr>
<tr>
<td>Samarium</td>
<td>Sm</td>
<td>62</td>
</tr>
<tr>
<td>Selenium</td>
<td>Se</td>
<td>34</td>
</tr>
<tr>
<td>Silicon</td>
<td>Si</td>
<td>14</td>
</tr>
<tr>
<td>Silver</td>
<td>Ag</td>
<td>47</td>
</tr>
<tr>
<td>Sodium</td>
<td>Na</td>
<td>11</td>
</tr>
<tr>
<td>Strontium</td>
<td>Sr</td>
<td>38</td>
</tr>
<tr>
<td>Sulfur</td>
<td>S</td>
<td>16</td>
</tr>
<tr>
<td>Tantalum</td>
<td>Ta</td>
<td>73</td>
</tr>
<tr>
<td>Technetium</td>
<td>Tc</td>
<td>43</td>
</tr>
<tr>
<td>Tellurium</td>
<td>Te</td>
<td>52</td>
</tr>
<tr>
<td>Terbium</td>
<td>Tb</td>
<td>65</td>
</tr>
<tr>
<td>Thallium</td>
<td>Ti</td>
<td>81</td>
</tr>
<tr>
<td>Thorium</td>
<td>Th</td>
<td>90</td>
</tr>
<tr>
<td>Thorium</td>
<td>Th</td>
<td>90</td>
</tr>
<tr>
<td>Thorium</td>
<td>Th</td>
<td>90</td>
</tr>
<tr>
<td>Tin</td>
<td>Sn</td>
<td>50</td>
</tr>
<tr>
<td>Titanium</td>
<td>Ti</td>
<td>22</td>
</tr>
<tr>
<td>Tungsten</td>
<td>W</td>
<td>74</td>
</tr>
<tr>
<td>Uranium</td>
<td>U</td>
<td>92</td>
</tr>
<tr>
<td>Vanadium</td>
<td>V</td>
<td>23</td>
</tr>
<tr>
<td>Xenon</td>
<td>Xe</td>
<td>54</td>
</tr>
<tr>
<td>Ytterbium</td>
<td>Yb</td>
<td>70</td>
</tr>
<tr>
<td>Yttrium</td>
<td>Y</td>
<td>39</td>
</tr>
</tbody>
</table>

**LIST OF ELEMENTS—Continued**
<table>
<thead>
<tr>
<th>Atomic No.</th>
<th>Radionuclide</th>
<th>ALI (C/m³)</th>
<th>ALI (C/m³)</th>
<th>DAC (C/m³)</th>
<th>Air (C/m³)</th>
<th>Water (C/m³)</th>
<th>Average Concentration (C/m³)</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Hydrogen-3</td>
<td>8E+4</td>
<td>8E+4</td>
<td>2E-5</td>
<td>1E-7</td>
<td>1E-3</td>
<td>1E-2</td>
</tr>
<tr>
<td></td>
<td>Water, DAC, includes skin absorption</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>4</td>
<td>Beryllium-7</td>
<td>4E+4</td>
<td>2E+4</td>
<td>9E-6</td>
<td>3E-8</td>
<td>6E-4</td>
<td>6E-3</td>
</tr>
<tr>
<td></td>
<td>W, all compounds except those given for Y</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td>Y, oxides, halides, and nitrates</td>
<td>-</td>
<td>2E+4</td>
<td>8E-6</td>
<td>3E-8</td>
<td>-</td>
<td>-</td>
</tr>
<tr>
<td>4</td>
<td>Beryllium-10</td>
<td>1E+3</td>
<td>2E+2</td>
<td>6E-8</td>
<td>2E-10</td>
<td>-</td>
<td>-</td>
</tr>
<tr>
<td></td>
<td>W, see 7Be, Li wall</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td>1E+3</td>
</tr>
<tr>
<td></td>
<td>(1E+3)</td>
<td>-</td>
<td>-</td>
<td>-</td>
<td>2E-5</td>
<td>2E-4</td>
<td></td>
</tr>
<tr>
<td>6</td>
<td>Carbon-11²</td>
<td>-</td>
<td>1E+6</td>
<td>5E-4</td>
<td>2E-6</td>
<td>-</td>
<td>-</td>
</tr>
<tr>
<td></td>
<td>Monoxide</td>
<td>-</td>
<td>1E+6</td>
<td>5E-4</td>
<td>2E-6</td>
<td>-</td>
<td>-</td>
</tr>
<tr>
<td></td>
<td>Dioxide</td>
<td>-</td>
<td>6E+5</td>
<td>3E-4</td>
<td>9E-7</td>
<td>-</td>
<td>-</td>
</tr>
<tr>
<td></td>
<td>Compounds</td>
<td>4E+5</td>
<td>4E+5</td>
<td>2E-4</td>
<td>6E-7</td>
<td>6E-3</td>
<td>6E-2</td>
</tr>
<tr>
<td>6</td>
<td>Carbon-14</td>
<td>-</td>
<td>2E+6</td>
<td>7E-4</td>
<td>2E-6</td>
<td>-</td>
<td>-</td>
</tr>
<tr>
<td></td>
<td>Monoxide</td>
<td>-</td>
<td>2E+6</td>
<td>7E-4</td>
<td>2E-6</td>
<td>-</td>
<td>-</td>
</tr>
<tr>
<td></td>
<td>Dioxide</td>
<td>-</td>
<td>2E+5</td>
<td>9E-5</td>
<td>3E-7</td>
<td>-</td>
<td>-</td>
</tr>
<tr>
<td></td>
<td>Compounds</td>
<td>2E+3</td>
<td>2E+3</td>
<td>1E-6</td>
<td>3E-9</td>
<td>3E-5</td>
<td>3E-4</td>
</tr>
</tbody>
</table>
### Table 1

<table>
<thead>
<tr>
<th>Atomic No.</th>
<th>Radionuclide</th>
<th>Class</th>
<th>Ingestion</th>
<th>Inhalation</th>
<th>Air</th>
<th>Water</th>
<th>Monthly Average Concentration</th>
</tr>
</thead>
<tbody>
<tr>
<td>7</td>
<td>Nitrogen-13*</td>
<td>Submersion*</td>
<td>1E-6</td>
<td>2E-8</td>
<td>-</td>
<td>-</td>
<td>-</td>
</tr>
<tr>
<td>8</td>
<td>Oxygen-16*</td>
<td>Submersion*</td>
<td>1E-6</td>
<td>2E-8</td>
<td>-</td>
<td>-</td>
<td>-</td>
</tr>
<tr>
<td>9</td>
<td>Fluorine-19*</td>
<td>D, fluorides of H, Li, Na, K, Rb, Cs, and Fr</td>
<td>5E+4</td>
<td>1E+4</td>
<td>3E-5</td>
<td>1E-7</td>
<td>-</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td>1E+1</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

### Table 2

<table>
<thead>
<tr>
<th>Occupational Values</th>
<th>Effluent Releases to</th>
</tr>
</thead>
<tbody>
<tr>
<td>Col. 1</td>
<td>Col. 2</td>
</tr>
</tbody>
</table>

### Table 3

<table>
<thead>
<tr>
<th>Concentration</th>
<th>Sewers</th>
</tr>
</thead>
<tbody>
<tr>
<td>Col. 1</td>
<td>Col. 2</td>
</tr>
</tbody>
</table>

*Note: The table entries are in scientific notation.*
<table>
<thead>
<tr>
<th>Atomic No.</th>
<th>Radionuclide</th>
<th>Class</th>
<th>Occupational Values</th>
<th>Effluent Concentrations</th>
<th>Releases to Sewers</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td></td>
<td></td>
<td>Col. 1</td>
<td>Col. 2</td>
<td>Col. 3</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td>Oral</td>
<td>Ingestion</td>
<td>Inhalation</td>
</tr>
<tr>
<td>14</td>
<td>Silicon-31</td>
<td>D, all compounds except those given for W and Y</td>
<td>9E+3</td>
<td>3E+4</td>
<td>1E-5</td>
</tr>
<tr>
<td></td>
<td></td>
<td>W, oxides, hydroxides, carbides, and nitrates</td>
<td>-</td>
<td>3E+4</td>
<td>1E-5</td>
</tr>
<tr>
<td></td>
<td></td>
<td>Y, alumino-silicate glass</td>
<td>-</td>
<td>3E+4</td>
<td>1E-5</td>
</tr>
<tr>
<td>14</td>
<td>Silicon-32</td>
<td>D, see 32P</td>
<td>2E+3</td>
<td>2E+2</td>
<td>1E-7</td>
</tr>
<tr>
<td></td>
<td></td>
<td>W, see 32P</td>
<td>-</td>
<td>2E+2</td>
<td>1E-8</td>
</tr>
<tr>
<td></td>
<td></td>
<td>Y, see 32P</td>
<td>-</td>
<td>5E+0</td>
<td>7E-5</td>
</tr>
<tr>
<td>15</td>
<td>Phosphorus-32</td>
<td>D, all compounds except phosphates given for W</td>
<td>6E+2</td>
<td>9E+2</td>
<td>4E-7</td>
</tr>
<tr>
<td></td>
<td></td>
<td>W, phosphates of Zn, Ca, Mg, Fe, Bi, and lanthanides</td>
<td>-</td>
<td>4E+2</td>
<td>2E-7</td>
</tr>
<tr>
<td>15</td>
<td>Phosphorus-33</td>
<td>D, see 33P</td>
<td>8E+3</td>
<td>8E+3</td>
<td>4E-6</td>
</tr>
<tr>
<td>16</td>
<td>Sulfur-35</td>
<td>Vapor</td>
<td>3E+4</td>
<td>6E-6</td>
<td>2E-8</td>
</tr>
<tr>
<td></td>
<td></td>
<td>D, sulfides and sulfates except those given for W</td>
<td>1E+4</td>
<td>2E+4</td>
<td>7E-6</td>
</tr>
<tr>
<td></td>
<td></td>
<td>W, elemental sulfur, sulfides of Sr, Ba, Ge, Sn, Pb, As, Sb, Bi, Cu, Ag, Au, Zn, Cd, Hg, W, and Mo, Sulfates of Ca, Sr, Ba, Ra, As, Sb, and Bi</td>
<td>-</td>
<td>2E+3</td>
<td>9E-7</td>
</tr>
<tr>
<td>17</td>
<td>Chlorine-36</td>
<td>D, chlorides of N, Li, Na, K, Rb, Cs, and Fr</td>
<td>2E+3</td>
<td>2E+3</td>
<td>1E-6</td>
</tr>
<tr>
<td></td>
<td></td>
<td>W, chlorides of lanthanides, Be, Mg, Ca, Sr, Ba, Ra, Al, Ge, In, TI, Ga, Sn, Pb, As, Sb, Bi, Fe, Ru, Os, Cc, Rh, Ir, Ru, Pt, Pt, Cu, Ag, Au, Zn, Cd, Mg, Sc, Y, Yt, Ir, Hf, V, Nb, Ta, Cr, Mo, W, Mo, Mo, and Re</td>
<td>-</td>
<td>2E+2</td>
<td>1E-7</td>
</tr>
<tr>
<td>Atomic No.</td>
<td>Radionuclide</td>
<td>Class</td>
<td>Col. 1 (oral Ingestion) AL (μCi)</td>
<td>Col. 2 (Inhalation) AL (μCi)</td>
<td>Col. 3 (DIN) μCi/m³</td>
</tr>
<tr>
<td>-----------</td>
<td>-------------</td>
<td>-------</td>
<td>----------------------------------</td>
<td>----------------------------</td>
<td>----------------------</td>
</tr>
<tr>
<td>17</td>
<td>Chlorine-36₂</td>
<td>D, see 36Cl</td>
<td>2E+4</td>
<td>4E+4</td>
<td>2E-5</td>
</tr>
<tr>
<td></td>
<td></td>
<td>W, see 36Cl</td>
<td>-</td>
<td>5E+4</td>
<td>2E-5</td>
</tr>
<tr>
<td>17</td>
<td>Chlorine-37₂</td>
<td>D, see 36Cl</td>
<td>2E+4</td>
<td>5E+4</td>
<td>2E-5</td>
</tr>
<tr>
<td></td>
<td></td>
<td>W, see 36Cl</td>
<td>-</td>
<td>6E+4</td>
<td>2E-5</td>
</tr>
<tr>
<td>18</td>
<td>Argon-37₂</td>
<td>Subersion₁</td>
<td>-</td>
<td>-</td>
<td>1E+0</td>
</tr>
<tr>
<td>18</td>
<td>Argon-39₂</td>
<td>Subersion₁</td>
<td>-</td>
<td>-</td>
<td>2E-4</td>
</tr>
<tr>
<td>18</td>
<td>Argon-41₂</td>
<td>Subersion₁</td>
<td>-</td>
<td>-</td>
<td>3E-6</td>
</tr>
<tr>
<td>19</td>
<td>Potassium-40</td>
<td>D, all compounds</td>
<td>3E+2</td>
<td>4E+2</td>
<td>2E-7</td>
</tr>
<tr>
<td>19</td>
<td>Potassium-42</td>
<td>D, all compounds</td>
<td>5E+3</td>
<td>6E+3</td>
<td>2E-6</td>
</tr>
<tr>
<td>19</td>
<td>Potassium-43</td>
<td>D, all compounds</td>
<td>6E+3</td>
<td>9E+3</td>
<td>4E-6</td>
</tr>
<tr>
<td>19</td>
<td>Potassium-44₂</td>
<td>D, all compounds</td>
<td>2E+4</td>
<td>7E+4</td>
<td>3E-5</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td>4E+4</td>
<td>5E-4</td>
<td>9E-3</td>
</tr>
<tr>
<td>19</td>
<td>Potassium-45₂</td>
<td>D, all compounds</td>
<td>3E+4</td>
<td>1E+5</td>
<td>5E-5</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td>5E+4</td>
<td>5E-4</td>
<td>1E-7</td>
</tr>
<tr>
<td>20</td>
<td>Calcium-41</td>
<td>W, all compounds</td>
<td>3E+3</td>
<td>4E+3</td>
<td>2E-6</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td>4E+3</td>
<td>5E-4</td>
<td>-</td>
</tr>
<tr>
<td>20</td>
<td>Calcium-45</td>
<td>W, all compounds</td>
<td>2E+3</td>
<td>8E+2</td>
<td>4E-7</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td>4E+3</td>
<td>1E-9</td>
<td>8E-7</td>
</tr>
<tr>
<td>21</td>
<td>Scandium-43</td>
<td>Y, all compounds</td>
<td>7E+3</td>
<td>2E+4</td>
<td>9E-6</td>
</tr>
<tr>
<td>21</td>
<td>Scandium-44₆</td>
<td>Y, all compounds</td>
<td>5E+2</td>
<td>7E+2</td>
<td>3E-7</td>
</tr>
<tr>
<td>21</td>
<td>Scandium-44₈</td>
<td>Y, all compounds</td>
<td>4E+3</td>
<td>1E+4</td>
<td>5E-6</td>
</tr>
<tr>
<td>21</td>
<td>Scandium-46</td>
<td>Y, all compounds</td>
<td>9E+2</td>
<td>2E+2</td>
<td>1E-7</td>
</tr>
<tr>
<td>21</td>
<td>Scandium-47</td>
<td>Y, all compounds</td>
<td>3E+3</td>
<td>1E+3</td>
<td>1E-6</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td>3L1 well</td>
<td>3E+3</td>
<td>-</td>
</tr>
<tr>
<td>21</td>
<td>Scandium-49</td>
<td>Y, all compounds</td>
<td>8E+2</td>
<td>1E+3</td>
<td>6E-7</td>
</tr>
<tr>
<td>21</td>
<td>Scandium-49₇</td>
<td>Y, all compounds</td>
<td>2E+4</td>
<td>5E+4</td>
<td>2E-5</td>
</tr>
<tr>
<td>22</td>
<td>Titanium-44</td>
<td>D, all compounds except those given for W and Y</td>
<td>3E+2</td>
<td>1E+1</td>
<td>5E-9</td>
</tr>
<tr>
<td></td>
<td></td>
<td>W, oxides, hydroxides, carbides, halides, and nitrates</td>
<td>-</td>
<td>3E+1</td>
<td>1E-8</td>
</tr>
<tr>
<td></td>
<td></td>
<td>Y, Sr/10₃</td>
<td>-</td>
<td>6E+0</td>
<td>2E-9</td>
</tr>
<tr>
<td>Atomic No.</td>
<td>Radioisotope</td>
<td>Class</td>
<td>Occupational Values</td>
<td>Effluent Concentrations</td>
<td>Releases to Sewers</td>
</tr>
<tr>
<td>------------</td>
<td>--------------</td>
<td>-------</td>
<td>---------------------</td>
<td>-------------------------</td>
<td>-------------------</td>
</tr>
<tr>
<td>22</td>
<td>Titanium-45</td>
<td>D, see 44Ti</td>
<td>Oral Inhalation</td>
<td>Col. 1 Col. 2 Col. 3</td>
<td>Col. 1 Col. 2</td>
</tr>
<tr>
<td></td>
<td></td>
<td>W, see 44Ti</td>
<td>(µCi)</td>
<td>(µCi)</td>
<td>(µCi/l)</td>
</tr>
<tr>
<td></td>
<td></td>
<td>Y, see 44Ti</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>23</td>
<td>Vanadium-47</td>
<td>D, all compounds except those given for W</td>
<td>Inhalation</td>
<td>Col. 1 Col. 2 Col. 3</td>
<td>Col. 1 Col. 2</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td>(µCi/l)</td>
<td>(µCi/l)</td>
<td>(µCi/l)</td>
</tr>
<tr>
<td></td>
<td></td>
<td>W, oxides, hydroxides, carbides, and halides</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>23</td>
<td>Vanadium-48</td>
<td>D, see 47V</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td>W, see 47V</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>23</td>
<td>Vanadium-49</td>
<td>D, see 47V</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td>W, see 47V</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>24</td>
<td>Chromium-48</td>
<td>D, all compounds except those given for W and Y</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td>W, halides and nitrates</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td>Y, oxides and hydroxides</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>24</td>
<td>Chromium-49</td>
<td>D, see 48Cr</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td>W, see 48Cr</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td>Y, see 48Cr</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>24</td>
<td>Chromium-51</td>
<td>D, see 49Cr</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td>W, see 49Cr</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td>Y, see 49Cr</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>25</td>
<td>Manganese-52</td>
<td>D, all compounds except those given for W</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td>W, oxides, hydroxides, carbides, and halides, and nitrates</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>25</td>
<td>Manganese-52</td>
<td>D, see 52Mn</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td>W, see 52Mn</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td>Y, see 52Mn</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>25</td>
<td>Manganese-53</td>
<td>D, see 53Mn</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td>W, see 53Mn</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td>Y, see 53Mn</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>25</td>
<td>Manganese-54</td>
<td>D, see 54Mn</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td>W, see 54Mn</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td>Y, see 54Mn</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>25</td>
<td>Manganese-56</td>
<td>D, see 56Mn</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td>W, see 56Mn</td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>
# Table 1

<table>
<thead>
<tr>
<th>Atomic No.</th>
<th>Radiouclide</th>
<th>Class</th>
<th>Table 1 Occupational Values</th>
<th>Table 2 Effluent Concentrations</th>
<th>Table 3 Monthly Average Concentration (µCi/m³)</th>
</tr>
</thead>
<tbody>
<tr>
<td>26</td>
<td>Iron-52</td>
<td>D, all compounds except those given for W</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td>W, oxides, hydroxides, and halides</td>
<td>2E-2</td>
<td>3E-3</td>
<td>1E-6</td>
<td>4E-9</td>
</tr>
<tr>
<td>26</td>
<td>Iron-55</td>
<td>D, see 57Fe</td>
<td>2E-2</td>
<td>3E-3</td>
<td>1E-6</td>
</tr>
<tr>
<td></td>
<td>W, see 57Fe</td>
<td>2E-2</td>
<td>3E-3</td>
<td>1E-6</td>
<td>4E-9</td>
</tr>
<tr>
<td>26</td>
<td>Iron-60</td>
<td>D, see 57Fe</td>
<td>2E-2</td>
<td>3E-3</td>
<td>1E-6</td>
</tr>
<tr>
<td></td>
<td>W, see 57Fe</td>
<td>2E-2</td>
<td>3E-3</td>
<td>1E-6</td>
<td>4E-9</td>
</tr>
<tr>
<td>27</td>
<td>Cobalt-55</td>
<td>D, all compounds except those given for Y</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td>Y, oxides, hydroxides, halides, and nitrates</td>
<td>2E-3</td>
<td>3E-3</td>
<td>1E-6</td>
<td>4E-9</td>
</tr>
<tr>
<td>27</td>
<td>Cobalt-56</td>
<td>Y, see 56Co</td>
<td>2E-2</td>
<td>3E-2</td>
<td>1E-6</td>
</tr>
<tr>
<td></td>
<td>Y, see 56Co</td>
<td>2E-2</td>
<td>3E-2</td>
<td>1E-6</td>
<td>4E-9</td>
</tr>
<tr>
<td>27</td>
<td>Cobalt-57</td>
<td>Y, see 57Co</td>
<td>2E-2</td>
<td>3E-2</td>
<td>1E-6</td>
</tr>
<tr>
<td></td>
<td>Y, see 57Co</td>
<td>2E-2</td>
<td>3E-2</td>
<td>1E-6</td>
<td>4E-9</td>
</tr>
<tr>
<td>27</td>
<td>Cobalt-59</td>
<td>Y, see 59Co</td>
<td>2E-2</td>
<td>3E-2</td>
<td>1E-6</td>
</tr>
<tr>
<td></td>
<td>Y, see 59Co</td>
<td>2E-2</td>
<td>3E-2</td>
<td>1E-6</td>
<td>4E-9</td>
</tr>
<tr>
<td>27</td>
<td>Cobalt-60</td>
<td>Y, see 60Co</td>
<td>2E-2</td>
<td>3E-2</td>
<td>1E-6</td>
</tr>
<tr>
<td></td>
<td>Y, see 60Co</td>
<td>2E-2</td>
<td>3E-2</td>
<td>1E-6</td>
<td>4E-9</td>
</tr>
<tr>
<td>27</td>
<td>Cobalt-62</td>
<td>Y, see 62Co</td>
<td>2E-2</td>
<td>3E-2</td>
<td>1E-6</td>
</tr>
<tr>
<td></td>
<td>Y, see 62Co</td>
<td>2E-2</td>
<td>3E-2</td>
<td>1E-6</td>
<td>4E-9</td>
</tr>
<tr>
<td>27</td>
<td>Cobalt-63</td>
<td>Y, see 63Co</td>
<td>2E-2</td>
<td>3E-2</td>
<td>1E-6</td>
</tr>
<tr>
<td></td>
<td>Y, see 63Co</td>
<td>2E-2</td>
<td>3E-2</td>
<td>1E-6</td>
<td>4E-9</td>
</tr>
<tr>
<td>28</td>
<td>Nickel-56</td>
<td>D, all compounds except those given for W</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td>W, oxides, hydroxides, and nitrates</td>
<td>2E-3</td>
<td>3E-3</td>
<td>1E-6</td>
<td>4E-9</td>
</tr>
<tr>
<td></td>
<td>Vapor</td>
<td>2E-3</td>
<td>3E-3</td>
<td>1E-6</td>
<td>4E-9</td>
</tr>
<tr>
<td>28</td>
<td>Nickel-57</td>
<td>D, see 57Ni</td>
<td>2E-3</td>
<td>3E-3</td>
<td>1E-6</td>
</tr>
<tr>
<td></td>
<td>Vapor</td>
<td>2E-3</td>
<td>3E-3</td>
<td>1E-6</td>
<td>4E-9</td>
</tr>
<tr>
<td>Atomic No.</td>
<td>Radionuclide</td>
<td>Class</td>
<td>Oral Ingestion (µCi)</td>
<td>Inhalation (µCi)</td>
<td>Air (µCi/m³)</td>
</tr>
<tr>
<td>-----------</td>
<td>--------------</td>
<td>-------</td>
<td>----------------------</td>
<td>-----------------</td>
<td>--------------</td>
</tr>
<tr>
<td>28</td>
<td>Nickel-59</td>
<td>D. see Ni&lt;sup&gt;59&lt;/sup&gt;</td>
<td>2E&lt;sup&gt;-4&lt;/sup&gt;</td>
<td>4E&lt;sup&gt;-3&lt;/sup&gt;</td>
<td>2E&lt;sup&gt;-6&lt;/sup&gt;</td>
</tr>
<tr>
<td></td>
<td>W. see Ni&lt;sup&gt;59&lt;/sup&gt;</td>
<td>-</td>
<td>7E&lt;sup&gt;-3&lt;/sup&gt;</td>
<td>3E&lt;sup&gt;-6&lt;/sup&gt;</td>
<td>1E&lt;sup&gt;-9&lt;/sup&gt;</td>
</tr>
<tr>
<td></td>
<td>Vapor</td>
<td>-</td>
<td>2E&lt;sup&gt;-3&lt;/sup&gt;</td>
<td>8E&lt;sup&gt;-7&lt;/sup&gt;</td>
<td>3E&lt;sup&gt;-9&lt;/sup&gt;</td>
</tr>
<tr>
<td>28</td>
<td>Nickel-63</td>
<td>D. see Ni&lt;sup&gt;63&lt;/sup&gt;</td>
<td>9E&lt;sup&gt;-3&lt;/sup&gt;</td>
<td>2E&lt;sup&gt;-3&lt;/sup&gt;</td>
<td>7E&lt;sup&gt;-7&lt;/sup&gt;</td>
</tr>
<tr>
<td></td>
<td>W. see Ni&lt;sup&gt;63&lt;/sup&gt;</td>
<td>-</td>
<td>3E&lt;sup&gt;-3&lt;/sup&gt;</td>
<td>3E&lt;sup&gt;-6&lt;/sup&gt;</td>
<td>4E&lt;sup&gt;-9&lt;/sup&gt;</td>
</tr>
<tr>
<td></td>
<td>Vapor</td>
<td>-</td>
<td>8E&lt;sup&gt;-2&lt;/sup&gt;</td>
<td>3E&lt;sup&gt;-7&lt;/sup&gt;</td>
<td>1E&lt;sup&gt;-9&lt;/sup&gt;</td>
</tr>
<tr>
<td>28</td>
<td>Nickel-65</td>
<td>D. see Ni&lt;sup&gt;65&lt;/sup&gt;</td>
<td>8E&lt;sup&gt;-3&lt;/sup&gt;</td>
<td>2E&lt;sup&gt;-4&lt;/sup&gt;</td>
<td>1E&lt;sup&gt;-5&lt;/sup&gt;</td>
</tr>
<tr>
<td></td>
<td>W. see Ni&lt;sup&gt;65&lt;/sup&gt;</td>
<td>-</td>
<td>3E&lt;sup&gt;-3&lt;/sup&gt;</td>
<td>3E&lt;sup&gt;-5&lt;/sup&gt;</td>
<td>4E&lt;sup&gt;-8&lt;/sup&gt;</td>
</tr>
<tr>
<td></td>
<td>Vapor</td>
<td>-</td>
<td>2E&lt;sup&gt;-4&lt;/sup&gt;</td>
<td>7E&lt;sup&gt;-6&lt;/sup&gt;</td>
<td>2E&lt;sup&gt;-8&lt;/sup&gt;</td>
</tr>
<tr>
<td>28</td>
<td>Nickel-66</td>
<td>D. see Ni&lt;sup&gt;66&lt;/sup&gt;</td>
<td>4E&lt;sup&gt;-2&lt;/sup&gt;</td>
<td>1E&lt;sup&gt;-1&lt;/sup&gt;</td>
<td>7E&lt;sup&gt;-7&lt;/sup&gt;</td>
</tr>
<tr>
<td></td>
<td>W. see Ni&lt;sup&gt;66&lt;/sup&gt;</td>
<td>-</td>
<td>6E&lt;sup&gt;-2&lt;/sup&gt;</td>
<td>3E&lt;sup&gt;-7&lt;/sup&gt;</td>
<td>9E&lt;sup&gt;-10&lt;/sup&gt;</td>
</tr>
<tr>
<td></td>
<td>Vapor</td>
<td>-</td>
<td>3E&lt;sup&gt;-3&lt;/sup&gt;</td>
<td>3E&lt;sup&gt;-6&lt;/sup&gt;</td>
<td>4E&lt;sup&gt;-9&lt;/sup&gt;</td>
</tr>
<tr>
<td>29</td>
<td>Copper-60&lt;sup&gt;2&lt;/sup&gt;</td>
<td>D. all compounds except those given for W and Y</td>
<td>3E&lt;sup&gt;-4&lt;/sup&gt;</td>
<td>9E&lt;sup&gt;-4&lt;/sup&gt;</td>
<td>4E&lt;sup&gt;-5&lt;/sup&gt;</td>
</tr>
<tr>
<td></td>
<td>W. sulfides, halides, and nitrates</td>
<td>-</td>
<td>3E&lt;sup&gt;-5&lt;/sup&gt;</td>
<td>5E&lt;sup&gt;-5&lt;/sup&gt;</td>
<td>2E&lt;sup&gt;-7&lt;/sup&gt;</td>
</tr>
<tr>
<td></td>
<td>Y. oxides and hydroxides</td>
<td>-</td>
<td>3E&lt;sup&gt;-5&lt;/sup&gt;</td>
<td>4E&lt;sup&gt;-5&lt;/sup&gt;</td>
<td>1E&lt;sup&gt;-7&lt;/sup&gt;</td>
</tr>
<tr>
<td>29</td>
<td>Copper-61</td>
<td>D. see Cu&lt;sup&gt;61&lt;/sup&gt;</td>
<td>1E&lt;sup&gt;-4&lt;/sup&gt;</td>
<td>3E&lt;sup&gt;-4&lt;/sup&gt;</td>
<td>1E&lt;sup&gt;-5&lt;/sup&gt;</td>
</tr>
<tr>
<td></td>
<td>W. see Cu&lt;sup&gt;61&lt;/sup&gt;</td>
<td>-</td>
<td>4E&lt;sup&gt;-4&lt;/sup&gt;</td>
<td>2E&lt;sup&gt;-5&lt;/sup&gt;</td>
<td>6E&lt;sup&gt;-8&lt;/sup&gt;</td>
</tr>
<tr>
<td></td>
<td>Y. see Cu&lt;sup&gt;61&lt;/sup&gt;</td>
<td>-</td>
<td>4E&lt;sup&gt;-4&lt;/sup&gt;</td>
<td>1E&lt;sup&gt;-5&lt;/sup&gt;</td>
<td>5E&lt;sup&gt;-8&lt;/sup&gt;</td>
</tr>
<tr>
<td>29</td>
<td>Copper-64</td>
<td>D. see Cu&lt;sup&gt;64&lt;/sup&gt;</td>
<td>1E&lt;sup&gt;-4&lt;/sup&gt;</td>
<td>3E&lt;sup&gt;-4&lt;/sup&gt;</td>
<td>1E&lt;sup&gt;-5&lt;/sup&gt;</td>
</tr>
<tr>
<td></td>
<td>W. see Cu&lt;sup&gt;64&lt;/sup&gt;</td>
<td>-</td>
<td>2E&lt;sup&gt;-4&lt;/sup&gt;</td>
<td>3E&lt;sup&gt;-5&lt;/sup&gt;</td>
<td>3E&lt;sup&gt;-8&lt;/sup&gt;</td>
</tr>
<tr>
<td></td>
<td>Y. see Cu&lt;sup&gt;64&lt;/sup&gt;</td>
<td>-</td>
<td>2E&lt;sup&gt;-4&lt;/sup&gt;</td>
<td>9E&lt;sup&gt;-6&lt;/sup&gt;</td>
<td>3E&lt;sup&gt;-8&lt;/sup&gt;</td>
</tr>
<tr>
<td>29</td>
<td>Copper-67</td>
<td>D. see Cu&lt;sup&gt;67&lt;/sup&gt;</td>
<td>5E&lt;sup&gt;-3&lt;/sup&gt;</td>
<td>8E&lt;sup&gt;-3&lt;/sup&gt;</td>
<td>3E&lt;sup&gt;-6&lt;/sup&gt;</td>
</tr>
<tr>
<td></td>
<td>W. see Cu&lt;sup&gt;67&lt;/sup&gt;</td>
<td>-</td>
<td>5E&lt;sup&gt;-3&lt;/sup&gt;</td>
<td>2E&lt;sup&gt;-6&lt;/sup&gt;</td>
<td>7E&lt;sup&gt;-9&lt;/sup&gt;</td>
</tr>
<tr>
<td></td>
<td>Y. see Cu&lt;sup&gt;67&lt;/sup&gt;</td>
<td>-</td>
<td>5E&lt;sup&gt;-3&lt;/sup&gt;</td>
<td>2E&lt;sup&gt;-6&lt;/sup&gt;</td>
<td>6E&lt;sup&gt;-9&lt;/sup&gt;</td>
</tr>
<tr>
<td>30</td>
<td>Zinc-62</td>
<td>Y. all compounds</td>
<td>1E&lt;sup&gt;-3&lt;/sup&gt;</td>
<td>3E&lt;sup&gt;-3&lt;/sup&gt;</td>
<td>1E&lt;sup&gt;-6&lt;/sup&gt;</td>
</tr>
<tr>
<td>30</td>
<td>Zinc-62&lt;sup&gt;2&lt;/sup&gt;</td>
<td>Y. all compounds</td>
<td>2E&lt;sup&gt;-4&lt;/sup&gt;</td>
<td>7E&lt;sup&gt;-4&lt;/sup&gt;</td>
<td>3E&lt;sup&gt;-5&lt;/sup&gt;</td>
</tr>
<tr>
<td></td>
<td>SL wall</td>
<td>-</td>
<td>3E&lt;sup&gt;-4&lt;/sup&gt;</td>
<td>3E&lt;sup&gt;-5&lt;/sup&gt;</td>
<td>1E&lt;sup&gt;-8&lt;/sup&gt;</td>
</tr>
<tr>
<td>30</td>
<td>Zinc-65</td>
<td>Y. all compounds</td>
<td>4E&lt;sup&gt;-2&lt;/sup&gt;</td>
<td>3E&lt;sup&gt;-2&lt;/sup&gt;</td>
<td>1E&lt;sup&gt;-7&lt;/sup&gt;</td>
</tr>
<tr>
<td>30</td>
<td>Zinc-65&lt;sup&gt;2&lt;/sup&gt;</td>
<td>Y. all compounds</td>
<td>4E&lt;sup&gt;-3&lt;/sup&gt;</td>
<td>7E&lt;sup&gt;-3&lt;/sup&gt;</td>
<td>3E&lt;sup&gt;-6&lt;/sup&gt;</td>
</tr>
<tr>
<td>30</td>
<td>Zinc-69</td>
<td>Y. all compounds</td>
<td>6E&lt;sup&gt;-5&lt;/sup&gt;</td>
<td>1E&lt;sup&gt;-5&lt;/sup&gt;</td>
<td>6E&lt;sup&gt;-5&lt;/sup&gt;</td>
</tr>
<tr>
<td>30</td>
<td>Zinc-72</td>
<td>Y. all compounds</td>
<td>6E&lt;sup&gt;-3&lt;/sup&gt;</td>
<td>2E&lt;sup&gt;-4&lt;/sup&gt;</td>
<td>7E&lt;sup&gt;-6&lt;/sup&gt;</td>
</tr>
<tr>
<td>30</td>
<td>Zinc-72&lt;sup&gt;2&lt;/sup&gt;</td>
<td>Y. all compounds</td>
<td>3E&lt;sup&gt;-3&lt;/sup&gt;</td>
<td>5E&lt;sup&gt;-3&lt;/sup&gt;</td>
<td>2E&lt;sup&gt;-9&lt;/sup&gt;</td>
</tr>
<tr>
<td>31</td>
<td>Gallium-67&lt;sup&gt;2&lt;/sup&gt;</td>
<td>D. all compounds except those given for W</td>
<td>5E&lt;sup&gt;-4&lt;/sup&gt;</td>
<td>2E&lt;sup&gt;-5&lt;/sup&gt;</td>
<td>7E&lt;sup&gt;-5&lt;/sup&gt;</td>
</tr>
<tr>
<td></td>
<td>W. oxides, hydroxides, citrates, halides, and nitrates</td>
<td>-</td>
<td>2E&lt;sup&gt;-5&lt;/sup&gt;</td>
<td>8E&lt;sup&gt;-5&lt;/sup&gt;</td>
<td>3E&lt;sup&gt;-7&lt;/sup&gt;</td>
</tr>
<tr>
<td>Atomic</td>
<td>Radioisotope</td>
<td>Class</td>
<td>Col. 1 Oral Ingestion (µCi)</td>
<td>Col. 2 Inhalation (µCi)</td>
<td>Col. 3 Inhalation (µCi/m³)</td>
</tr>
<tr>
<td>-----------</td>
<td>--------------</td>
<td>----------------</td>
<td>-----------------------------</td>
<td>-------------------------</td>
<td>----------------------------</td>
</tr>
<tr>
<td>31</td>
<td>Gallium-66</td>
<td>D, see 67Ga</td>
<td>1E+3</td>
<td>4E+3</td>
<td>2E-6</td>
</tr>
<tr>
<td></td>
<td></td>
<td>K, see 67Ga</td>
<td>3E+3</td>
<td>3E+3</td>
<td>2E-6</td>
</tr>
<tr>
<td>31</td>
<td>Gallium-67</td>
<td>D, see 67Ga</td>
<td>7E+3</td>
<td>3E+4</td>
<td>6E-6</td>
</tr>
<tr>
<td></td>
<td></td>
<td>W, see 67Ga</td>
<td>-</td>
<td>1E+4</td>
<td>4E-6</td>
</tr>
<tr>
<td>31</td>
<td>Gallium-68²</td>
<td>D, see 68Ga</td>
<td>7E+4</td>
<td>2E+5</td>
<td>2E-5</td>
</tr>
<tr>
<td></td>
<td></td>
<td>W, see 68Ga</td>
<td>-</td>
<td>5E+4</td>
<td>2E-5</td>
</tr>
<tr>
<td>31</td>
<td>Gallium-70²</td>
<td>D, see 69Ga</td>
<td>5E+4</td>
<td>2E+5</td>
<td>2E-5</td>
</tr>
<tr>
<td></td>
<td></td>
<td>W, see 69Ga</td>
<td>-</td>
<td>2E+5</td>
<td>8E-5</td>
</tr>
<tr>
<td>31</td>
<td>Gallium-72</td>
<td>D, see 72Ga</td>
<td>1E+3</td>
<td>4E+3</td>
<td>2E-6</td>
</tr>
<tr>
<td></td>
<td></td>
<td>W, see 72Ga</td>
<td>-</td>
<td>3E+3</td>
<td>2E-6</td>
</tr>
<tr>
<td>31</td>
<td>Gallium-73²</td>
<td>D, see 73Ga</td>
<td>5E+3</td>
<td>2E+4</td>
<td>6E-6</td>
</tr>
<tr>
<td></td>
<td></td>
<td>W, see 73Ga</td>
<td>-</td>
<td>2E+4</td>
<td>6E-6</td>
</tr>
<tr>
<td>32</td>
<td>Germanium-66</td>
<td>D, all compounds except those given for 66Ga</td>
<td>2E+4</td>
<td>3E+4</td>
<td>2E-5</td>
</tr>
<tr>
<td></td>
<td></td>
<td>W, oxides, sulfides, and halides</td>
<td>-</td>
<td>2E+4</td>
<td>9E-6</td>
</tr>
<tr>
<td>32</td>
<td>Germanium-67</td>
<td>D, see 67Ga</td>
<td>3E+4</td>
<td>1E+5</td>
<td>4E-5</td>
</tr>
<tr>
<td></td>
<td></td>
<td>W, see 67Ga</td>
<td>-</td>
<td>1E+5</td>
<td>4E-5</td>
</tr>
<tr>
<td>32</td>
<td>Germanium-68</td>
<td>D, see 68Ga</td>
<td>5E+3</td>
<td>2E+5</td>
<td>2E-6</td>
</tr>
<tr>
<td></td>
<td></td>
<td>W, see 68Ga</td>
<td>-</td>
<td>1E+5</td>
<td>2E-6</td>
</tr>
<tr>
<td>32</td>
<td>Germanium-69</td>
<td>D, see 69Ga</td>
<td>1E+4</td>
<td>2E+4</td>
<td>6E-6</td>
</tr>
<tr>
<td></td>
<td></td>
<td>W, see 69Ga</td>
<td>-</td>
<td>2E+4</td>
<td>3E-6</td>
</tr>
<tr>
<td>32</td>
<td>Germanium-71</td>
<td>D, see 71Ga</td>
<td>5E+4</td>
<td>2E-5</td>
<td>2E-4</td>
</tr>
<tr>
<td></td>
<td></td>
<td>W, see 71Ga</td>
<td>-</td>
<td>4E-4</td>
<td>2E-5</td>
</tr>
<tr>
<td>32</td>
<td>Germanium-72</td>
<td>D, see 72Ga</td>
<td>4E+4</td>
<td>9E-4</td>
<td>3E-5</td>
</tr>
<tr>
<td></td>
<td></td>
<td>W, see 72Ga</td>
<td>-</td>
<td>8E-4</td>
<td>4E-5</td>
</tr>
<tr>
<td>32</td>
<td>Germanium-73</td>
<td>D, see 73Ga</td>
<td>9E+3</td>
<td>2E+4</td>
<td>4E-6</td>
</tr>
<tr>
<td></td>
<td></td>
<td>W, see 73Ga</td>
<td>-</td>
<td>9E-3</td>
<td>3E-6</td>
</tr>
<tr>
<td>32</td>
<td>Germanium-74</td>
<td>D, see 74Ga</td>
<td>3E+4</td>
<td>6E-6</td>
<td>3E-8</td>
</tr>
<tr>
<td></td>
<td></td>
<td>W, see 74Ga</td>
<td>-</td>
<td>2E+4</td>
<td>9E-6</td>
</tr>
<tr>
<td>Atomic No.</td>
<td>Radioisotope</td>
<td>Class</td>
<td>Col. 1 Oral Ingestion (µCi)</td>
<td>Col. 2 Inhalation (µCi/L)</td>
<td>Col. 3 Inhaled (µCi/ml)</td>
</tr>
<tr>
<td>-----------</td>
<td>--------------</td>
<td>----------------</td>
<td>-----------------------------</td>
<td>----------------------------</td>
<td>-------------------------</td>
</tr>
<tr>
<td>33</td>
<td>Arsenic-69²</td>
<td>W, all compounds</td>
<td>1E+4</td>
<td>1E+5</td>
<td>5E-5</td>
</tr>
<tr>
<td></td>
<td></td>
<td>(4E+4)</td>
<td></td>
<td></td>
<td>6E-4</td>
</tr>
<tr>
<td>33</td>
<td>Arsenic-70²</td>
<td>W, all compounds</td>
<td>1E+4</td>
<td>5E+4</td>
<td>2E-5</td>
</tr>
<tr>
<td>33</td>
<td>Arsenic-71</td>
<td>W, all compounds</td>
<td>4E+3</td>
<td>5E+3</td>
<td>2E-6</td>
</tr>
<tr>
<td>33</td>
<td>Arsenic-72</td>
<td>W, all compounds</td>
<td>9E+2</td>
<td>1E+3</td>
<td>6E-7</td>
</tr>
<tr>
<td>33</td>
<td>Arsenic-73</td>
<td>W, all compounds</td>
<td>8E+3</td>
<td>2E+3</td>
<td>7E-7</td>
</tr>
<tr>
<td>33</td>
<td>Arsenic-74</td>
<td>W, all compounds</td>
<td>1E+3</td>
<td>8E+2</td>
<td>3E-7</td>
</tr>
<tr>
<td>33</td>
<td>Arsenic-75</td>
<td>W, all compounds</td>
<td>1E+3</td>
<td>1E+3</td>
<td>6E-7</td>
</tr>
<tr>
<td>33</td>
<td>Arsenic-77</td>
<td>W, all compounds</td>
<td>4E+3</td>
<td>5E+3</td>
<td>2E-6</td>
</tr>
<tr>
<td></td>
<td></td>
<td>(1E+3)</td>
<td></td>
<td></td>
<td>6E-5</td>
</tr>
<tr>
<td>33</td>
<td>Arsenic-78²</td>
<td>W, all compounds</td>
<td>8E+3</td>
<td>2E+4</td>
<td>9E-6</td>
</tr>
<tr>
<td>34</td>
<td>Selenium-75²</td>
<td>D, all compounds except W, oxides, hydrosel, carbosel, and elemental Se</td>
<td>2E+4</td>
<td>4E+4</td>
<td>1E-5</td>
</tr>
<tr>
<td></td>
<td></td>
<td>(1E+4)</td>
<td></td>
<td></td>
<td>6E-8</td>
</tr>
<tr>
<td>34</td>
<td>Selenium-77²</td>
<td>D, see 77Se W, see 77Se</td>
<td>6E+4</td>
<td>2E+5</td>
<td>6E-5</td>
</tr>
<tr>
<td></td>
<td></td>
<td>(1E+4)</td>
<td></td>
<td></td>
<td>6E-7</td>
</tr>
<tr>
<td>34</td>
<td>Selenium-79</td>
<td>D, see 79Se W, see 79Se</td>
<td>3E+3</td>
<td>1E+4</td>
<td>5E-6</td>
</tr>
<tr>
<td></td>
<td></td>
<td>(1E+4)</td>
<td></td>
<td></td>
<td>2E-9</td>
</tr>
<tr>
<td>34</td>
<td>Selenium-81²</td>
<td>D, see 81Se W, see 81Se</td>
<td>5E+2</td>
<td>7E+2</td>
<td>3E-7</td>
</tr>
<tr>
<td></td>
<td></td>
<td>(1E+4)</td>
<td></td>
<td></td>
<td>8E-10</td>
</tr>
<tr>
<td>34</td>
<td>Selenium-83²</td>
<td>D, see 83Se W, see 83Se</td>
<td>6E+2</td>
<td>8E+2</td>
<td>3E-7</td>
</tr>
<tr>
<td></td>
<td></td>
<td>(1E+4)</td>
<td></td>
<td></td>
<td>8E-10</td>
</tr>
<tr>
<td>34</td>
<td>Selenium-85²</td>
<td>D, see 85Se W, see 85Se</td>
<td>4E+4</td>
<td>7E+4</td>
<td>3E-5</td>
</tr>
<tr>
<td></td>
<td></td>
<td>(1E+4)</td>
<td></td>
<td></td>
<td>3E-7</td>
</tr>
<tr>
<td>34</td>
<td>Selenium-87²</td>
<td>D, see 87Se W, see 87Se</td>
<td>3E+4</td>
<td>5E+5</td>
<td>5E-5</td>
</tr>
<tr>
<td></td>
<td></td>
<td>(8E+4)</td>
<td></td>
<td></td>
<td>1E-3</td>
</tr>
<tr>
<td>Atomic  No.</td>
<td>Radionuclide</td>
<td>Class</td>
<td>Col. 1 Occupational Values</td>
<td>Col. 2 Inhalation</td>
<td>Col. 3 Inhalation</td>
</tr>
<tr>
<td>------------</td>
<td>--------------</td>
<td>-------</td>
<td>---------------------------</td>
<td>-------------------</td>
<td>-------------------</td>
</tr>
<tr>
<td>35</td>
<td>Bromine-80</td>
<td>D, E</td>
<td>4E-4 4E-4 2E-5 5E-6</td>
<td>-</td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>35</td>
<td>Bromine-76</td>
<td>B</td>
<td>4E-4 7E-4 3E-5 1E-7</td>
<td>-</td>
<td></td>
</tr>
<tr>
<td>35</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>35</td>
<td>Bromine-75</td>
<td>B</td>
<td>5E-4 5E-4 2E-5 7E-6</td>
<td>-</td>
<td></td>
</tr>
<tr>
<td>35</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>35</td>
<td>Bromine-74</td>
<td>D, E</td>
<td>6E-3 5E-3 2E-6 7E-9 5E-5</td>
<td>-</td>
<td></td>
</tr>
<tr>
<td>35</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>35</td>
<td>Bromine-72</td>
<td>B</td>
<td>7E-4 4E-4 2E-6 6E-6 -</td>
<td>-</td>
<td></td>
</tr>
<tr>
<td>35</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>35</td>
<td>Bromine-68</td>
<td>B</td>
<td>8E-4 6E-4 2E-6 6E-8 -</td>
<td>-</td>
<td></td>
</tr>
<tr>
<td>35</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>35</td>
<td>Bromine-66</td>
<td>B</td>
<td>9E-4 7E-4 2E-6 6E-9 -</td>
<td>-</td>
<td></td>
</tr>
<tr>
<td>35</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>35</td>
<td>Krypton-84</td>
<td>D</td>
<td>1E-4 1E-4 2E-5 1E-6 -</td>
<td>-</td>
<td></td>
</tr>
<tr>
<td>35</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>35</td>
<td>Krypton-82</td>
<td>D</td>
<td>2E-4 2E-4 2E-5 8E-6 -</td>
<td>-</td>
<td></td>
</tr>
<tr>
<td>35</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>35</td>
<td>Krypton-80</td>
<td>D</td>
<td>3E-4 3E-4 2E-5 3E-6 -</td>
<td>-</td>
<td></td>
</tr>
<tr>
<td>35</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Atomic Number</td>
<td>Radioisotope</td>
<td>Class</td>
<td>Occupational Values</td>
<td>Concentration</td>
<td>Table 3</td>
</tr>
<tr>
<td>---------------</td>
<td>--------------</td>
<td>-------</td>
<td>---------------------</td>
<td>---------------</td>
<td>---------</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td>Oral Inhalation</td>
<td>Air (mcL/L)</td>
<td>Oral Inhalation</td>
</tr>
<tr>
<td>36</td>
<td>Krypton-85m</td>
<td>Submerg</td>
<td>1E-2</td>
<td>5E-5</td>
<td>-</td>
</tr>
<tr>
<td>36</td>
<td>Krypton-85m</td>
<td>Submerg</td>
<td>-</td>
<td>-</td>
<td>2E-5</td>
</tr>
<tr>
<td>36</td>
<td>Krypton-85m</td>
<td>Submerg</td>
<td>-</td>
<td>-</td>
<td>2E-4</td>
</tr>
<tr>
<td>36</td>
<td>Krypton-85m</td>
<td>Submerg</td>
<td>-</td>
<td>-</td>
<td>3E-6</td>
</tr>
<tr>
<td>36</td>
<td>Krypton-85m</td>
<td>Submerg</td>
<td>-</td>
<td>-</td>
<td>2E-6</td>
</tr>
<tr>
<td>37</td>
<td>Radium-226</td>
<td>D, all compounds</td>
<td>3E+4</td>
<td>3E+5</td>
<td>3E-4</td>
</tr>
<tr>
<td>37</td>
<td>Radium-226</td>
<td>D, all compounds</td>
<td>2E+4</td>
<td>2E+5</td>
<td>2E-6</td>
</tr>
<tr>
<td>37</td>
<td>Radium-226</td>
<td>D, all compounds</td>
<td>3E+4</td>
<td>3E+5</td>
<td>3E-6</td>
</tr>
<tr>
<td>37</td>
<td>Radium-226</td>
<td>D, all compounds</td>
<td>5E+2</td>
<td>5E+3</td>
<td>4E-7</td>
</tr>
<tr>
<td>37</td>
<td>Radium-226</td>
<td>D, all compounds</td>
<td>5E+2</td>
<td>5E+3</td>
<td>3E-7</td>
</tr>
<tr>
<td>37</td>
<td>Radium-226</td>
<td>D, all compounds</td>
<td>5E+2</td>
<td>5E+3</td>
<td>3E-7</td>
</tr>
<tr>
<td>37</td>
<td>Radium-226</td>
<td>D, all compounds</td>
<td>3E+3</td>
<td>3E+4</td>
<td>6E-7</td>
</tr>
<tr>
<td>37</td>
<td>Radium-226</td>
<td>D, all compounds</td>
<td>4E+4</td>
<td>4E+5</td>
<td>6E-8</td>
</tr>
<tr>
<td>38</td>
<td>Strontium-89</td>
<td>D, all soluble compounds</td>
<td>4E+3</td>
<td>4E+4</td>
<td>5E-6</td>
</tr>
<tr>
<td>38</td>
<td>Strontium-89</td>
<td>D, see Sr</td>
<td>3E+4</td>
<td>3E+4</td>
<td>3E-5</td>
</tr>
<tr>
<td>38</td>
<td>Strontium-89</td>
<td>D, see Sr</td>
<td>3E+4</td>
<td>3E+4</td>
<td>3E-5</td>
</tr>
<tr>
<td>38</td>
<td>Strontium-89</td>
<td>D, see Sr</td>
<td>3E+4</td>
<td>3E+4</td>
<td>3E-5</td>
</tr>
<tr>
<td>38</td>
<td>Strontium-89</td>
<td>D, see Sr</td>
<td>3E+4</td>
<td>3E+4</td>
<td>3E-5</td>
</tr>
<tr>
<td>38</td>
<td>Strontium-89</td>
<td>D, see Sr</td>
<td>3E+4</td>
<td>3E+4</td>
<td>3E-5</td>
</tr>
<tr>
<td>38</td>
<td>Strontium-89</td>
<td>D, see Sr</td>
<td>3E+4</td>
<td>3E+4</td>
<td>3E-5</td>
</tr>
<tr>
<td>38</td>
<td>Strontium-89</td>
<td>D, see Sr</td>
<td>3E+4</td>
<td>3E+4</td>
<td>3E-5</td>
</tr>
<tr>
<td>38</td>
<td>Strontium-89</td>
<td>D, see Sr</td>
<td>3E+4</td>
<td>3E+4</td>
<td>3E-5</td>
</tr>
<tr>
<td>38</td>
<td>Strontium-89</td>
<td>D, see Sr</td>
<td>3E+4</td>
<td>3E+4</td>
<td>3E-5</td>
</tr>
</tbody>
</table>
### Table 1: Occupational Values

<table>
<thead>
<tr>
<th>Atomic No.</th>
<th>Radiouclide</th>
<th>Class</th>
<th>Col. 1 (Gr)</th>
<th>Col. 2</th>
<th>Col. 3</th>
</tr>
</thead>
<tbody>
<tr>
<td>38</td>
<td>Strontium-89</td>
<td>D, see Sr</td>
<td>6E+2</td>
<td>8E+2</td>
<td>4E-7</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td>(6E+2)</td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td>Y, see Sr</td>
<td>5E+2</td>
<td>3E+2</td>
<td>6E-8</td>
</tr>
<tr>
<td>38</td>
<td>Strontium-89</td>
<td>D, see Sr</td>
<td>3E+1</td>
<td>2E+1</td>
<td>8E-9</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td>(4E+1)</td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td>Y, see Sr</td>
<td>4E+0</td>
<td>2E-9</td>
<td>6E-12</td>
</tr>
<tr>
<td>38</td>
<td>Strontium-89</td>
<td>D, see Sr</td>
<td>2E+3</td>
<td>6E+3</td>
<td>2E-6</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td>(4E+3)</td>
<td></td>
<td></td>
</tr>
<tr>
<td>38</td>
<td>Strontium-89</td>
<td>D, see Sr</td>
<td>3E-3</td>
<td>9E-3</td>
<td>4E-6</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td>(3E-3)</td>
<td></td>
<td></td>
</tr>
<tr>
<td>39</td>
<td>Yttrium-89m 2</td>
<td>W, all compounds except</td>
<td>2E+4</td>
<td>6E+4</td>
<td>2E-5</td>
</tr>
<tr>
<td></td>
<td></td>
<td>these given for Y</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td>Y, oxides and hydroxides</td>
<td>5E+4</td>
<td>2E-5</td>
<td>8E-8</td>
</tr>
<tr>
<td>39</td>
<td>Yttrium-86</td>
<td>W, see Ym</td>
<td>3E+3</td>
<td>1E-6</td>
<td>5E-9</td>
</tr>
<tr>
<td></td>
<td></td>
<td>Y, see Ym</td>
<td>3E+3</td>
<td>1E-6</td>
<td>5E-9</td>
</tr>
<tr>
<td>39</td>
<td>Yttrium-87</td>
<td>W, see Ym</td>
<td>3E+3</td>
<td>1E-6</td>
<td>5E-9</td>
</tr>
<tr>
<td></td>
<td></td>
<td>Y, see Ym</td>
<td>3E+3</td>
<td>1E-6</td>
<td>5E-9</td>
</tr>
<tr>
<td>39</td>
<td>Yttrium-88</td>
<td>W, see Ym</td>
<td>3E+2</td>
<td>1E-7</td>
<td>3E-10</td>
</tr>
<tr>
<td></td>
<td></td>
<td>Y, see Ym</td>
<td>3E+2</td>
<td>1E-7</td>
<td>3E-10</td>
</tr>
<tr>
<td>39</td>
<td>Yttrium-89m</td>
<td>W, see Ym</td>
<td>8E-3</td>
<td>1E-4</td>
<td>5E-6</td>
</tr>
<tr>
<td></td>
<td></td>
<td>Y, see Ym</td>
<td>8E-3</td>
<td>1E-4</td>
<td>5E-6</td>
</tr>
<tr>
<td>39</td>
<td>Yttrium-89</td>
<td>W, see Ym</td>
<td>4E+2</td>
<td>7E-2</td>
<td>9E-10</td>
</tr>
<tr>
<td></td>
<td></td>
<td>Y, see Ym</td>
<td>(5E+2)</td>
<td></td>
<td>-</td>
</tr>
<tr>
<td>39</td>
<td>Yttrium-90m 2</td>
<td>W, see Ym</td>
<td>1E+5</td>
<td>2E+5</td>
<td>3E-4</td>
</tr>
<tr>
<td></td>
<td></td>
<td>Y, see Ym</td>
<td>1E+5</td>
<td>2E+5</td>
<td>3E-4</td>
</tr>
<tr>
<td>39</td>
<td>Yttrium-91</td>
<td>W, see Ym</td>
<td>5E+2</td>
<td>7E-2</td>
<td>2E-10</td>
</tr>
<tr>
<td></td>
<td></td>
<td>Y, see Ym</td>
<td>(6E+2)</td>
<td></td>
<td>-</td>
</tr>
<tr>
<td>39</td>
<td>Yttrium-92</td>
<td>W, see Ym</td>
<td>3E+3</td>
<td>9E-3</td>
<td>4E-6</td>
</tr>
<tr>
<td></td>
<td></td>
<td>Y, see Ym</td>
<td>3E+3</td>
<td>9E-3</td>
<td>4E-6</td>
</tr>
<tr>
<td>39</td>
<td>Yttrium-93</td>
<td>W, see Ym</td>
<td>1E+3</td>
<td>3E-3</td>
<td>4E-9</td>
</tr>
<tr>
<td></td>
<td></td>
<td>Y, see Ym</td>
<td>1E+3</td>
<td>3E-3</td>
<td>4E-9</td>
</tr>
<tr>
<td>39</td>
<td>Yttrium-94</td>
<td>W, see Ym</td>
<td>2E+4</td>
<td>8E-4</td>
<td>3E-5</td>
</tr>
<tr>
<td></td>
<td></td>
<td>Y, see Ym</td>
<td>2E+4</td>
<td>8E-4</td>
<td>3E-5</td>
</tr>
<tr>
<td>39</td>
<td>Yttrium-95</td>
<td>W, see Ym</td>
<td>4E+4</td>
<td>2E-5</td>
<td>6E-5</td>
</tr>
<tr>
<td></td>
<td></td>
<td>Y, see Ym</td>
<td>(5E+4)</td>
<td></td>
<td>-</td>
</tr>
</tbody>
</table>

### Table 2: Effluent Concentrations

<table>
<thead>
<tr>
<th>Monthly Average Concentration (µCi/mL)</th>
</tr>
</thead>
<tbody>
<tr>
<td>8E-8</td>
</tr>
<tr>
<td>3E-4</td>
</tr>
<tr>
<td>3E-3</td>
</tr>
<tr>
<td>7E-6</td>
</tr>
</tbody>
</table>

### Table 3: Releases to Sewers

<table>
<thead>
<tr>
<th>Monthly Average Concentration (µCi/mL)</th>
</tr>
</thead>
<tbody>
<tr>
<td>4E-4</td>
</tr>
<tr>
<td>4E-3</td>
</tr>
<tr>
<td>7E-4</td>
</tr>
<tr>
<td>7E-3</td>
</tr>
<tr>
<td>Atomic Number</td>
</tr>
<tr>
<td>---------------</td>
</tr>
<tr>
<td>30</td>
</tr>
<tr>
<td></td>
</tr>
<tr>
<td></td>
</tr>
<tr>
<td>40</td>
</tr>
<tr>
<td></td>
</tr>
<tr>
<td></td>
</tr>
<tr>
<td>40</td>
</tr>
<tr>
<td></td>
</tr>
<tr>
<td></td>
</tr>
<tr>
<td>40</td>
</tr>
<tr>
<td></td>
</tr>
<tr>
<td></td>
</tr>
<tr>
<td></td>
</tr>
<tr>
<td>40</td>
</tr>
<tr>
<td></td>
</tr>
<tr>
<td></td>
</tr>
<tr>
<td></td>
</tr>
<tr>
<td>40</td>
</tr>
<tr>
<td></td>
</tr>
<tr>
<td></td>
</tr>
<tr>
<td></td>
</tr>
<tr>
<td>41</td>
</tr>
<tr>
<td></td>
</tr>
<tr>
<td></td>
</tr>
<tr>
<td>41</td>
</tr>
<tr>
<td></td>
</tr>
<tr>
<td>41</td>
</tr>
<tr>
<td></td>
</tr>
<tr>
<td>41</td>
</tr>
<tr>
<td></td>
</tr>
<tr>
<td>41</td>
</tr>
<tr>
<td>41</td>
</tr>
<tr>
<td>41</td>
</tr>
<tr>
<td></td>
</tr>
<tr>
<td>41</td>
</tr>
<tr>
<td>41</td>
</tr>
<tr>
<td>41</td>
</tr>
<tr>
<td></td>
</tr>
<tr>
<td>41</td>
</tr>
<tr>
<td></td>
</tr>
</tbody>
</table>

396
### Table 3: Occupational Values

<table>
<thead>
<tr>
<th>Atomic Number</th>
<th>Radioisotope</th>
<th>Class</th>
<th>Table 1: Occupational Values</th>
<th>Table 2: Efluent Concentrations</th>
<th>Table 3: Releases to Sewers</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td></td>
<td></td>
<td>Col. 1</td>
<td>Col. 2</td>
<td>Col. 3</td>
</tr>
<tr>
<td>41</td>
<td>Niobium-95</td>
<td>W, see Nb</td>
<td>21-3</td>
<td>31-3</td>
<td>51-7</td>
</tr>
<tr>
<td>42</td>
<td>Niobium-96</td>
<td>W, see Nb</td>
<td>1E-3</td>
<td>31-3</td>
<td>31-3</td>
</tr>
<tr>
<td>43</td>
<td>Niobium-97</td>
<td>W, see Nb</td>
<td>21-4</td>
<td>31-4</td>
<td>31-6</td>
</tr>
<tr>
<td>44</td>
<td>Niobium-98</td>
<td>W, see Nb</td>
<td>1E-4</td>
<td>51-4</td>
<td>21-5</td>
</tr>
<tr>
<td>45</td>
<td>Niobium-99</td>
<td>Y, see Nb</td>
<td>3E-4</td>
<td>7E-3</td>
<td>3E-6</td>
</tr>
<tr>
<td>46</td>
<td>Molybdenum-90</td>
<td>D, all compounds except those given for Y</td>
<td>4E-3</td>
<td>7E-3</td>
<td>3E-6</td>
</tr>
<tr>
<td>47</td>
<td>Molybdenum-91m</td>
<td>D, see Mo</td>
<td>3E-4</td>
<td>7E-3</td>
<td>3E-6</td>
</tr>
<tr>
<td>48</td>
<td>Molybdenum-91</td>
<td>Y, see Mo</td>
<td>4E-3</td>
<td>5E-3</td>
<td>2E-6</td>
</tr>
<tr>
<td>49</td>
<td>Molybdenum-92</td>
<td>D, see Mo</td>
<td>3E-4</td>
<td>5E-3</td>
<td>2E-6</td>
</tr>
<tr>
<td>50</td>
<td>Molybdenum-93</td>
<td>D, see Mo</td>
<td>2E-4</td>
<td>5E-3</td>
<td>2E-6</td>
</tr>
<tr>
<td>51</td>
<td>Molybdenum-94</td>
<td>D, see Mo</td>
<td>2E-4</td>
<td>5E-3</td>
<td>2E-6</td>
</tr>
<tr>
<td>52</td>
<td>Molybdenum-95</td>
<td>D, see Mo</td>
<td>2E-4</td>
<td>5E-3</td>
<td>2E-6</td>
</tr>
<tr>
<td>53</td>
<td>Molybdenum-96</td>
<td>D, see Mo</td>
<td>2E-4</td>
<td>5E-3</td>
<td>2E-6</td>
</tr>
<tr>
<td>54</td>
<td>Molybdenum-97</td>
<td>D, see Mo</td>
<td>2E-4</td>
<td>5E-3</td>
<td>2E-6</td>
</tr>
<tr>
<td>55</td>
<td>Molybdenum-98</td>
<td>D, see Mo</td>
<td>2E-4</td>
<td>5E-3</td>
<td>2E-6</td>
</tr>
<tr>
<td>56</td>
<td>Molybdenum-99</td>
<td>D, see Mo</td>
<td>2E-4</td>
<td>5E-3</td>
<td>2E-6</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Atomic Number</th>
<th>Radioisotope</th>
<th>Class</th>
<th>Table 1: Occupational Values</th>
<th>Table 2: Efluent Concentrations</th>
<th>Table 3: Releases to Sewers</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td></td>
<td></td>
<td>Col. 1</td>
<td>Col. 2</td>
<td>Col. 3</td>
</tr>
<tr>
<td>57</td>
<td>Technetium-93</td>
<td>D, see Mo</td>
<td>7E-4</td>
<td>2E-5</td>
<td>6E-5</td>
</tr>
<tr>
<td>58</td>
<td>Technetium-94</td>
<td>D, see Mo</td>
<td>7E-4</td>
<td>2E-5</td>
<td>6E-5</td>
</tr>
<tr>
<td>59</td>
<td>Technetium-95</td>
<td>D, see Mo</td>
<td>7E-4</td>
<td>2E-5</td>
<td>6E-5</td>
</tr>
<tr>
<td>60</td>
<td>Technetium-96</td>
<td>D, see Mo</td>
<td>7E-4</td>
<td>2E-5</td>
<td>6E-5</td>
</tr>
<tr>
<td>61</td>
<td>Technetium-97</td>
<td>D, see Mo</td>
<td>7E-4</td>
<td>2E-5</td>
<td>6E-5</td>
</tr>
<tr>
<td>62</td>
<td>Technetium-98</td>
<td>D, see Mo</td>
<td>7E-4</td>
<td>2E-5</td>
<td>6E-5</td>
</tr>
<tr>
<td>63</td>
<td>Technetium-99</td>
<td>D, see Mo</td>
<td>7E-4</td>
<td>2E-5</td>
<td>6E-5</td>
</tr>
</tbody>
</table>

397
<table>
<thead>
<tr>
<th>Atoic No.</th>
<th>Radioisotope</th>
<th>Class</th>
<th>Oral Ingestion (µCi)</th>
<th>Inhalation (µCi)</th>
<th>Air (µCi/ml)</th>
<th>Water (µCi/ml)</th>
<th>Monthly Average Concentration (µCi/ml)</th>
</tr>
</thead>
<tbody>
<tr>
<td>43</td>
<td>Technetium-99</td>
<td>D, see 99mTc</td>
<td>4E+4</td>
<td>5E+4</td>
<td>2E-5</td>
<td>7E-8</td>
<td>5E-4</td>
</tr>
<tr>
<td></td>
<td></td>
<td>W, see 99mTc</td>
<td>-</td>
<td>6E+3</td>
<td>2E-6</td>
<td>8E-9</td>
<td>-</td>
</tr>
<tr>
<td>43</td>
<td>Technetium-99</td>
<td>D, see 99mTc</td>
<td>2E+3</td>
<td>2E-3</td>
<td>4E-7</td>
<td>2E-9</td>
<td>3E-5</td>
</tr>
<tr>
<td></td>
<td></td>
<td>W, see 99mTc</td>
<td>2E+2</td>
<td>2E-2</td>
<td>4E-10</td>
<td>-</td>
<td>-</td>
</tr>
<tr>
<td>43</td>
<td>Technetium-99</td>
<td>D, see 99mTc</td>
<td>8E+4</td>
<td>4E+4</td>
<td>4E-5</td>
<td>2E-7</td>
<td>3E-3</td>
</tr>
<tr>
<td></td>
<td></td>
<td>W, see 99mTc</td>
<td>-</td>
<td>2E+5</td>
<td>4E-4</td>
<td>-</td>
<td>-</td>
</tr>
<tr>
<td>43</td>
<td>Technetium-101</td>
<td>D, see 101Tc</td>
<td>4E+4</td>
<td>3E+4</td>
<td>4E-5</td>
<td>5E-7</td>
<td>-</td>
</tr>
<tr>
<td></td>
<td></td>
<td>W, see 101Tc</td>
<td>-</td>
<td>4E+5</td>
<td>2E-4</td>
<td>4E-7</td>
<td>-</td>
</tr>
<tr>
<td>43</td>
<td>Technetium-104</td>
<td>D, see 104Tc</td>
<td>2E+4</td>
<td>2E+3</td>
<td>5E-5</td>
<td>1E-7</td>
<td>-</td>
</tr>
<tr>
<td></td>
<td></td>
<td>W, see 104Tc</td>
<td>-</td>
<td>2E+4</td>
<td>2E-4</td>
<td>4E-7</td>
<td>-</td>
</tr>
<tr>
<td>44</td>
<td>Ruthenium-90</td>
<td>D, all compounds except those given for W and Y</td>
<td>2E+4</td>
<td>2E+4</td>
<td>5E-5</td>
<td>6E-8</td>
<td>2E-4</td>
</tr>
<tr>
<td></td>
<td></td>
<td>W, halides</td>
<td>6E+4</td>
<td>3E-5</td>
<td>9E-8</td>
<td>-</td>
<td>-</td>
</tr>
<tr>
<td></td>
<td></td>
<td>T, oxides and hydrates</td>
<td>6E+4</td>
<td>2E-5</td>
<td>6E-0</td>
<td>-</td>
<td>-</td>
</tr>
<tr>
<td>44</td>
<td>Ruthenium-99</td>
<td>D, see 99Ru</td>
<td>8E+4</td>
<td>8E-6</td>
<td>3E-4</td>
<td>3E-4</td>
<td>1E-3</td>
</tr>
<tr>
<td></td>
<td></td>
<td>W, see 99Ru</td>
<td>-</td>
<td>8E-4</td>
<td>3E-6</td>
<td>2E-8</td>
<td>-</td>
</tr>
<tr>
<td></td>
<td></td>
<td>T, see 99Ru</td>
<td>-</td>
<td>8E-4</td>
<td>3E-6</td>
<td>2E-8</td>
<td>-</td>
</tr>
<tr>
<td>44</td>
<td>Ruthenium-103</td>
<td>D, see 103Ru</td>
<td>2E+3</td>
<td>2E+3</td>
<td>7E-7</td>
<td>2E-9</td>
<td>3E-5</td>
</tr>
<tr>
<td></td>
<td></td>
<td>W, see 103Ru</td>
<td>-</td>
<td>2E+3</td>
<td>4E-7</td>
<td>1E-9</td>
<td>-</td>
</tr>
<tr>
<td></td>
<td></td>
<td>T, see 103Ru</td>
<td>-</td>
<td>2E+3</td>
<td>4E-7</td>
<td>1E-9</td>
<td>-</td>
</tr>
<tr>
<td>44</td>
<td>Ruthenium-105</td>
<td>D, see 105Ru</td>
<td>5E+3</td>
<td>5E-6</td>
<td>5E-8</td>
<td>2E-9</td>
<td>3E-5</td>
</tr>
<tr>
<td></td>
<td></td>
<td>W, see 105Ru</td>
<td>-</td>
<td>5E+3</td>
<td>5E-6</td>
<td>2E-9</td>
<td>-</td>
</tr>
<tr>
<td></td>
<td></td>
<td>T, see 105Ru</td>
<td>-</td>
<td>5E+3</td>
<td>5E-6</td>
<td>2E-9</td>
<td>-</td>
</tr>
<tr>
<td>44</td>
<td>Ruthenium-106</td>
<td>D, see 106Ru</td>
<td>2E+3</td>
<td>1E+1</td>
<td>4E-8</td>
<td>1E-10</td>
<td>-</td>
</tr>
<tr>
<td></td>
<td></td>
<td>W, see 106Ru</td>
<td>-</td>
<td>5E+1</td>
<td>1E-11</td>
<td>4E-6</td>
<td>3E-5</td>
</tr>
<tr>
<td></td>
<td></td>
<td>T, see 106Ru</td>
<td>-</td>
<td>1E+1</td>
<td>5E-9</td>
<td>1E-11</td>
<td>-</td>
</tr>
<tr>
<td>45</td>
<td>Rhodium-92</td>
<td>D, all compounds except those given for W and Y</td>
<td>2E+4</td>
<td>6E+4</td>
<td>2E-5</td>
<td>8E-8</td>
<td>2E-4</td>
</tr>
<tr>
<td></td>
<td></td>
<td>W, halides</td>
<td>6E+4</td>
<td>3E-5</td>
<td>1E-7</td>
<td>-</td>
<td>-</td>
</tr>
<tr>
<td></td>
<td></td>
<td>T, oxides and hydrates</td>
<td>6E+4</td>
<td>3E-5</td>
<td>9E-8</td>
<td>-</td>
<td>-</td>
</tr>
<tr>
<td>45</td>
<td>Rhodium-93</td>
<td>D, see 93Rh</td>
<td>2E+3</td>
<td>2E+3</td>
<td>9E-7</td>
<td>3E-9</td>
<td>3E-4</td>
</tr>
<tr>
<td></td>
<td></td>
<td>W, see 93Rh</td>
<td>-</td>
<td>2E+3</td>
<td>9E-7</td>
<td>3E-9</td>
<td>-</td>
</tr>
<tr>
<td></td>
<td></td>
<td>T, see 93Rh</td>
<td>-</td>
<td>2E+3</td>
<td>9E-7</td>
<td>3E-9</td>
<td>-</td>
</tr>
</tbody>
</table>
### Table 1: Occupational Values

<table>
<thead>
<tr>
<th>Atomic No.</th>
<th>Radiouclide</th>
<th>Class</th>
<th>Oral Implantation (μCi)</th>
<th>Oral Ingestion (μCi)</th>
<th>Inhalation (μCi/m³)</th>
<th>Air (μCi/m³)</th>
<th>Water (μCi/m³)</th>
<th>Monthly Average Concentration (μCi/ml)</th>
</tr>
</thead>
</table>

#### Rhodium-102

<table>
<thead>
<tr>
<th>45</th>
<th>Rhodium-102</th>
<th>D, sep</th>
<th>59μCi</th>
<th>50μCi</th>
<th>25μCi</th>
<th>5μCi</th>
<th>5μCi</th>
<th>5μCi</th>
</tr>
</thead>
<tbody>
<tr>
<td>45</td>
<td>Rhodium-102</td>
<td>W, sep</td>
<td>59μCi</td>
<td>50μCi</td>
<td>25μCi</td>
<td>5μCi</td>
<td>5μCi</td>
<td>5μCi</td>
</tr>
<tr>
<td>45</td>
<td>Rhodium-102</td>
<td>Y, sep</td>
<td>59μCi</td>
<td>50μCi</td>
<td>25μCi</td>
<td>5μCi</td>
<td>5μCi</td>
<td>5μCi</td>
</tr>
</tbody>
</table>

#### Rhodium-103

<table>
<thead>
<tr>
<th>45</th>
<th>Rhodium-103</th>
<th>D, sep</th>
<th>59μCi</th>
<th>50μCi</th>
<th>25μCi</th>
<th>5μCi</th>
<th>5μCi</th>
<th>5μCi</th>
</tr>
</thead>
<tbody>
<tr>
<td>45</td>
<td>Rhodium-103</td>
<td>W, sep</td>
<td>59μCi</td>
<td>50μCi</td>
<td>25μCi</td>
<td>5μCi</td>
<td>5μCi</td>
<td>5μCi</td>
</tr>
<tr>
<td>45</td>
<td>Rhodium-103</td>
<td>Y, sep</td>
<td>59μCi</td>
<td>50μCi</td>
<td>25μCi</td>
<td>5μCi</td>
<td>5μCi</td>
<td>5μCi</td>
</tr>
</tbody>
</table>

#### Palladium-100

<table>
<thead>
<tr>
<th>46</th>
<th>Palladium-100</th>
<th>D, sep</th>
<th>100μCi</th>
<th>100μCi</th>
<th>100μCi</th>
<th>100μCi</th>
<th>100μCi</th>
<th>100μCi</th>
</tr>
</thead>
<tbody>
<tr>
<td>46</td>
<td>Palladium-100</td>
<td>W, sep</td>
<td>100μCi</td>
<td>100μCi</td>
<td>100μCi</td>
<td>100μCi</td>
<td>100μCi</td>
<td>100μCi</td>
</tr>
<tr>
<td>46</td>
<td>Palladium-100</td>
<td>Y, sep</td>
<td>100μCi</td>
<td>100μCi</td>
<td>100μCi</td>
<td>100μCi</td>
<td>100μCi</td>
<td>100μCi</td>
</tr>
</tbody>
</table>

### Table 2: Effluent Concentrations

#### Table 3: Releases to Sewer
<table>
<thead>
<tr>
<th>Atomic No.</th>
<th>Radionuclide</th>
<th>Class</th>
<th>Col. 1 Oral Ingestion (µCi/l)</th>
<th>Col. 2 Inhalation (µCi/l)</th>
<th>Col. 3 Air (µCi/m³)</th>
<th>Col. 1 Water (µCi/l)</th>
<th>Col. 2 Water (µCi/l)</th>
<th>Monthly Average Concentration (µCi/m³)</th>
</tr>
</thead>
<tbody>
<tr>
<td>46</td>
<td>Palladium-109</td>
<td>D, see Pd²⁺</td>
<td>2E+3</td>
<td>6E+3</td>
<td>3E+6</td>
<td>9E-9</td>
<td>3E-5</td>
<td>3E-6</td>
</tr>
<tr>
<td></td>
<td></td>
<td>W, see Pd²⁺</td>
<td>-</td>
<td>5E+3</td>
<td>3E+6</td>
<td>9E-9</td>
<td>-</td>
<td>-</td>
</tr>
<tr>
<td></td>
<td></td>
<td>Y, see Pd²⁺</td>
<td>-</td>
<td>5E+3</td>
<td>3E+6</td>
<td>9E-9</td>
<td>-</td>
<td>-</td>
</tr>
<tr>
<td>47</td>
<td>Silver-102²⁺</td>
<td>D, all compounds except those given for W and Y</td>
<td>5E+4</td>
<td>2E+5</td>
<td>8E-5</td>
<td>2E-7</td>
<td>-</td>
<td>-</td>
</tr>
<tr>
<td></td>
<td></td>
<td>Li, wall (6E+3)</td>
<td>-</td>
<td>-</td>
<td>-</td>
<td>9E-4</td>
<td>9E-3</td>
<td>-</td>
</tr>
<tr>
<td></td>
<td>W, nitrates and sulfides</td>
<td>2E+5</td>
<td>9E-5</td>
<td>3E-7</td>
<td>-</td>
<td>-</td>
<td>-</td>
<td></td>
</tr>
<tr>
<td></td>
<td>Y, oxides and hydroxides</td>
<td>2E+5</td>
<td>8E-5</td>
<td>3E-7</td>
<td>-</td>
<td>-</td>
<td>-</td>
<td></td>
</tr>
<tr>
<td>47</td>
<td>Silver-103²⁺</td>
<td>D, see Ag²⁺</td>
<td>4E+4</td>
<td>3E+5</td>
<td>4E-5</td>
<td>3E-7</td>
<td>5E-4</td>
<td>5E-3</td>
</tr>
<tr>
<td></td>
<td>W, see Ag²⁺</td>
<td>-</td>
<td>3E+5</td>
<td>5E-5</td>
<td>3E-7</td>
<td>-</td>
<td>-</td>
<td></td>
</tr>
<tr>
<td></td>
<td>Y, see Ag²⁺</td>
<td>-</td>
<td>3E+5</td>
<td>5E-5</td>
<td>3E-7</td>
<td>-</td>
<td>-</td>
<td></td>
</tr>
<tr>
<td>47</td>
<td>Silver-104²⁺</td>
<td>D, see Ag²⁺</td>
<td>3E+4</td>
<td>9E+4</td>
<td>4E-5</td>
<td>3E-7</td>
<td>4E-4</td>
<td>4E-3</td>
</tr>
<tr>
<td></td>
<td>W, see Ag²⁺</td>
<td>-</td>
<td>1E+5</td>
<td>5E-5</td>
<td>3E-7</td>
<td>-</td>
<td>-</td>
<td></td>
</tr>
<tr>
<td></td>
<td>Y, see Ag²⁺</td>
<td>-</td>
<td>1E+5</td>
<td>5E-5</td>
<td>3E-7</td>
<td>-</td>
<td>-</td>
<td></td>
</tr>
<tr>
<td>47</td>
<td>Silver-105⁷⁺</td>
<td>D, see Ag²⁺</td>
<td>3E+3</td>
<td>2E+4</td>
<td>4E-5</td>
<td>3E-7</td>
<td>4E-5</td>
<td>4E-4</td>
</tr>
<tr>
<td></td>
<td>W, see Ag²⁺</td>
<td>-</td>
<td>3E+3</td>
<td>7E-7</td>
<td>3E-9</td>
<td>-</td>
<td>-</td>
<td></td>
</tr>
<tr>
<td></td>
<td>Y, see Ag²⁺</td>
<td>-</td>
<td>3E+3</td>
<td>7E-7</td>
<td>3E-9</td>
<td>-</td>
<td>-</td>
<td></td>
</tr>
<tr>
<td>47</td>
<td>Silver-106⁷⁺</td>
<td>D, see Ag²⁺</td>
<td>6E+2</td>
<td>7E+2</td>
<td>3E-7</td>
<td>3E-9</td>
<td>3E-5</td>
<td>3E-4</td>
</tr>
<tr>
<td></td>
<td>W, see Ag²⁺</td>
<td>-</td>
<td>8E+2</td>
<td>3E-7</td>
<td>3E-9</td>
<td>-</td>
<td>-</td>
<td></td>
</tr>
<tr>
<td></td>
<td>Y, see Ag²⁺</td>
<td>-</td>
<td>8E+2</td>
<td>3E-7</td>
<td>3E-9</td>
<td>-</td>
<td>-</td>
<td></td>
</tr>
<tr>
<td>47</td>
<td>Silver-107⁷⁺</td>
<td>D, see Ag²⁺</td>
<td>6E+4</td>
<td>2E+5</td>
<td>8E-5</td>
<td>3E-7</td>
<td>9E-4</td>
<td>9E-3</td>
</tr>
<tr>
<td></td>
<td>W, see Ag²⁺</td>
<td>-</td>
<td>3E+5</td>
<td>9E-5</td>
<td>3E-7</td>
<td>-</td>
<td>-</td>
<td></td>
</tr>
<tr>
<td></td>
<td>Y, see Ag²⁺</td>
<td>-</td>
<td>3E+5</td>
<td>9E-5</td>
<td>3E-7</td>
<td>-</td>
<td>-</td>
<td></td>
</tr>
<tr>
<td>47</td>
<td>Silver-108⁷⁺</td>
<td>D, see Ag²⁺</td>
<td>6E+2</td>
<td>5E+2</td>
<td>8E-8</td>
<td>3E-10</td>
<td>9E-6</td>
<td>9E-5</td>
</tr>
<tr>
<td></td>
<td>W, see Ag²⁺</td>
<td>-</td>
<td>6E+2</td>
<td>8E-8</td>
<td>3E-10</td>
<td>-</td>
<td>-</td>
<td></td>
</tr>
<tr>
<td></td>
<td>Y, see Ag²⁺</td>
<td>-</td>
<td>6E+2</td>
<td>8E-8</td>
<td>3E-10</td>
<td>-</td>
<td>-</td>
<td></td>
</tr>
<tr>
<td>47</td>
<td>Silver-111⁷⁺</td>
<td>D, see Ag²⁺</td>
<td>6E+2</td>
<td>2E+3</td>
<td>6E-7</td>
<td>-</td>
<td>-</td>
<td>-</td>
</tr>
<tr>
<td></td>
<td>W, see Ag²⁺</td>
<td>-</td>
<td>3E+3</td>
<td>7E-7</td>
<td>-</td>
<td>2E-5</td>
<td>2E-4</td>
<td></td>
</tr>
<tr>
<td></td>
<td>Y, see Ag²⁺</td>
<td>-</td>
<td>3E+3</td>
<td>7E-7</td>
<td>-</td>
<td>2E-5</td>
<td>2E-4</td>
<td></td>
</tr>
<tr>
<td>47</td>
<td>Silver-112⁷⁺</td>
<td>D, see Ag²⁺</td>
<td>3E+3</td>
<td>8E+3</td>
<td>3E-6</td>
<td>1E-9</td>
<td>4E-5</td>
<td>4E-4</td>
</tr>
<tr>
<td></td>
<td>W, see Ag²⁺</td>
<td>-</td>
<td>3E+4</td>
<td>5E-6</td>
<td>1E-9</td>
<td>-</td>
<td>-</td>
<td></td>
</tr>
<tr>
<td></td>
<td>Y, see Ag²⁺</td>
<td>-</td>
<td>3E+4</td>
<td>5E-6</td>
<td>1E-9</td>
<td>-</td>
<td>-</td>
<td></td>
</tr>
<tr>
<td>Atomic Mass No.</td>
<td>Class</td>
<td>Table 1: Oral Drinking Concentrations</td>
<td>Table 2: Effluent Concentrations</td>
<td>Table 3: Releases to Sowers</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>-----------------</td>
<td>-------</td>
<td>--------------------------------------</td>
<td>-----------------------------------</td>
<td>---------------------------</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td>Col. 1</td>
<td>Col. 2</td>
<td>Col. 3</td>
<td>Col. 1</td>
<td>Col. 2</td>
<td>Monthly Average Concentration (μCi/ml)</td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td>Oral Ingestion</td>
<td>All</td>
<td>Inhalation</td>
<td>Air</td>
<td>Water</td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td>(μCi)</td>
<td>(μCi)</td>
<td>(μCi/ml)</td>
<td>(μCi/ml)</td>
<td>(μCi/ml)</td>
<td></td>
<td></td>
</tr>
<tr>
<td>47</td>
<td>Silver-110</td>
<td>D, see 110Ag</td>
<td>3E-6</td>
<td>4E-5</td>
<td>1E-7</td>
<td>-</td>
<td>-</td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td>(II)</td>
<td>(II)</td>
<td>(II)</td>
<td>(II)</td>
<td>(II)</td>
<td></td>
<td></td>
</tr>
<tr>
<td>48</td>
<td>Cadmium-104</td>
<td>D, all compounds except those given for K and Y</td>
<td>2E-4</td>
<td>3E-5</td>
<td>8E-6</td>
<td>3E-4</td>
<td>3E-3</td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td>W, see 104Ag</td>
<td>-</td>
<td>4E-5</td>
<td>2E-7</td>
<td>-</td>
<td>-</td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td>Y, see 104Ag</td>
<td>-</td>
<td>3E-5</td>
<td>3E-7</td>
<td>-</td>
<td>-</td>
<td></td>
</tr>
<tr>
<td>49</td>
<td>Cadmium-106</td>
<td>D, see 106Cd</td>
<td>2E-6</td>
<td>2E-5</td>
<td>8E-6</td>
<td>3E-4</td>
<td>3E-3</td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td>W, see 106Cd</td>
<td>-</td>
<td>2E-5</td>
<td>2E-7</td>
<td>-</td>
<td>-</td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td>Y, see 106Cd</td>
<td>-</td>
<td>2E-5</td>
<td>2E-7</td>
<td>-</td>
<td>-</td>
<td></td>
</tr>
<tr>
<td>50</td>
<td>Cadmium-109</td>
<td>D, see 109Cd</td>
<td>4E-5</td>
<td>4E-4</td>
<td>7E-6</td>
<td>4E-5</td>
<td>4E-5</td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td>W, see 109Cd</td>
<td>-</td>
<td>3E-5</td>
<td>2E-7</td>
<td>-</td>
<td>-</td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td>Y, see 109Cd</td>
<td>-</td>
<td>3E-5</td>
<td>2E-7</td>
<td>-</td>
<td>-</td>
<td></td>
</tr>
<tr>
<td>51</td>
<td>Cadmium-112</td>
<td>D, see 112Cd</td>
<td>2E-5</td>
<td>3E-5</td>
<td>2E-7</td>
<td>-</td>
<td>-</td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td>W, see 112Cd</td>
<td>-</td>
<td>3E-4</td>
<td>2E-6</td>
<td>-</td>
<td>-</td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td>Y, see 112Cd</td>
<td>-</td>
<td>3E-4</td>
<td>2E-6</td>
<td>-</td>
<td>-</td>
<td></td>
</tr>
<tr>
<td>52</td>
<td>Cadmium-113</td>
<td>D, see 113Cd</td>
<td>9E-5</td>
<td>5E-4</td>
<td>2E-6</td>
<td>4E-6</td>
<td>4E-6</td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td>W, see 113Cd</td>
<td>-</td>
<td>3E-4</td>
<td>2E-6</td>
<td>-</td>
<td>-</td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td>Y, see 113Cd</td>
<td>-</td>
<td>3E-4</td>
<td>2E-6</td>
<td>-</td>
<td>-</td>
<td></td>
</tr>
<tr>
<td>53</td>
<td>Cadmium-115</td>
<td>D, see 115Cd</td>
<td>3E-4</td>
<td>3E-3</td>
<td>8E-7</td>
<td>2E-9</td>
<td>-</td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td>W, see 115Cd</td>
<td>-</td>
<td>2E-7</td>
<td>2E-9</td>
<td>-</td>
<td>-</td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td>Y, see 115Cd</td>
<td>-</td>
<td>2E-7</td>
<td>2E-9</td>
<td>-</td>
<td>-</td>
<td></td>
</tr>
<tr>
<td>54</td>
<td>Cadmium-117</td>
<td>D, see 117Cd</td>
<td>5E-4</td>
<td>5E-4</td>
<td>2E-8</td>
<td>5E-5</td>
<td>6E-6</td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td>W, see 117Cd</td>
<td>-</td>
<td>7E-4</td>
<td>2E-8</td>
<td>-</td>
<td>-</td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td>Y, see 117Cd</td>
<td>-</td>
<td>7E-4</td>
<td>2E-8</td>
<td>-</td>
<td>-</td>
<td></td>
</tr>
</tbody>
</table>

401
<table>
<thead>
<tr>
<th>Atomic No.</th>
<th>Radioisotope</th>
<th>Class</th>
<th>Table 1</th>
<th>Table 2 Effluent Concentrations</th>
<th>Table 2 Releases to Sewers</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td></td>
<td></td>
<td>Occupational Values</td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td>Col. 1</td>
<td>Col. 2</td>
<td>Col. 3</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td>Oral Ingestion</td>
<td>All</td>
<td>UIC</td>
</tr>
<tr>
<td>48</td>
<td>Cadmium-117</td>
<td>D, see 110Cd</td>
<td>5E-3</td>
<td>5E-5</td>
<td>5E-8</td>
</tr>
<tr>
<td></td>
<td></td>
<td>W, see 110Cd</td>
<td></td>
<td></td>
<td>2E-4</td>
</tr>
<tr>
<td></td>
<td></td>
<td>Y, see 110Cd</td>
<td></td>
<td></td>
<td>2E-4</td>
</tr>
<tr>
<td>49</td>
<td>Indium-109</td>
<td>D, all compounds except those given for W</td>
<td>2E-3</td>
<td>2E-5</td>
<td>2E-5</td>
</tr>
<tr>
<td></td>
<td></td>
<td>W, oxides, hydrides, halides, and nitrates</td>
<td></td>
<td></td>
<td>6E-4</td>
</tr>
<tr>
<td>49</td>
<td>Indium-110²</td>
<td>D, see 110m²</td>
<td>2E-4</td>
<td>2E-4</td>
<td>2E-5</td>
</tr>
<tr>
<td></td>
<td></td>
<td>W, see 110m²</td>
<td></td>
<td></td>
<td>2E-4</td>
</tr>
<tr>
<td>49</td>
<td>Indium-110</td>
<td>D, see 110m²</td>
<td>4E-3</td>
<td>4E-5</td>
<td>4E-6</td>
</tr>
<tr>
<td></td>
<td></td>
<td>W, see 110m²</td>
<td></td>
<td></td>
<td>4E-4</td>
</tr>
<tr>
<td>49</td>
<td>Indium-111</td>
<td>D, see 111m²</td>
<td>1E-3</td>
<td>1E-5</td>
<td>1E-6</td>
</tr>
<tr>
<td></td>
<td></td>
<td>W, see 111m²</td>
<td></td>
<td></td>
<td>1E-4</td>
</tr>
<tr>
<td>49</td>
<td>Indium-112²</td>
<td>D, see 112m²</td>
<td>1E-5</td>
<td>1E-5</td>
<td>1E-6</td>
</tr>
<tr>
<td></td>
<td></td>
<td>W, see 112m²</td>
<td></td>
<td></td>
<td>1E-5</td>
</tr>
<tr>
<td>49</td>
<td>Indium-113m²</td>
<td>D, see 113m²</td>
<td>1E-5</td>
<td>1E-5</td>
<td>1E-6</td>
</tr>
<tr>
<td></td>
<td></td>
<td>W, see 113m²</td>
<td></td>
<td></td>
<td>1E-5</td>
</tr>
<tr>
<td>49</td>
<td>Indium-125m</td>
<td>D, see 115m</td>
<td>5E-2</td>
<td>5E-4</td>
<td>5E-6</td>
</tr>
<tr>
<td></td>
<td></td>
<td>W, see 115m</td>
<td></td>
<td></td>
<td>5E-2</td>
</tr>
<tr>
<td>49</td>
<td>Indium-129m</td>
<td>D, see 129m</td>
<td>1E-4</td>
<td>1E-5</td>
<td>1E-6</td>
</tr>
<tr>
<td></td>
<td></td>
<td>W, see 129m</td>
<td></td>
<td></td>
<td>1E-4</td>
</tr>
<tr>
<td>49</td>
<td>Indium-135m</td>
<td>D, see 135m</td>
<td>5E-6</td>
<td>5E-8</td>
<td>5E-10</td>
</tr>
<tr>
<td></td>
<td></td>
<td>W, see 135m</td>
<td></td>
<td></td>
<td>5E-6</td>
</tr>
<tr>
<td>49</td>
<td>Indium-137m²</td>
<td>D, see 137m²</td>
<td>2E-4</td>
<td>2E-5</td>
<td>2E-5</td>
</tr>
<tr>
<td></td>
<td></td>
<td>W, see 137m²</td>
<td></td>
<td></td>
<td>2E-4</td>
</tr>
<tr>
<td>49</td>
<td>Indium-137²</td>
<td>D, see 137²</td>
<td>4E-5</td>
<td>4E-5</td>
<td>4E-5</td>
</tr>
<tr>
<td></td>
<td></td>
<td>W, see 137²</td>
<td></td>
<td></td>
<td>4E-5</td>
</tr>
<tr>
<td>49</td>
<td>Tin-116</td>
<td>D, see 116m</td>
<td>1E-4</td>
<td>1E-4</td>
<td>1E-4</td>
</tr>
<tr>
<td></td>
<td></td>
<td>W, see 116m</td>
<td></td>
<td></td>
<td>1E-4</td>
</tr>
<tr>
<td>50</td>
<td>Tin-118</td>
<td>D, all compounds except those given for W</td>
<td>4E-3</td>
<td>4E-5</td>
<td>4E-6</td>
</tr>
<tr>
<td></td>
<td></td>
<td>W, sulfides, oxides, hydrides, halides, nitrates, and atomic phosphate</td>
<td></td>
<td></td>
<td>1E-4</td>
</tr>
<tr>
<td>50</td>
<td>Tin-118²</td>
<td>D, see 118m²</td>
<td>7E-4</td>
<td>7E-5</td>
<td>7E-5</td>
</tr>
<tr>
<td></td>
<td></td>
<td>W, see 118m²</td>
<td></td>
<td></td>
<td>7E-4</td>
</tr>
</tbody>
</table>

402
<table>
<thead>
<tr>
<th>Atomic No.</th>
<th>Radionuclide</th>
<th>Class</th>
<th>Table 1 Occupational Values</th>
<th>Table 2 Effluent Concentrations</th>
<th>Table 3 Releases to Seawaters</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td></td>
<td></td>
<td>Oral Intake (ALI) (μCi)</td>
<td>Inhalation (μCi)</td>
<td>Air (μCi/ml)</td>
</tr>
<tr>
<td>50</td>
<td>Tm-139</td>
<td>D, see 139m</td>
<td>5 x 10^3</td>
<td>5 x 10^3</td>
<td>5 x 10^3</td>
</tr>
<tr>
<td></td>
<td>W, see 139m</td>
<td></td>
<td>5 x 10^3</td>
<td>5 x 10^3</td>
<td>5 x 10^3</td>
</tr>
<tr>
<td>50</td>
<td>Tm-129</td>
<td>D, see 139m</td>
<td>5 x 10^3</td>
<td>5 x 10^3</td>
<td>5 x 10^3</td>
</tr>
<tr>
<td></td>
<td>W, see 139m</td>
<td></td>
<td>5 x 10^3</td>
<td>5 x 10^3</td>
<td>5 x 10^3</td>
</tr>
<tr>
<td>50</td>
<td>Tm-129m</td>
<td>D, see 139m</td>
<td>5 x 10^3</td>
<td>5 x 10^3</td>
<td>5 x 10^3</td>
</tr>
<tr>
<td></td>
<td>W, see 139m</td>
<td></td>
<td>5 x 10^3</td>
<td>5 x 10^3</td>
<td>5 x 10^3</td>
</tr>
</tbody>
</table>

---

403
<table>
<thead>
<tr>
<th>Atomic No.</th>
<th>Radiouclide</th>
<th>Class</th>
<th>Col. 1 Oral Ingestion Act. (uCi)</th>
<th>Col. 2 Inhalation Act. (uCi)</th>
<th>Col. 3 Air (uCi/m³)</th>
<th>Col. 1 Water (uCi/m³)</th>
<th>Monthly Average Concentration (uCi/m³)</th>
</tr>
</thead>
<tbody>
<tr>
<td>51</td>
<td>Antimony-111m</td>
<td>O, see 111m</td>
<td>62 ± 3</td>
<td>72 ± 4</td>
<td>80 ± 6</td>
<td>32 ± 0</td>
<td>72 ± 0</td>
</tr>
<tr>
<td></td>
<td>W, see 111m</td>
<td>56 ± 3</td>
<td>22 ± 4</td>
<td>90 ± 6</td>
<td>30 ± 0</td>
<td>70 ± 0</td>
<td>30 ± 0</td>
</tr>
<tr>
<td>51</td>
<td>Antimony-120</td>
<td>O, see 120</td>
<td>20 ± 4</td>
<td>30 ± 4</td>
<td>50 ± 5</td>
<td>40 ± 0</td>
<td>50 ± 0</td>
</tr>
<tr>
<td></td>
<td>W, see 120</td>
<td>50 ± 4</td>
<td>10 ± 4</td>
<td>50 ± 5</td>
<td>40 ± 0</td>
<td>50 ± 0</td>
<td>40 ± 0</td>
</tr>
<tr>
<td>51</td>
<td>Antimony-120 (18 hrs)</td>
<td>O, see 120</td>
<td>72 ± 5</td>
<td>52 ± 5</td>
<td>72 ± 4</td>
<td>52 ± 4</td>
<td>72 ± 4</td>
</tr>
<tr>
<td></td>
<td>W, see 120</td>
<td>50 ± 3</td>
<td>30 ± 3</td>
<td>50 ± 2</td>
<td>30 ± 2</td>
<td>50 ± 2</td>
<td>30 ± 2</td>
</tr>
<tr>
<td>51</td>
<td>Antimony-120 (5.76 hrs)</td>
<td>O, see 120</td>
<td>72 ± 2</td>
<td>52 ± 2</td>
<td>72 ± 1</td>
<td>52 ± 1</td>
<td>72 ± 1</td>
</tr>
<tr>
<td></td>
<td>W, see 120</td>
<td>40 ± 3</td>
<td>20 ± 3</td>
<td>40 ± 2</td>
<td>20 ± 2</td>
<td>40 ± 2</td>
<td>20 ± 2</td>
</tr>
<tr>
<td>51</td>
<td>Antimony-122</td>
<td>O, see 122</td>
<td>80 ± 2</td>
<td>60 ± 2</td>
<td>80 ± 1</td>
<td>60 ± 1</td>
<td>80 ± 1</td>
</tr>
<tr>
<td></td>
<td>W, see 122</td>
<td>70 ± 2</td>
<td>50 ± 2</td>
<td>20 ± 1</td>
<td>20 ± 1</td>
<td>20 ± 1</td>
<td>20 ± 1</td>
</tr>
<tr>
<td>51</td>
<td>Antimony-124e</td>
<td>O, see 124e</td>
<td>32 ± 5</td>
<td>60 ± 5</td>
<td>32 ± 4</td>
<td>60 ± 4</td>
<td>32 ± 4</td>
</tr>
<tr>
<td></td>
<td>W, see 124e</td>
<td>20 ± 5</td>
<td>40 ± 5</td>
<td>20 ± 4</td>
<td>40 ± 4</td>
<td>20 ± 4</td>
<td>40 ± 4</td>
</tr>
<tr>
<td>51</td>
<td>Antimony-142</td>
<td>O, see 142</td>
<td>62 ± 2</td>
<td>90 ± 2</td>
<td>62 ± 1</td>
<td>90 ± 1</td>
<td>62 ± 1</td>
</tr>
<tr>
<td></td>
<td>W, see 142</td>
<td>50 ± 2</td>
<td>70 ± 2</td>
<td>50 ± 1</td>
<td>70 ± 1</td>
<td>50 ± 1</td>
<td>70 ± 1</td>
</tr>
<tr>
<td>51</td>
<td>Antimony-142 (5.76 hrs)</td>
<td>O, see 142</td>
<td>20 ± 2</td>
<td>40 ± 2</td>
<td>20 ± 1</td>
<td>40 ± 1</td>
<td>20 ± 1</td>
</tr>
<tr>
<td></td>
<td>W, see 142</td>
<td>10 ± 2</td>
<td>20 ± 2</td>
<td>10 ± 1</td>
<td>20 ± 1</td>
<td>10 ± 1</td>
<td>20 ± 1</td>
</tr>
<tr>
<td>51</td>
<td>Antimony-152</td>
<td>O, see 152</td>
<td>80 ± 2</td>
<td>60 ± 2</td>
<td>80 ± 1</td>
<td>60 ± 1</td>
<td>80 ± 1</td>
</tr>
<tr>
<td></td>
<td>W, see 152</td>
<td>70 ± 2</td>
<td>50 ± 2</td>
<td>20 ± 1</td>
<td>20 ± 1</td>
<td>20 ± 1</td>
<td>20 ± 1</td>
</tr>
</tbody>
</table>

Note: The table continues with similar entries for other radiouclides.
<table>
<thead>
<tr>
<th>Atomic No.</th>
<th>Radionuclide</th>
<th>Class</th>
<th>Table 1 Occupational Values</th>
<th>Table 2 Effluent Concentrations</th>
<th>Table 3 Releases to Sewers</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td></td>
<td></td>
<td>Col. 1 Oral Inhalation</td>
<td>Col. 2 Inhalation</td>
<td>Col. 3 Air Water Monthly Average Concentration</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td>ingestion (cCi)</td>
<td>dose (cCi)</td>
<td>concentration (cCi/m³)</td>
</tr>
<tr>
<td>52</td>
<td>Tellurium-210</td>
<td>D, all compounds except those given for W</td>
<td>6E+3</td>
<td>2E+4</td>
<td>9E-6</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td>W, oxides, hydrazides, and nitrates</td>
<td>3E+4</td>
<td>1E-5</td>
</tr>
<tr>
<td>52</td>
<td>Tellurium-210m</td>
<td>D, see ¹⁰⁵⁵Eg</td>
<td>5E+2</td>
<td>2E+2</td>
<td>8E-2</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td>Bone surf Bone surf (5E+2)</td>
<td>(4E+2)</td>
<td>2E+2</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td>W, see ¹⁰⁵⁵Eg</td>
<td>4E+2</td>
<td>2E+2</td>
</tr>
<tr>
<td>52</td>
<td>Tellurium-211</td>
<td>D, see ¹⁰⁵⁵Eg</td>
<td>3E+3</td>
<td>4E+3</td>
<td>9E-6</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td>W, see ¹⁰⁵⁵Eg</td>
<td>4E+3</td>
<td>2E+3</td>
</tr>
<tr>
<td>52</td>
<td>Tellurium-212m</td>
<td>D, see ¹⁰⁵⁵Eg</td>
<td>6E+2</td>
<td>2E+2</td>
<td>5E-6</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td>Bone surf Bone surf (5E+2)</td>
<td>(3E+2)</td>
<td>3E+2</td>
</tr>
<tr>
<td>52</td>
<td>Tellurium-212</td>
<td>D, see ¹⁰⁵⁵Eg</td>
<td>5E+2</td>
<td>3E+2</td>
<td>8E-2</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td>Bone surf Bone surf (5E+2)</td>
<td>(3E+2)</td>
<td>3E+2</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td>W, see ¹⁰⁵⁵Eg</td>
<td>4E+2</td>
<td>2E+2</td>
</tr>
<tr>
<td>52</td>
<td>Tellurium-213</td>
<td>D, see ¹⁰⁵⁵Eg</td>
<td>3E+3</td>
<td>4E+3</td>
<td>9E-6</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td>Bone surf Bone surf (5E+3)</td>
<td>(2E+3)</td>
<td>2E+2</td>
</tr>
<tr>
<td>52</td>
<td>Tellurium-214m</td>
<td>D, see ¹⁰⁵⁵Eg</td>
<td>6E+2</td>
<td>3E+2</td>
<td>1E-7</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td>Bone surf Bone surf (5E+2)</td>
<td>(4E+2)</td>
<td>2E+2</td>
</tr>
<tr>
<td>52</td>
<td>Tellurium-215</td>
<td>D, see ¹⁰⁵⁵Eg</td>
<td>7E+3</td>
<td>2E+4</td>
<td>9E-6</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td>W, see ¹⁰⁵⁵Eg</td>
<td>3E+4</td>
<td>2E+4</td>
</tr>
<tr>
<td>52</td>
<td>Tellurium-216m</td>
<td>D, see ¹⁰⁵⁵Eg</td>
<td>5E+2</td>
<td>6E+2</td>
<td>3E-7</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td>W, see ¹⁰⁵⁵Eg</td>
<td>3E+2</td>
<td>1E-7</td>
</tr>
<tr>
<td>52</td>
<td>Tellurium-217</td>
<td>D, see ¹⁰⁵⁵Eg</td>
<td>3E+4</td>
<td>6E+4</td>
<td>3E-5</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td>W, see ¹⁰⁵⁵Eg</td>
<td>7E+4</td>
<td>3E-5</td>
</tr>
<tr>
<td>52</td>
<td>Tellurium-218m</td>
<td>D, see ¹⁰⁵⁵Eg</td>
<td>3E+2</td>
<td>4E+2</td>
<td>2E-7</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td>W, see ¹⁰⁵⁵Eg</td>
<td>5E+2</td>
<td>2E-7</td>
</tr>
<tr>
<td>52</td>
<td>Tellurium-219</td>
<td>D, see ¹⁰⁵⁵Eg</td>
<td>3E+3</td>
<td>5E+3</td>
<td>2E-6</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td>W, see ¹⁰⁵⁵Eg</td>
<td>3E+3</td>
<td>2E-6</td>
</tr>
</tbody>
</table>

405
<table>
<thead>
<tr>
<th>Atomic No.</th>
<th>Radionuclide</th>
<th>Class</th>
<th>Table 1</th>
<th>Occupational Values</th>
<th>Table 2</th>
<th>Effluent Concentrations</th>
<th>Table 3</th>
<th>Releases to Sewers</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td></td>
<td></td>
<td>Col. 1</td>
<td>Ingestion (µCi)</td>
<td>Col. 2</td>
<td>(µCi/m³)</td>
<td>Col. 1</td>
<td>(µCi/m³)</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td>(µCi)</td>
<td>Thyroid (µCi/m³)</td>
<td>(µCi)</td>
<td></td>
<td>(µCi)</td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>52</td>
<td>Tellurium-132</td>
<td>D, see</td>
<td>2E+2</td>
<td>2E+2</td>
<td>9E-8</td>
<td>-</td>
<td>-</td>
<td>-</td>
</tr>
<tr>
<td></td>
<td></td>
<td>132</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td>W, see</td>
<td>2E+2</td>
<td>2E+2</td>
<td>9E-8</td>
<td>-</td>
<td>-</td>
<td>-</td>
</tr>
<tr>
<td></td>
<td></td>
<td>132</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>52</td>
<td>Tellurium-133</td>
<td>D, see</td>
<td>3E+3</td>
<td>6E-3</td>
<td>7E-5</td>
<td>-</td>
<td>-</td>
<td>-</td>
</tr>
<tr>
<td></td>
<td></td>
<td>133</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td>W, see</td>
<td>3E+3</td>
<td>6E-3</td>
<td>7E-5</td>
<td>-</td>
<td>-</td>
<td>-</td>
</tr>
<tr>
<td></td>
<td></td>
<td>133</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>52</td>
<td>Tellurium-134</td>
<td>D, see</td>
<td>3E+4</td>
<td>8E-4</td>
<td>9E-6</td>
<td>-</td>
<td>-</td>
<td>-</td>
</tr>
<tr>
<td></td>
<td></td>
<td>134</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td>W, see</td>
<td>3E+4</td>
<td>8E-4</td>
<td>9E-6</td>
<td>-</td>
<td>-</td>
<td>-</td>
</tr>
<tr>
<td></td>
<td></td>
<td>134</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>53</td>
<td>Iodine-120</td>
<td>D, all</td>
<td>3E+4</td>
<td>3E+4</td>
<td>9E-6</td>
<td>3E-8</td>
<td>4E-3</td>
<td>-</td>
</tr>
<tr>
<td></td>
<td>compounds</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>53</td>
<td>Iodine-120</td>
<td>D, all</td>
<td>3E+4</td>
<td>3E+4</td>
<td>9E-6</td>
<td>3E-8</td>
<td>4E-3</td>
<td>-</td>
</tr>
<tr>
<td></td>
<td>compounds</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>53</td>
<td>Iodine-121</td>
<td>D, all</td>
<td>3E+4</td>
<td>3E+4</td>
<td>9E-6</td>
<td>3E-8</td>
<td>4E-3</td>
<td>-</td>
</tr>
<tr>
<td></td>
<td>compounds</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>53</td>
<td>Iodine-122</td>
<td>D, all</td>
<td>3E+4</td>
<td>3E+4</td>
<td>9E-6</td>
<td>3E-8</td>
<td>4E-3</td>
<td>-</td>
</tr>
<tr>
<td></td>
<td>compounds</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>53</td>
<td>Iodine-124</td>
<td>D, all</td>
<td>3E+4</td>
<td>3E+4</td>
<td>9E-6</td>
<td>3E-8</td>
<td>4E-3</td>
<td>-</td>
</tr>
<tr>
<td></td>
<td>compounds</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>53</td>
<td>Iodine-125</td>
<td>D, all</td>
<td>3E+4</td>
<td>3E+4</td>
<td>9E-6</td>
<td>3E-8</td>
<td>4E-3</td>
<td>-</td>
</tr>
<tr>
<td></td>
<td>compounds</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>53</td>
<td>Iodine-126</td>
<td>D, all</td>
<td>3E+4</td>
<td>3E+4</td>
<td>9E-6</td>
<td>3E-8</td>
<td>4E-3</td>
<td>-</td>
</tr>
<tr>
<td></td>
<td>compounds</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>53</td>
<td>Iodine-128</td>
<td>D, all</td>
<td>3E+4</td>
<td>3E+4</td>
<td>9E-6</td>
<td>3E-8</td>
<td>4E-3</td>
<td>-</td>
</tr>
<tr>
<td></td>
<td>compounds</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>53</td>
<td>Iodine-129</td>
<td>D, all</td>
<td>3E+4</td>
<td>3E+4</td>
<td>9E-6</td>
<td>3E-8</td>
<td>4E-3</td>
<td>-</td>
</tr>
<tr>
<td>Atomic No.</td>
<td>Radioisotope</td>
<td>Class</td>
<td>Col. 1 Oral Ingestion (µCi)</td>
<td>Col. 2 Inhalation (µCi)</td>
<td>Col. 3 Inhalation (µCi)</td>
<td>Col. 1 Air (µCi/mL)</td>
<td>Col. 2 Air (µCi/mL)</td>
<td>Col. 1 Water (µCi/mL)</td>
</tr>
<tr>
<td>-----------</td>
<td>--------------</td>
<td>-------</td>
<td>-----------------------------</td>
<td>------------------------</td>
<td>------------------------</td>
<td>-------------------</td>
<td>-------------------</td>
<td>-------------------</td>
</tr>
<tr>
<td>53</td>
<td>Iodine-130</td>
<td>D, all compounds</td>
<td>4E+2 Thyroid (3E+2)</td>
<td>7E+2 Thyroid (2E+2)</td>
<td>3E+7</td>
<td>-</td>
<td>-</td>
<td>-</td>
</tr>
<tr>
<td>53</td>
<td>Iodine-131</td>
<td>D, all compounds</td>
<td>3E+1 Thyroid (9E+1)</td>
<td>5E+1 Thyroid (2E+2)</td>
<td>-</td>
<td>3E-9</td>
<td>2E-5</td>
<td>2E-4</td>
</tr>
<tr>
<td>53</td>
<td>Iodine-132</td>
<td>D, all compounds</td>
<td>4E+3 Thyroid (1E+4)</td>
<td>8E+3 Thyroid (2E+4)</td>
<td>-</td>
<td>3E-6</td>
<td>1E-4</td>
<td>1E-3</td>
</tr>
<tr>
<td>53</td>
<td>Iodine-133</td>
<td>D, all compounds</td>
<td>3E+2 Thyroid (9E+2)</td>
<td>6E+2 Thyroid (1E+3)</td>
<td>-</td>
<td>2E-6</td>
<td>1E-4</td>
<td>1E-3</td>
</tr>
<tr>
<td>53</td>
<td>Iodine-134</td>
<td>D, all compounds</td>
<td>2E+4 Thyroid (3E+4)</td>
<td>5E+4 Thyroid (9E+4)</td>
<td>-</td>
<td>3E-7</td>
<td>7E-5</td>
<td>7E-5</td>
</tr>
<tr>
<td>53</td>
<td>Iodine-135</td>
<td>D, all compounds</td>
<td>8E+3 Thyroid (3E+3)</td>
<td>2E+3 Thyroid (3E+3)</td>
<td>-</td>
<td>4E-9</td>
<td>3E-5</td>
<td>5E-4</td>
</tr>
<tr>
<td>54</td>
<td>Xenon-125</td>
<td>Submerged</td>
<td>-</td>
<td>-</td>
<td>1E-5</td>
<td>4E-8</td>
<td>-</td>
<td>-</td>
</tr>
<tr>
<td>54</td>
<td>Xenon-125</td>
<td>Submerged</td>
<td>-</td>
<td>-</td>
<td>2E-6</td>
<td>1E-8</td>
<td>-</td>
<td>-</td>
</tr>
<tr>
<td>54</td>
<td>Xenon-126</td>
<td>Submerged</td>
<td>-</td>
<td>-</td>
<td>7E-5</td>
<td>7E-7</td>
<td>-</td>
<td>-</td>
</tr>
<tr>
<td>54</td>
<td>Xenon-127</td>
<td>Submerged</td>
<td>-</td>
<td>-</td>
<td>6E-6</td>
<td>3E-8</td>
<td>-</td>
<td>-</td>
</tr>
<tr>
<td>54</td>
<td>Xenon-128</td>
<td>Submerged</td>
<td>-</td>
<td>-</td>
<td>2E-5</td>
<td>6E-8</td>
<td>-</td>
<td>-</td>
</tr>
<tr>
<td>54</td>
<td>Xenon-129</td>
<td>Submerged</td>
<td>-</td>
<td>-</td>
<td>3E-5</td>
<td>6E-8</td>
<td>-</td>
<td>-</td>
</tr>
<tr>
<td>54</td>
<td>Xenon-130</td>
<td>Submerged</td>
<td>-</td>
<td>-</td>
<td>2E-4</td>
<td>9E-7</td>
<td>-</td>
<td>-</td>
</tr>
<tr>
<td>54</td>
<td>Xenon-131</td>
<td>Submerged</td>
<td>-</td>
<td>-</td>
<td>4E-4</td>
<td>2E-6</td>
<td>-</td>
<td>-</td>
</tr>
<tr>
<td>54</td>
<td>Xenon-132</td>
<td>Submerged</td>
<td>-</td>
<td>-</td>
<td>1E-4</td>
<td>4E-7</td>
<td>-</td>
<td>-</td>
</tr>
<tr>
<td>54</td>
<td>Xenon-133</td>
<td>Submerged</td>
<td>-</td>
<td>-</td>
<td>1E-4</td>
<td>5E-7</td>
<td>-</td>
<td>-</td>
</tr>
<tr>
<td>54</td>
<td>Xenon-134</td>
<td>Submerged</td>
<td>-</td>
<td>-</td>
<td>9E-6</td>
<td>4E-8</td>
<td>-</td>
<td>-</td>
</tr>
<tr>
<td>54</td>
<td>Xenon-135</td>
<td>Submerged</td>
<td>-</td>
<td>-</td>
<td>1E-5</td>
<td>7E-8</td>
<td>-</td>
<td>-</td>
</tr>
<tr>
<td>54</td>
<td>Xenon-136</td>
<td>Submerged</td>
<td>-</td>
<td>-</td>
<td>4E-6</td>
<td>2E-8</td>
<td>-</td>
<td>-</td>
</tr>
<tr>
<td>55</td>
<td>Cesium-132</td>
<td>D, all compounds</td>
<td>5E+4 St. wall (4E+4)</td>
<td>1E+5</td>
<td>6E-5</td>
<td>2E-7</td>
<td>-</td>
<td>-</td>
</tr>
<tr>
<td>55</td>
<td>Cesium-137</td>
<td>D, all compounds</td>
<td>6E+4</td>
<td>9E+4</td>
<td>4E-5</td>
<td>1E-7</td>
<td>9E-4</td>
<td>9E-3</td>
</tr>
<tr>
<td>Atomic Radius</td>
<td>Radionuclide</td>
<td>Class</td>
<td>Table 1 Occupational Values</td>
<td>Table 2 Effluent Concentrations</td>
<td>Table 3 Releases to Sewers</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>---------------</td>
<td>-------------</td>
<td>-------</td>
<td>----------------------------</td>
<td>--------------------------------</td>
<td>---------------------------</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Attractive No.</td>
<td></td>
<td></td>
<td>Col. 1 Oral Ingestion (uCi/ml)</td>
<td>Col. 2 Inhalation (uCi/ml)</td>
<td>Col. 3 Air (uCi/ml)</td>
<td>Col. 4 Water (uCi/ml)</td>
<td>Monthly Average Concentration (uCi/ml)</td>
<td></td>
</tr>
<tr>
<td>55</td>
<td>Cesium-137</td>
<td>D, all compounds</td>
<td>2E+4</td>
<td>1E+4</td>
<td>1E-5</td>
<td>5E-8</td>
<td>3E-4</td>
<td>3E-3</td>
</tr>
<tr>
<td>55</td>
<td>Cesium-137</td>
<td>D, all compounds</td>
<td>6E+4</td>
<td>2E+5</td>
<td>8E-5</td>
<td>3E-7</td>
<td>-</td>
<td>-</td>
</tr>
<tr>
<td>55</td>
<td>Cesium-137</td>
<td>D, all compounds</td>
<td>-</td>
<td>-</td>
<td>-</td>
<td>1E-3</td>
<td>1E-2</td>
<td></td>
</tr>
<tr>
<td>55</td>
<td>Cesium-137</td>
<td>D, all compounds</td>
<td>2E+4</td>
<td>3E+4</td>
<td>1E-5</td>
<td>4E-8</td>
<td>3E-4</td>
<td>3E-3</td>
</tr>
<tr>
<td>55</td>
<td>Cesium-137</td>
<td>D, all compounds</td>
<td>3E+3</td>
<td>4E+3</td>
<td>2E-6</td>
<td>6E-9</td>
<td>4E-5</td>
<td>4E-4</td>
</tr>
<tr>
<td>55</td>
<td>Cesium-137</td>
<td>D, all compounds</td>
<td>1E+4</td>
<td>2E+4</td>
<td>6E-5</td>
<td>2E-7</td>
<td>-</td>
<td>-</td>
</tr>
<tr>
<td>55</td>
<td>Cesium-137</td>
<td>D, all compounds</td>
<td>-</td>
<td>-</td>
<td>-</td>
<td>2E-5</td>
<td>2E-2</td>
<td></td>
</tr>
<tr>
<td>55</td>
<td>Cesium-137</td>
<td>D, all compounds</td>
<td>7E+1</td>
<td>1E+2</td>
<td>4E-8</td>
<td>2E-10</td>
<td>9E-7</td>
<td>9E-6</td>
</tr>
<tr>
<td>55</td>
<td>Cesium-137</td>
<td>D, all compounds</td>
<td>1E+4</td>
<td>2E+5</td>
<td>8E-5</td>
<td>3E-7</td>
<td>1E-3</td>
<td>1E-2</td>
</tr>
<tr>
<td>55</td>
<td>Cesium-137</td>
<td>D, all compounds</td>
<td>7E+2</td>
<td>1E+3</td>
<td>5E-7</td>
<td>2E-9</td>
<td>1E-5</td>
<td>1E-4</td>
</tr>
<tr>
<td>55</td>
<td>Cesium-137</td>
<td>D, all compounds</td>
<td>4E+2</td>
<td>7E+2</td>
<td>3E-7</td>
<td>9E-10</td>
<td>6E-6</td>
<td>6E-5</td>
</tr>
<tr>
<td>55</td>
<td>Cesium-137</td>
<td>D, all compounds</td>
<td>1E+2</td>
<td>2E+2</td>
<td>6E-8</td>
<td>2E-10</td>
<td>1E-6</td>
<td>1E-5</td>
</tr>
<tr>
<td>55</td>
<td>Cesium-137</td>
<td>D, all compounds</td>
<td>2E+4</td>
<td>4E+4</td>
<td>2E-5</td>
<td>8E-8</td>
<td>-</td>
<td>-</td>
</tr>
<tr>
<td>55</td>
<td>Cesium-137</td>
<td>D, all compounds</td>
<td>-</td>
<td>-</td>
<td>-</td>
<td>4E-4</td>
<td>4E-3</td>
<td></td>
</tr>
<tr>
<td>56</td>
<td>Barium-139</td>
<td>D, all compounds</td>
<td>6E+3</td>
<td>7E+4</td>
<td>6E-6</td>
<td>2E-8</td>
<td>8E-5</td>
<td>8E-4</td>
</tr>
<tr>
<td>56</td>
<td>Barium-139</td>
<td>D, all compounds</td>
<td>5E+2</td>
<td>7E+3</td>
<td>7E-7</td>
<td>2E-9</td>
<td>7E-5</td>
<td></td>
</tr>
<tr>
<td>56</td>
<td>Barium-139</td>
<td>D, all compounds</td>
<td>4E+5</td>
<td>5E+6</td>
<td>6E-4</td>
<td>2E-6</td>
<td>-</td>
<td>-</td>
</tr>
<tr>
<td>56</td>
<td>Barium-139</td>
<td>D, all compounds</td>
<td>-</td>
<td>-</td>
<td>-</td>
<td>7E-3</td>
<td>7E-2</td>
<td></td>
</tr>
<tr>
<td>56</td>
<td>Barium-139</td>
<td>D, all compounds</td>
<td>3E+3</td>
<td>8E+3</td>
<td>3E-6</td>
<td>1E-8</td>
<td>4E-5</td>
<td>4E-4</td>
</tr>
<tr>
<td>56</td>
<td>Barium-139</td>
<td>D, all compounds</td>
<td>2E+3</td>
<td>9E+3</td>
<td>4E-6</td>
<td>1E-8</td>
<td>-</td>
<td>-</td>
</tr>
<tr>
<td>56</td>
<td>Barium-139</td>
<td>D, all compounds</td>
<td>-</td>
<td>-</td>
<td>-</td>
<td>4E-5</td>
<td>4E-4</td>
<td></td>
</tr>
<tr>
<td>56</td>
<td>Barium-139</td>
<td>D, all compounds</td>
<td>2E+3</td>
<td>7E+2</td>
<td>3E-7</td>
<td>9E-10</td>
<td>2E-5</td>
<td>2E-4</td>
</tr>
<tr>
<td>56</td>
<td>Barium-139</td>
<td>D, all compounds</td>
<td>3E+3</td>
<td>7E+4</td>
<td>5E-6</td>
<td>2E-8</td>
<td>4E-5</td>
<td>4E-4</td>
</tr>
<tr>
<td>56</td>
<td>Barium-139</td>
<td>D, all compounds</td>
<td>1E+4</td>
<td>3E+4</td>
<td>1E-5</td>
<td>4E-8</td>
<td>2E-4</td>
<td>2E-3</td>
</tr>
<tr>
<td>56</td>
<td>Barium-139</td>
<td>D, all compounds</td>
<td>5E+2</td>
<td>1E+3</td>
<td>6E-7</td>
<td>2E-9</td>
<td>-</td>
<td>-</td>
</tr>
<tr>
<td>56</td>
<td>Barium-140</td>
<td>D, all compounds</td>
<td>2E+4</td>
<td>3E+4</td>
<td>3E-5</td>
<td>1E-7</td>
<td>3E-4</td>
<td>3E-3</td>
</tr>
<tr>
<td>56</td>
<td>Barium-140</td>
<td>D, all compounds</td>
<td>-</td>
<td>-</td>
<td>-</td>
<td>8E-6</td>
<td>8E-5</td>
<td></td>
</tr>
<tr>
<td>57</td>
<td>Lanthane-132</td>
<td>D, all compounds</td>
<td>5E+4</td>
<td>1E+5</td>
<td>5E-5</td>
<td>2E-7</td>
<td>6E-4</td>
<td>6E-3</td>
</tr>
<tr>
<td>Atomic Radiouclide No.</td>
<td>Class</td>
<td>Col. 1 Oral Inhalation (µCi)</td>
<td>Col. 2 Inhalation (µCi)</td>
<td>Col. 3 Air/water (µCi/µl/m)</td>
<td>Col. 4 Oral Inhalation (µCi)</td>
<td>Col. 5 Inhalation (µCi)</td>
<td>Col. 6 Air/water (µCi/µl/m)</td>
<td>Monthly Average Concentration (µCi/µl/m)</td>
</tr>
<tr>
<td>------------------------</td>
<td>------</td>
<td>-----------------------------</td>
<td>------------------------</td>
<td>----------------------------</td>
<td>----------------------------</td>
<td>------------------------</td>
<td>----------------------------</td>
<td>----------------------------------</td>
</tr>
<tr>
<td>57 Lanthanum-132</td>
<td>D</td>
<td>31La</td>
<td>10±3 10±4</td>
<td>4E-6 4E-5</td>
<td>1E-8 4E-5</td>
<td>4E-5</td>
<td>4E-4</td>
<td>1E-10</td>
</tr>
<tr>
<td>57 Lanthanum-135</td>
<td>D</td>
<td>31La</td>
<td>4E-4 10±5</td>
<td>4E-3 4E-3</td>
<td>3E-7 5E-4</td>
<td>5E-3</td>
<td>2E-3</td>
<td>1E-10</td>
</tr>
<tr>
<td>57 Lanthanum-137</td>
<td>D</td>
<td>32La</td>
<td>4E-4 6E+1</td>
<td>- 2E-4</td>
<td>1E-10</td>
<td>-</td>
<td>-</td>
<td>-</td>
</tr>
<tr>
<td>57 Lanthanum-138</td>
<td>D</td>
<td>32La</td>
<td>1E-2 1E-3</td>
<td>3E-7 3E-7</td>
<td>1E-4 3E-5</td>
<td>1E-4</td>
<td>1E-4</td>
<td>1E-4</td>
</tr>
<tr>
<td>57 Lanthanum-140</td>
<td>D</td>
<td>32La</td>
<td>1E-2 1E-3</td>
<td>1E-6 1E-6</td>
<td>1E-9 9E-6</td>
<td>9E-6</td>
<td>9E-6</td>
<td>1E-4</td>
</tr>
<tr>
<td>57 Lanthanum-141</td>
<td>D</td>
<td>32La</td>
<td>4E-3 3E-3</td>
<td>3E-7 3E-7</td>
<td>1E-8 5E-5</td>
<td>5E-4</td>
<td>5E-4</td>
<td>1E-3</td>
</tr>
<tr>
<td>57 Lanthanum-142</td>
<td>D</td>
<td>32La</td>
<td>4E-3 1E-3</td>
<td>3E-6 5E-6</td>
<td>3E-6 3E-6</td>
<td>3E-4</td>
<td>3E-4</td>
<td>3E-4</td>
</tr>
<tr>
<td>57 Lanthanum-143</td>
<td>D</td>
<td>32La</td>
<td>1E-5 1E-5</td>
<td>3E-7 3E-7</td>
<td>1E-4 3E-5</td>
<td>1E-4</td>
<td>3E-4</td>
<td>3E-4</td>
</tr>
<tr>
<td>58 Cerium-134</td>
<td>W</td>
<td>34Ce</td>
<td>5E-6 7E-7</td>
<td>1E-9 1E-9</td>
<td>5E-6 7E-7</td>
<td>1E-9</td>
<td>1E-9</td>
<td>1E-9</td>
</tr>
<tr>
<td>58 Cerium-135</td>
<td>W</td>
<td>34Ce</td>
<td>3E-3 3E-4</td>
<td>1E-8 1E-8</td>
<td>3E-5 3E-5</td>
<td>3E-4</td>
<td>3E-4</td>
<td>3E-4</td>
</tr>
<tr>
<td>58 Cerium-137</td>
<td>Y</td>
<td>34Ce</td>
<td>7E-6 7E-7</td>
<td>5E-9 5E-9</td>
<td>1E-6 1E-6</td>
<td>1E-6</td>
<td>1E-6</td>
<td>1E-6</td>
</tr>
<tr>
<td>58 Cerium-138</td>
<td>Y</td>
<td>34Ce</td>
<td>2E-4 2E-5</td>
<td>3E-7 3E-7</td>
<td>2E-6 2E-6</td>
<td>2E-4</td>
<td>2E-4</td>
<td>2E-4</td>
</tr>
<tr>
<td>58 Cerium-139</td>
<td>Y</td>
<td>34Ce</td>
<td>6E-6 6E-6</td>
<td>4E-9 4E-9</td>
<td>2E-7 2E-7</td>
<td>4E-9</td>
<td>4E-9</td>
<td>4E-9</td>
</tr>
<tr>
<td>58 Cerium-141</td>
<td>Y</td>
<td>34Ce</td>
<td>1E-6 1E-6</td>
<td>2E-7 2E-7</td>
<td>1E-6 1E-6</td>
<td>2E-4</td>
<td>2E-4</td>
<td>2E-4</td>
</tr>
<tr>
<td>58 Cerium-143</td>
<td>Y</td>
<td>34Ce</td>
<td>4E-6 4E-6</td>
<td>4E-9 4E-9</td>
<td>4E-6 4E-6</td>
<td>2E-4</td>
<td>2E-4</td>
<td>2E-4</td>
</tr>
<tr>
<td>Atomic Number</td>
<td>Radionuclide</td>
<td>Class</td>
<td>Inhalation</td>
<td>Oral Ingestion</td>
<td>Concentration</td>
<td>Released to</td>
<td>Monthly Average</td>
<td></td>
</tr>
<tr>
<td>---------------</td>
<td>--------------</td>
<td>-------</td>
<td>------------</td>
<td>----------------</td>
<td>---------------</td>
<td>-------------</td>
<td>---------------</td>
<td></td>
</tr>
<tr>
<td>58</td>
<td>Cerium-144</td>
<td>W, see $^{134}$Ce</td>
<td>Z × 2</td>
<td>Z × 1</td>
<td>Z × 2</td>
<td>4E-11</td>
<td>-</td>
<td></td>
</tr>
<tr>
<td>59</td>
<td>Praseodymium-141</td>
<td>W, all compounds except those given for Pr</td>
<td>ZE × 4</td>
<td>ZE × 4</td>
<td>ZE × 2</td>
<td>3E-7</td>
<td>-</td>
<td></td>
</tr>
<tr>
<td>59</td>
<td>Praseodymium-139</td>
<td>W, see $^{139}$Pr</td>
<td>ZE × 4</td>
<td>ZE × 4</td>
<td>ZE × 2</td>
<td>3E-7</td>
<td>-</td>
<td></td>
</tr>
<tr>
<td>59</td>
<td>Praseodymium-137</td>
<td>W, see $^{137}$Pr</td>
<td>ZE × 2</td>
<td>ZE × 2</td>
<td>ZE × 1</td>
<td>3E-7</td>
<td>-</td>
<td></td>
</tr>
<tr>
<td>59</td>
<td>Praseodymium-136</td>
<td>W, see $^{136}$Pr</td>
<td>ZE × 1</td>
<td>ZE × 1</td>
<td>ZE × 1</td>
<td>3E-7</td>
<td>-</td>
<td></td>
</tr>
<tr>
<td>59</td>
<td>Praseodymium-135</td>
<td>W, see $^{135}$Pr</td>
<td>ZE × 1</td>
<td>ZE × 1</td>
<td>ZE × 1</td>
<td>3E-7</td>
<td>-</td>
<td></td>
</tr>
</tbody>
</table>

---

**410**
<table>
<thead>
<tr>
<th>Atomic Radioisotope</th>
<th>Class</th>
<th>Table 1 Occupational Values</th>
<th>Table 2 Effluent Concentrations</th>
<th>Table 3 Releases to Sewers</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td></td>
<td>Oral</td>
<td>Inhalation</td>
<td>Air</td>
</tr>
<tr>
<td></td>
<td></td>
<td>Ingestion</td>
<td>(μCi)</td>
<td>DRC</td>
</tr>
<tr>
<td>60</td>
<td>Neodymium-137²</td>
<td>W, see ¹³⁷Nd</td>
<td>9E+4</td>
<td>3E+5</td>
</tr>
<tr>
<td>60</td>
<td>Neodymium-141</td>
<td>W, see ¹⁴¹Nd</td>
<td>-</td>
<td>3E+5</td>
</tr>
<tr>
<td>60</td>
<td>Neodymium-147</td>
<td>W, see ¹⁴⁷Nd</td>
<td>2E+5</td>
<td>7E+4</td>
</tr>
<tr>
<td></td>
<td>Y, see ¹⁴⁷Nd</td>
<td>-</td>
<td>6E+5</td>
<td>3E-4</td>
</tr>
<tr>
<td>60</td>
<td>Neodymium-149²</td>
<td>W, see ¹⁴⁹Nd</td>
<td>1E+4</td>
<td>3E+4</td>
</tr>
<tr>
<td></td>
<td>Y, see ¹⁴⁹Nd</td>
<td>-</td>
<td>2E+4</td>
<td>1E-5</td>
</tr>
<tr>
<td>60</td>
<td>Neodymium-151²</td>
<td>W, see ¹⁵¹Nd</td>
<td>7E+4</td>
<td>2E+5</td>
</tr>
<tr>
<td></td>
<td>Y, see ¹⁵¹Nd</td>
<td>-</td>
<td>2E+5</td>
<td>8E-5</td>
</tr>
<tr>
<td>61</td>
<td>Promethium-147²</td>
<td>W, all compounds except those given for Y, see ¹⁴⁷Nd</td>
<td>5E+4</td>
<td>2E+5</td>
</tr>
<tr>
<td></td>
<td>Y, oxides, hydroxides, carbonates, and fluorides</td>
<td>-</td>
<td>-</td>
<td>-</td>
</tr>
<tr>
<td>61</td>
<td>Promethium-143</td>
<td>W, see ¹⁴³Nd</td>
<td>5E+3</td>
<td>6E+2</td>
</tr>
<tr>
<td></td>
<td>Y, see ¹⁴³Nd</td>
<td>-</td>
<td>7E+2</td>
<td>3E-7</td>
</tr>
<tr>
<td>61</td>
<td>Promethium-144</td>
<td>W, see ¹⁴⁴Nd</td>
<td>1E+3</td>
<td>1E+2</td>
</tr>
<tr>
<td></td>
<td>Y, see ¹⁴⁴Nd</td>
<td>-</td>
<td>1E+2</td>
<td>5E-8</td>
</tr>
<tr>
<td>61</td>
<td>Promethium-145</td>
<td>W, see ¹⁴⁵Nd</td>
<td>1E+4</td>
<td>2E+2</td>
</tr>
<tr>
<td></td>
<td>Y, see ¹⁴⁵Nd</td>
<td>-</td>
<td>2E+2</td>
<td>8E-8</td>
</tr>
<tr>
<td>61</td>
<td>Promethium-146</td>
<td>W, see ¹⁴⁶Nd</td>
<td>2E+3</td>
<td>5E+2</td>
</tr>
<tr>
<td></td>
<td>Y, see ¹⁴⁶Nd</td>
<td>-</td>
<td>5E+2</td>
<td>7E-8</td>
</tr>
<tr>
<td>61</td>
<td>Promethium-147</td>
<td>W, see ¹⁴⁷Nd</td>
<td>4E+3</td>
<td>3E+2</td>
</tr>
<tr>
<td></td>
<td>Y, see ¹⁴⁷Nd</td>
<td>-</td>
<td>3E+2</td>
<td>6E-8</td>
</tr>
<tr>
<td>61</td>
<td>Promethium-148a</td>
<td>W, see ¹⁴⁸aNd</td>
<td>7E+2</td>
<td>3E+2</td>
</tr>
<tr>
<td></td>
<td>Y, see ¹⁴⁸aNd</td>
<td>-</td>
<td>3E+2</td>
<td>1E-7</td>
</tr>
<tr>
<td>61</td>
<td>Promethium-148b</td>
<td>W, see ¹⁴⁸bNd</td>
<td>4E+2</td>
<td>5E+2</td>
</tr>
<tr>
<td></td>
<td>Y, see ¹⁴⁸bNd</td>
<td>-</td>
<td>5E+2</td>
<td>2E-7</td>
</tr>
<tr>
<td>61</td>
<td>Promethium-149</td>
<td>W, see ¹⁴⁹Nd</td>
<td>1E+3</td>
<td>2E+3</td>
</tr>
<tr>
<td></td>
<td>Y, see ¹⁴⁹Nd</td>
<td>-</td>
<td>2E+3</td>
<td>8E-7</td>
</tr>
<tr>
<td>61</td>
<td>Promethium-150</td>
<td>W, see ¹⁵⁰Nd</td>
<td>2E+3</td>
<td>4E+3</td>
</tr>
<tr>
<td></td>
<td>Y, see ¹⁵⁰Nd</td>
<td>-</td>
<td>4E+3</td>
<td>1E-6</td>
</tr>
<tr>
<td>61</td>
<td>Promethium-151</td>
<td>W, see ¹⁵¹Nd</td>
<td>2E+3</td>
<td>4E+3</td>
</tr>
<tr>
<td></td>
<td>Y, see ¹⁵¹Nd</td>
<td>-</td>
<td>4E+3</td>
<td>1E-6</td>
</tr>
<tr>
<td>Atomic No.</td>
<td>Radiouclide</td>
<td>Class</td>
<td>Oral ingestion ALL (μCi)</td>
<td>Oral ingestion LIL (μCi)</td>
</tr>
<tr>
<td>-----------</td>
<td>-------------</td>
<td>-------------</td>
<td>--------------------------</td>
<td>-------------------------</td>
</tr>
<tr>
<td>62</td>
<td>Samarium-146</td>
<td>W, all compounds</td>
<td>3×10^4</td>
<td>3×10^5</td>
</tr>
<tr>
<td>62</td>
<td>Samarium-147</td>
<td>W, all compounds</td>
<td>5×10^4</td>
<td>2×10^5</td>
</tr>
<tr>
<td>62</td>
<td>Samarium-148</td>
<td>W, all compounds</td>
<td>8×10^3</td>
<td>3×10^4</td>
</tr>
<tr>
<td>62</td>
<td>Samarium-148</td>
<td>W, all compounds</td>
<td>6×10^3</td>
<td>5×10^2</td>
</tr>
<tr>
<td>62</td>
<td>Samarium-149</td>
<td>W, all compounds</td>
<td>1×10^4</td>
<td>4×10^-2</td>
</tr>
<tr>
<td>62</td>
<td>Samarium-150</td>
<td>W, all compounds</td>
<td>2×10^3</td>
<td>4×10^-2</td>
</tr>
<tr>
<td>62</td>
<td>Samarium-151</td>
<td>W, all compounds</td>
<td>2×10^3</td>
<td>1×10^4</td>
</tr>
<tr>
<td>62</td>
<td>Samarium-152</td>
<td>W, all compounds</td>
<td>2×10^3</td>
<td>1×10^4</td>
</tr>
<tr>
<td>62</td>
<td>Samarium-153</td>
<td>W, all compounds</td>
<td>6×10^3</td>
<td>2×10^5</td>
</tr>
<tr>
<td>62</td>
<td>Samarium-154</td>
<td>W, all compounds</td>
<td>5×10^3</td>
<td>9×10^-3</td>
</tr>
<tr>
<td>62</td>
<td>Europium-150</td>
<td>W, all compounds</td>
<td>2×10^3</td>
<td>2×10^3</td>
</tr>
<tr>
<td>62</td>
<td>Europium-154</td>
<td>W, all compounds</td>
<td>1×10^3</td>
<td>3×10^-3</td>
</tr>
<tr>
<td>62</td>
<td>Europium-155</td>
<td>W, all compounds</td>
<td>3×10^3</td>
<td>2×10^3</td>
</tr>
<tr>
<td>62</td>
<td>Europium-156</td>
<td>W, all compounds</td>
<td>5×10^4</td>
<td>4×10^-3</td>
</tr>
<tr>
<td>62</td>
<td>Europium-157</td>
<td>W, all compounds</td>
<td>8×10^5</td>
<td>2×10^3</td>
</tr>
<tr>
<td>62</td>
<td>Europium-158</td>
<td>W, all compounds</td>
<td>6×10^4</td>
<td>9×10^-3</td>
</tr>
<tr>
<td>62</td>
<td>Europium-159</td>
<td>W, all compounds</td>
<td>6×10^5</td>
<td>8×10^4</td>
</tr>
<tr>
<td>Atomic No.</td>
<td>Radiouclide</td>
<td>Class</td>
<td>Col. 1</td>
<td>Col. 2</td>
</tr>
<tr>
<td>------------</td>
<td>-------------</td>
<td>-------</td>
<td>-------</td>
<td>-------</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td>Oral Ingestion</td>
<td>Inhalation</td>
</tr>
<tr>
<td>62</td>
<td>Europium-152</td>
<td>W, all compounds</td>
<td>6E+3</td>
<td>5E+3</td>
</tr>
<tr>
<td>63</td>
<td>Europium-152</td>
<td>W, all compounds</td>
<td>6E+4</td>
<td>6E+4</td>
</tr>
<tr>
<td>64</td>
<td>Gadolinium-156</td>
<td>D, all compounds except</td>
<td>6E+4</td>
<td>5E+5</td>
</tr>
<tr>
<td></td>
<td></td>
<td>those given for W</td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td>Li, Na (14+4)</td>
<td>-</td>
<td>-</td>
</tr>
<tr>
<td>64</td>
<td>Gadolinium-156</td>
<td>D, see 14Gd</td>
<td>3E+3</td>
<td>3E+3</td>
</tr>
<tr>
<td></td>
<td></td>
<td>W, see 14Gd</td>
<td>3E+2</td>
<td>3E-7</td>
</tr>
<tr>
<td>64</td>
<td>Gadolinium-157</td>
<td>D, see 15Gd</td>
<td>4E+3</td>
<td>4E+3</td>
</tr>
<tr>
<td></td>
<td></td>
<td>W, see 15Gd</td>
<td>4E+3</td>
<td>4E-9</td>
</tr>
<tr>
<td>64</td>
<td>Gadolinium-158</td>
<td>D, see 16Gd</td>
<td>2E+4</td>
<td>2E+4</td>
</tr>
<tr>
<td></td>
<td></td>
<td>W, see 16Gd</td>
<td>-</td>
<td>-</td>
</tr>
<tr>
<td>64</td>
<td>Gadolinium-159</td>
<td>D, see 17Gd</td>
<td>3E+3</td>
<td>3E+3</td>
</tr>
<tr>
<td></td>
<td></td>
<td>W, see 17Gd</td>
<td>3E+3</td>
<td>3E-6</td>
</tr>
<tr>
<td>64</td>
<td>Gadolinium-158</td>
<td>D, see 18Gd</td>
<td>4E+3</td>
<td>4E+3</td>
</tr>
<tr>
<td></td>
<td></td>
<td>W, see 18Gd</td>
<td>-</td>
<td>-</td>
</tr>
<tr>
<td>64</td>
<td>Terbium-147</td>
<td>W, all compounds</td>
<td>9E+3</td>
<td>9E+3</td>
</tr>
<tr>
<td></td>
<td></td>
<td>W, see 14Gd</td>
<td>9E+3</td>
<td>9E+3</td>
</tr>
<tr>
<td>64</td>
<td>Terbium-149</td>
<td>W, all compounds</td>
<td>5E+3</td>
<td>5E+3</td>
</tr>
<tr>
<td></td>
<td></td>
<td>W, see 14Gd</td>
<td>5E+3</td>
<td>5E+3</td>
</tr>
<tr>
<td>64</td>
<td>Terbium-150</td>
<td>W, all compounds</td>
<td>5E+3</td>
<td>5E+3</td>
</tr>
<tr>
<td></td>
<td></td>
<td>W, see 15Gd</td>
<td>5E+3</td>
<td>5E+3</td>
</tr>
<tr>
<td>64</td>
<td>Terbium-152</td>
<td>W, all compounds</td>
<td>4E+3</td>
<td>4E+3</td>
</tr>
<tr>
<td></td>
<td></td>
<td>W, see 16Gd</td>
<td>4E+3</td>
<td>4E+3</td>
</tr>
<tr>
<td>64</td>
<td>Terbium-153</td>
<td>W, all compounds</td>
<td>5E+3</td>
<td>5E+3</td>
</tr>
<tr>
<td></td>
<td></td>
<td>W, see 17Gd</td>
<td>5E+3</td>
<td>5E+3</td>
</tr>
<tr>
<td>64</td>
<td>Terbium-154</td>
<td>W, all compounds</td>
<td>3E+3</td>
<td>3E+3</td>
</tr>
<tr>
<td></td>
<td></td>
<td>W, see 18Gd</td>
<td>3E+3</td>
<td>3E+3</td>
</tr>
<tr>
<td>65</td>
<td>W, all compounds</td>
<td>5E+3</td>
<td>5E+3</td>
<td>2E+6</td>
</tr>
<tr>
<td>65</td>
<td>W, all compounds</td>
<td>5E+3</td>
<td>5E+3</td>
<td>2E+6</td>
</tr>
<tr>
<td>65</td>
<td>W, all compounds</td>
<td>5E+3</td>
<td>5E+3</td>
<td>2E+6</td>
</tr>
<tr>
<td>65</td>
<td>W, all compounds</td>
<td>5E+3</td>
<td>5E+3</td>
<td>2E+6</td>
</tr>
<tr>
<td>65</td>
<td>W, all compounds</td>
<td>5E+3</td>
<td>5E+3</td>
<td>2E+6</td>
</tr>
</tbody>
</table>

413
<table>
<thead>
<tr>
<th>Atomic No.</th>
<th>Radionuclide</th>
<th>Class</th>
<th>Table 1 Occupational Values</th>
<th>Table 2 Effluent Concentrations</th>
<th>Table 3 Releases to Sewers</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td></td>
<td></td>
<td>Col. 1 (pCi)</td>
<td>Col. 2 (pCi)</td>
<td>Col. 3 (pCi)</td>
</tr>
<tr>
<td>65</td>
<td>Tc-99m</td>
<td>W, all compounds</td>
<td>$7 \times 10^3$</td>
<td>$8 \times 10^3$</td>
<td>$3 \times 10^3$</td>
</tr>
<tr>
<td>66</td>
<td>Tb-156</td>
<td>W, all compounds</td>
<td>$1 \times 10^3$</td>
<td>$1 \times 10^3$</td>
<td>$3 \times 10^3$</td>
</tr>
<tr>
<td>65</td>
<td>Tc-157</td>
<td>W, all compounds</td>
<td>$5 \times 10^4$</td>
<td>$3 \times 10^4$</td>
<td>$1 \times 10^4$</td>
</tr>
<tr>
<td>65</td>
<td>Tc-156</td>
<td>W, all compounds</td>
<td>$1 \times 10^4$</td>
<td>$2 \times 10^4$</td>
<td>$7 \times 10^3$</td>
</tr>
<tr>
<td>65</td>
<td>Tc-157</td>
<td>W, all compounds</td>
<td>$8 \times 10^4$</td>
<td>$2 \times 10^4$</td>
<td>$8 \times 10^3$</td>
</tr>
<tr>
<td>65</td>
<td>Tc-156</td>
<td>W, all compounds</td>
<td>$2 \times 10^4$</td>
<td>$2 \times 10^4$</td>
<td>$7 \times 10^3$</td>
</tr>
<tr>
<td>66</td>
<td>Dy-154</td>
<td>W, all compounds</td>
<td>$5 \times 10^3$</td>
<td>$3 \times 10^3$</td>
<td>$1 \times 10^3$</td>
</tr>
<tr>
<td>66</td>
<td>Dy-153</td>
<td>W, all compounds</td>
<td>$2 \times 10^3$</td>
<td>$2 \times 10^3$</td>
<td>$6 \times 10^3$</td>
</tr>
<tr>
<td>66</td>
<td>Dy-152</td>
<td>W, all compounds</td>
<td>$1 \times 10^3$</td>
<td>$1 \times 10^3$</td>
<td>$3 \times 10^3$</td>
</tr>
<tr>
<td>66</td>
<td>Dy-151</td>
<td>W, all compounds</td>
<td>$1 \times 10^3$</td>
<td>$1 \times 10^3$</td>
<td>$5 \times 10^3$</td>
</tr>
<tr>
<td>66</td>
<td>Dy-150</td>
<td>W, all compounds</td>
<td>$1 \times 10^3$</td>
<td>$1 \times 10^3$</td>
<td>$4 \times 10^3$</td>
</tr>
<tr>
<td>66</td>
<td>Dy-149</td>
<td>W, all compounds</td>
<td>$1 \times 10^3$</td>
<td>$1 \times 10^3$</td>
<td>$3 \times 10^3$</td>
</tr>
<tr>
<td>67</td>
<td>Ho-155</td>
<td>W, all compounds</td>
<td>$2 \times 10^3$</td>
<td>$2 \times 10^3$</td>
<td>$6 \times 10^3$</td>
</tr>
<tr>
<td>67</td>
<td>Ho-154</td>
<td>W, all compounds</td>
<td>$3 \times 10^3$</td>
<td>$3 \times 10^3$</td>
<td>$5 \times 10^3$</td>
</tr>
<tr>
<td>67</td>
<td>Ho-153</td>
<td>W, all compounds</td>
<td>$2 \times 10^3$</td>
<td>$2 \times 10^3$</td>
<td>$4 \times 10^3$</td>
</tr>
<tr>
<td>67</td>
<td>Ho-152</td>
<td>W, all compounds</td>
<td>$1 \times 10^3$</td>
<td>$1 \times 10^3$</td>
<td>$3 \times 10^3$</td>
</tr>
<tr>
<td>67</td>
<td>Ho-151</td>
<td>W, all compounds</td>
<td>$1 \times 10^3$</td>
<td>$1 \times 10^3$</td>
<td>$5 \times 10^3$</td>
</tr>
<tr>
<td>67</td>
<td>Ho-150</td>
<td>W, all compounds</td>
<td>$1 \times 10^3$</td>
<td>$1 \times 10^3$</td>
<td>$4 \times 10^3$</td>
</tr>
<tr>
<td>67</td>
<td>Ho-149</td>
<td>W, all compounds</td>
<td>$1 \times 10^3$</td>
<td>$1 \times 10^3$</td>
<td>$3 \times 10^3$</td>
</tr>
<tr>
<td>67</td>
<td>Ho-148</td>
<td>W, all compounds</td>
<td>$1 \times 10^3$</td>
<td>$1 \times 10^3$</td>
<td>$2 \times 10^3$</td>
</tr>
<tr>
<td>67</td>
<td>Ho-147</td>
<td>W, all compounds</td>
<td>$1 \times 10^3$</td>
<td>$1 \times 10^3$</td>
<td>$3 \times 10^3$</td>
</tr>
<tr>
<td>67</td>
<td>Ho-146</td>
<td>W, all compounds</td>
<td>$1 \times 10^3$</td>
<td>$1 \times 10^3$</td>
<td>$1 \times 10^3$</td>
</tr>
<tr>
<td>Atomic No.</td>
<td>Radionuclide</td>
<td>Class</td>
<td>Table 1 Occupational Values</td>
<td>Table 2 Effluent Concentrations</td>
<td>Table 3 Releases to Seawaters</td>
</tr>
<tr>
<td>-----------</td>
<td>--------------</td>
<td>-------</td>
<td>----------------------------</td>
<td>--------------------------------</td>
<td>-------------------------------</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td>Col. 1 Oral Ingestion All (µCi)</td>
<td>Col. 2 Inhalation (µCi)</td>
<td>Col. 3 Inh (µCi/ml)</td>
</tr>
<tr>
<td>60</td>
<td>Erbium-169</td>
<td>W. all compounds</td>
<td>3X+3</td>
<td>3X+3</td>
<td>1E-6</td>
</tr>
<tr>
<td>60</td>
<td>Erbium-171</td>
<td>W. all compounds</td>
<td>4E+3</td>
<td>3E+4</td>
<td>4E-6</td>
</tr>
<tr>
<td>60</td>
<td>Erbium-172</td>
<td>W. all compounds</td>
<td>3X+3</td>
<td>3X+3</td>
<td>6E-7</td>
</tr>
<tr>
<td>69</td>
<td>Thulium-169 2</td>
<td>W. all compounds</td>
<td>7E+4</td>
<td>3E+5</td>
<td>5E-4</td>
</tr>
<tr>
<td>69</td>
<td>Thulium-169 2</td>
<td>W. all compounds</td>
<td>7E+4</td>
<td>3E+5</td>
<td>5E-4</td>
</tr>
<tr>
<td>69</td>
<td>Thulium-169 2</td>
<td>W. all compounds</td>
<td>7E+4</td>
<td>3E+5</td>
<td>5E-4</td>
</tr>
<tr>
<td>69</td>
<td>Thulium-169 2</td>
<td>W. all compounds</td>
<td>7E+4</td>
<td>3E+5</td>
<td>5E-4</td>
</tr>
<tr>
<td>69</td>
<td>Thulium-170</td>
<td>W. all compounds</td>
<td>8E+2</td>
<td>2E+2</td>
<td>9E-8</td>
</tr>
<tr>
<td>69</td>
<td>Thulium-171</td>
<td>W. all compounds</td>
<td>3E+4</td>
<td>3E+4</td>
<td>1E-7</td>
</tr>
<tr>
<td>69</td>
<td>Thulium-172</td>
<td>W. all compounds</td>
<td>7E+2</td>
<td>7E+2</td>
<td>5E-7</td>
</tr>
<tr>
<td>69</td>
<td>Thulium-173</td>
<td>W. all compounds</td>
<td>4E+3</td>
<td>1E+4</td>
<td>5E-6</td>
</tr>
<tr>
<td>69</td>
<td>Thulium-175 2</td>
<td>W. all compounds</td>
<td>7E+4</td>
<td>3E+5</td>
<td>1E-4</td>
</tr>
<tr>
<td>70</td>
<td>Ytterbium-169 2</td>
<td>W. all compounds except those given for Y, Y's, oxides, hydroxides, and fluorides</td>
<td>7E+4</td>
<td>3E+5</td>
<td>1E-4</td>
</tr>
<tr>
<td>70</td>
<td>Ytterbium-169 2</td>
<td>W. see Ytterbium-169 2</td>
<td>7E+4</td>
<td>3E+5</td>
<td>1E-4</td>
</tr>
<tr>
<td>70</td>
<td>Ytterbium-169 2</td>
<td>W. see Ytterbium-169 2</td>
<td>7E+4</td>
<td>3E+5</td>
<td>1E-4</td>
</tr>
<tr>
<td>70</td>
<td>Ytterbium-169 2</td>
<td>W. see Ytterbium-169 2</td>
<td>7E+4</td>
<td>3E+5</td>
<td>1E-4</td>
</tr>
<tr>
<td>70</td>
<td>Ytterbium-169 2</td>
<td>W. see Ytterbium-169 2</td>
<td>7E+4</td>
<td>3E+5</td>
<td>1E-4</td>
</tr>
<tr>
<td>70</td>
<td>Ytterbium-169 2</td>
<td>W. see Ytterbium-169 2</td>
<td>7E+4</td>
<td>3E+5</td>
<td>1E-4</td>
</tr>
<tr>
<td>70</td>
<td>Ytterbium-170 3</td>
<td>W. see Ytterbium-170 3</td>
<td>7E+4</td>
<td>3E+5</td>
<td>1E-4</td>
</tr>
<tr>
<td>70</td>
<td>Ytterbium-170 3</td>
<td>W. see Ytterbium-170 3</td>
<td>7E+4</td>
<td>3E+5</td>
<td>1E-4</td>
</tr>
<tr>
<td>70</td>
<td>Ytterbium-170 3</td>
<td>W. see Ytterbium-170 3</td>
<td>7E+4</td>
<td>3E+5</td>
<td>1E-4</td>
</tr>
<tr>
<td>70</td>
<td>Ytterbium-170 3</td>
<td>W. see Ytterbium-170 3</td>
<td>7E+4</td>
<td>3E+5</td>
<td>1E-4</td>
</tr>
</tbody>
</table>

415
<table>
<thead>
<tr>
<th>Atomic No.</th>
<th>Radionuclide</th>
<th>Class</th>
<th>Col. 1 Oral Ingestion (uCi/L)</th>
<th>Col. 2 Inhalation (uCi/L)</th>
<th>Col. 3 Exhaled (uCi/mL)</th>
<th>Col. 4 Air (uCi/L)</th>
<th>Col. 5 Water (uCi/L)</th>
<th>Monthly Average Concentration (uCi/L)</th>
</tr>
</thead>
<tbody>
<tr>
<td>71</td>
<td>Lutetium-169</td>
<td>W, all compounds except those given for Y</td>
<td>4E+3</td>
<td>4E+3</td>
<td>2E-6</td>
<td>4E-9</td>
<td>3E-8</td>
<td>3E-4</td>
</tr>
<tr>
<td></td>
<td>Y, oxides, hydroxides, and fluorides</td>
<td>-</td>
<td>4E+3</td>
<td>2E-6</td>
<td>6E-9</td>
<td>-</td>
<td>-</td>
<td>-</td>
</tr>
<tr>
<td>71</td>
<td>Lutetium-170</td>
<td>W, see 139 La</td>
<td>3E+3</td>
<td>2E+3</td>
<td>8E-7</td>
<td>3E-9</td>
<td>2E-5</td>
<td>2E-4</td>
</tr>
<tr>
<td></td>
<td>Y, see 139 La</td>
<td>-</td>
<td>2E+3</td>
<td>8E-7</td>
<td>3E-9</td>
<td>-</td>
<td>-</td>
<td>-</td>
</tr>
<tr>
<td>71</td>
<td>Lutetium-171</td>
<td>W, see 139 La</td>
<td>2E+3</td>
<td>2E+3</td>
<td>8E-7</td>
<td>3E-9</td>
<td>3E-5</td>
<td>3E-4</td>
</tr>
<tr>
<td></td>
<td>Y, see 139 La</td>
<td>-</td>
<td>2E+3</td>
<td>8E-7</td>
<td>3E-9</td>
<td>-</td>
<td>-</td>
<td>-</td>
</tr>
<tr>
<td>71</td>
<td>Lutetium-172</td>
<td>W, see 139 La</td>
<td>3E+3</td>
<td>2E+3</td>
<td>5E-7</td>
<td>2E-9</td>
<td>3E-5</td>
<td>3E-4</td>
</tr>
<tr>
<td></td>
<td>Y, see 139 La</td>
<td>-</td>
<td>2E+3</td>
<td>5E-7</td>
<td>2E-9</td>
<td>-</td>
<td>-</td>
<td>-</td>
</tr>
<tr>
<td>71</td>
<td>Lutetium-173</td>
<td>W, see 139 La</td>
<td>5E+3</td>
<td>3E+2</td>
<td>3E-7</td>
<td>-</td>
<td>7E-5</td>
<td>3E-4</td>
</tr>
<tr>
<td></td>
<td>Y, see 139 La</td>
<td>-</td>
<td>(3E+3)</td>
<td>-</td>
<td>6E-10</td>
<td>-</td>
<td>-</td>
<td>-</td>
</tr>
<tr>
<td>71</td>
<td>Lutetium-174</td>
<td>W, see 139 La</td>
<td>2E+3</td>
<td>2E+2</td>
<td>1E-7</td>
<td>-</td>
<td>-</td>
<td>-</td>
</tr>
<tr>
<td></td>
<td>Y, see 139 La</td>
<td>-</td>
<td>(1E+3)</td>
<td>-</td>
<td>5E-10</td>
<td>4E-5</td>
<td>4E-4</td>
<td>-</td>
</tr>
<tr>
<td>71</td>
<td>Lutetium-175</td>
<td>W, see 139 La</td>
<td>5E+3</td>
<td>3E+2</td>
<td>5E-8</td>
<td>-</td>
<td>7E-5</td>
<td>7E-4</td>
</tr>
<tr>
<td></td>
<td>Y, see 139 La</td>
<td>-</td>
<td>(3E+3)</td>
<td>-</td>
<td>3E-10</td>
<td>-</td>
<td>-</td>
<td>-</td>
</tr>
<tr>
<td>71</td>
<td>Lutetium-176</td>
<td>W, see 139 La</td>
<td>8E+3</td>
<td>3E+4</td>
<td>1E-5</td>
<td>3E-8</td>
<td>3E-4</td>
<td>3E-3</td>
</tr>
<tr>
<td></td>
<td>Y, see 139 La</td>
<td>-</td>
<td>3E+4</td>
<td>5E-6</td>
<td>3E-8</td>
<td>-</td>
<td>-</td>
<td>-</td>
</tr>
<tr>
<td>71</td>
<td>Lutetium-177</td>
<td>W, see 139 La</td>
<td>7E+2</td>
<td>5E+0</td>
<td>2E-9</td>
<td>-</td>
<td>2E-5</td>
<td>1E-4</td>
</tr>
<tr>
<td></td>
<td>Y, see 139 La</td>
<td>-</td>
<td>(1E+3)</td>
<td>-</td>
<td>2E-10</td>
<td>-</td>
<td>-</td>
<td>-</td>
</tr>
<tr>
<td>71</td>
<td>Lutetium-178</td>
<td>W, see 139 La</td>
<td>7E+2</td>
<td>5E+0</td>
<td>2E-9</td>
<td>-</td>
<td>2E-5</td>
<td>1E-4</td>
</tr>
<tr>
<td></td>
<td>Y, see 139 La</td>
<td>-</td>
<td>(1E+3)</td>
<td>-</td>
<td>2E-10</td>
<td>-</td>
<td>-</td>
<td>-</td>
</tr>
<tr>
<td>71</td>
<td>Lutetium-179</td>
<td>W, see 139 La</td>
<td>2E+3</td>
<td>2E+3</td>
<td>8E-7</td>
<td>3E-9</td>
<td>-</td>
<td>-</td>
</tr>
<tr>
<td></td>
<td>Y, see 139 La</td>
<td>-</td>
<td>(3E+3)</td>
<td>-</td>
<td>4E-5</td>
<td>4E-4</td>
<td>-</td>
<td>-</td>
</tr>
<tr>
<td>71</td>
<td>Lutetium-180</td>
<td>W, see 139 La</td>
<td>5E+6</td>
<td>2E+5</td>
<td>8E-5</td>
<td>3E-7</td>
<td>-</td>
<td>-</td>
</tr>
<tr>
<td></td>
<td>Y, see 139 La</td>
<td>-</td>
<td>(2E+6)</td>
<td>-</td>
<td>6E-4</td>
<td>6E-3</td>
<td>-</td>
<td>-</td>
</tr>
<tr>
<td>71</td>
<td>Lutetium-181</td>
<td>W, see 139 La</td>
<td>4E+6</td>
<td>2E+5</td>
<td>5E-5</td>
<td>2E-7</td>
<td>-</td>
<td>-</td>
</tr>
<tr>
<td></td>
<td>Y, see 139 La</td>
<td>-</td>
<td>(2E+6)</td>
<td>-</td>
<td>6E-4</td>
<td>6E-3</td>
<td>-</td>
<td>-</td>
</tr>
<tr>
<td>71</td>
<td>Lutetium-182</td>
<td>W, see 139 La</td>
<td>6E+5</td>
<td>2E+5</td>
<td>5E-5</td>
<td>2E-7</td>
<td>-</td>
<td>-</td>
</tr>
<tr>
<td></td>
<td>Y, see 139 La</td>
<td>-</td>
<td>2E+6</td>
<td>3E-6</td>
<td>5E-9</td>
<td>9E-5</td>
<td>9E-4</td>
<td>-</td>
</tr>
<tr>
<td>Atomic No.</td>
<td>Radioisotope</td>
<td>Class</td>
<td>Occupational Values</td>
<td>Effluent Concentrations</td>
<td>Releases to Sewer</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>-----------</td>
<td>--------------</td>
<td>-------</td>
<td>---------------------</td>
<td>------------------------</td>
<td>-------------------</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td>Col. 1 Oral Ingestion (µCi)</td>
<td>Col. 2 Inhalation (µCi)</td>
<td>Col. 3 Air (µCi/m³)</td>
<td>Col. 1 Oral Ingestion (µCi)</td>
<td>Col. 2 Inhalation (µCi)</td>
<td>Col. 3 Air (µCi/m³)</td>
</tr>
<tr>
<td>73</td>
<td>Tantulum-177</td>
<td>W, all compounds except those given for Y</td>
<td>4 × 10⁻⁴</td>
<td>11 × 10⁻⁵</td>
<td>5 × 10⁻⁵</td>
<td>2 × 10⁻⁷</td>
<td>5 × 10⁻⁴</td>
<td>5 × 10⁻³</td>
</tr>
<tr>
<td>73</td>
<td>Tantulum-173</td>
<td>Y, see 177mT</td>
<td>2 × 10⁻⁴</td>
<td>2 × 10⁻⁴</td>
<td>8 × 10⁻⁶</td>
<td>3 × 10⁻⁸</td>
<td>5 × 10⁻⁵</td>
<td>4 × 10⁻⁴</td>
</tr>
<tr>
<td>73</td>
<td>Tantulum-174</td>
<td>Y, see 177mT</td>
<td>2 × 10⁻⁴</td>
<td>2 × 10⁻⁴</td>
<td>11 × 10⁻⁵</td>
<td>2 × 10⁻⁸</td>
<td>1 × 10⁻⁴</td>
<td>1 × 10⁻³</td>
</tr>
<tr>
<td>73</td>
<td>Tantulum-175</td>
<td>Y, see 177mT</td>
<td>6 × 10⁻⁴</td>
<td>2 × 10⁻⁴</td>
<td>7 × 10⁻⁶</td>
<td>2 × 10⁻⁸</td>
<td>8 × 10⁻⁵</td>
<td>8 × 10⁻⁴</td>
</tr>
<tr>
<td>73</td>
<td>Tantulum-176</td>
<td>Y, see 177mT</td>
<td>4 × 10⁻⁴</td>
<td>2 × 10⁻⁴</td>
<td>11 × 10⁻⁵</td>
<td>2 × 10⁻⁸</td>
<td>1 × 10⁻⁴</td>
<td>1 × 10⁻³</td>
</tr>
<tr>
<td>73</td>
<td>Tantulum-177</td>
<td>Y, see 177mT</td>
<td>5 × 10⁻⁴</td>
<td>2 × 10⁻⁴</td>
<td>8 × 10⁻⁶</td>
<td>3 × 10⁻⁸</td>
<td>2 × 10⁻⁴</td>
<td>2 × 10⁻³</td>
</tr>
<tr>
<td>73</td>
<td>Tantulum-178</td>
<td>Y, see 177mT</td>
<td>4 × 10⁻⁴</td>
<td>2 × 10⁻⁴</td>
<td>11 × 10⁻⁵</td>
<td>2 × 10⁻⁸</td>
<td>1 × 10⁻⁴</td>
<td>1 × 10⁻³</td>
</tr>
<tr>
<td>73</td>
<td>Tantulum-179</td>
<td>Y, see 177mT</td>
<td>4 × 10⁻⁴</td>
<td>2 × 10⁻⁴</td>
<td>8 × 10⁻⁶</td>
<td>3 × 10⁻⁸</td>
<td>2 × 10⁻⁴</td>
<td>2 × 10⁻³</td>
</tr>
<tr>
<td>73</td>
<td>Tantulum-180</td>
<td>Y, see 177mT</td>
<td>4 × 10⁻⁴</td>
<td>2 × 10⁻⁴</td>
<td>11 × 10⁻⁵</td>
<td>2 × 10⁻⁸</td>
<td>1 × 10⁻⁴</td>
<td>1 × 10⁻³</td>
</tr>
<tr>
<td>73</td>
<td>Tantulum-181</td>
<td>Y, see 177mT</td>
<td>4 × 10⁻⁴</td>
<td>2 × 10⁻⁴</td>
<td>8 × 10⁻⁶</td>
<td>3 × 10⁻⁸</td>
<td>2 × 10⁻⁴</td>
<td>2 × 10⁻³</td>
</tr>
<tr>
<td>73</td>
<td>Tantulum-182</td>
<td>Y, see 177mT</td>
<td>4 × 10⁻⁴</td>
<td>2 × 10⁻⁴</td>
<td>11 × 10⁻⁵</td>
<td>2 × 10⁻⁸</td>
<td>1 × 10⁻⁴</td>
<td>1 × 10⁻³</td>
</tr>
<tr>
<td>73</td>
<td>Tantulum-183</td>
<td>Y, see 177mT</td>
<td>4 × 10⁻⁴</td>
<td>2 × 10⁻⁴</td>
<td>11 × 10⁻⁵</td>
<td>2 × 10⁻⁸</td>
<td>1 × 10⁻⁴</td>
<td>1 × 10⁻³</td>
</tr>
<tr>
<td>73</td>
<td>Tantulum-184</td>
<td>Y, see 177mT</td>
<td>4 × 10⁻⁴</td>
<td>2 × 10⁻⁴</td>
<td>11 × 10⁻⁵</td>
<td>2 × 10⁻⁸</td>
<td>1 × 10⁻⁴</td>
<td>1 × 10⁻³</td>
</tr>
<tr>
<td>73</td>
<td>Tantulum-185</td>
<td>Y, see 177mT</td>
<td>4 × 10⁻⁴</td>
<td>2 × 10⁻⁴</td>
<td>11 × 10⁻⁵</td>
<td>2 × 10⁻⁸</td>
<td>1 × 10⁻⁴</td>
<td>1 × 10⁻³</td>
</tr>
<tr>
<td>73</td>
<td>Tantulum-186</td>
<td>Y, see 177mT</td>
<td>4 × 10⁻⁴</td>
<td>2 × 10⁻⁴</td>
<td>11 × 10⁻⁵</td>
<td>2 × 10⁻⁸</td>
<td>1 × 10⁻⁴</td>
<td>1 × 10⁻³</td>
</tr>
<tr>
<td>74</td>
<td>Tungsten-176</td>
<td>D, all compounds</td>
<td>4 × 10⁻⁴</td>
<td>2 × 10⁻⁴</td>
<td>1 × 10⁻⁴</td>
<td>1 × 10⁻³</td>
<td></td>
<td></td>
</tr>
<tr>
<td>74</td>
<td>Tungsten-177</td>
<td>D, all compounds</td>
<td>4 × 10⁻⁴</td>
<td>2 × 10⁻⁴</td>
<td>1 × 10⁻⁴</td>
<td>1 × 10⁻³</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Atomic No.</td>
<td>Radionuclide</td>
<td>Class</td>
<td>Table 1: Occupational Values</td>
<td>Table 2: Efficient Concentrations</td>
<td>Table 3: Monthly Average</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>-----------</td>
<td>--------------</td>
<td>-------</td>
<td>------------------------------</td>
<td>----------------------------------</td>
<td>--------------------------</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td>Inhalation</td>
<td>Inhalation</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td>Cont. 1</td>
<td>Cont. 2</td>
<td>Cont. 3</td>
<td>Cont. 1</td>
<td>Cont. 2</td>
<td>Cont. 3</td>
</tr>
<tr>
<td>74</td>
<td>Tungsten-178</td>
<td>D, all compounds</td>
<td>5 ≤ 3</td>
<td>25 ≤ 4</td>
<td>85 ≤ 6</td>
<td>30 ≤ 8</td>
<td>75 ≤ 5</td>
<td>78 ≤ 4</td>
</tr>
<tr>
<td>75</td>
<td>Rhenium-186</td>
<td>D, all compounds except those given for W</td>
<td>9 ≤ 4</td>
<td>31 ≤ 5</td>
<td>-</td>
<td>32 ≤ 4</td>
<td>42 ≤ 7</td>
<td>-</td>
</tr>
<tr>
<td></td>
<td></td>
<td>W, see 177W</td>
<td>-</td>
<td>22 ≤ 5</td>
<td>32 ≤ 4</td>
<td>42 ≤ 7</td>
<td>-</td>
<td>-</td>
</tr>
<tr>
<td>75</td>
<td>Rhenium-186</td>
<td>D, see 177W</td>
<td>25 ≤ 3</td>
<td>35 ≤ 9</td>
<td>55 ≤ 9</td>
<td>32 ≤ 6</td>
<td>32 ≤ 3</td>
<td>32 ≤ 3</td>
</tr>
<tr>
<td>75</td>
<td>Rhenium-186</td>
<td>W, see 177W</td>
<td>-</td>
<td>25 ≤ 7</td>
<td>35 ≤ 9</td>
<td>55 ≤ 9</td>
<td>32 ≤ 6</td>
<td>32 ≤ 3</td>
</tr>
<tr>
<td>75</td>
<td>Rhenium-186</td>
<td>D, see 177W</td>
<td>25 ≤ 5</td>
<td>35 ≤ 9</td>
<td>55 ≤ 9</td>
<td>32 ≤ 6</td>
<td>32 ≤ 3</td>
<td>32 ≤ 3</td>
</tr>
<tr>
<td>75</td>
<td>Rhenium-186</td>
<td>W, see 177W</td>
<td>-</td>
<td>25 ≤ 7</td>
<td>35 ≤ 9</td>
<td>55 ≤ 9</td>
<td>32 ≤ 6</td>
<td>32 ≤ 3</td>
</tr>
<tr>
<td>75</td>
<td>Rhenium-186</td>
<td>D, see 177W</td>
<td>25 ≤ 5</td>
<td>35 ≤ 9</td>
<td>55 ≤ 9</td>
<td>32 ≤ 6</td>
<td>32 ≤ 3</td>
<td>32 ≤ 3</td>
</tr>
<tr>
<td>75</td>
<td>Rhenium-186</td>
<td>W, see 177W</td>
<td>-</td>
<td>25 ≤ 7</td>
<td>35 ≤ 9</td>
<td>55 ≤ 9</td>
<td>32 ≤ 6</td>
<td>32 ≤ 3</td>
</tr>
<tr>
<td>75</td>
<td>Rhenium-186</td>
<td>D, see 177W</td>
<td>25 ≤ 5</td>
<td>35 ≤ 9</td>
<td>55 ≤ 9</td>
<td>32 ≤ 6</td>
<td>32 ≤ 3</td>
<td>32 ≤ 3</td>
</tr>
<tr>
<td>75</td>
<td>Rhenium-186</td>
<td>W, see 177W</td>
<td>-</td>
<td>25 ≤ 7</td>
<td>35 ≤ 9</td>
<td>55 ≤ 9</td>
<td>32 ≤ 6</td>
<td>32 ≤ 3</td>
</tr>
<tr>
<td>75</td>
<td>Rhenium-186</td>
<td>D, see 177W</td>
<td>25 ≤ 5</td>
<td>35 ≤ 9</td>
<td>55 ≤ 9</td>
<td>32 ≤ 6</td>
<td>32 ≤ 3</td>
<td>32 ≤ 3</td>
</tr>
<tr>
<td>75</td>
<td>Rhenium-186</td>
<td>W, see 177W</td>
<td>-</td>
<td>25 ≤ 7</td>
<td>35 ≤ 9</td>
<td>55 ≤ 9</td>
<td>32 ≤ 6</td>
<td>32 ≤ 3</td>
</tr>
<tr>
<td>75</td>
<td>Rhenium-186</td>
<td>D, see 177W</td>
<td>25 ≤ 5</td>
<td>35 ≤ 9</td>
<td>55 ≤ 9</td>
<td>32 ≤ 6</td>
<td>32 ≤ 3</td>
<td>32 ≤ 3</td>
</tr>
<tr>
<td>75</td>
<td>Rhenium-186</td>
<td>W, see 177W</td>
<td>-</td>
<td>25 ≤ 7</td>
<td>35 ≤ 9</td>
<td>55 ≤ 9</td>
<td>32 ≤ 6</td>
<td>32 ≤ 3</td>
</tr>
</tbody>
</table>

419
<table>
<thead>
<tr>
<th>Atomic No.</th>
<th>Radioisotope</th>
<th>Class</th>
<th>Oral Ingestion</th>
<th>Inhalation</th>
<th>Air</th>
<th>Water</th>
<th>Monthly Average Concentration</th>
</tr>
</thead>
<tbody>
<tr>
<td>75</td>
<td>Americium-241</td>
<td>$^{241}$Am</td>
<td>$3 \times 10^{-3}$</td>
<td>$5 \times 10^{-3}$</td>
<td>15</td>
<td>0</td>
<td>4</td>
</tr>
<tr>
<td>76</td>
<td>Americium-242</td>
<td>$^{242}$Am</td>
<td>$5 \times 10^{-3}$</td>
<td>$2 \times 10^{-3}$</td>
<td>5</td>
<td>0</td>
<td>0</td>
</tr>
<tr>
<td>76</td>
<td>Americium-240</td>
<td>$^{240}$Am</td>
<td>$1 \times 10^{-3}$</td>
<td>$5 \times 10^{-3}$</td>
<td>50</td>
<td>5</td>
<td>5</td>
</tr>
<tr>
<td>76</td>
<td>Americium-241</td>
<td>$^{241}$Am</td>
<td>$5 \times 10^{-3}$</td>
<td>$2 \times 10^{-3}$</td>
<td>5</td>
<td>0</td>
<td>0</td>
</tr>
<tr>
<td>76</td>
<td>Americium-242</td>
<td>$^{242}$Am</td>
<td>$5 \times 10^{-3}$</td>
<td>$2 \times 10^{-3}$</td>
<td>5</td>
<td>0</td>
<td>0</td>
</tr>
<tr>
<td>76</td>
<td>Americium-240</td>
<td>$^{240}$Am</td>
<td>$1 \times 10^{-3}$</td>
<td>$5 \times 10^{-3}$</td>
<td>50</td>
<td>5</td>
<td>5</td>
</tr>
</tbody>
</table>

Note: The table contains values for different radioactive isotopes, including Americium-241, Americium-242, and Americium-240, with specific concentrations given in microcuries per liter (μCi/L) for oral ingestion, inhalation, air, and water. The values are indicative of monthly average concentrations for releases to sewers.
<table>
<thead>
<tr>
<th>Atomic Number</th>
<th>Radionuclide</th>
<th>Class</th>
<th>Col. 1</th>
<th>Col. 2</th>
<th>Col. 3</th>
<th>Col. 1</th>
<th>Col. 2</th>
<th>Monthly Average Concentration (pCi/ml)</th>
</tr>
</thead>
<tbody>
<tr>
<td>77</td>
<td>Iridium-189</td>
<td>D, see 189Ir</td>
<td>3E+3</td>
<td>2E+4</td>
<td>5E-6</td>
<td>2E-0</td>
<td>7E-5</td>
<td>7E-4</td>
</tr>
<tr>
<td></td>
<td></td>
<td>Y, see 189Ir</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>77</td>
<td>Iridium-190</td>
<td>D, see 190Ir</td>
<td>2E+3</td>
<td>2E+3</td>
<td>3E-6</td>
<td>1E-5</td>
<td>3E-5</td>
<td>3E-4</td>
</tr>
<tr>
<td></td>
<td></td>
<td>Y, see 190Ir</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>77</td>
<td>Iridium-187</td>
<td>D, see 187Ir</td>
<td>1E+4</td>
<td>2E+4</td>
<td>1E-5</td>
<td>5E-8</td>
<td>2E-4</td>
<td>1E-3</td>
</tr>
<tr>
<td></td>
<td></td>
<td>Y, see 187Ir</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>77</td>
<td>Iridium-186</td>
<td>D, see 186Ir</td>
<td>2E+3</td>
<td>2E+3</td>
<td>2E-6</td>
<td>4E-8</td>
<td>2E-9</td>
<td>3E-4</td>
</tr>
<tr>
<td></td>
<td></td>
<td>Y, see 186Ir</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>77</td>
<td>Iridium-189</td>
<td>D, see 189Ir</td>
<td>5E+3</td>
<td>5E+3</td>
<td>3E-6</td>
<td>7E-9</td>
<td>7E-4</td>
<td>7E-4</td>
</tr>
<tr>
<td></td>
<td></td>
<td>Y, see 189Ir</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>77</td>
<td>Iridium-150m²</td>
<td>D, see 150m²</td>
<td>2E+5</td>
<td>2E+5</td>
<td>8E-5</td>
<td>2E-7</td>
<td>2E-3</td>
<td>2E-2</td>
</tr>
<tr>
<td></td>
<td></td>
<td>Y, see 150m²</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>77</td>
<td>Iridium-150</td>
<td>D, see 150Ir</td>
<td>1E+3</td>
<td>9E+2</td>
<td>4E-7</td>
<td>1E-9</td>
<td>1E-1</td>
<td>1E-6</td>
</tr>
<tr>
<td></td>
<td></td>
<td>Y, see 150Ir</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>77</td>
<td>Iridium-152</td>
<td>D, see 152Ir</td>
<td>2E+0</td>
<td>9E+1</td>
<td>4E-8</td>
<td>1E-10</td>
<td>4E-6</td>
<td>4E-6</td>
</tr>
<tr>
<td></td>
<td></td>
<td>Y, see 152Ir</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>77</td>
<td>Iridium-192</td>
<td>D, see 192Ir</td>
<td>9E+2</td>
<td>3E+2</td>
<td>1E-7</td>
<td>4E-10</td>
<td>1E-5</td>
<td>1E-4</td>
</tr>
<tr>
<td></td>
<td></td>
<td>Y, see 192Ir</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>77</td>
<td>Iridium-194</td>
<td>D, see 194Ir</td>
<td>6E+2</td>
<td>9E+1</td>
<td>4E-8</td>
<td>2E-10</td>
<td>9E-6</td>
<td>9E-5</td>
</tr>
<tr>
<td></td>
<td></td>
<td>Y, see 194Ir</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>77</td>
<td>Iridium-194</td>
<td>D, see 194Ir</td>
<td>2E+0</td>
<td>3E+3</td>
<td>1E-6</td>
<td>4E-8</td>
<td>1E-5</td>
<td>1E-4</td>
</tr>
<tr>
<td></td>
<td></td>
<td>Y, see 194Ir</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>77</td>
<td>Iridium-195</td>
<td>D, see 195Ir</td>
<td>6E+3</td>
<td>2E+4</td>
<td>1E-5</td>
<td>3E-0</td>
<td>1E-4</td>
<td>1E-3</td>
</tr>
<tr>
<td></td>
<td></td>
<td>Y, see 195Ir</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>77</td>
<td>Iridium-195</td>
<td>D, see 195Ir</td>
<td>3E+4</td>
<td>4E+4</td>
<td>2E-5</td>
<td>5E-8</td>
<td>2E-3</td>
<td>2E-3</td>
</tr>
<tr>
<td></td>
<td></td>
<td>Y, see 195Ir</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>78</td>
<td>Platinum-198</td>
<td>D, all compounds</td>
<td>1E+4</td>
<td>4E+4</td>
<td>2E-5</td>
<td>5E-8</td>
<td>2E-4</td>
<td>2E-4</td>
</tr>
<tr>
<td>78</td>
<td>Platinum-198</td>
<td>D, all compounds</td>
<td>1E+4</td>
<td>4E+4</td>
<td>2E-5</td>
<td>5E-8</td>
<td>2E-4</td>
<td>2E-4</td>
</tr>
<tr>
<td>78</td>
<td>Platinum-199</td>
<td>D, all compounds</td>
<td>1E+4</td>
<td>4E+4</td>
<td>2E-5</td>
<td>5E-8</td>
<td>2E-4</td>
<td>2E-4</td>
</tr>
<tr>
<td>78</td>
<td>Platinum-201</td>
<td>D, all compounds</td>
<td>3E+3</td>
<td>6E+3</td>
<td>4E-6</td>
<td>1E-8</td>
<td>5E-5</td>
<td>5E-4</td>
</tr>
<tr>
<td>Atomic No.</td>
<td>Radioisotope</td>
<td>Class</td>
<td>Table 1: Occupational Values</td>
<td>Table 2: Efficient Concentrations</td>
<td>Table 2: Releases to Sewers</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>-----------</td>
<td>--------------</td>
<td>-------</td>
<td>-------------------------------</td>
<td>----------------------------------</td>
<td>-------------------------------</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td>Col. 1 Oral Ingestion (mCi)</td>
<td>Col. 2 Inhalation (mCi/l)</td>
<td>Col. 3 Air (mCi/mL)</td>
<td>Water (mCi/mL)</td>
<td>Monthly Average Concentration (mCi/mL)</td>
<td></td>
</tr>
<tr>
<td>78</td>
<td>Platinum-195m</td>
<td>D, all compounds</td>
<td>3E+3 (L/L well)</td>
<td>3E+3</td>
<td>5E-9</td>
<td>4E-5</td>
<td>4E-4</td>
<td></td>
</tr>
<tr>
<td>78</td>
<td>Platinum-195</td>
<td>D, all compounds</td>
<td>4E+4 (L/L well)</td>
<td>3E+4</td>
<td>2E-8</td>
<td>4E-5</td>
<td>4E-4</td>
<td></td>
</tr>
<tr>
<td>78</td>
<td>Platinum-195m</td>
<td>D, all compounds</td>
<td>2E+3 (L/L well)</td>
<td>3E+3</td>
<td>2E-6</td>
<td>6E-9</td>
<td>-</td>
<td></td>
</tr>
<tr>
<td>78</td>
<td>Platinum-195m</td>
<td>D, all compounds</td>
<td>2E+4</td>
<td>4E+4</td>
<td>2E-9</td>
<td>2E-4</td>
<td>2E-3</td>
<td></td>
</tr>
<tr>
<td>78</td>
<td>Platinum-197x</td>
<td>D, all compounds</td>
<td>3E+3</td>
<td>3E+3</td>
<td>6E-9</td>
<td>7E-4</td>
<td>7E-3</td>
<td></td>
</tr>
<tr>
<td>78</td>
<td>Platinum-199x</td>
<td>D, all compounds</td>
<td>3E+3</td>
<td>3E+3</td>
<td>3E-9</td>
<td>2E-4</td>
<td>2E-3</td>
<td></td>
</tr>
<tr>
<td>79</td>
<td>Gold-193x</td>
<td>D, all compounds except those given for W and Y</td>
<td>9E+3</td>
<td>3E+4</td>
<td>1E-5</td>
<td>4E-8</td>
<td>1E-3</td>
<td></td>
</tr>
<tr>
<td></td>
<td>W, halides and nitrates</td>
<td>-</td>
<td>2E+4</td>
<td>9E-6</td>
<td>3E+8</td>
<td>-</td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td>Y, oxides and hydrates</td>
<td>-</td>
<td>2E+4</td>
<td>6E-6</td>
<td>3E-8</td>
<td>-</td>
<td></td>
<td></td>
</tr>
<tr>
<td>79</td>
<td>Gold-194x</td>
<td>D, see 195x</td>
<td>3E+3</td>
<td>3E+3</td>
<td>3E-6</td>
<td>3E-8</td>
<td>4E-5</td>
<td>4E-4</td>
</tr>
<tr>
<td>79</td>
<td>Gold-195x</td>
<td>D, see 195x</td>
<td>5E+3</td>
<td>5E+3</td>
<td>2E-6</td>
<td>8E-9</td>
<td>-</td>
<td></td>
</tr>
<tr>
<td>79</td>
<td>Gold-195</td>
<td>D, see 195x</td>
<td>3E+3</td>
<td>3E+3</td>
<td>2E-6</td>
<td>2E-9</td>
<td>7E-9</td>
<td>7E-4</td>
</tr>
<tr>
<td>79</td>
<td>Gold-196x</td>
<td>D, see 195x</td>
<td>5E+3</td>
<td>5E+3</td>
<td>2E-7</td>
<td>4E-9</td>
<td>-</td>
<td></td>
</tr>
<tr>
<td>79</td>
<td>Gold-198x</td>
<td>D, see 195x</td>
<td>5E+3</td>
<td>5E+3</td>
<td>2E-7</td>
<td>4E-9</td>
<td>-</td>
<td></td>
</tr>
<tr>
<td>79</td>
<td>Gold-199</td>
<td>D, see 195x</td>
<td>3E+3</td>
<td>3E+3</td>
<td>2E-7</td>
<td>7E-9</td>
<td>2E-4</td>
<td></td>
</tr>
<tr>
<td>79</td>
<td>Gold-200</td>
<td>D, see 195x</td>
<td>3E+3</td>
<td>3E+3</td>
<td>2E-7</td>
<td>1E-9</td>
<td>-</td>
<td></td>
</tr>
<tr>
<td>79</td>
<td>Gold-201x</td>
<td>D, see 195x</td>
<td>3E+3</td>
<td>3E+3</td>
<td>2E-7</td>
<td>1E-9</td>
<td>-</td>
<td></td>
</tr>
<tr>
<td>79</td>
<td>Gold-202x</td>
<td>D, see 195x</td>
<td>3E+3</td>
<td>3E+3</td>
<td>2E-7</td>
<td>1E-9</td>
<td>-</td>
<td></td>
</tr>
</tbody>
</table>

- W, halides and nitrates
- Y, oxides and hydrates
- D, all compounds except those given for W and Y
- Monthly Average Concentration (mCi/mL)
<table>
<thead>
<tr>
<th>Atomic</th>
<th>Radioisotope</th>
<th>Class</th>
<th>Occupational Values</th>
<th>Table 2 Effluent Concentrations</th>
<th>Table 3 Releases to Severe</th>
</tr>
</thead>
<tbody>
<tr>
<td>No.</td>
<td></td>
<td></td>
<td>Oral Injection</td>
<td></td>
<td>Monthly Average Concentration</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td>AI (μCi)</td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td>Inhalation</td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td>AT (μCi/l)</td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td>IN (μCi/ml)</td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td>Air (μCi/ml)</td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td>Water (μCi/ml)</td>
<td></td>
<td></td>
</tr>
<tr>
<td>80</td>
<td>Mercury-193m</td>
<td>Vapor</td>
<td>-</td>
<td>6E+3</td>
<td>3E-6</td>
</tr>
<tr>
<td></td>
<td></td>
<td>Organic D</td>
<td>4E+3</td>
<td>1E+4</td>
<td>6E-6</td>
</tr>
<tr>
<td></td>
<td></td>
<td>Organic D</td>
<td>2E+4</td>
<td>1E-5</td>
<td>4E-8</td>
</tr>
<tr>
<td></td>
<td></td>
<td>D. sulfates</td>
<td>3E+3</td>
<td>1E+4</td>
<td>6E-6</td>
</tr>
<tr>
<td></td>
<td></td>
<td>W. oxides, hydroxides, halides, nitrites, and sulfides</td>
<td>-</td>
<td>6E+3</td>
<td>3E-6</td>
</tr>
<tr>
<td>80</td>
<td>Mercury-193</td>
<td>Vapor</td>
<td>-</td>
<td>3E+3</td>
<td>2E-5</td>
</tr>
<tr>
<td></td>
<td></td>
<td>Organic D</td>
<td>2E+4</td>
<td>1E-5</td>
<td>2E-5</td>
</tr>
<tr>
<td></td>
<td></td>
<td>Organic D</td>
<td>3E+3</td>
<td>1E-8</td>
<td>2E-5</td>
</tr>
<tr>
<td></td>
<td></td>
<td>D. see 193m</td>
<td>2E+4</td>
<td>4E-4</td>
<td>2E-6</td>
</tr>
<tr>
<td></td>
<td></td>
<td>W. see 193m</td>
<td>-</td>
<td>4E-4</td>
<td>6E-8</td>
</tr>
<tr>
<td>80</td>
<td>Mercury-194</td>
<td>Vapor</td>
<td>-</td>
<td>3E+3</td>
<td>2E-8</td>
</tr>
<tr>
<td></td>
<td></td>
<td>Organic D</td>
<td>2E+3</td>
<td>3E+3</td>
<td>2E-8</td>
</tr>
<tr>
<td></td>
<td></td>
<td>D. see 194m</td>
<td>2E+4</td>
<td>4E+1</td>
<td>2E-8</td>
</tr>
<tr>
<td></td>
<td></td>
<td>W. see 194m</td>
<td>-</td>
<td>3E+2</td>
<td>5E-8</td>
</tr>
<tr>
<td>80</td>
<td>Mercury-195m</td>
<td>Vapor</td>
<td>-</td>
<td>3E+3</td>
<td>2E-6</td>
</tr>
<tr>
<td></td>
<td></td>
<td>Organic D</td>
<td>3E+3</td>
<td>2E+3</td>
<td>3E-6</td>
</tr>
<tr>
<td></td>
<td></td>
<td>D. see 195m</td>
<td>2E+4</td>
<td>6E+3</td>
<td>8E-6</td>
</tr>
<tr>
<td></td>
<td></td>
<td>W. see 195m</td>
<td>-</td>
<td>1E+5</td>
<td>1E-5</td>
</tr>
<tr>
<td>80</td>
<td>Mercury-195</td>
<td>Vapor</td>
<td>-</td>
<td>3E+3</td>
<td>2E-5</td>
</tr>
<tr>
<td></td>
<td></td>
<td>Organic D</td>
<td>2E+4</td>
<td>3E+4</td>
<td>2E-5</td>
</tr>
<tr>
<td></td>
<td></td>
<td>D. see 195</td>
<td>3E+3</td>
<td>4E+4</td>
<td>1E-5</td>
</tr>
<tr>
<td></td>
<td></td>
<td>W. see 195</td>
<td>-</td>
<td>3E+4</td>
<td>1E-5</td>
</tr>
<tr>
<td>80</td>
<td>Mercury-197m</td>
<td>Vapor</td>
<td>-</td>
<td>3E+3</td>
<td>2E-6</td>
</tr>
<tr>
<td></td>
<td></td>
<td>Organic D</td>
<td>4E+3</td>
<td>2E-5</td>
<td>3E-6</td>
</tr>
<tr>
<td></td>
<td></td>
<td>D. see 197m</td>
<td>3E+3</td>
<td>6E+3</td>
<td>3E-6</td>
</tr>
<tr>
<td></td>
<td></td>
<td>W. see 197m</td>
<td>-</td>
<td>5E+3</td>
<td>2E-6</td>
</tr>
<tr>
<td>80</td>
<td>Mercury-197</td>
<td>Vapor</td>
<td>-</td>
<td>8E+3</td>
<td>3E-6</td>
</tr>
<tr>
<td></td>
<td></td>
<td>Organic D</td>
<td>5E+3</td>
<td>1E-4</td>
<td>6E-6</td>
</tr>
<tr>
<td></td>
<td></td>
<td>D. see 197</td>
<td>4E+3</td>
<td>1E+4</td>
<td>5E-6</td>
</tr>
<tr>
<td></td>
<td></td>
<td>W. see 197</td>
<td>-</td>
<td>5E+3</td>
<td>4E-6</td>
</tr>
<tr>
<td>80</td>
<td>Mercury-199m</td>
<td>Vapor</td>
<td>-</td>
<td>8E+6</td>
<td>3E-5</td>
</tr>
<tr>
<td></td>
<td></td>
<td>Organic D</td>
<td>6E+4</td>
<td>2E-5</td>
<td>7E-5</td>
</tr>
<tr>
<td></td>
<td></td>
<td>D. see 199m</td>
<td>6E+4</td>
<td>2E-5</td>
<td>7E-5</td>
</tr>
<tr>
<td></td>
<td></td>
<td>W. see 199</td>
<td>-</td>
<td>3E-2</td>
<td>6E-4</td>
</tr>
<tr>
<td>80</td>
<td>Mercury-203</td>
<td>Vapor</td>
<td>-</td>
<td>8E+4</td>
<td>4E-7</td>
</tr>
<tr>
<td></td>
<td></td>
<td>Organic D</td>
<td>6E+4</td>
<td>2E-7</td>
<td>7E-6</td>
</tr>
<tr>
<td></td>
<td></td>
<td>D. see 203</td>
<td>5E+4</td>
<td>4E+7</td>
<td>1E-9</td>
</tr>
<tr>
<td></td>
<td></td>
<td>W. see 203</td>
<td>-</td>
<td>3E+4</td>
<td>5E-7</td>
</tr>
<tr>
<td>81</td>
<td>Thallium-204</td>
<td>D. all compounds</td>
<td>5E+4</td>
<td>2E+5</td>
<td>5E-5</td>
</tr>
<tr>
<td></td>
<td></td>
<td>D. all compounds</td>
<td>5E+4</td>
<td>2E+5</td>
<td>5E-5</td>
</tr>
<tr>
<td></td>
<td></td>
<td>D. all compounds</td>
<td>1E+5</td>
<td>6E-5</td>
<td>2E-7</td>
</tr>
</tbody>
</table>

*Note: The values are given in units of μCi or μCi/l.*
<table>
<thead>
<tr>
<th>Atomic No.</th>
<th>Radionuclide</th>
<th>Class</th>
<th>Col. 1 Oral Ingestion (pCi/l)</th>
<th>Col. 2 Inhalation (pCi/l)</th>
<th>Col. 3 Inhalation (pCi/l)</th>
<th>Table 2 Effluent Concentrations</th>
<th>Table 3 Releases to Sewers</th>
<th>Monthly Average Concentration (pCi/l)</th>
</tr>
</thead>
<tbody>
<tr>
<td>81</td>
<td>Thallium-194</td>
<td>D, all compounds</td>
<td>3E+5</td>
<td>6E+5</td>
<td>2E+4</td>
<td>9E-7</td>
<td>-</td>
<td>-</td>
</tr>
<tr>
<td>81</td>
<td>Thallium-195</td>
<td>D, all compounds</td>
<td>6E+4</td>
<td>1E+5</td>
<td>5E-5</td>
<td>2E-7</td>
<td>9E-6</td>
<td>9E+3</td>
</tr>
<tr>
<td>81</td>
<td>Thallium-197</td>
<td>D, all compounds</td>
<td>7E+4</td>
<td>1E+5</td>
<td>5E-5</td>
<td>2E-7</td>
<td>1E-3</td>
<td>1E-2</td>
</tr>
<tr>
<td>81</td>
<td>Thallium-199</td>
<td>D, all compounds</td>
<td>3E+4</td>
<td>5E+4</td>
<td>2E-5</td>
<td>6E-8</td>
<td>4E-4</td>
<td>4E-3</td>
</tr>
<tr>
<td>81</td>
<td>Thallium-200</td>
<td>D, all compounds</td>
<td>2E+4</td>
<td>3E+4</td>
<td>1E-5</td>
<td>5E-8</td>
<td>3E-4</td>
<td>3E-3</td>
</tr>
<tr>
<td>81</td>
<td>Thallium-201</td>
<td>D, all compounds</td>
<td>6E+4</td>
<td>6E+4</td>
<td>4E-5</td>
<td>3E-7</td>
<td>9E-4</td>
<td>9E+3</td>
</tr>
<tr>
<td>81</td>
<td>Thallium-203</td>
<td>D, all compounds</td>
<td>4E+3</td>
<td>1E+4</td>
<td>5E-6</td>
<td>2E-8</td>
<td>1E-4</td>
<td>1E-3</td>
</tr>
<tr>
<td>81</td>
<td>Thallium-204</td>
<td>D, all compounds</td>
<td>2E+3</td>
<td>2E+3</td>
<td>9E+6</td>
<td>3E-9</td>
<td>3E-4</td>
<td>3E-3</td>
</tr>
<tr>
<td>82</td>
<td>Lead-196</td>
<td>D, all compounds</td>
<td>7E+3</td>
<td>5E+3</td>
<td>2E+6</td>
<td>7E+9</td>
<td>5E+5</td>
<td>5E-4</td>
</tr>
<tr>
<td>82</td>
<td>Lead-198</td>
<td>D, all compounds</td>
<td>4E+4</td>
<td>6E+4</td>
<td>3E-5</td>
<td>9E-8</td>
<td>4E-4</td>
<td>4E-3</td>
</tr>
<tr>
<td>82</td>
<td>Lead-200</td>
<td>D, all compounds</td>
<td>2E+4</td>
<td>7E+4</td>
<td>3E-5</td>
<td>2E+7</td>
<td>3E+4</td>
<td>3E-3</td>
</tr>
<tr>
<td>82</td>
<td>Lead-201</td>
<td>D, all compounds</td>
<td>3E+3</td>
<td>6E+3</td>
<td>3E+6</td>
<td>9E+9</td>
<td>4E-5</td>
<td>4E-4</td>
</tr>
<tr>
<td>82</td>
<td>Lead-202</td>
<td>D, all compounds</td>
<td>7E+3</td>
<td>2E+4</td>
<td>8E-6</td>
<td>2E+9</td>
<td>1E-4</td>
<td>1E-3</td>
</tr>
<tr>
<td>82</td>
<td>Lead-203</td>
<td>D, all compounds</td>
<td>6E+3</td>
<td>9E+3</td>
<td>4E+5</td>
<td>1E+8</td>
<td>6E-5</td>
<td>6E-4</td>
</tr>
<tr>
<td>82</td>
<td>Lead-205</td>
<td>D, all compounds</td>
<td>6E+4</td>
<td>1E+4</td>
<td>6E-7</td>
<td>3E-9</td>
<td>5E-5</td>
<td>5E-4</td>
</tr>
<tr>
<td>82</td>
<td>Lead-209</td>
<td>D, all compounds</td>
<td>5E+5</td>
<td>6E+4</td>
<td>8E-5</td>
<td>6E-9</td>
<td>3E-4</td>
<td>3E-3</td>
</tr>
<tr>
<td>82</td>
<td>Lead-210</td>
<td>D, all compounds</td>
<td>8E+3</td>
<td>2E+3</td>
<td>1E+10</td>
<td>-</td>
<td>-</td>
<td>-</td>
</tr>
</tbody>
</table>

424
## Table 1

<p>| Atomic No. | Radioisotope | Class | Col. 1 | Col. 2 | Col. 3 | Col. 1 | Col. 2 | Col. 3 | Col. 1 | Col. 2 | Col. 3 | Col. 1 | Col. 2 | Col. 3 | Col. 1 | Col. 2 | Col. 3 | Col. 1 | Col. 2 | Col. 3 |
|------------|--------------|-------|--------|--------|--------|--------|--------|--------|--------|--------|--------|--------|--------|--------|--------|--------|--------|--------|--------|
| 83 | Bismuth-209 | D, see 209Bi | - | 2E-3 | 7E-3 | 3E-6 | 3E-9 | 3E-5 | 3E-4 |
| W, see 209Bi | - | 6E-3 | 5E-6 | 3E-9 | - | - |
| 83 | Bismuth-205 | D, see 205Bi | - | 3E-3 | 3E-3 | 1E-6 | 3E-9 | 2E-5 | 2E-4 |
| W, see 205Bi | - | 3E-3 | 5E-7 | 2E-9 | - | - |
| 83 | Bismuth-206 | D, see 206Bi | - | 6E-2 | 3E-3 | 6E-7 | 2E-9 | 9E-6 | 9E-5 |
| W, see 206Bi | - | 3E-2 | 4E-7 | 3E-9 | - | - |
| 83 | Bismuth-207 | D, see 207Bi | - | 1E-3 | 2E-3 | 7E-7 | 2E-9 | 1E-5 | 1E-4 |
| W, see 207Bi | - | 4E-2 | 1E-7 | 5E-10 | - | - |
| 83 | Bismuth-210 | D, see 210Bi | 4E-1 | 5E-0 | 2E-9 | - | - | - |
| W, see 210Bi | 7E-1 | 3E-10 | 9E-13 | - | - |
| 83 | Bismuth-214 | D, see 214Bi | 8E-2 | 1E-7 | 1E-5 | 1E-4 |
| W, see 214Bi | 4E-2 | 1E-10 | 4E-11 | - | - |
| 83 | Bismuth-212 | D, see 212Bi | 4E-2 | 1E-7 | 1E-5 | 1E-4 |
| W, see 212Bi | 3E-1 | 3E-8 | 4E-11 | - | - |
| 83 | Bismuth-213 | D, see 213Bi | 3E-2 | 1E-7 | 1E-5 | 1E-4 |
| W, see 213Bi | 4E-2 | 1E-10 | 4E-11 | - | - |
| 83 | Bismuth-214 | D, see 214Bi | 2E-4 | 8E-2 | 3E-7 | 1E-9 | - | - |
| W, see 214Bi | 5E-2 | 4E-7 | 1E-9 | - | - |
| 84 | Polonium-210 | D, all compounds except those given for W | 3E-4 | 6E-4 | 3E-5 | 3E-8 | 3E-4 | 3E-3 |
| W, oxides, hydrides, and nitrates | 9E-4 | 4E-5 | 1E-7 | - | - |
| 84 | Polonium-209 | D, see 209Po | 7E-4 | 4E-4 | 2E-5 | 5E-8 | 3E-4 | 3E-3 |
| W, see 209Po | 7E-4 | 3E-5 | 1E-7 | - | - |
| 84 | Polonium-207 | D, see 207Po | 3E-4 | 3E-4 | 1E-5 | 3E-8 | 3E-4 | 3E-3 |
| W, see 207Po | 3E-4 | 1E-5 | 3E-8 | 3E-4 | 3E-3 |
| 84 | Polonium-210 | D, see 210Po | 3E-10 | 6E-1 | 3E-10 | 9E-13 | 4E-8 | 4E-7 |
| W, see 210Po | 6E-1 | 3E-10 | 9E-13 | - | - |
| 85 | Actinium-226 | D, halides | 3E-4 | 3E-4 | 1E-6 | 4E-9 | 8E-5 | 8E-4 |
| W | 2E-3 | 9E-7 | 3E-9 | - | - |
| 85 | Actinium-221 | D, halides | - | 2E-1 | 3E-8 | 1E-10 | 2E-6 | 2E-5 |
| W | 5E-1 | 2E-9 | 1E-11 | - | - |
| 86 | Radon-222 | With daughters removed | - | 2E-4 | 7E-6 | 2E-6 | - | - |
| (or 32 working level months) | - | 2E-4 | 8E-9 | 3E-11 | - | - |
| With daughters present | - | 2E-4 | 7E-6 | 2E-6 | - | - |
| (or 1.0 working level) | - | 2E-4 | 8E-9 | 3E-11 | - | - |</p>
<table>
<thead>
<tr>
<th>Atomic No.</th>
<th>Radi nuclide</th>
<th>Class</th>
<th>Col. 1 Occupational Values</th>
<th>Col. 2 Effluent Concentrations</th>
<th>Col. 3 Releases to Severe</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td></td>
<td></td>
<td>Oral Implantation (µCi)</td>
<td>Inhalation (µCi)</td>
<td>Air (µCi/ml) Water (µCi/ml)</td>
</tr>
<tr>
<td>86</td>
<td>Radon-222</td>
<td>With daughters removed</td>
<td>- 1E-6 4E-6 1E-6</td>
<td>- 3E-6 1E-6</td>
<td>-</td>
</tr>
<tr>
<td></td>
<td></td>
<td>With daughters present</td>
<td>- 1E-2 3E-8 1E-10</td>
<td>- 3E-8 1E-10</td>
<td>-</td>
</tr>
<tr>
<td>87</td>
<td>Francium-222</td>
<td>D, all compounds</td>
<td>2E+3 5E+2 2E+7 6E-10 3E-5 3E-4</td>
<td>-</td>
<td>-</td>
</tr>
<tr>
<td>87</td>
<td>Francium-223</td>
<td>D, all compounds</td>
<td>6E+2 8E+2 3E+7 3E-9 8E-6 8E-6</td>
<td>-</td>
<td>-</td>
</tr>
<tr>
<td>88</td>
<td>Radium-223</td>
<td>W, all compounds</td>
<td>5E+0 Bone surf (9%+0) 7E-1 3E-10 9E-13 -</td>
<td>-</td>
<td>-</td>
</tr>
<tr>
<td>88</td>
<td>Radium-224</td>
<td>W, all compounds</td>
<td>8E+0 Bone surf (2E+1) 7E+0 3E+10 9E-13 -</td>
<td>-</td>
<td>-</td>
</tr>
<tr>
<td>88</td>
<td>Radium-225</td>
<td>W, all compounds</td>
<td>8E+0 Bone surf (2E+1) 7E-1 3E-10 9E-13 -</td>
<td>-</td>
<td>-</td>
</tr>
<tr>
<td>88</td>
<td>Radium-226</td>
<td>W, all compounds</td>
<td>2E+0 Bone surf (2E+1) 6E-1 3E-10 9E-13 -</td>
<td>-</td>
<td>-</td>
</tr>
<tr>
<td>89</td>
<td>Radium-227</td>
<td>W, all compounds</td>
<td>2E+4 Bone surf (2E+4) 1E+4 6E-6 -</td>
<td>-</td>
<td>-</td>
</tr>
<tr>
<td>89</td>
<td>Radon-228</td>
<td>W, all compounds</td>
<td>2E+0 Bone surf (4E+0) 1E+0 5E-10 2E-12 -</td>
<td>-</td>
<td>-</td>
</tr>
<tr>
<td>89</td>
<td>Actinium-226</td>
<td>D, all compounds except those given for W and Y</td>
<td>2E+3 3E+1 Bone surf (2E+3) 3E-8</td>
<td>-</td>
<td>-</td>
</tr>
<tr>
<td></td>
<td></td>
<td>W, halides and nitrites</td>
<td>- 5E+1 Bone surf (4E+1) 7E-11 3E-5 3E-4</td>
<td>-</td>
<td>-</td>
</tr>
<tr>
<td></td>
<td></td>
<td>Y, oxides and hydrides</td>
<td>- 5E+1 Bone surf (4E+1) 7E-11 3E-5 3E-4</td>
<td>-</td>
<td>-</td>
</tr>
<tr>
<td>89</td>
<td>Actinium-225</td>
<td>D, see 224Ac</td>
<td>5E+1 Bone surf (2E+1) 3E-10</td>
<td>-</td>
<td>-</td>
</tr>
<tr>
<td></td>
<td></td>
<td>W, see 224Ac</td>
<td>- 6E+1 Bone surf (3E+1) 7E-13 7E-7 7E-6</td>
<td>-</td>
<td>-</td>
</tr>
<tr>
<td></td>
<td></td>
<td>Y, see 224Ac</td>
<td>- 6E+1 Bone surf (3E+1) 7E-13 7E-7 7E-6</td>
<td>-</td>
<td>-</td>
</tr>
<tr>
<td>89</td>
<td>Actinium-226</td>
<td>D, see 224Ac</td>
<td>1E+2 3E+0 Bone surf (1E+2) 3E-9</td>
<td>-</td>
<td>-</td>
</tr>
<tr>
<td></td>
<td></td>
<td>W, see 224Ac</td>
<td>- 5E+0 Bone surf (3E+0) 7E-12 2E-6 2E-5</td>
<td>-</td>
<td>-</td>
</tr>
<tr>
<td></td>
<td></td>
<td>Y, see 224Ac</td>
<td>- 5E+0 Bone surf (3E+0) 7E-12 2E-6 2E-5</td>
<td>-</td>
<td>-</td>
</tr>
<tr>
<td>89</td>
<td>Actinium-227</td>
<td>D, see 224Ac</td>
<td>2E+3 Bone surf (3E+1) 5E+3</td>
<td>3E+3 5E-9 5E-0</td>
<td>-</td>
</tr>
<tr>
<td></td>
<td></td>
<td>W, see 224Ac</td>
<td>- 3E+3 Bone surf (3E+3) 5E-15 5E-9 5E-0</td>
<td>-</td>
<td>-</td>
</tr>
<tr>
<td></td>
<td></td>
<td>Y, see 224Ac</td>
<td>- 3E+3 Bone surf (3E+3) 5E-15 5E-9 5E-0</td>
<td>-</td>
<td>-</td>
</tr>
</tbody>
</table>
### Table 3

<table>
<thead>
<tr>
<th>Atomic No.</th>
<th>Radioisotope</th>
<th>Class</th>
<th>Occupational Values</th>
<th>Effluent Concentrations</th>
<th>Releases to Severe</th>
</tr>
</thead>
<tbody>
<tr>
<td>89</td>
<td>Actinium-229</td>
<td>D, see 229Ac</td>
<td>Col. 1</td>
<td>Col. 2</td>
<td>Col. 3</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td>Oral Ingestion</td>
<td>Air</td>
<td>Water</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td>All (pCi)</td>
<td>(pCi/ml)</td>
<td>(pCi/ml)</td>
</tr>
<tr>
<td>90</td>
<td>Thorium-230</td>
<td>W, see 230Th</td>
<td>2E+3</td>
<td>3E+0</td>
<td>4E-9</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td>Bone surf</td>
<td>Bone surf</td>
<td>Bone surf</td>
</tr>
<tr>
<td>90</td>
<td>Thorium-229</td>
<td>W, see 229Th</td>
<td>2E+2</td>
<td>3E+0</td>
<td>4E-12</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td>Bone surf</td>
<td>Bone surf</td>
<td>Bone surf</td>
</tr>
<tr>
<td>90</td>
<td>Thorium-229</td>
<td>W, see 229Th</td>
<td>2E+0</td>
<td>2E+3</td>
<td>4E-12</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td>Bone surf</td>
<td>Bone surf</td>
<td>Bone surf</td>
</tr>
<tr>
<td>90</td>
<td>Thorium-230</td>
<td>W, see 230Th</td>
<td>2E+0</td>
<td>2E+3</td>
<td>4E-12</td>
</tr>
</tbody>
</table>

### Table 2

<table>
<thead>
<tr>
<th>Atomic No.</th>
<th>Radioisotope</th>
<th>Class</th>
<th>Occupational Values</th>
<th>Effluent Concentrations</th>
<th>Releases to Severe</th>
</tr>
</thead>
<tbody>
<tr>
<td>89</td>
<td>Actinium-229</td>
<td>D, see 229Ac</td>
<td>Col. 1</td>
<td>Col. 2</td>
<td>Col. 3</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td>Oral Ingestion</td>
<td>Air</td>
<td>Water</td>
</tr>
<tr>
<td>90</td>
<td>Thorium-230</td>
<td>W, see 230Th</td>
<td>2E+3</td>
<td>3E+0</td>
<td>4E-9</td>
</tr>
<tr>
<td>90</td>
<td>Thorium-229</td>
<td>W, see 229Th</td>
<td>2E+2</td>
<td>3E+0</td>
<td>4E-12</td>
</tr>
<tr>
<td>90</td>
<td>Thorium-229</td>
<td>W, see 229Th</td>
<td>2E+0</td>
<td>2E+3</td>
<td>4E-12</td>
</tr>
<tr>
<td>90</td>
<td>Thorium-230</td>
<td>W, see 230Th</td>
<td>2E+0</td>
<td>2E+3</td>
<td>4E-12</td>
</tr>
</tbody>
</table>

### Table 1

<table>
<thead>
<tr>
<th>Atomic No.</th>
<th>Radioisotope</th>
<th>Class</th>
<th>Occupational Values</th>
<th>Effluent Concentrations</th>
<th>Releases to Severe</th>
</tr>
</thead>
<tbody>
<tr>
<td>89</td>
<td>Actinium-229</td>
<td>D, see 229Ac</td>
<td>Col. 1</td>
<td>Col. 2</td>
<td>Col. 3</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td>Oral Ingestion</td>
<td>Air</td>
<td>Water</td>
</tr>
<tr>
<td>90</td>
<td>Thorium-230</td>
<td>W, see 230Th</td>
<td>2E+3</td>
<td>3E+0</td>
<td>4E-9</td>
</tr>
<tr>
<td>90</td>
<td>Thorium-229</td>
<td>W, see 229Th</td>
<td>2E+2</td>
<td>3E+0</td>
<td>4E-12</td>
</tr>
<tr>
<td>90</td>
<td>Thorium-229</td>
<td>W, see 229Th</td>
<td>2E+0</td>
<td>2E+3</td>
<td>4E-12</td>
</tr>
<tr>
<td>90</td>
<td>Thorium-230</td>
<td>W, see 230Th</td>
<td>2E+0</td>
<td>2E+3</td>
<td>4E-12</td>
</tr>
</tbody>
</table>

---

427
<table>
<thead>
<tr>
<th>Atomic No.</th>
<th>Radionuclide</th>
<th>Class</th>
<th>Col. 1 Occupational Values</th>
<th>Col. 2 Effluent Concentrations</th>
<th>Col. 3 Monthly Average Concentration</th>
</tr>
</thead>
<tbody>
<tr>
<td>91</td>
<td>Protactinium-231</td>
<td>W, see 231Pa</td>
<td>Oral Ingestion (µCi/L)</td>
<td>Inhalation (µCi/L)</td>
<td>Air (µCi/mL)</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td>6E+2</td>
<td>5E+0</td>
<td>7E-12</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td>(9E+2)</td>
<td>(6E+3)</td>
<td>(7E+3)</td>
</tr>
<tr>
<td></td>
<td></td>
<td>Y, see 231Pa</td>
<td>Bone surf</td>
<td>Bone surf</td>
<td>Bone surf</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td>4E+0</td>
<td>6E-13</td>
<td>6E-15</td>
</tr>
<tr>
<td>91</td>
<td>Protactinium-231</td>
<td>W, see 231Pa</td>
<td>Bone surf (5E+1)</td>
<td>Bone surf (5E+3)</td>
<td>Bone surf (5E+3)</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td>4E+3</td>
<td>6E-13</td>
<td>6E-15</td>
</tr>
<tr>
<td></td>
<td></td>
<td>Y, see 231Pa</td>
<td>Bone surf (5E+1)</td>
<td>Bone surf (5E+3)</td>
<td>Bone surf (5E+3)</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td>4E+3</td>
<td>6E-13</td>
<td>6E-15</td>
</tr>
<tr>
<td>91</td>
<td>Protactinium-232</td>
<td>W, see 232Pa</td>
<td>1E+3</td>
<td>9E-9</td>
<td>-</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td>2E-3</td>
<td>9E-9</td>
<td>-</td>
</tr>
<tr>
<td></td>
<td></td>
<td>Y, see 232Pa</td>
<td>Bone surf (5E+1)</td>
<td>Bone surf (5E+3)</td>
<td>Bone surf (5E+3)</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td>6E-8</td>
<td>8E-11</td>
<td>-</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td>6E-8</td>
<td>8E-11</td>
<td>-</td>
</tr>
<tr>
<td>91</td>
<td>Protactinium-233</td>
<td>W, see 233Pa</td>
<td>3E+3</td>
<td>7E-2</td>
<td>1E-9</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td>3E+3</td>
<td>7E-2</td>
<td>1E-9</td>
</tr>
<tr>
<td></td>
<td></td>
<td>Y, see 233Pa</td>
<td>L/L well (2E+3)</td>
<td>L/L well (2E+3)</td>
<td>L/L well (2E+3)</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td>2E+3</td>
<td>7E-7</td>
<td>8E-10</td>
</tr>
<tr>
<td>92</td>
<td>Uranium-230</td>
<td>D, U, UO₂₃, UO₂₃(NO₃)</td>
<td>4E+0</td>
<td>9E-10</td>
<td>-</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td>4E+1</td>
<td>9E-10</td>
<td>-</td>
</tr>
<tr>
<td></td>
<td></td>
<td>W, UO₂, U₂O₅, U₂O₃</td>
<td>Bone surf (8E+0)</td>
<td>Bone surf (8E+1)</td>
<td>Bone surf (8E+1)</td>
</tr>
<tr>
<td></td>
<td></td>
<td>Y, UO₂, U₂O₅</td>
<td>Bone surf (8E+1)</td>
<td>Bone surf (8E+1)</td>
<td>Bone surf (8E+1)</td>
</tr>
<tr>
<td>92</td>
<td>Uranium-231</td>
<td>D, see 231Pa</td>
<td>5E+3</td>
<td>1E-8</td>
<td>-</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td>5E+3</td>
<td>1E-8</td>
<td>-</td>
</tr>
<tr>
<td></td>
<td></td>
<td>Y, see 231Pa</td>
<td>L/L well (2E+3)</td>
<td>L/L well (2E+3)</td>
<td>L/L well (2E+3)</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td>2E+3</td>
<td>7E-6</td>
<td>8E-9</td>
</tr>
<tr>
<td>92</td>
<td>Uranium-232</td>
<td>D, see 232Pa</td>
<td>2E+0</td>
<td>9E-11</td>
<td>-</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td>2E+1</td>
<td>9E-11</td>
<td>-</td>
</tr>
<tr>
<td></td>
<td></td>
<td>W, see 232Pa</td>
<td>Bone surf (4E+0)</td>
<td>Bone surf (4E+1)</td>
<td>Bone surf (4E+1)</td>
</tr>
<tr>
<td></td>
<td></td>
<td>Y, see 232Pa</td>
<td>Bone surf (4E+1)</td>
<td>Bone surf (4E+1)</td>
<td>Bone surf (4E+1)</td>
</tr>
<tr>
<td>92</td>
<td>Uranium-233</td>
<td>D, see 233Pa</td>
<td>1E+1</td>
<td>5E-10</td>
<td>-</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td>1E+1</td>
<td>5E-10</td>
<td>-</td>
</tr>
<tr>
<td></td>
<td></td>
<td>W, see 233Pa</td>
<td>Bone surf (2E+1)</td>
<td>Bone surf (2E+1)</td>
<td>Bone surf (2E+1)</td>
</tr>
<tr>
<td></td>
<td></td>
<td>Y, see 233Pa</td>
<td>Bone surf (2E+1)</td>
<td>Bone surf (2E+1)</td>
<td>Bone surf (2E+1)</td>
</tr>
<tr>
<td>92</td>
<td>Uranium-234</td>
<td>D, see 234Pa</td>
<td>1E+1</td>
<td>5E-10</td>
<td>-</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td>1E+1</td>
<td>5E-10</td>
<td>-</td>
</tr>
<tr>
<td></td>
<td></td>
<td>W, see 234Pa</td>
<td>Bone surf (2E+1)</td>
<td>Bone surf (2E+1)</td>
<td>Bone surf (2E+1)</td>
</tr>
<tr>
<td></td>
<td></td>
<td>Y, see 234Pa</td>
<td>Bone surf (2E+1)</td>
<td>Bone surf (2E+1)</td>
<td>Bone surf (2E+1)</td>
</tr>
</tbody>
</table>
Nuclear Regulatory Commission

Pt. 20, App. B

VerDate Sep<11>2014

15:21 May 15, 2020

Jkt 250030

PO 00000

Frm 00439

Fmt 8010

Sfmt 8006

Y:\SGML\250030.XXX

250030

EC02OC91.046</GPH>

429


<table>
<thead>
<tr>
<th>Atomic No.</th>
<th>Radionuclide</th>
<th>Class</th>
<th>Col. 1 Occupational Values</th>
<th>Col. 2</th>
<th>Col. 3</th>
<th>Col. 1</th>
<th>Col. 2</th>
<th>Monthly Average Concentration (µCi/ml)</th>
</tr>
</thead>
<tbody>
<tr>
<td>93</td>
<td>Neptunium-239</td>
<td>W, all compounds</td>
<td>Oral ingestion (µCi)</td>
<td>Inhalation (µCi)</td>
<td>Air (µCi/ml)</td>
<td>Water (µCi/ml)</td>
<td></td>
<td></td>
</tr>
<tr>
<td>94</td>
<td>Plutonium-239</td>
<td>W, all compounds except Pu239</td>
<td>Oral ingestion (µCi)</td>
<td>Inhalation (µCi)</td>
<td>Air (µCi/ml)</td>
<td>Water (µCi/ml)</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Atomic No.</td>
<td>Radionuclide</td>
<td>Class</td>
<td>Table 1: Occupational Values</td>
<td>Table 2: Effluent Concentrations</td>
<td>Table 3: Releases to Sowers</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>------------</td>
<td>--------------</td>
<td>-------</td>
<td>-----------------------------</td>
<td>---------------------------------</td>
<td>-----------------------------</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td>Oral Inhalation</td>
<td>Air</td>
<td>Water</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td>Exposure (µCi)</td>
<td>Exposure (µCi/ml)</td>
<td>Exposure (µCi/ml)</td>
<td>Monthly Average Concentration (µCi/ml)</td>
<td>Col. 1</td>
<td>Col. 2</td>
</tr>
<tr>
<td>94</td>
<td>Plutonium-242</td>
<td>W, see 234Pu</td>
<td>4E-1</td>
<td>Bone surf (3E-7)</td>
<td>2E-10</td>
<td>2E-10</td>
<td>2E-10</td>
<td>2E-10</td>
</tr>
<tr>
<td>94</td>
<td>Plutonium-243</td>
<td>W, see 234Pu</td>
<td>4E-4</td>
<td>Bone surf (3E-5)</td>
<td>2E-6</td>
<td>2E-6</td>
<td>2E-6</td>
<td>2E-6</td>
</tr>
<tr>
<td>94</td>
<td>Plutonium-244</td>
<td>W, see 234Pu</td>
<td>4E-1</td>
<td>Bone surf (3E-12)</td>
<td>2E-14</td>
<td>2E-14</td>
<td>2E-14</td>
<td>2E-14</td>
</tr>
<tr>
<td>94</td>
<td>Plutonium-245</td>
<td>W, see 234Pu</td>
<td>1E-2</td>
<td>Bone surf (3E-6)</td>
<td>5E-8</td>
<td>5E-8</td>
<td>5E-8</td>
<td>5E-8</td>
</tr>
<tr>
<td>95</td>
<td>Americium-237</td>
<td>W, all compounds</td>
<td>4E-4</td>
<td>Bone surf (6E-3)</td>
<td>9E-9</td>
<td>9E-9</td>
<td>9E-9</td>
<td>9E-9</td>
</tr>
<tr>
<td>95</td>
<td>Americium-240</td>
<td>W, all compounds</td>
<td>4E-4</td>
<td>Bone surf (3E-6)</td>
<td>5E-8</td>
<td>5E-8</td>
<td>5E-8</td>
<td>5E-8</td>
</tr>
<tr>
<td>95</td>
<td>Americium-241</td>
<td>W, all compounds</td>
<td>4E-4</td>
<td>Bone surf (3E-12)</td>
<td>2E-14</td>
<td>2E-14</td>
<td>2E-14</td>
<td>2E-14</td>
</tr>
<tr>
<td>95</td>
<td>Americium-242</td>
<td>W, all compounds</td>
<td>4E-4</td>
<td>Bone surf (3E-6)</td>
<td>5E-8</td>
<td>5E-8</td>
<td>5E-8</td>
<td>5E-8</td>
</tr>
<tr>
<td>95</td>
<td>Americium-243</td>
<td>W, all compounds</td>
<td>4E-4</td>
<td>Bone surf (3E-12)</td>
<td>2E-14</td>
<td>2E-14</td>
<td>2E-14</td>
<td>2E-14</td>
</tr>
<tr>
<td>95</td>
<td>Americium-244</td>
<td>W, all compounds</td>
<td>4E-4</td>
<td>Bone surf (3E-6)</td>
<td>5E-8</td>
<td>5E-8</td>
<td>5E-8</td>
<td>5E-8</td>
</tr>
<tr>
<td>95</td>
<td>Americium-245</td>
<td>W, all compounds</td>
<td>4E-4</td>
<td>Bone surf (3E-6)</td>
<td>5E-8</td>
<td>5E-8</td>
<td>5E-8</td>
<td>5E-8</td>
</tr>
</tbody>
</table>

431
<table>
<thead>
<tr>
<th>Atomic No.</th>
<th>Radionuclide</th>
<th>Class</th>
<th>Table 1: Occupational Limits</th>
<th>Table 2: Effluent Concentrations</th>
<th>Table 3: Releases to Sewers</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td></td>
<td></td>
<td>Oral Inhalation C&lt;sup&gt;1+9&lt;/sup&gt;</td>
<td>Oral Inhalation C&lt;sup&gt;1+9&lt;/sup&gt;</td>
<td>Monthly Average Concentration (pCi/L)</td>
</tr>
</tbody>
</table>

### Table 1: Occupational Values

<table>
<thead>
<tr>
<th></th>
<th>Col. 1 ( oral )</th>
<th>Col. 2 ( oral )</th>
<th>C&lt;sup&gt;1+9&lt;/sup&gt; (oral)</th>
<th>Col. 1 (inhalation)</th>
<th>Col. 2 (inhalation)</th>
<th>C&lt;sup&gt;1+9&lt;/sup&gt; (inhalation)</th>
<th>Air (pCi/mL)</th>
<th>Water (pCi/mL)</th>
<th>Monthly Average Concentration (pCi/L)</th>
</tr>
</thead>
<tbody>
<tr>
<td>95</td>
<td>Americium-241</td>
<td>V, all compounds</td>
<td>5E+4</td>
<td>2E+5</td>
<td>BE-5</td>
<td>3E-7</td>
<td>-</td>
<td>-</td>
<td>-</td>
</tr>
<tr>
<td>95</td>
<td>Americium-241</td>
<td>V, all compounds</td>
<td>8E+4</td>
<td>1E+5</td>
<td>4E-5</td>
<td>3E-7</td>
<td>4E-6</td>
<td>4E-3</td>
<td>-</td>
</tr>
<tr>
<td>96</td>
<td>Curium-238</td>
<td>V, all compounds</td>
<td>2E+4</td>
<td>1E+3</td>
<td>5E-7</td>
<td>2E-9</td>
<td>2E-6</td>
<td>2E-3</td>
<td>-</td>
</tr>
<tr>
<td>96</td>
<td>Curium-240</td>
<td>V, all compounds</td>
<td>6E+1</td>
<td>6E+1</td>
<td>2E-10</td>
<td>9E-13</td>
<td>1E-6</td>
<td>1E-5</td>
<td>-</td>
</tr>
<tr>
<td>96</td>
<td>Curium-241</td>
<td>V, all compounds</td>
<td>1E+3</td>
<td>3E+1</td>
<td>3E-8</td>
<td>5E-11</td>
<td>2E-5</td>
<td>2E-4</td>
<td>-</td>
</tr>
<tr>
<td>96</td>
<td>Curium-242</td>
<td>V, all compounds</td>
<td>3E+1</td>
<td>3E-1</td>
<td>3E-10</td>
<td>4E-13</td>
<td>7E-7</td>
<td>7E-6</td>
<td>-</td>
</tr>
<tr>
<td>96</td>
<td>Curium-243</td>
<td>V, all compounds</td>
<td>1E+0</td>
<td>9E-3</td>
<td>4E-12</td>
<td>2E-14</td>
<td>3E-8</td>
<td>3E-7</td>
<td>-</td>
</tr>
<tr>
<td>96</td>
<td>Curium-244</td>
<td>V, all compounds</td>
<td>1E+0</td>
<td>7E-2</td>
<td>5E-12</td>
<td>3E-14</td>
<td>3E-8</td>
<td>3E-7</td>
<td>-</td>
</tr>
<tr>
<td>96</td>
<td>Curium-245</td>
<td>V, all compounds</td>
<td>7E-1</td>
<td>6E-3</td>
<td>3E-12</td>
<td>2E-14</td>
<td>3E-9</td>
<td>3E-7</td>
<td>-</td>
</tr>
<tr>
<td>96</td>
<td>Curium-246</td>
<td>V, all compounds</td>
<td>7E-1</td>
<td>6E-3</td>
<td>3E-12</td>
<td>2E-14</td>
<td>3E-9</td>
<td>3E-7</td>
<td>-</td>
</tr>
<tr>
<td>96</td>
<td>Curium-247</td>
<td>V, all compounds</td>
<td>8E-1</td>
<td>6E-3</td>
<td>3E-12</td>
<td>2E-14</td>
<td>3E-9</td>
<td>3E-7</td>
<td>-</td>
</tr>
<tr>
<td>96</td>
<td>Curium-248</td>
<td>V, all compounds</td>
<td>2E-1</td>
<td>6E-3</td>
<td>3E-12</td>
<td>2E-14</td>
<td>3E-9</td>
<td>3E-7</td>
<td>-</td>
</tr>
<tr>
<td>96</td>
<td>Curium-249</td>
<td>V, all compounds</td>
<td>5E+4</td>
<td>2E+4</td>
<td>7E-6</td>
<td>4E-8</td>
<td>-</td>
<td>-</td>
<td>-</td>
</tr>
<tr>
<td>97</td>
<td>Berkelium-245</td>
<td>V, all compounds</td>
<td>2E+3</td>
<td>3E+3</td>
<td>5E-7</td>
<td>2E-9</td>
<td>3E-5</td>
<td>3E-4</td>
<td>-</td>
</tr>
<tr>
<td>97</td>
<td>Berkelium-246</td>
<td>V, all compounds</td>
<td>3E+3</td>
<td>3E+3</td>
<td>7E-6</td>
<td>4E-9</td>
<td>4E-5</td>
<td>4E-4</td>
<td>-</td>
</tr>
<tr>
<td>97</td>
<td>Berkelium-247</td>
<td>V, all compounds</td>
<td>5E+1</td>
<td>6E-3</td>
<td>2E-12</td>
<td>1E-14</td>
<td>3E-9</td>
<td>3E-7</td>
<td>-</td>
</tr>
<tr>
<td>97</td>
<td>Berkelium-249</td>
<td>V, all compounds</td>
<td>2E+2</td>
<td>3E+3</td>
<td>7E-10</td>
<td>-</td>
<td>-</td>
<td>-</td>
<td>-</td>
</tr>
</tbody>
</table>

432
<table>
<thead>
<tr>
<th>Atomic Number</th>
<th>Isotope</th>
<th>Class</th>
<th>Table 1 Occupational Values</th>
<th>Table 2 Effluent Concentrations</th>
<th>Table 3 Releases to Sanitary Systems</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td></td>
<td></td>
<td>Col. 1 Oral Ingestion</td>
<td>Col. 2 Inhalation</td>
<td>Col. 3 Inhalation</td>
</tr>
<tr>
<td>97</td>
<td>Berkelium-250</td>
<td>W, all compounds</td>
<td>9E+3</td>
<td>3E-2</td>
<td>1E-7</td>
</tr>
<tr>
<td>98</td>
<td>Californium-244</td>
<td>W, all compounds except those given for Y</td>
<td>3E+4</td>
<td>6E+2</td>
<td>2E-7</td>
</tr>
<tr>
<td></td>
<td></td>
<td>Y, oxides and hydridoxides</td>
<td>-</td>
<td>6E+2</td>
<td>2E-7</td>
</tr>
<tr>
<td>98</td>
<td>Californium-246</td>
<td>W, see 244Cf</td>
<td>4E+2</td>
<td>9E+0</td>
<td>4E-9</td>
</tr>
<tr>
<td></td>
<td></td>
<td>Y, see 244Cf</td>
<td>-</td>
<td>9E+0</td>
<td>4E-9</td>
</tr>
<tr>
<td>98</td>
<td>Californium-248</td>
<td>W, see 244Cf</td>
<td>8E+0</td>
<td>6E-2</td>
<td>3E-11</td>
</tr>
<tr>
<td></td>
<td></td>
<td>Y, see 244Cf</td>
<td>-</td>
<td>6E-2</td>
<td>3E-11</td>
</tr>
<tr>
<td>98</td>
<td>Californium-249</td>
<td>W, see 244Cf</td>
<td>5E-1</td>
<td>4E-3</td>
<td>2E-12</td>
</tr>
<tr>
<td></td>
<td></td>
<td>Y, see 244Cf</td>
<td>-</td>
<td>4E-3</td>
<td>2E-12</td>
</tr>
<tr>
<td>98</td>
<td>Californium-250</td>
<td>W, see 244Cf</td>
<td>3E+0</td>
<td>9E-3</td>
<td>4E-12</td>
</tr>
<tr>
<td></td>
<td></td>
<td>Y, see 244Cf</td>
<td>-</td>
<td>9E-3</td>
<td>4E-12</td>
</tr>
<tr>
<td>98</td>
<td>Californium-251</td>
<td>W, see 244Cf</td>
<td>5E-1</td>
<td>4E-3</td>
<td>2E-12</td>
</tr>
<tr>
<td></td>
<td></td>
<td>Y, see 244Cf</td>
<td>-</td>
<td>4E-3</td>
<td>2E-12</td>
</tr>
<tr>
<td>98</td>
<td>Californium-252</td>
<td>W, see 244Cf</td>
<td>3E+0</td>
<td>2E-2</td>
<td>8E-12</td>
</tr>
<tr>
<td></td>
<td></td>
<td>Y, see 244Cf</td>
<td>-</td>
<td>2E-2</td>
<td>8E-12</td>
</tr>
<tr>
<td>98</td>
<td>Californium-253</td>
<td>W, see 244Cf</td>
<td>3E+0</td>
<td>2E-2</td>
<td>8E-12</td>
</tr>
<tr>
<td></td>
<td></td>
<td>Y, see 244Cf</td>
<td>-</td>
<td>2E-2</td>
<td>8E-12</td>
</tr>
<tr>
<td>99</td>
<td>Einsteinium-250</td>
<td>W, all compounds</td>
<td>4E+4</td>
<td>5E+2</td>
<td>2E-7</td>
</tr>
<tr>
<td></td>
<td></td>
<td>Y, see 244Cf</td>
<td>-</td>
<td>5E+2</td>
<td>2E-7</td>
</tr>
<tr>
<td>99</td>
<td>Einsteinium-251</td>
<td>W, all compounds</td>
<td>7E+3</td>
<td>9E+2</td>
<td>4E-7</td>
</tr>
<tr>
<td></td>
<td></td>
<td>Y, see 244Cf</td>
<td>-</td>
<td>9E+2</td>
<td>4E-7</td>
</tr>
<tr>
<td>99</td>
<td>Einsteinium-252</td>
<td>W, all compounds</td>
<td>7E+3</td>
<td>9E+2</td>
<td>4E-7</td>
</tr>
<tr>
<td></td>
<td></td>
<td>Y, see 244Cf</td>
<td>-</td>
<td>9E+2</td>
<td>4E-7</td>
</tr>
<tr>
<td>Atomic No.</td>
<td>Radioisotope</td>
<td>Class</td>
<td>Col. 1 Oral Ingestion (μCi)</td>
<td>Col. 2 Inhalation (μCi)</td>
<td>Col. 3 Inhalation (μCi/ml)</td>
</tr>
<tr>
<td>-----------</td>
<td>--------------</td>
<td>-------</td>
<td>-----------------------------</td>
<td>------------------------</td>
<td>---------------------------</td>
</tr>
<tr>
<td>99</td>
<td>Einsteinium-254</td>
<td>W, all compounds</td>
<td>$3 \times 10^2$</td>
<td>$1 \times 10^1$</td>
<td>$4 \times 10^2$</td>
</tr>
<tr>
<td>100</td>
<td>Fermium-257</td>
<td>W, all compounds</td>
<td>$5 \times 10^2$</td>
<td>$1 \times 10^1$</td>
<td>$5 \times 10^1$</td>
</tr>
<tr>
<td>101</td>
<td>Mendelevium-258</td>
<td>W, all compounds</td>
<td>$1 \times 10^2$</td>
<td>$1 \times 10^1$</td>
<td>$1 \times 10^1$</td>
</tr>
</tbody>
</table>

- Any single radionuclide not listed above with decay mode other than alpha emission or spontaneous fission and with radioactivity half-life less than 2 hours
- Subversion

- Any single radionuclide not listed above with decay mode other than alpha emission or spontaneous fission and with radioactivity half-life greater than 2 hours
- Any single radionuclide not listed above that decays by alpha emission or spontaneous fission, or any mixture for which either the identity or the concentration of any radionuclide in the mixture is not known

434
FOOTNOTES:

1 **Submersion** means that values given are for submersion in a hemispherical semi-infinite cloud of airborne material.

2 These radionuclides have radiological half-lives of less than 2 hours. The total effective dose equivalent received during operations with these radionuclides might include a significant contribution from external exposure. The DAE values for all radionuclides, other than those designated Class "Submersion," are based upon the committed effective dose equivalent due to the intake of the radionuclide into the body and do **DO** include potentially significant contributions to dose equivalent from external exposures. The license may substitute JE-7 mCi/l for the listed DAE to account for the submersion dose prospectively, but should use individual monitoring devices or other radiation measuring instruments that measure external exposure to demonstrate compliance with the limits. (See § 20.1203.)

3 For soluble mixtures of U-238, U-234, and U-235 in air, chemical toxicity may be the limiting factor (see § 20.1201(e)). If the percent by weight (enrichment) of U-235 is not greater than 5, the concentration value for a 40-hour workweek is 0.2 milligrams per cubic meter of air average. For any enrichment, the product of the average concentration and time of exposure during a 40-hour workweek shall not exceed 1E-3 (SA) pCi/gram, where SA is the specific activity of the uranium isolated. The specific activity for natural uranium is 6.7E-7 curies per gram U. The specific activity for other mixtures of U-238, U-235, and U-234, if not known, shall be:

\[
SA = 3.6E-7 \text{ curies/gram U} \\
SA = (0.4 + 0.38 \text{ (enrichment)} + 0.0004 \text{ (enrichment)}^2) \times 6.7E-7 \text{ curies/gram U}
\]

where enrichment is the percentage by weight of U-235, expressed as percent.

NOTE:

1. If the identity of each radionuclide in a mixture is known but the concentration of one or more of the radionuclides in the mixture is not known, the DAE for the mixture shall be the most restrictive DAE of any radionuclide in the mixture.

2. If the identity of each radionuclide in the mixture is not known, but it is known that certain radionuclides specified in this appendix are not present in the mixture, the inhalation ALI, DAE, and effluent and sewage concentrations for the mixture are the lowest values specified in this appendix for any radionuclide that is not known to be absent from the mixture; or

<table>
<thead>
<tr>
<th>Radionuclide</th>
<th>Table 1 Occupational Values</th>
<th>Table 2 Effluent Concentrations</th>
<th>Table 3 Releases to Sewers</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>Oral Ingestion ALI (mCi)</td>
<td>Ingestion Inhalation DAE (mCi/l)</td>
<td>Air (mCi/l)</td>
</tr>
<tr>
<td></td>
<td>Col. 1</td>
<td>Col. 2</td>
<td>Col. 1</td>
</tr>
<tr>
<td>Ca-251-W</td>
<td>7E-6</td>
<td>3E-13</td>
<td>7E-3</td>
</tr>
<tr>
<td>Ca-250-W</td>
<td>7E-3</td>
<td>3E-12</td>
<td>-</td>
</tr>
<tr>
<td>Ca-248-W</td>
<td>2E-4</td>
<td>3E-13</td>
<td>7E-2</td>
</tr>
<tr>
<td>Ca-244-W</td>
<td>7E-5</td>
<td>3E-12</td>
<td>7E-1</td>
</tr>
<tr>
<td>Th-233-W</td>
<td>7E-6</td>
<td>3E-13</td>
<td>-</td>
</tr>
<tr>
<td>Th-232-W</td>
<td>7E-3</td>
<td>3E-12</td>
<td>-</td>
</tr>
<tr>
<td>Th-230-W</td>
<td>2E-4</td>
<td>3E-13</td>
<td>7E-2</td>
</tr>
<tr>
<td>Th-229-W</td>
<td>7E-5</td>
<td>3E-12</td>
<td>7E-1</td>
</tr>
<tr>
<td>Th-228-W</td>
<td>7E-6</td>
<td>3E-13</td>
<td>-</td>
</tr>
<tr>
<td>Th-227-W</td>
<td>7E-3</td>
<td>3E-12</td>
<td>-</td>
</tr>
<tr>
<td>Th-226-W</td>
<td>2E-4</td>
<td>3E-13</td>
<td>7E-2</td>
</tr>
<tr>
<td>Th-225-W</td>
<td>7E-5</td>
<td>3E-12</td>
<td>7E-1</td>
</tr>
<tr>
<td>Th-224-W</td>
<td>7E-6</td>
<td>3E-13</td>
<td>-</td>
</tr>
<tr>
<td>Th-223-W</td>
<td>7E-3</td>
<td>3E-12</td>
<td>-</td>
</tr>
<tr>
<td>Th-222-W</td>
<td>2E-4</td>
<td>3E-13</td>
<td>7E-2</td>
</tr>
<tr>
<td>Th-221-W</td>
<td>7E-5</td>
<td>3E-12</td>
<td>7E-1</td>
</tr>
<tr>
<td>Th-219-W</td>
<td>7E-6</td>
<td>3E-13</td>
<td>-</td>
</tr>
<tr>
<td>Th-218-W</td>
<td>7E-3</td>
<td>3E-12</td>
<td>-</td>
</tr>
<tr>
<td>Th-217-W</td>
<td>2E-4</td>
<td>3E-13</td>
<td>7E-2</td>
</tr>
<tr>
<td>Th-216-W</td>
<td>7E-5</td>
<td>3E-12</td>
<td>7E-1</td>
</tr>
<tr>
<td>Th-214-W</td>
<td>7E-6</td>
<td>3E-13</td>
<td>-</td>
</tr>
<tr>
<td>Th-213-W</td>
<td>7E-3</td>
<td>3E-12</td>
<td>-</td>
</tr>
<tr>
<td>Th-212-W</td>
<td>2E-4</td>
<td>3E-13</td>
<td>7E-2</td>
</tr>
<tr>
<td>Th-209-W</td>
<td>7E-5</td>
<td>3E-12</td>
<td>7E-1</td>
</tr>
<tr>
<td>Th-208-W</td>
<td>7E-6</td>
<td>3E-13</td>
<td>-</td>
</tr>
</tbody>
</table>
### Table 1: Occupational Values

<table>
<thead>
<tr>
<th>Radionuclide</th>
<th>Col. 1 Oral Ingestion (mCi)</th>
<th>Col. 2 Inhalation (mCi/l)</th>
<th>Col. 3 DAC (mCi/l)</th>
</tr>
</thead>
</table>

If, in addition, it is known that Si-32-Y, Sn-111m-Y, Fe-52-0, Sr-40-Y, 28-Y, and 29-Y, are present, the following values may be used for the DAC of the mixture; 5.2 ug of gross alpha activity from uranium-236, 17 ug/gram from thorium-230, and 920 ug/micromole of air. 3 ug/micromole of natural uranium or 45 micrograms of natural uranium per cubic meter of air.

### Table 2: Occupational Concentrations

<table>
<thead>
<tr>
<th>Radionuclide</th>
<th>Col. 1 Air (mCi/m³)</th>
<th>Col. 2 Water (mCi/m³)</th>
<th>Col. 3 Monthly Average Concentration (mCi/m³)</th>
</tr>
</thead>
</table>

If, in addition, it is known that Sn-124-W, Ga-68m-W, Cd-105-D, Au-198m-W, Cd-113m-W, and Cd-113m-W are present, the following values may be used for the DAC of the mixture: 2 ug/micromole of air.

### Table 3: Reliance on Bevers

<table>
<thead>
<tr>
<th>Radionuclide</th>
<th>Col. 1 Bevers</th>
<th>Col. 2 Bevers</th>
<th>Col. 3 Bevers</th>
</tr>
</thead>
</table>

Example: If radionuclides "A," "B," and "C" are present in concentrations $c_A$, $c_B$, and $c_C$, and if the applicable DACs are $DAC_A$, $DAC_B$, and $DAC_C$, respectively, then the concentrations shall be limited so that the following relationship exists:

$$c_A < DAC_A, c_B < DAC_B, c_C < DAC_C$$

§ 300f

TITLED 42—THE PUBLIC HEALTH AND WELFARE

Page 964

organizations reporting any such transactions under subsection (a)(3) of this section.


(f) Rates

Nothing in this section shall be construed to confer upon the Secretary any authority to approve or disapprove the rates charged by any health maintenance organization.

(g) Annual financial statement

Any health maintenance organization failing to file with the Secretary the annual financial statement required in subsection (a) of this section shall be ineligible for any Federal assistance under this subchapter until such time as such statement is received by the Secretary and shall not be a qualified health maintenance organization for purposes of section 300e–9 of this title.

(h) Penalties

Whoever knowingly and willfully makes or causes to be made any false statement or representation of a material fact in any statement filed pursuant to this section shall be guilty of a felony and upon conviction thereof shall be fined not more than $25,000 or imprisoned for not more than five years, or both.


Amendments


1986—Subsec. (e). Pub. L. 99–660 struck out subsec. (e) which read as follows: “The Secretary shall file an annual report with the Congress on the operation of this section. Such report shall include—

(1) an enumeration of standards and norms utilized to make the evaluations required under subsection (d) of this section; 

(2) an assessment of the degree of conformity or nonconformity of each health maintenance organization evaluated by the Secretary under subsection (d) of this section with such standards and norms; 

(3) what action, if any, the Secretary considers necessary under section 300e–11 of this title with respect to health maintenance organizations evaluated under subsection (d) of this section.”

1981—Subsec. (a). Pub. L. 97–35, § 948(a), (b), in par. (2) inserted reference to copy of the report, if any, filed with the Health Care Financing Administration, and in par. (3) reorganized excluding provisions and, among revisions, inserted salaries paid to employees for services.

Subsec. (b)(1). Pub. L. 97–35, § 948(c), inserted “responsible for management or administration” after “employee”.

Subsec. (b)(4). Pub. L. 97–35, § 948(d), substituted “spouse, child, or parent” for “member of the immediate family”.

 Effective Date of 1986 Amendment


SUBCHAPTER XII—SAFETY OF PUBLIC WATER SYSTEMS

PART A—DEFINITIONS

§ 300f. Definitions

For purposes of this subchapter:

(1) The term “primary drinking water regulation” means a regulation which—

(A) applies to public water systems;

(B) specifies contaminants which, in the judgment of the Administrator, may have any adverse effect on the health of persons;

(C) specifies for each such contaminant either—

(i) a maximum contaminant level, if, in the judgment of the Administrator, it is economically and technologically feasible to ascertain the level of such contaminant in water in public water systems, or

(ii) if, in the judgment of the Administrator, it is not economically or technologically feasible to so ascertain the level of such contaminant, each treatment technique known to the Administrator which leads to a reduction in the level of such contaminant sufficient to satisfy the requirements of section 300g–1 of this title; and

(D) contains criteria and procedures to assure a supply of drinking water which dependably complies with such maximum contaminant levels; including accepted methods for quality control and testing procedures to insure compliance with such levels and to insure proper operation and maintenance of the system, and requirements as to (i) the minimum quality of water which may be taken into the system and (ii) siting for new facilities for public water systems.

At any time after promulgation of a regulation referred to in this paragraph, the Administrator may add equally effective quality control and testing procedures by guidance published in the Federal Register. Such procedures shall be treated as an alternative for public water systems to the quality control and testing procedures listed in the regulation.

(2) The term “secondary drinking water regulation” means a regulation which applies to public water systems and which specifies the maximum contaminant levels which, in the judgment of the Administrator, are requisite to protect the public welfare. Such regulations may apply to any contaminant in drinking water (A) which may adversely affect the odor or appearance of such water and consequently may cause a substantial number of the persons served by the public water system providing such water to discontinue its use, or (B) which may otherwise adversely affect the public welfare. Such regulations may vary according to geographic and other circumstances.

(3) The term “maximum contaminant level” means the maximum permissible level of a contaminant in water which is delivered to any user of a public water system.

(4) PUBLIC WATER SYSTEM.—

(A) IN GENERAL.—The term “public water system” means a system for the provision to
the public of water for human consumption through pipes or other constructed conveyances, if such system has at least fifteen service connections or regularly serves at least twenty-five individuals. Such term includes (i) any collection, treatment, storage, and distribution facilities under control of the operator of such system and used primarily in connection with such system, and (ii) any collection or pretreatment storage facilities not under such control which are used primarily in connection with such system.

(III) (B) CONNECTIONS.—For purposes of subparagraph (A), a connection to a system that delivers water by a constructed conveyance other than a pipe shall not be considered a connection, if—

(1) the water is used exclusively for purposes other than residential use (consisting of drinking, bathing, and cooking, or other similar uses);

(II) in the case of a State exercising primary enforcement responsibility for public water systems, that the water, provided for residential or similar uses for drinking, cooking, and bathing is centrally treated or treated at the point of entry by the provider, a pass-through entity, or the user to achieve the equivalent level of protection provided by the applicable national primary drinking water regulations.

(III) the Administrator or the State (in the case of a State exercising primary enforcement responsibility for public water systems) determines that alternative water to achieve the equivalent level of public health protection provided by the applicable national primary drinking water regulation is provided for residential or similar uses for drinking and cooking;

(11) the term “Indian Tribe” means any Indian tribe having a Federally recognized governing body carrying out substantial governmental duties and powers over any area. For purposes of section 300j–12 of this title, the term includes any Native village (as defined in section 1602(c) of title 43).

(15) COMMUNITY WATER SYSTEM.—The term “community water system” means a public water system that—

(A) serves at least 15 service connections used by year-round residents of the area served by the system; or

(B) regularly serves at least 25 year-round residents.

(16) NONCOMMUNITY WATER SYSTEM.—The term “noncommunity water system” means a public water system that is not a community water system.

(7) The term “contaminant” means any physical, chemical, biological, or radiological substance or matter in water.

(8) The term “Administrator” means the Administrator of the Environmental Protection Agency.

(9) The term “Agency” means the Environmental Protection Agency.

(10) The term “municipality” means a city, town, or other public body created by or pursuant to State law, or an Indian Tribe.

(11) The term “Federal agency” means any department, agency, or instrumentality of the United States.

(12) The term “person” means an individual, corporation, company, association, partnership, State, municipality, or Federal agency (and includes officers, employees, and agents of any corporation, company, association, State, municipality, or Federal agency).

(13)(A) Except as provided in subparagraph (B), the term “State” includes, in addition to the several States, only the District of Columbia, Guam, the Commonwealth of Puerto Rico, the Northern Mariana Islands, the Virgin Islands, American Samoa, and the Trust Territory of the Pacific Islands.

(14) The term “Indian Tribe” means any Indian tribe having a Federally recognized governing body carrying out substantial governmental duties and powers over any area. For purposes of section 300j–12 of this title, the term includes any Native village (as defined in section 1602(c) of title 43).

(15) COMMUNITY WATER SYSTEM.—The term “community water system” means a public water system that—

(A) serves at least 15 service connections used by year-round residents of the area served by the system; or

(B) regularly serves at least 25 year-round residents.

(16) NONCOMMUNITY WATER SYSTEM.—The term “noncommunity water system” means a public water system that is not a community water system.

(17) The term “person” means an individual, corporation, company, association, partnership, State, municipality, or Federal agency (and includes officers, employees, and agents of any corporation, company, association, State, municipality, or Federal agency).

(18) (A) Except as provided in subparagraph (B), the term “State” includes, in addition to the several States, only the District of Columbia, Guam, the Commonwealth of Puerto Rico, the Northern Mariana Islands, the Virgin Islands, American Samoa, and the Trust Territory of the Pacific Islands.

(19) The term “Indian Tribe” means any Indian tribe having a Federally recognized governing body carrying out substantial governmental duties and powers over any area. For purposes of section 300j–12 of this title, the term includes any Native village (as defined in section 1602(c) of title 43).

(20) COMMUNITY WATER SYSTEM.—The term “community water system” means a public water system that—

(A) serves at least 15 service connections used by year-round residents of the area served by the system; or

(B) regularly serves at least 25 year-round residents.

(21) NONCOMMUNITY WATER SYSTEM.—The term “noncommunity water system” means a public water system that is not a community water system.
referred to in this paragraph, the Administrator may add equally effective quality control and testing procedures by guidance published in the Federal Register. Such procedures shall be treated as an alternative for public water systems to the quality control and testing procedures listed in the regulation.


Par. (4). Pub. L. 104–182, §101(b)(1), designated existing provisions as subpar. (A), inserted par. and subpar. headings, redesignated former subpars. (A) and (B) as cls. (i) and (ii), respectively, substituted “water for human consumption through pipes or other constructed conveyances” for “‘piped water for human consumption’ in first sentence, and added subpars. (B) and (C).

Par. (13). Pub. L. 104–182, §101(a)(2), added existing provisions as subpar. (A), substituted “Except as provided in subparagraph (B), the term” for “The term”, and added subpar. (B).

Par. (14). Pub. L. 104–182, §101(a)(3), inserted at end “For purposes of section 300–12 of this title, the term includes any Native village (as defined in section 1602(c) of title 43).”


1977—Par. (12). Pub. L. 95–190 expanded definition of “person” to include Federal agency, and officers, employees, and agents of any corporation, company, etc.

1976—Par. (13). Pub. L. 94–484 defined “State” to include Northern Mariana Islands.

Pub. L. 94–517 added par. (13).

**Effective Date of 1996 Amendment**

Section 2(b) of Pub. L. 104–182 provided that: “Except as otherwise specified in this Act (enacting sections 300–7 to 300–9, 300h–8, 300I–3c, and 300I–12 to 300–18 of this title and section 1263a of Title 33, Navigation and Navigable Waters, amending this section, sections 300g–1 to 300h–6, 300h–5 to 300h–7, 300i, 300I–1, 300J to 300–2, 300–4 to 300–8, 300I–11, and 300I–21 to 300–25 of this title, sections 4701 and 4721 of Title 16, Conservation, and section 349 of Title 21, Food and Drugs, repealing section 13551 of this title, enacting provisions set out as notes under this section, sections 201, 300I–1, 300I–1, and 300I–12 of this title, section 1281 of Title 33, and section 45 of former Title 40, Public Buildings, Property, and Works, and amending provisions set out as a note under section 201 of this title) or in the amendments made by this Act, this Act and the amendments made by this Act shall take effect on the date of enactment of this Act [Aug. 6, 1996].”

**Short Title**

This subchapter is known as the “Safe Drinking Water Act”, see note set out under section 201 of this title.

**Termination of Trust Territory of the Pacific Islands**

For termination of Trust Territory of the Pacific Islands, see note set out preceding section 1681 of Title 48, Territories and Insular Possessions.

**Effect of Public Law 104–182 on Federal Water Pollution Control Act**

Section 2(c) of Pub. L. 104–182 provided that: “Except for the provisions of section 302 (42 U.S.C. 300–12 note) (relating to transfers of funds), nothing in this Act [see Effective Date of 1996 Amendment above] or in any amendments made by this Act to title XIV of the Public Health Service Act [this subchapter] (commonly known as the ‘Safe Drinking Water Act’) or any other law shall be construed by the Administrator of the Environmental Protection Agency or the courts as affecting, modifying, expanding, changing, or altering—

“(1) the provisions of the Federal Water Pollution Control Act [33 U.S.C. 1251 et seq.];

“(2) the duties and responsibilities of the Administrator under that Act; or

“(3) the regulation or control of point or nonpoint sources of pollution discharged into waters covered by that Act.

The Administrator shall identify in the agency’s annual budget all funding and full-time equivalents administering such title XIV separately from funding and staffing for the Federal Water Pollution Control Act.”

**Congressional Findings**

Section 3 of Pub. L. 104–182 provided that: “The Congress finds that—

“(1) safe drinking water is essential to the protection of public health;

“(2) because the requirements of the Safe Drinking Water Act (42 U.S.C. 300f et seq.) now exceed the financial and technical capacity of some public water systems, especially many small public water systems, the Federal Government needs to provide assistance to communities to help the communities meet Federal drinking water requirements;

“(3) the Federal Government commits to maintaining and improving its partnership with the States in the administration and implementation of the Safe Drinking Water Act;

“(4) States play a central role in the implementation of safe drinking water programs, and States need increased financial resources and appropriate flexibility to ensure the prompt and effective development and implementation of drinking water programs;

“(5) the existing process for the assessment and selection of additional drinking water contaminants needs to be revised and improved to ensure that there is a sound scientific basis for setting priorities in establishing drinking water regulations;

“(6) procedures for assessing the health effects of contaminants establishing drinking water standards should be revised to provide greater opportunity for public education and participation;

“(7) in considering the appropriate level of regulation for contaminants in drinking water, risk assessment, based on sound and objective science, and benefit–cost analysis are important analytical tools for improving the efficiency and effectiveness of drinking water regulations to protect human health;

“(8) more effective protection of public health requires—

“(A) a Federal commitment to set priorities that will allow scarce Federal, State, and local resources to be targeted toward the drinking water problems of greatest public health concern;

“(B) maximizing the value of the different and complementary strengths and responsibilities of the Federal and State governments in those States that have primary enforcement responsibility for the Safe Drinking Water Act; and

“(C) prevention of drinking water contamination through well-trained system operators, water systems with adequate managerial, technical, and financial capacity, and enhanced protection of source waters of public water systems;

“(9) compliance with the requirements of the Safe Drinking Water Act continues to be a concern at public water systems experiencing technical and financial limitations, and Federal, State, and local governments need more resources and more effective authority to attain the objectives of the Safe Drinking Water Act; and

“(10) consumers served by public water systems should be provided with information on the source of the water they are drinking and its quality and safety, as well as prompt notice of any violation of drinking water regulations.”

**GAO Study**

“(A) ascertain the numbers and locations of individuals and households relying for their residential water needs, including drinking, bathing, and cooking (or other similar uses) on irrigation water systems, mining water systems, industrial water systems, or other water systems covered by section 1401(4)(B) of the Safe Drinking Water Act [par. (4)(B) of this section] that are not public water systems subject to the Safe Drinking Water Act [this subchapter];

“(B) determine the sources and costs and affordability (to users and systems) of water used by such populations for their residential water needs; and

“(C) review State and system compliance with the exclusion provisions of section 1401(4)(B) of such Act.

The Comptroller General shall submit a report to the Congress within 3 years after the date of enactment of this Act [Aug. 6, 1996] containing the results of such study.”

SAFE DRINKING WATER AMENDMENTS OF 1977

RESTRICTIONS ON APPROPRIATIONS FOR RESEARCH

Pub. L. 95–190, § 2(e), Nov. 16, 1977, 91 Stat. 1393, provided that: “Nothing in this Act [see Short Title of 1977 Amendment note set out under section 201 of this title] shall be construed to authorize the appropriation of any amount for research under title XIV of the Public Health Service Act [this subchapter] (relating to safe drinking water).”

SAFE DRINKING WATER AMENDMENTS OF 1977 AS NOT AFFECTING AUTHORITY OF ADMINISTRATOR WITH RESPECT TO CONTAMINANTS

Pub. L. 95–190, § 3(e)(2), Nov. 16, 1977, 91 Stat. 1394, provided that: “Nothing in this Act [see Short Title of 1977 Amendment note set out under section 201 of this title] shall be construed to alter or affect the Administrator's authority or duty under title 14 of the Public Health Service Act [this subchapter] to promulgate regulations or take other action with respect to any contaminant.”

RURAL WATER SURVEY; REPORT TO PRESIDENT AND CONGRESS; AUTHORIZATION OF APPROPRIATIONS

Section 3 of Pub. L. 93–523, as amended by Pub. L. 95–190, §§ 2(d), 3(d), Nov. 16, 1977, 91 Stat. 1393, 1394, directed Administrator of Environmental Protection Agency, after consultation with Secretary of Agriculture and the several States, to enter into arrangements with public or private entities to conduct a survey of quantity, quality, and availability of rural drinking water supplies, which survey was to include, but not be limited to, consideration of number of residents in each rural area who presently are using inadequately served by a public or private drinking water supply system, or by an individual home drinking water supply system, or who presently have limited or otherwise inadequate access to drinking water, or who, due to absence or inadequacy of a drinking water supply system, are exposed to an increased health hazard, and who have experienced incidents of chronic or acute illness, which may be attributed to inadequacy of a drinking water supply system. Survey to be completed within eighteen months of Dec. 16, 1974, and a final report thereon submitted, not later than six months after completion of survey, to President and to Congress.

FEDERAL COMPLIANCE WITH POLLUTION CONTROL STANDARDS

For provisions relating to the responsibility of the head of each Executive agency for compliance with applicable pollution control standards, see Ex. Ord. No. 12088, Oct. 13, 1978, 43 F.R. 47707, set out as a note under section 4321 of this title.

TERMINATION OF ADVISORY COMMITTEES

Pub. L. 93–641, § 6, Jan. 4, 1974, 88 Stat. 2275, set out as a note under section 217a of this title, provided that an advisory committee established pursuant to the Public Health Service Act shall terminate at such time as may be specifically prescribed by an Act of Congress enacted after Jan. 4, 1975.

PART B—PUBLIC WATER SYSTEMS

§ 300g. Coverage

Subject to sections 300g–4 and 300g–5 of this title, national primary drinking water regulations under this part shall apply to each public water system in each State; except that such regulations shall not apply to a public water system—

(1) which consists only of distribution and storage facilities (and does not have any collection and treatment facilities);

(2) which obtains all of its water from, but is not owned or operated by, a public water system to which such regulations apply;

(3) which does not sell water to any person; and

(4) which is not a carrier which conveys passengers in interstate commerce.

(July 1, 1944, ch. 373, title XIV, § 1411, as added Pub. L. 93–523, § 2(a), Dec. 16, 1974, 88 Stat. 1662.)

§ 300g–1. National drinking water regulations

(a) National primary drinking water regulations; maximum contaminant level goals; simultaneous publication of regulations and goals

(1) Effective on June 19, 1986, each national interim or revised primary drinking water regulation promulgated under this section before June 19, 1986, shall be deemed to be a national primary drinking water regulation under subsection (b) of this section. No such regulation shall be required to comply with the standards set forth in subsection (b)(4) of this section unless such regulation is amended to establish a different maximum contaminant level after June 19, 1986.

(2) After June 19, 1986, each recommended maximum contaminant level published before June 19, 1986, shall be treated as a maximum contaminant level goal.

(3) Whenever a national primary drinking water regulation is proposed under subsection (b) of this section for any contaminant, the maximum contaminant level goal for such contaminant shall be proposed simultaneously. Whenever a national primary drinking water regulation is promulgated under subsection (b) of this section for any contaminant, the maximum contaminant level goal for such contaminant shall be published simultaneously.

(4) Paragraph (3) shall not apply to any recommended maximum contaminant level published before June 19, 1986.

(b) Standards

(1) IDENTIFICATION OF CONTAMINANTS FOR LISTING.—

(A) GENERAL AUTHORITY.—The Administrator shall, in accordance with the procedures established by this subsection, publish a maximum contaminant level goal and promulgate a national primary drinking water regulation for a contaminant (other than a contaminant referred to in paragraph (2) for which a national primary drinking water regulation has been
promulgated as of August 6, 1996) if the Administrator determines that—

(i) the contaminant may have an adverse effect on the health of persons;

(ii) the contaminant is known to occur or there is a substantial likelihood that the contaminant will occur in public water systems with a frequency and at levels of public health concern; and

(iii) in the sole judgment of the Administrator, regulation of such contaminant presents a meaningful opportunity for health risk reduction for persons served by public water systems.

(B) REGULATION OF UNREGULATED CONTAMINANTS.—

(i) LISTING OF CONTAMINANTS FOR CONSIDERATION.—(I) Not later than 18 months after August 6, 1996, and every 5 years thereafter, the Administrator, after consultation with the scientific community, including the Science Advisory Board, after notice and opportunity for public comment, and after considering the occurrence data base established under section 300j–4(g) of this title, shall publish a list of contaminants which, at the time of publication, are not subject to any proposed or promulgated national primary drinking water regulation, which are known or anticipated to occur in public water systems, and which may require regulation under this subchapter.

(II) The unregulated contaminants considered under subclause (I) shall include, but not be limited to, substances referred to in section 9601(14) of this title, and substances registered as pesticides under the Federal Insecticide, Fungicide, and Rodenticide Act [7 U.S.C. 136 et seq.].

(III) The Administrator’s decision whether or not to select an unregulated contaminant for a list under this clause shall not be subject to judicial review.

(ii) DETERMINATION TO REGULATE.—(I) Not later than 5 years after August 6, 1996, and every 5 years thereafter, the Administrator shall, after notice of the preliminary determination and opportunity for public comment, for not fewer than 5 contaminants included on the list published under clause (i), make determinations of whether or not to regulate such contaminants.

(II) A determination to regulate a contaminant shall be based on findings that the criteria of clauses (i), (ii), and (iii) of subparagraph (A) are satisfied. Such findings shall be based on the best available public health information, including the occurrence data base established under section 300j–4(g) of this title.

(III) The Administrator may make a determination to regulate a contaminant that does not appear on a list under clause (i) if the determination to regulate is made pursuant to subclause (II).

(IV) A determination under this clause not to regulate a contaminant shall be considered final agency action and subject to judicial review.

(iii) REVIEW.—Each document setting forth the determination for a contaminant under clause (ii) shall be available for public comment at such time as the determination is published.

(C) PRIORITIES.—In selecting unregulated contaminants for consideration under subparagraph (B), the Administrator shall select contaminants that present the greatest public health concern. The Administrator, in making such selection, shall take into consideration, among other factors of public health concern, the effect of such contaminants upon subgroups that comprise a meaningful portion of the general population (such as infants, children, pregnant women, the elderly, individuals with a history of serious illness, or other subpopulations) that are identifiable as being at greater risk of adverse health effects due to exposure to contaminants in drinking water than the general population.

(D) URGENT THREATS TO PUBLIC HEALTH.—The Administrator may promulgate an interim national primary drinking water regulation for a contaminant without making a determination for the contaminant under paragraph (4)(C), or completing the analysis under paragraph (3)(C), to address an urgent threat to public health as determined by the Administrator after consultation with and written response to any comments provided by the Secretary of Health and Human Services, acting through the director of the Centers for Disease Control and Prevention or the director of the National Institutes of Health. A determination for any contaminant in accordance with paragraph (4)(C) subject to an interim regulation under this subparagraph shall be issued, and a completed analysis meeting the criteria of paragraph (3)(C) shall be published, not later than 3 years after the date on which the regulation is promulgated and the regulation shall be repromulgated, or revised if appropriate, not later than 5 years after that date.

(E) REGULATION.—For each contaminant that the Administrator determines to regulate under subparagraph (B), the Administrator shall publish maximum contaminant level goals and promulgate, by rule, national primary drinking water regulations under this subsection. The Administrator shall propose the maximum contaminant level goal and national primary drinking water regulation for a contaminant not later than 24 months after the determination to regulate under subparagraph (B), and may publish such proposed regulation concurrent with the determination to regulate. The Administrator shall publish a maximum contaminant level goal and promulgate a national primary drinking water regulation within 18 months after the proposal thereof. The Administrator, by notice in the Federal Register, may extend the deadline for such promulgation for up to 9 months.

(F) HEALTH ADVISORIES AND OTHER ACTIONS.—

The Administrator may publish health advisories (which are not regulations) or take other appropriate actions for contaminants not subject to any national primary drinking water regulation.

(2) SCHEDULES AND DEADLINES.—

(A) IN GENERAL.—In the case of the contaminants listed in the Advance Notice of Proposed
Rulemaking published in volume 47, Federal Register, page 9352, and in volume 48, Federal Register, page 45502, the Administrator shall publish maximum contaminant level goals and promulgate national primary drinking water regulations:

(i) not later than 1 year after June 19, 1986, for no fewer than 9 of the listed contaminants;
(ii) not later than 2 years after June 19, 1986, for no fewer than 40 of the listed contaminants; and
(iii) not later than 3 years after June 19, 1986, for the remainder of the listed contaminants.

(B) SUBSTITUTION OF CONTAMINANTS.—If the Administrator identifies a drinking water contaminant the regulation of which, in the judgment of the Administrator, is more likely to be protective of public health (taking into account the schedule for regulation under subparagraph (A)) than a contaminant referred to in subparagraph (A), the Administrator may publish a maximum contaminant level goal and promulgate a national primary drinking water regulation for the identified contaminant in lieu of regulating the contaminant referred to in subparagraph (A). Substitutions may be made for not more than 7 contaminants referred to in subparagraph (A). Regulation of a contaminant identified under this subparagraph shall be in accordance with the schedule applicable to the contaminant for which the substitution is made.

(C) DISINFECTANTS AND DISINFECTION BYPRODUCTS.—The Administrator shall promulgate an Interim Enhanced Surface Water Treatment Rule, a Stage I Disinfectants and Disinfection Byproducts Rule, and a Stage II Disinfectants and Disinfection Byproducts Rule in accordance with the schedule published in volume 59, Federal Register, page 6361 (February 10, 1994), in table III.13 of the proposed Information Collection Rule. If a delay occurs with respect to the promulgation of any rule in the schedule referred to in this subparagraph, all subsequent rules shall be completed as expeditiously as practicable but no later than a revised date that reflects the interval in resolving the uncertainty; and use for the purposes of paragraphs (4), (5), and (6) an analysis of each of the following:

(I) Quantifiable and nonquantifiable health risk reduction benefits for which there is a factual basis in the rulemaking record to conclude that such benefits are likely to occur as the result of treatment to comply with each level.

(II) Quantifiable and nonquantifiable health risk reduction benefits for which there is a factual basis in the rulemaking record to conclude that such benefits are likely to occur from reductions in co-occurring contaminants that may be attributed solely to compliance with the maximum contaminant level, excluding benefits resulting from compliance with other proposed or promulgated regulations.

(III) Quantifiable and nonquantifiable costs for which there is a factual basis in the rulemaking record to conclude that such costs are likely to occur solely as a result of compliance with the maximum contaminant level, including monitoring, treatment, and other costs and excluding costs resulting from compliance with other proposed or promulgated regulations.

(IV) The incremental costs and benefits associated with each alternative maximum contaminant level considered.

(V) The effects of the contaminant on the general population and on groups within the general population such as infants, children, pregnant women, the elderly, individuals with a history of serious illness, or other subpopulations that are identified as likely to be at greater risk of adverse health effects due to exposure to contami-
§ 300g–1

OALS AND STANDARDS.—

(A) MAXIMUM CONTAMINANT LEVEL GOALS.—Each maximum contaminant level goal established under this subsection shall be set at the level at which no known or anticipated adverse effects on the health of persons occur and which allows an adequate margin of safety.

(B) MAXIMUM CONTAMINANT LEVELS.—Except as provided in paragraphs (5) and (6), each national primary drinking water regulation for a contaminant for which a maximum contaminant level goal is established under this subsection shall specify a maximum contaminant level for such contaminant which is as close to the maximum contaminant level goal as is feasible.

(C) DETERMINATION.—At the time the Administrator proposes a national primary drinking water regulation under this paragraph, the Administrator shall publish a determination as to whether the benefits of the maximum contaminant level justify, or do not justify, the costs based on the analysis conducted under paragraph (3)(C).

(D) DEFINITION OF FEASIBLE.—For the purposes of this subsection, the term “feasible” means feasible with the use of the best technology, treatment techniques and other means which the Administrator finds, after examination for efficacy under field conditions and not solely under laboratory conditions, are available (taking cost into consideration). For the purpose of this paragraph, granular activated carbon is feasible for the control of synthetic organic chemicals, and any technology, treatment technique, or other means found to be the best available for the control of synthetic organic chemicals must be at least as effective in controlling synthetic organic chemicals as granular activated carbon.

(E) FEASIBLE TECHNOLOGIES.—(i) IN GENERAL.—Each national primary drinking water regulation which establishes a maximum contaminant level shall list the technology, treatment technique, or other means which the Administrator finds to be feasible for purposes of meeting such maximum contaminant level, but a regulation under this subsection shall not require that any specified technology, treatment technique, or other means be used for purposes of meeting such maximum contaminant level.

(ii) LIST OF TECHNOLOGIES FOR SMALL SYSTEMS.—The Administrator shall include in the list any technology, treatment technique, or other means that is affordable, as determined by the Administrator in consultation with the States, for small public water systems serving—

(I) a population of 10,000 or fewer but more than 3,300;

(II) a population of 3,300 or fewer but more than 500; and

(III) a population of 500 or fewer but more than 25;

and that achieves compliance with the maximum contaminant level or treatment technique, or other means to ensure proper operation and maintenance and compliance with the maximum contaminant level or treatment technique and equipped with mechanical warnings to ensure that customers are automatically notified of operational problems. The Administrator shall not include in the list any point-of-use treatment technology, treatment technique, or other means to achieve compliance with a maximum contaminant level or treatment technique requirement for a microbial contaminant (or an indicator of a microbial contaminant). If the American National Standards Institute has issued product standards applicable to a specific type of point-of-entry or point-of-use treatment unit, individual units of that technology shall not be accepted for compliance with a maximum contaminant level or treatment technique requirement unless they are independently certified in accordance with such standards. In listing any technology, treatment technique, or other means pursuant to this clause, the Administrator shall consider the quality of the source water to be treated.

(iii) LIST OF TECHNOLOGIES THAT ACHIEVE COMPLIANCE.—Except as provided in clause...
(v), not later than 2 years after August 6, 1996, and after consultation with the States, the Administrator shall issue a list of technologies that achieve compliance with the maximum contaminant level or treatment technique for each category of public water systems described in subclauses (I), (II), and (III) of clause (ii) for each national primary drinking water regulation promulgated prior to June 19, 1986.

(iv) ADDITIONAL TECHNOLOGIES.—The Administrator may, at any time after a national primary drinking water regulation has been promulgated, supplement the list of technologies describing additional or new or innovative treatment technologies that meet the requirements of this paragraph for categories of small public water systems described in subclauses (I), (II), and (III) of clause (ii) that are subject to the regulation.

(v) TECHNOLOGIES THAT MEET SURFACE WATER TREATMENT RULE.—Within one year after August 6, 1996, the Administrator shall list technologies known to the Administrator which meet the level or levels or treatment techniques describing additional or new or innovative treatment technologies that would result in an increase in the health risk from drinking water by—

(i) increasing the concentration of other contaminants in drinking water; or

(ii) interfering with the efficacy of drinking water treatment techniques or processes that are used to comply with other national primary drinking water regulations.

(B) ESTABLISHMENT OF LEVEL.—If the Administrator establishes a maximum contaminant level or levels or requires the use of treatment techniques for any contaminant or contaminants pursuant to the authority of this paragraph—

(i) the level or levels or treatment techniques shall minimize the overall risk of adverse health effects by balancing the risk from the contaminant and the risk from other contaminants the concentrations of which may be affected by the use of a treatment technique or process that would be employed to attain the maximum contaminant level or levels; and

(ii) the combination of technology, treatment techniques, or other means required to meet the level or levels shall not be more stringent than is feasible (as defined in paragraph (4)(D)).

(6) ADDITIONAL HEALTH RISK REDUCTION AND COST CONSIDERATIONS.—

(A) IN GENERAL.—Notwithstanding paragraph (4), the Administrator may, at any time after a national primary drinking water regulation that has been promulgated, promulgate new or innovative treatment techniques that would justify the costs of complying with the regulation. This subparagraph shall not apply if the contaminant is found almost exclusively in small systems eligible under section 300g–4(e) of this title.

(B) EXCEPTION.—The Administrator shall not use the authority of this paragraph to promulgate a maximum contaminant level for a contaminant, if the benefits of compliance with a national primary drinking water regulation for the contaminant that would be promulgated in accordance with paragraph (4) experienced by—

(i) persons served by large public water systems; and

(ii) persons served by such other systems as are unlikely, based on information provided by the States, to receive a variance under section 300g–4(e) of this title (relating to small system variances);

would justify the costs to the systems of complying with the regulation. This subparagraph shall not apply if the contaminant is found almost exclusively in small systems eligible under section 300g–4(e) of this title for a small system variance.

(C) DISINFECTANTS AND DISINFECTION BYPRODUCTS.—The Administrator may not use the authority of this paragraph to establish a maximum contaminant level in a Stage I or Stage II national primary drinking water regulation (as described in paragraph (2)(C)) for contaminants that are disinfectants or disinfection byproducts, or to establish a maximum contaminant level or treatment technique requirement for the control of cryptosporidium. The Administrator may use the authority of this paragraph to promulgate a list of technologies that meet the requirements of this paragraph for disinfectants and disinfection byproducts that are used to comply with the level, the Administrator may, after notice and opportunity for public comment, promulgate a maximum contaminant level for the contaminant that maximizes health risk reduction benefits at a cost that is justified by the benefits.

(T) TECHNIQUES THAT MEET SURFACE WATER TREATMENT RULE.—Within one year after August 6, 1996, the Administrator shall list technologies known to the Administrator which meet the requirements of this paragraph, but the Administrator may grant a variance from any specified treatment technique in accordance with section 300g–4(a)(3) of this title.
(B) Any schedule referred to in this subsection for the promulgation of a national primary drinking water regulation for any contaminant shall apply in the same manner if the regulation requires a treatment technique in lieu of establishing a maximum contaminant level.

(C)(i) Not later than 18 months after June 19, 1986, the Administrator shall propose and promulgate national primary drinking water regulations specifying criteria under which filtration (including coagulation and sedimentation, as appropriate) is required as a treatment technique for public water systems supplied by surface water sources. In promulgating such rules, the Administrator shall consider the quality of source waters, protection afforded by watershed management, treatment practices (such as disinfection and length of water storage) and other factors relevant to protection of health.

(ii) In lieu of the provisions of section 300g–4 of this title the Administrator shall specify procedures by which the State determines which public water systems within its jurisdiction shall adopt a filtration under the criteria of clause (i). The State may require the public water system to provide studies or other information to assist in this determination. The procedures shall provide notice and opportunity for public hearing on this determination. If the State determines that filtration is required, the State shall prescribe a schedule for compliance by the public water system with the filtration requirement. A schedule shall require compliance within 18 months of a determination made under clause (iii).

(iii) Within 18 months from the time that the Administrator establishes the criteria and procedures under this subparagraph, a State with primary enforcement responsibility shall adopt any necessary regulations to implement this subparagraph. Within 12 months of adoption of such regulations the State shall make determinations regarding filtration for all the public water systems within its jurisdiction supplied by surface waters.

(iv) If a State does not have primary enforcement responsibility for public water systems, the Administrator shall have the authority to make the determination in clause (ii) in such State as the State would have under that clause. Any filtration requirement or schedule under this subparagraph shall be treated as if it were a requirement of a national primary drinking water regulation.

(v) As an additional alternative to the regulations promulgated pursuant to clauses (i) and (iii), including the criteria for avoiding filtration contained in 40 CFR 141.71, a State exercising primary enforcement responsibility for public water systems may, on a case-by-case basis, and after notice and opportunity for public comment, establish treatment requirements as an alternative to filtration in the case of systems having uninhabited, undeveloped watersheds in consolidated ownership, and having control over access to, and activities in, those watersheds, if the State determines (and the Administrator concurs) that the quality of the source water and the alternative treatment requirements established by the State ensure greater removal or inactivation efficiencies of pathogenic organisms for which national primary drinking water regulations have been promulgated or that are of public health concern than would be achieved by the combination of filtration and chlorination disinfection (in compliance with this section).

(ii) DISINFECTION.—At any time after the end of the 3-year period that begins on August 6, 1996, but not later than the date on which the Administrator promulgates a Stage II rulemaking for disinfectants and disinfection byproducts (as described in paragraph (2)(C)), the Administrator shall also promulgate national primary drinking water regulations requiring disinfection as a treatment technique for all public water systems, including surface water systems and, as necessary, ground water systems. After consultation with the States, the Administrator shall (as part of the regulations) promulgate criteria that the Administrator, or a State that has primary enforcement responsibility under section 300g–2 of this title, shall apply to determine whether disinfection shall be required as a treatment technique for any public water system served by ground water. The Administrator shall simultaneously promulgate a rule specifying criteria that will be used by the Administrator (or delegated State authorities) to grant variances from this requirement according to the provisions of sections 300g–4(a)(1)(B) and 300g–4(a)(3) of this title. In implementing section 300l–1(e) of this title the Administrator or the delegated State authority shall, where appropriate, give special consideration to providing technical assistance to small public water systems in complying with the regulations promulgated under this paragraph.

(9) REVIEW AND REVISION.—The Administrator shall, not less often than every 6 years, review and revise, as appropriate, each national primary drinking water regulation promulgated under this subchapter. Any revision of a national primary drinking water regulation shall be promulgated in accordance with this section, except that each revision shall maintain, or provide for greater, protection of the health of persons.

(10) EFFECTIVE DATE.—A national primary drinking water regulation promulgated under this section (and any amendment thereto) shall take effect on the date that is 3 years after the date on which the regulation is promulgated unless the Administrator determines that an earlier date is practicable, except that the Administrator, or a State (in the case of an individual system), may allow up to 2 additional years to comply with a maximum contaminant level or treatment technique if the Administrator or State (in the case of an individual system) determines that additional time is necessary for capital improvements.

(11) No national primary drinking water regulation may require the addition of any substance for preventive health care purposes unrelated to contamination of drinking water.

(12) CERTAIN CONTAMINANTS.—

(A) ARSENIC.—

(i) Schedule and standard.—Notwithstanding the deadlines set forth in paragraph (1), the Administrator shall promulgate a national primary drinking water regulation
for arsenic pursuant to this subsection, in accordance with the schedule established by this paragraph.

(ii) STUDY PLAN.—Not later than 180 days after August 6, 1996, the Administrator shall develop a comprehensive plan for study in support of drinking water rulemaking to reduce the uncertainty in assessing health risks associated with exposure to low levels of arsenic. In conducting such study, the Administrator shall consult with the National Academy of Sciences, other Federal agencies, and interested public and private entities.

(iii) COOPERATIVE AGREEMENTS.—In carrying out the study plan, the Administrator may enter into cooperative agreements with other Federal agencies, State and local governments, and other interested public and private entities.

(iv) PROPOSED REGULATIONS.—The Administrator shall propose a national primary drinking water regulation for arsenic not later than January 1, 2000.

(v) FINAL REGULATIONS.—Not later than January 1, 2001, after notice and opportunity for public comment, the Administrator shall promulgate a national primary drinking water regulation for arsenic.

(vi) AUTHORIZATION.—There are authorized to be appropriated $2,500,000 for each of fiscal years 1997 through 2000 for the studies required by this paragraph.

(B) SULFATE.—

(i) ADDITIONAL STUDY.—Prior to promulgating a national primary drinking water regulation for sulfate, the Administrator and the Director of the Centers for Disease Control and Prevention shall jointly conduct an additional study to establish a reliable dose-response relationship for the adverse human health effects that may result from exposure to sulfate in drinking water, including the health effects that may be experienced by groups within the general population (including infants and travelers) that are potentially at greater risk of adverse health effects as the result of such exposure. The study shall be conducted in consultation with interested States, shall be based on the best available, peer-reviewed science and supporting studies conducted in accordance with sound and objective scientific practices, and shall be completed not later than 30 months after August 6, 1996.

(ii) DETERMINATION.—The Administrator shall include sulfate among the 5 or more contaminants for which a determination is made pursuant to paragraph (3)(B) not later than 5 years after August 6, 1996.

(iii) PROPOSED AND FINAL RULE.—Notwithstanding the deadlines set forth in paragraph (2), the Administrator may, pursuant to the authorities of this subsection and after notice and opportunity for public comment, promulgate a final national primary drinking water regulation for sulfate. Any such regulation shall include requirements for public notification and options for the provision of alternative water supplies to populations at risk as a means of complying with the regulation in lieu of a best available treatment technology or other means.

(13) RADON IN DRINKING WATER.—

(A) NATIONAL PRIMARY DRINKING WATER REGULATION.—Notwithstanding paragraph (2), the Administrator shall withdraw any national primary drinking water regulation for radon proposed prior to August 6, 1996, and shall propose and promulgate a regulation for radon under this section, as amended by the Safe Drinking Water Act Amendments of 1996.

(B) RISK ASSESSMENT AND STUDIES.—

(i) ASSESSMENT BY NAS.—Prior to proposing a national primary drinking water regulation for radon, the Administrator shall arrange for the National Academy of Sciences to prepare a risk assessment for radon in drinking water using the best available science in accordance with the requirements of paragraph (3). The risk assessment shall consider each of the risks associated with exposure to radon from drinking water and consider studies on the health effects of radon at levels and under conditions likely to be experienced through residential exposure. The risk assessment shall be peer-reviewed.

(ii) STUDY OF OTHER MEASURES.—The Administrator shall arrange for the National Academy of Sciences to prepare an assessment of the health risk reduction benefits associated with various mitigation measures to reduce radon levels in indoor air. The assessment may be conducted as part of the risk assessment authorized by clause (i) and shall be used by the Administrator to prepare the guidance and approve State programs under subparagraph (G).

(iii) OTHER ORGANIZATION.—If the National Academy of Sciences declines to prepare the risk assessment or studies required by this subparagraph, the Administrator shall enter into a contract or cooperative agreement with another independent, scientific organization to prepare such assessments or studies.

(C) HEALTH RISK REDUCTION AND COST ANALYSIS.—Not later than 30 months after August 6, 1996, the Administrator shall publish, and seek public comment on, a health risk reduction and cost analysis meeting the requirements of paragraph (3)(C) for potential maximum contaminant levels that are being considered for radon in drinking water. The Administrator shall include a response to all significant public comments received on the analysis with the preamble for the proposed rule published under subparagraph (D).

(D) PROPOSED REGULATION.—Not later than 36 months after August 6, 1996, the Administrator shall propose a maximum contaminant level goal and a national primary drinking water regulation for radon pursuant to this section.

(E) FINAL REGULATION.—Not later than 12 months after the date of the proposal under subparagraph (D), the Administrator shall publish a maximum contaminant level goal and promulgate a national primary drinking water regulation for radon pursuant to this section.
section based on the risk assessment prepared pursuant to subparagraph (B) and the health risk reduction and cost analysis published pursuant to subparagraph (C). In considering the risk assessment and the health risk reduction and cost analysis in connection with the promulgation of such a standard, the Administrator shall take into account the costs and benefits of control programs for radon from other sources.

(F) ALTERNATIVE MAXIMUM CONTAMINANT LEVEL.—If the maximum contaminant level for radon in drinking water promulgated pursuant to subparagraph (E) is more stringent than necessary to reduce the contribution to radon in indoor air from drinking water to a concentration that is equivalent to the national average concentration of radon in outdoor air, the Administrator shall, simultaneously with the promulgation of such level, promulgate an alternative maximum contaminant level for radon that would result in a contribution of radon from drinking water to radon levels in indoor air equivalent to the national average concentration of radon in outdoor air. If the Administrator promulgates an alternative maximum contaminant level under this subparagraph, the Administrator shall, after notice and opportunity for public comment and in consultation with the States, publish guidelines for State programs, including criteria for multimedia measures to mitigate radon levels in indoor air, to be used by the States in preparing programs under subparagraph (G). The guidelines shall take into account data from existing radon mitigation programs and the assessment of mitigation measures prepared under subparagraph (B).

(G) MULTIMEDIA RADON MITIGATION PROGRAMS.—

(i) IN GENERAL.—A State may develop and submit a multimedia program to mitigate radon levels in indoor air for approval by the Administrator under this subparagraph. If, after notice and the opportunity for public comment, such program is approved by the Administrator, public water systems in the State may submit a program for approval by the Administrator under this subparagraph. If, after written notice to the State and an opportunity for the State to correct any deficiency in the program, withdraw approval of programs that no longer comply with such requirements.

(iv) REVIEW.—The Administrator shall periodically, but not less often than every 5 years, review each multimedia mitigation program approved under this subparagraph to determine whether it continues to meet the requirements of clause (iii) and shall, after written notice to the State and an opportunity for the State to correct any deficiency in the program, withdraw approval of programs that no longer comply with such requirements.

(v) EXTENSION.—If, within 90 days after the promulgation of an alternative maximum contaminant level under subparagraph (F), the Governor of a State submits a letter to the Administrator committing to develop a multimedia mitigation program under this subparagraph, the effective date of the national primary drinking water regulation for radon in the State that would be applicable under paragraph (10) shall be extended for a period of 18 months.

(vi) LOCAL PROGRAMS.—In the event that a State chooses not to submit a multimedia mitigation program for approval under this subparagraph or has submitted a program that has been disapproved, any public water system in the State may submit a program for approval by the Administrator according to the same criteria, conditions, and approval process that would apply to a State program. The Administrator shall approve a multimedia mitigation program if the health risk reduction benefits expected to be achieved by the program are equal to or greater than the health risk reduction benefits that would result from compliance by the public water system with the maximum contaminant level for radon promulgated under subparagraph (E).

(14) RECYCLING OF FILTER BACKWASH.—The Administrator shall promulgate a regulation to govern the recycling of filter backwash water within the treatment process of a public water system. The Administrator shall promulgate such regulation not later than 4 years after August 6, 1996, unless such recycling has been addressed by the Administrator's Enhanced Surface Water Treatment Rule prior to such date.

(15) VARIANCE TECHNOLOGIES.—

(A) IN GENERAL.—At the same time as the Administrator promulgates a national primary drinking water regulation for a contaminant pursuant to this section, the Administrator shall issue guidance or regulations describing the best treatment technologies, treatment techniques, or other means (referred to in this paragraph as “variance technology”) for the contaminant that the Admin-
istrator finds, after examination for efficacy under field conditions and not solely under laboratory conditions, are available and affordable, as determined by the Administrator in consultation with the States, for public water systems of varying size, considering the quality of the source water to be treated. The Administrator shall identify such variance technologies for public water systems serving—

(i) a population of 10,000 or fewer but more than 3,300;
(ii) a population of 3,300 or fewer but more than 500; and
(iii) a population of 500 or fewer but more than 25,

if, considering the quality of the source water to be treated, no treatment technology is listed for public water systems of that size under paragraph (4)(E). Variance technologies identified by the Administrator pursuant to this paragraph may not achieve compliance with the maximum contaminant level or treatment technique requirement of such regulation, but shall achieve the maximum reduction or inactivation efficiency that is affordable considering the size of the system and the quality of the source water. The guidance or regulations shall not require the use of a technology from a specific manufacturer or brand.

(B) LIMITATION.—The Administrator shall not identify any variance technology under this paragraph, unless the Administrator has determined, considering the quality of the source water to be treated and the expected useful life of the technology, that the variance technology is protective of public health.

(C) ADDITIONAL INFORMATION.—The Administrator shall include in the guidance or regulations identifying variance technologies under this paragraph any assumptions supporting the public health determination referred to in subparagraph (B), where such assumptions concern the public water system to which the technology may be applied, or its source waters. The Administrator shall provide any assumptions used in determining affordability, taking into consideration the number of persons served by such systems. The Administrator shall provide as much reliable information as practicable on performance, effectiveness, limitations, costs, and other relevant factors including the applicability of variance technology to waters from surface and underground sources.

(D) REGULATIONS AND GUIDANCE.—Not later than 2 years after August 6, 1996, and after consultation with the States, the Administrator shall issue guidance or regulations under subparagraph (A) for each national primary drinking water regulation promulgated prior to August 6, 1996, for which a variance may be granted under section 300g–4(e) of this title. The Administrator may, at any time after a national primary drinking water regulation has been promulgated, issue guidance or regulations describing additional variance technologies. The Administrator shall, not less often than every 7 years, or upon receipt of a petition supported by substantial information, review variance technologies identified under this paragraph. The Administrator shall issue revised guidance or regulations if new or innovative variance technologies become available that meet the requirements of this paragraph and achieve an equal or greater reduction or inactivation efficiency than the variance technologies previously identified under this subparagraph. No public water system shall be required to replace a variance technology during the useful life of the technology for the sole reason that a more efficient variance technology has been listed under this subparagraph.

(c) Secondary regulations; publication of proposed regulations; promulgation; amendments

The Administrator shall publish proposed national secondary drinking water regulations within 270 days after December 16, 1974. Within 90 days after publication of any such regulation, he shall promulgate such regulation with such modifications as he deems appropriate. Regulations under this subsection may be amended from time to time.

(d) Regulations; public hearings; administrative consultations

Regulations under this section shall be prescribed in accordance with section 553 of title 5 (relating to rulemaking), except that the Administrator shall provide opportunity for public hearing prior to promulgation of such regulations. In proposing and promulgating regulations under this section, the Administrator shall consult with the Secretary and the National Drinking Water Advisory Council.

(e) Science Advisory Board comments

The Administrator shall request comments from the Science Advisory Board (established under the Environmental Research, Development, and Demonstration Act of 1978) prior to proposal of a maximum contaminant level goal and national primary drinking water regulation. The Board shall respond, as it deems appropriate, within the time period applicable for promulgation of the national primary drinking water standard concerned. This subsection shall, under no circumstances, be used to delay final promulgation of any national primary drinking water standard.


REFERENCES IN TEXT


The Safe Drinking Water Act Amendments of 1996, referred to in subsec. (b)(13)(A), is Pub. L. 104–182, Aug. 6,

AMENDMENTS

1996—Subsec. (a)(3). Pub. L. 104–182, § 102(c)(2), struck out “paragraph (1), (2), or (3) of” before “subsection (b)” in two places.
Subsec. (b). Pub. L. 104–182, § 102(a), inserted heading.
Subsec. (b)(1), (2). Pub. L. 104–182, § 103(a), added pars. (1) and (2) as outlyingpars. (1) and (2) of subpar. (B) which related to publication of maximum contaminant level goals and promulgation of national primary drinking water regulations for certain listed contaminants or subsets of contaminants.
Pub. L. 104–182, § 102(a), struck out par. (3) which related to publication of maximum contaminant level goals and promulgation of national primary drinking water regulations for contaminants, other than those referred to in pars. (1) or (2), which may have an adverse effect on human health and are known to occur in public water systems.
Subsec. (b)(4). Pub. L. 104–182, § 104(a)(1), designated first sentence as subpar. (A), inserted par. and subpar. (A) headings, designated second sentence as subpar. (B), inserted subpar. (B) heading, substituted “Except as provided in paragraphs (5) and (6), each national” for “Each national” and “specify a maximum contaminant level” for “specify a maximum level”, and added subpar. (C).
Subsec. (b)(4)(D). Pub. L. 104–182, § 104(a)(2), (3), redesignated par. (5) as subpar. (D) of par. (4), inserted subpar. heading, and substituted “this paragraph” for “paragraph (4)”.
Subsec. (b)(4)(E). Pub. L. 104–182, § 104(a)(4), (5), redesignated subpar. (6) as subpar. (D)(1) of par. (4), inserted subpar. and cl. headings, substituted “this subsection” for “this paragraph”, and added cls. (i) to (v).
Subsec. (b)(5). Pub. L. 104–182, § 104(a)(6), added subpar. (5) and (6). Provided par. (5) and (6) redesignated subpars. (D) and (E)(i), respectively, of par. (4).
Subsec. (b)(8). Pub. L. 104–182, § 105(a)(2), substituted “section 300g–2(a)” for “section 300g–2(1)”.
Subsec. (b)(12). Pub. L. 104–182, § 107, inserted heading, realigned margins, and substituted “At any time after the end of the 3-year period that begins on August 6, 1996, but not later than the date on which the Administrator promulgates a Stage II rulemaking for disinfectants and disinfection byproducts (as described in paragraph (2)(C)), the Administrator shall also promulgate national primary drinking water regulations requiring disinfection as a treatment technique for all public water systems, including surface water systems and, as necessary, ground water systems. After consultation with the States, the Administrator shall (as part of the regulations) promulgate criteria that the Administrator, or a State that has primary enforcement responsibility under section 300g–2 of this title, shall apply to determine whether disinfection shall be required as a treatment technique for any public water system served by ground water.” for “Not later than 36 months after June 19, 1986, the Administrator shall propose and promulgate national primary drinking water regulations requiring disinfection as a treatment technique for all public water systems.”
Subsec. (b)(9). Pub. L. 104–182, § 108(c), amended par. (9) generally. Prior to amendment, par. (9) read as follows: “National primary drinking water regulations shall be amended whenever changes in technology, treatment techniques, and other means permit greater protection of the health of persons, but in any event such regulations shall be reviewed at least once every 3 years. Such review shall include an analysis of innovations or changes in technology, treatment techniques or other activities that have occurred over the previous 3-year period and that may provide for greater protection of the health of persons. The findings of such review shall be published in the Federal Register. If, after opportunity for public comment, the Administrator concludes that the technology, treatment techniques, or other means resulting from such innovations or changes are not feasible within the meaning of paragraph (5), an explanation of such conclusion shall be published in the Federal Register.”
Subsec. (b)(10). Pub. L. 104–182, § 108(a), amended par. (10) generally. Prior to amendment, par. (10) read as follows: “National primary drinking water regulations promulgated under this subsection (and amendments thereto) shall take effect on dates after the date of their promulgation. Regulations under subsection (a) of this section shall be superseded by regulations under this subsection to the extent provided by the regulations under this subsection.”
1986—Subsec. (a). Pub. L. 99–339, § 101(a), amended subsec. (a) generally. Prior to amendment, subsec. (a) read as follows: “(1) The Administrator shall publish proposed national interim primary drinking water regulations within 90 days after December 16, 1974. Within 180 days after December 16, 1974, he shall promulgate such regulations with such modifications as he deems appropriate. Regulations under this paragraph may be amended from time to time.
(2) National interim primary drinking water regulations promulgated under paragraph (1) shall protect health to the extent feasible, using technology, treatment techniques, and other means, which the Administrator determines are generally available (taking costs into consideration) on December 16, 1974.
(3) The interim primary regulations first promulgated under paragraph (1) shall take effect eighteen months after the date of their promulgation.
(4) Subsec. (b)(1). Pub. L. 99–339, § 101(b), substituted provisions establishing standard setting schedules and deadlines for provisions relating to establishment of maximum contaminant levels and a list of contaminants with adverse effect but of undetermined potential.
Subsec. (b)(2). Pub. L. 99–339, § 101(b), substituted provisions authorizing the Administrator to substitute contaminants for those referred to in par. (1) and to supply a list of the contaminants proposed for substitution, with the decision of the Administrator to regulate such contaminant not subject to judicial review, for provisions which authorized the Administrator to publish in the Federal Register proposed revised national interim primary drinking water regulations and 180 days after the date of such proposed regulations to promulgate such revised regulations with modification as deemed appropriate.
Subsec. (b)(3). Pub. L. 99–339, § 101(b), substituted provisions directing the Administrator to publish maximum contaminant level goals and promulgate national primary drinking water regulations for contaminants, other than those specified in par. (1) or (2), which may have an adverse effect on health and are known or anticipated to occur in public water systems, to establish an advisory group to aid in establishing a list of such contaminants, and to publish, within a specified time, both proposed and final goals and regulations for provisions which required that revised national primary drinking water regulations specify a maximum contaminant level or require the use of treatment techniques for each contaminant, which level or technique
was to be as close to the recommended level or technique as feasible, and defined the term "feasible".

Subsec. (b)(4) to (11), Pub. L. 99-339, § 101(b), (c)(1), (d), added a new paragraph and redesignated former pars. (4) to (11), respectively, in par. (9) substituted "National" for "Revised National" and inserted provisions that review include analysis, and publication in Federal Register, of innovations in technology, treatment techniques or other activities occurring during previous three years and their feasibility, and in par. (10) substituted "National" for "Revised National".

Subsec. (e), Pub. L. 99-339, § 101(e), amended subsec. (e) generally, substituting provisions which relate to the request by the Administrator of comments by the Science Advisory Board prior to proposal of a maximum contaminant goal and national primary drinking water regulation for provisions which related to study by the National Academy of Sciences to determine the maximum contaminant levels, report to Congress, and funding therefor.

1977—Subsec. (e)(2), Pub. L. 95-190 inserted provisions relating to revisions of the required report and cl. (G).

NATIONAL PRIMARY DRINKING WATER REGULATION FOR ARSENIC


APPLICABILITY OF PRIOR REQUIREMENTS

Section 102(b) of Pub. L. 104-182 provided that: "The requirements of subparagraphs (C) and (D) of section 1412(b)(3) of the Safe Drinking Water Act [subsec. (b)(3)(C), (D) of this section] as in effect before the date of enactment of this Act [Aug. 6, 1996], and any obligation to promulgate regulations pursuant to such subparagraphs as of the date of enactment of this Act, are superseded by the amendments made by subsection (a) (amending this section)."

DISINFECTANTS AND DISINFECTION BYPRODUCTS

Section 104(b) of Pub. L. 104-182 provided that: "The Administrator of the Environmental Protection Agency may use the authority of section 1412(b)(5) of the Safe Drinking Water Act [subsec. (b)(3)(C), (D) of this section] as in effect before the date of enactment of this Act [Aug. 6, 1996], and any obligation to promulgate regulations pursuant to such subparagraphs as of the date of enactment of this Act, are superseded by the amendments made by subsection (a) (amending this section)."

§ 300g-2. State primary enforcement responsibility

(a) In general

For purposes of this subchapter, a State has primary enforcement responsibility for public water systems during any period for which the Administrator determines (pursuant to regulations prescribed under subsection (b) of this section) that such State—

(1) has adopted drinking water regulations that are no less stringent than the national primary drinking water regulations promulgated by the Administrator under subsections (a) and (b) of section 300g-1 of this title not later than 2 years after the date on which the regulations are promulgated by the Administrator, except that the Administrator may provide for an extension of not more than 2 years if, after submission and review of appropriate, adequate documentation from the State, the Administrator determines that the extension is necessary and justified;

(2) has adopted and is implementing adequate procedures for the enforcement of such State regulations, including conducting such monitoring and making such inspections as the Administrator may require by regulation;

(3) will keep such records and make such reports with respect to its activities under paragraphs (1) and (2) as the Administrator may require by regulation;

(4) if it permits variances or exemptions, or both, from the requirements of its drinking water regulations which meet the requirements of paragraph (1), permits such variances and exemptions under conditions and in a manner which is not less stringent than the conditions under, and the manner in which variances and exemptions may be granted under sections 300g-4 and 300g-5 of this title;

(5) has adopted and can implement an adequate plan for the provision of safe drinking water under emergency circumstances including earthquakes, floods, hurricanes, and other natural disasters, as appropriate; and

(6) has adopted authority for administrative penalties (unless the constitution of the State prohibits the adoption of the authority) in a maximum amount—

(A) in the case of a system serving a population of more than 10,000, that is not less than $1,000 per day per violation; and

(B) in the case of any other system, that is adequate to ensure compliance (as determined by the State); except that a State may establish a maximum limitation on the total amount of administrative penalties that may be imposed on a public water system per violation.

(b) Regulations

(1) The Administrator shall, by regulation (proposed within 180 days of December 16, 1974), prescribe the manner in which a State may apply to the Administrator for a determination that the requirements of paragraphs (1), (2), (3), and (4) of subsection (a) of this section are satisfied with respect to the State, the manner in which the determination is made, the period for which the determination will be effective, and the manner in which the Administrator may determine that such requirements are no longer met. Such regulations shall require that before a determination of the Administrator that such requirements are met or are no longer met with respect to a State may become effective, the Administrator shall notify such State of the determination and the reasons therefor and shall provide an opportunity for public hearing on the determination. Such regulations shall be promulgated (with such modifications as the Administrator deems appropriate) within 90 days of the publication of the proposed regulations in the Federal Register. The Administrator shall promptly notify in writing the chief executive officer of each State of the promulgation of regulations under this paragraph. Such notice shall contain a copy of the regulations and shall
§ 300g–3  TITLE 42—THE PUBLIC HEALTH AND WELFARE

specify a State’s authority under this subchapter when it is determined to have primary enforcement responsibility for public water systems.

(2) When an application is submitted in accordance with the Administrator's regulations under paragraph (1), the Administrator shall within 90 days of the date on which such application is submitted (A) make the determination applied for, or (B) deny the application and notify the applicant in writing of the reasons for his denial.

(c) Interim primary enforcement authority

A State that has primary enforcement authority under this section with respect to each existing national primary drinking water regulation shall be considered to have primary enforcement authority with respect to each new or revised national primary drinking water regulation during the period beginning on the effective date of a regulation adopted and submitted by the State with respect to the new or revised national primary drinking water regulation in accordance with subsection (b)(1) of this section and ending at such time as the Administrator makes a determination under subsection (b)(2)(B) of this section with respect to the regulation.


AMENDMENTS

1996—Subsec. (a)(1). Pub. L. 104-182, §112(a)(1), amended par. (1) generally. Prior to amendment, par. (1) read as follows: "has adopted drinking water regulations which are no less stringent than the national primary drinking water regulations in effect under sections 300g–1(a) and 300g–1(b) of this title;". Subsec. (a)(5). Pub. L. 104-182, §112(b), inserted "including earthquakes, floods, hurricanes, and other natural disasters, as appropriate" after "emergency circumstances;".


1986—Subsec. (a)(1). Pub. L. 99-339 substituted "are no less stringent than the national primary drinking water regulations in effect under sections 300g–1(a) and 300g–1(b) of this title" for subpars. (A) and (B) which related to stringency of State drinking water regulations between period of promulgation and effective date of national interim drinking water regulations and during the period after such effective date.

§ 300g–3. Enforcement of drinking water regulations

(a) Notice to State and public water system; issuance of administrative order; civil action

(1)(A) Whenever the Administrator finds during a period during which a State has primary enforcement responsibility for public water systems (within the meaning of section 300g–2(a) of this title) that any public water system—

(i) for which a variance under section 300g–4 or an exemption under section 300g–5 of this title is not in effect, does not comply with any applicable requirement, or

(ii) for which a variance under section 300g–4 or an exemption under section 300g–5 of this title is in effect, does not comply with any schedule or other requirement imposed pursuant thereto,

he shall so notify the State and such public water system and provide such advice and technical assistance to such State and public water system as may be appropriate to bring the system into compliance with the requirement by the earliest feasible time.

(B) If, beyond the thirtieth day after the Administrator’s notification under subparagraph (A), the State has not commenced appropriate enforcement action, the Administrator shall issue an order under subsection (g) of this section requiring the public water system to comply with such applicable requirement or the Administrator shall commence a civil action under subsection (b) of this section.

(2) Enforcement in nonprimacy states.—

(A) In general.—If, on the basis of information available to the Administrator, the Administrator finds, with respect to a period in which a State does not have primary enforcement responsibility for public water systems, that a public water system in the State—

(i) for which a variance under section 300g–4 of this title or an exemption under section 300g–5 of this title is not in effect, does not comply with any applicable requirement; or

(ii) for which a variance under section 300g–4 of this title or an exemption under section 300g–5 of this title is in effect, does not comply with any schedule or other requirement imposed pursuant to the variance or exemption,

the Administrator shall issue an order under subsection (g) of this section requiring the public water system to comply with the requirement, or commence a civil action under subsection (b) of this section.

(B) Notice.—If the Administrator takes any action pursuant to this paragraph, the Administrator shall notify an appropriate local elected official, if any, with jurisdiction over the public water system of the action prior to the time that the action is taken.

(b) Judicial determinations in appropriate Federal district courts; civil penalties, separate violations

The Administrator may bring a civil action in the appropriate United States district court to require compliance with any applicable requirement, with an order issued under subsection (g) of this section, or with any schedule or other requirement imposed pursuant to a variance or exemption granted under section 300g–4 or 300g–5 of this title if—

(1) authorized under paragraph (1) or (2) of subsection (a) of this section, or

(2) if requested by (A) the chief executive officer of the State in which is located the public water system which is not in compliance with such regulation or requirement, or (B) the agency of such State which has jurisdiction over compliance by public water systems in the State with national primary drinking water regulations or State drinking water regulations.

The court may enter, in an action brought under this subsection, such judgement as protection of
public health may require, taking into consideration the time necessary to comply and the availability of alternative water supplies; and, if the court determines that there has been a violation of the regulation or schedule or other requirement with respect to which the action was brought, the court may, taking into account the seriousness of the violation, the population at risk, and other appropriate factors, impose on the violator a civil penalty of not to exceed $25,000 for each day in which such violation occurs.

(c) Notice to persons served

(1) In general

Each owner or operator of a public water system shall give notice of each of the following to the persons served by the system:

(A) Notice of any failure on the part of the public water system to—

(i) comply with an applicable maximum contaminant level or treatment technique requirement of, or a testing procedure prescribed by, a national primary drinking water regulation; or
(ii) perform monitoring required by section 300j–4(a) of this title.

(B) If the public water system is subject to a variance granted under subsection (a)(1)(A), (a)(2), or (e) of section 300g–4 of this title for an inability to meet a maximum contaminant level requirement or is subject to an exemption granted under section 300g–5 of this title, notice of—

(i) the existence of the variance or exemption; and
(ii) any failure to comply with the requirements of any schedule prescribed pursuant to the variance or exemption.

(C) Notice of the concentration level of any unregulated contaminant for which the Administrator has required public notice pursuant to paragraph (2)(E).

(2) Form, manner, and frequency of notice

(A) In general

The Administrator shall, by regulation, and after consultation with the States, prescribe the manner, frequency, form, and content for giving notice under this subsection.

The regulations shall—

(i) provide for different frequencies of notice based on the differences between violations that are intermittent or infrequent and violations that are continuous or frequent; and
(ii) take into account the seriousness of any potential adverse health effects that may be involved.

(B) State requirements

(i) In general

A State may, by rule, establish alternative notification requirements—

(I) with respect to the form and content of notice given under and in a manner in accordance with subparagraph (C); and
(II) with respect to the form and content of notice given under subparagraph (D).

(ii) Contents

The alternative requirements shall provide the same type and amount of information as required pursuant to this subsection and regulations issued under subparagraph (A).

(iii) Relationship to section 300g–2

Nothing in this subparagraph shall be construed or applied to modify the requirements of section 300g–2 of this title.

(C) Violations with potential to have serious adverse effects on human health

Regulations issued under subparagraph (A) shall specify notification procedures for each violation by a public water system that has the potential to have serious adverse effects on human health as a result of short-term exposure. Each notice of violation provided under this subparagraph shall—

(i) be distributed as soon as practicable after the occurrence of the violation, but not later than 24 hours after the occurrence of the violation;
(ii) provide a clear and readily understandable explanation of—

(I) the violation;
(II) the potential adverse effects on human health;
(III) the steps that the public water system is taking to correct the violation; and
(IV) the necessity of seeking alternative water supplies until the violation is corrected;
(iii) be provided to the Administrator or the head of the State agency that has primary enforcement responsibility under section 300g–2 of this title as soon as practicable, but not later than 24 hours after the occurrence of the violation; and
(iv) as required by the State agency in general regulations of the State agency, or on a case-by-case basis after the consultation referred to in clause (iii), considering the health risks involved—

(I) be provided to appropriate broadcast media;
(II) be prominently published in a newspaper of general circulation serving the area not later than 1 day after distribution of a notice pursuant to clause (i) or the date of publication of the next issue of the newspaper; or
(III) be provided by posting or door-to-door notification in lieu of notification by means of broadcast media or newspaper.

(D) Written notice

(i) In general

Regulations issued under subparagraph (A) shall specify notification procedures for violations other than the violations covered by subparagraph (C). The procedures shall specify that a public water system shall provide written notice to each person served by the system by notice (I) in the first bill (if any) prepared after the date of occurrence of the violation, (II) in
an annual report issued not later than 1 year after the date of occurrence of the violation, or (III) by mail or direct delivery as soon as practicable, but not later than 1 year after the date of occurrence of the violation.

(ii) Form and manner of notice
The Administrator shall prescribe the form and manner of the notice to provide a clear and readily understandable explanation of the violation, any potential adverse health effects, and the steps that the system is taking to seek alternative water supplies, if any, until the violation is corrected.

(E) Unregulated contaminants
The Administrator may require the owner or operator of a public water system to give notice to the persons served by the system of the concentration levels of an unregulated contaminant required to be monitored under section 300g–2 of this title.

(3) Reports

(A) Annual report by State

(i) In general
Not later than January 1, 1998, and annually thereafter, each State that has primary enforcement responsibility under section 300g–2 of this title shall prepare, make readily available to the public, and submit to the Administrator an annual report on violations of national primary drinking water regulations by public water systems in the State, including violations with respect to (I) maximum contaminant levels, (II) treatment requirements, (III) variances and exemptions, and (IV) monitoring requirements determined to be significant by the Administrator after consultation with the States.

(ii) Distribution
The State shall publish and distribute summaries of the report and indicate where the full report is available for review.

(B) Annual report by Administrator
Not later than July 1, 1998, and annually thereafter, the Administrator shall prepare and make available to the public an annual report summarizing and evaluating reports submitted by States pursuant to subparagraph (A) and notices submitted by public water systems serving Indian Tribes provided to the Administrator pursuant to subparagraph (C) or (D) of paragraph (2) and making recommendations concerning the resources needed to improve compliance with this subchapter. The report shall include information about public water system compliance on Indian reservations and about enforcement activities undertaken and financial assistance provided by the Administrator on Indian reservations, and shall make specific recommendations concerning the resources needed to improve compliance with this subchapter on Indian reservations.

(4) Consumer confidence reports by community water systems

(A) Annual reports to consumers
The Administrator, in consultation with public water systems, environmental groups, public interest groups, risk communication experts, and the States, and other interested parties, shall issue regulations within 24 months after August 6, 1996, to require each community water system to mail to each customer of the system at least once annually a report on the level of contaminants in the drinking water purveyed by that system (referred to in this paragraph as a “consumer confidence report”). Such regulations shall provide a brief and plainly worded definition of the terms “maximum contaminant level goal”, “maximum contaminant level”, “variances”, and “exemptions” and brief statements in plain language regarding the health concerns that resulted in regulation of each regulated contaminant. The regulations shall also include a brief and plainly worded explanation regarding contaminants that may reasonably be expected to be present in drinking water, including bottled water. The regulations shall also provide for an Environmental Protection Agency toll-free hotline that consumers can call for more information and explanation.

(B) Contents of report
The consumer confidence reports under this paragraph shall include, but not be limited to, each of the following:

(i) Information on the source of the water purveyed.
(ii) A brief and plainly worded definition of the terms “maximum contaminant level goal”, “maximum contaminant level”, “variances”, and “exemptions” as provided in the regulations of the Administrator.
(iii) If any regulated contaminant is detected in the water purveyed by the public water system, a statement setting forth (I) the maximum contaminant level goal, (II) the maximum contaminant level, (III) the level of such contaminant in such water system, and (IV) for any regulated contaminant for which there has been a violation of the maximum contaminant level during the year concerned, the brief statement in plain language regarding the health concerns that resulted in regulation of such contaminant, as provided by the Administrator in regulations under subparagraph (A).
(iv) Information on compliance with national primary drinking water regulations, as required by the Administrator, and notice if the system is operating under a variance or exemption and the basis on which the variance or exemption was granted.
(v) Information on the levels of unregulated contaminants for which monitoring is required under section 300g–4(a)(2) of this title (including levels of cryptosporidium and radon where States determine they may be found).
(vi) A statement that the presence of contaminants in drinking water does not necessarily indicate that the drinking water poses a health risk and that more information about contaminants and potential health effects can be obtained by calling the Environmental Protection Agency hotline.

A public water system may include such additional information as it deems appropriate for public education. The Administrator may, for not more than 3 regulated contaminants other than those referred to in sub-clause (IV) of clause (iii), require a consumer confidence report under this paragraph to include the brief statement in plain language regarding the health concerns that resulted in regulation of the contaminant or contaminants concerned, as provided by the Administrator in regulations under subparagraph (A).

(C) Coverage

The Governor of a State may determine not to apply the mailing requirement of subparagraph (A) to a community water system serving fewer than 10,000 persons. Any such system shall—

(i) inform, in the newspaper notice required by clause (iii) or by other means, its customers that the system will not be mailing the report as required by subparagraph (A);

(ii) make the consumer confidence report available upon request to the public; and

(iii) publish the report referred to in subparagraph (A) annually in one or more local newspapers serving the area in which customers of the system are located.

(D) Alternative to publication

For any community water system which, pursuant to subparagraph (C), is not required to meet the mailing requirement of subparagraph (A) and which serves 500 persons or fewer, the community water system may elect not to comply with clause (i) or (iii) of subparagraph (C). If the community water system so elects, the system shall, at a minimum—

(i) prepare an annual consumer confidence report pursuant to subparagraph (B); and

(ii) provide notice at least once per year to each of its customers by mail, by door-to-door delivery, by posting or by other means authorized by the regulations of the Administrator that the consumer confidence report is available upon request.

(E) Alternative form and content

A State exercising primary enforcement responsibility may establish, by rule, after notice and public comment, alternative requirements with respect to the form and content of consumer confidence reports under this paragraph.

(d) Notice of noncompliance with secondary drinking water regulations

Whenever, on the basis of information available to him, the Administrator finds that within a reasonable time after national secondary drinking water regulations have been promulgated, one or more public water systems in a State do not comply with such secondary regulations, and that such noncompliance appears to result from a failure of such State to take reasonable action to assure that public water systems throughout such State meet such secondary regulations, he shall so notify the State.

(e) State authority to adopt or enforce laws or regulations respecting drinking water regulations or public water systems unaffected

Nothing in this subchapter shall diminish any authority of a State or political subdivision to adopt or enforce any law or regulation respecting drinking water regulations or public water systems, but no such law or regulation shall relieve any person of any requirement otherwise applicable under this subchapter.

(f) Notice and public hearing; availability of recommendations transmitted to State and public water system

If the Administrator makes a finding of noncompliance (described in subparagraph (A) or (B) of subsection (a)(1) of this section) with respect to a public water system in a State which has primary enforcement responsibility, the Administrator may, for the purpose of assisting that State in carrying out such responsibility and upon the petition of such State or public water system or persons served by such system, hold, after appropriate notice, public hearings for the purpose of gathering information from technical or other experts, Federal, State, or other public officials, representatives of such public water system, persons served by such system, and other interested persons on—

(1) the ways in which such system can within the earliest feasible time be brought into compliance with the regulation or requirement with respect to which such finding was made, and

(2) the means for the maximum feasible protection of the public health during any period in which such system is not in compliance with a national primary drinking water regulation or requirement applicable to a variance or exemption.

On the basis of such hearings the Administrator shall issue recommendations which shall be sent to such State and public water system and shall be made available to the public and communications media.

(g) Administrative order requiring compliance; notice and hearing; civil penalty; civil actions

(1) In any case in which the Administrator is authorized to bring a civil action under this section or under section 300j-4 of this title with respect to any applicable requirement, the Administrator also may issue an order to require compliance with such applicable requirement.

(2) An order issued under this subsection shall not take effect, in the case of a State having primary enforcement responsibility for public water systems in that State, until after the Administrator has provided the State with an opportunity to confer with the Administrator regarding the order. A copy of any order issued
under this subsection shall be sent to the appropriate State agency of the State involved if the State has primary enforcement responsibility for public water systems in that State. Any order issued under this subsection shall state with reasonable specificity the nature of the violation. In any case in which an order under this subsection is issued to a corporation, a copy of such order shall be issued to appropriate corporate officers.

(3)(A) Any person who violates, or fails or refuses to comply with, an order under this subsection shall be liable to the United States for a civil penalty of not more than $25,000 per day of violation.

(B) In a case in which a civil penalty sought by the Administrator under this paragraph does not exceed $5,000, the penalty shall be assessed by the Administrator after notice and opportunity for a public hearing (unless the person against whom the penalty is assessed requests a hearing on the record in accordance with section 554 of title 5). In a case in which a civil penalty sought by the Administrator under this paragraph exceeds $5,000, but does not exceed $25,000, the penalty shall be assessed by the Administrator after notice and opportunity for a hearing on the record in accordance with section 554 of title 5.

(C) Whenever any civil penalty sought by the Administrator under this subsection for a violation of an applicable requirement exceeds $25,000, the penalty shall be assessed by a civil action brought by the Administrator in the appropriate United States district court (as determined under the provisions of title 28).

(D) If any person fails to pay an assessment of a civil penalty after it has become final and unappealable order, or after the appropriate court of appeals has entered final judgment in favor of the Administrator, the Attorney General shall recover the amount for which such person is liable in any appropriate district court of the United States. In any such action, the validity and appropriateness of the final order imposing the civil penalty shall not be subject to review.

(h) Consolidation incentive

(1) In general

An owner or operator of a public water system may submit to the State in which the system is located (if the State has primary enforcement responsibility under section 300g–2 of this title) or to the Administrator (if the State does not have primary enforcement responsibility) a plan (including specific measures and schedules) for—

(A) the physical consolidation of the system with 1 or more other systems;

(B) the consolidation of significant management and administrative functions of the system with 1 or more other systems; or

(C) the transfer of ownership of the system that may reasonably be expected to improve drinking water quality.

(2) Consequences of approval

If the State or the Administrator approves a plan pursuant to paragraph (1), no enforcement action shall be taken pursuant to this part with respect to a specific violation identified in the approved plan prior to the date that is the earlier of the date on which consolidation is completed according to the plan or the date that is 2 years after the plan is approved.

(i) "Applicable requirement" defined

In this section, the term "applicable requirement" means—

(1) a requirement of section 300g–1, 300g–3, 300g–4, 300g–5, 300g–6, 300l–2, 300i, or 300j–4 of this title;

(2) a regulation promulgated pursuant to a section referred to in paragraph (1);

(3) a schedule or requirement imposed pursuant to a section referred to in paragraph (1); and

(4) a requirement of, or permit issued under, an applicable State program for which the Administrator has made a determination that the requirements of section 300g–2 of this title have been satisfied, or an applicable State program approved pursuant to this part.

(2002—Subsec. (i)(1). Pub. L. 107–188 inserted "300i–2" after "300g–4".


Subsec. (a)(1)(B). Pub. L. 104–182, §113(a)(1)(B), substituted "any applicable requirement" for "a national primary drinking water regulation in effect under section 300g–1 of this title".

Subsec. (a)(2). Pub. L. 104–182, §113(a)(1)(A)(i), substituted "applicable requirement" for "such regulation or requirement".

Subsec. (a)(2). Pub. L. 104–182, §113(a)(1)(B), added par. (2) and struck out former par. (2) which read as follows: "Whenever, on the basis of information available to him, the Administrator finds during a period during which a State does not have primary enforcement responsibility for public water systems that a public water system in such State—"

"(A) for which a variance under section 300g–4(a)(2) or an exemption under section 300g–5(f) of this title is not in effect, does not comply with any national primary drinking water regulation in effect under section 300g–1 of this title, or"

"(B) for which a variance under section 300g–4(a)(2) or an exemption under section 300g–5(f) of this title is in effect, does not comply with any schedule or other requirement imposed pursuant thereto,"

the Administrator shall issue an order under subsection (g) of this section requiring the public water system to comply with such regulation or requirement or the Administrator shall commence a civil action under subsection (b) of this section.

Subsec. (b). Pub. L. 104–182, §113(a)(2), substituted "any applicable requirement" for "a national primary drinking water regulation" in introductory provisions.

Subsec. (c). Pub. L. 104–182, §114(a). amended subsec. (c) generality. Prior to amendment, subsec. (c) related to notice of owner or operator of public water system to persons served, regulations for form, manner, and

1 So in original. There probably should be a comma.
frequency of notice, amendment of regulations to provide different types and frequencies of notice, and penalties.

Subsec. (g)(1). Pub. L. 104–182, §113(a)(3)(A), substituted “applicable requirement” for “regulation, schedule, or other requirement” in two places.

Subsec. (g)(2). Pub. L. 104–182, §113(a)(3)(B), substituted “effect, in the case” for “effect until after notice and opportunity for public hearing and, in the case” and “regarding the order” for “regarding the proposed order” and struck out “proposed to be” after “A copy of the

Subsec. (g)(3)(B). Pub. L. 104–182, §113(a)(3)(C)(i), added subpar. (B) and struck out former subpar. (B) which read as follows: “Whenever any civil penalty sought by the Administrator under this paragraph does not exceed a total of $5,000, the penalty shall be assessed by the Administrator after notice and opportunity for a hearing on the record in accordance with section 554 of title 5.”

Subsec. (g)(3)(C). Pub. L. 104–182, §113(a)(3)(C)(ii), substituted “subsection for a violation of an applicable requirement exceeds $25,000” for “paragraph exceeds $5,000”.

Subsecs. (h), (i). Pub. L. 104–182, §113(a)(4), added subsecs. (h) and (i).


Subsec. (a)(1)(A). Pub. L. 99–339, §102(a), inserted “and such public water system” after “notify the State” in provisions following cl. (i).

Subsec. (a)(1)(B). Pub. L. 99–339, §102(b)(1), amended subpar. (B) generally, substituting provisions which relate to issuance of an order to public water system to comply with regulations, or commencement of civil action if the State has not commenced appropriate enforcement action for provisions which related to public notice of noncompliance and commencement of civil action by Administrator if State failed to take steps to obtain compliance by public water system.

Subsec. (a)(2). Pub. L. 99–339, §102(b)(2), substituted “the Administrator shall issue an order under subsection (g) of this section requiring the public water system to comply with such regulation or requirement, or the Administrator shall commence a civil action under subsection (b) of this section” for “he may commence a civil action under subsection (b) of this section”.

Subsec. (b). Pub. L. 99–339, §102(c), inserted “, with an order issued under subsection (g) of this section,” before “or with any schedule” and substituted “there has been a violation” for “there has been a willful violation” and “$25,000” for “$5,000”.

Subsec. (c). Pub. L. 99–339, §103, substituted provisions relating to amendment of regulations within fifteen months after June 19, 1986, to provide different types and frequencies of notice based on the differences between violations which are intermittent or continuous, manner and content of notices, notice required to be served by owner or operator of public water system, and civil penalty of $25,000, for provisions relating to form, manner, and frequency of notice based on three month billing period for water bills, notice required to be public served by owner or operator of public water system, and civil penalty of $5,000.

Subsec. (g). Pub. L. 99–339, §102(d), added subsec. (g).

1977—Subsec. (c). Pub. L. 95–190 inserted provisions relating to frequency of required notice, and notice respecting contaminant levels, and substituted “issued under this subsection” for “thereunder”.

§ 300g–4. Variances

(a) Characteristics of raw water sources; specific treatment technique; notice to Administrator, reasons for variance, compliance, enforcement; approval or revision of schedules and revocation of variances; review of variances and schedules; publication in Federal Register, notice and results of review; notice to State; considerations respecting abuse of discretion in granting variances or failing to prescribe schedules; State corrective action; authority of Administrator in a State without primary enforcement responsibility; alternative treatment techniques

Notwithstanding any other provision of this part, variances from national primary drinking water regulations may be granted as follows:

(1)(A) A State which has primary enforcement responsibility for public water systems may grant one or more variances from an applicable national primary drinking water regulation to one or more public water systems within its jurisdiction which, because of characteristics of the raw water sources which are reasonably available to the systems, cannot meet the requirements respecting the maximum contaminant levels of such drinking water regulation. A variance may be issued to a system on condition that the system install the best technology, treatment techniques, or other means, which the Administrator finds are available (taking costs into consideration), and based upon an evaluation satisfactory to the State that indicates that alternative sources of water are not reasonably available to the system. The Administrator shall propose and promulgate his finding of the best available technology, treatment techniques or other means available for each contaminant for purposes of this subsection at the time he proposes and promulgates a maximum contaminant level for each such contaminant. The Administrator’s findings of best available technology, treatment techniques or other means for purposes of this subsection may vary depending on the number of persons served by the system or for other physical conditions related to engineering feasibility and costs of compliance with maximum contaminant levels as considered appropriate by the Administrator. Before a State may grant a variance under this subparagraph, the State shall prescribe at the time the variance is granted, a schedule for—

(i) compliance (including increments of progress) by the public water system with each containment level requirement with respect to which the variance was granted, and

(ii) implementation by the public water system of such additional control measures as the State may require for each contaminant, subject to such contaminant level requirement, during the period ending on the date compliance with such requirement is required.

\(^1\) So in original.
§ 300g–4

Before a schedule prescribed by a State pursuant to this subparagraph may take effect, the State shall provide notice and opportunity for a public hearing on the schedule. A notice given pursuant to the preceding sentence may cover the prescribing of more than one such schedule and a hearing held pursuant to such notice shall include each of the schedules covered by the notice. A schedule prescribed pursuant to this subparagraph for a public water system granted a variance shall require compliance by the system with each contaminant level requirement with respect to which the variance was granted as expeditiously as practicable (as the State may reasonably determine).

(B) A State which has primary enforcement responsibility for public water systems may grant to one or more public water systems within its jurisdiction one or more variances from any provision of the national primary drinking water regulation which requires the use of a specified treatment technique with respect to a contaminant if the public water system applying for the variance demonstrates to the satisfaction of the State that such treatment technique is not necessary to protect the health of persons because of the nature of the raw water source of such system. A variance granted under this subparagraph shall be conditioned on such monitoring and other requirements as the Administrator may prescribe.

(C) Before a variance proposed to be granted by a State under subparagraph (A) or (B) may take effect, such State shall provide notice and opportunity for public hearing on the proposed variance. A notice given pursuant to the preceding sentence may cover the granting of more than one variance and a hearing held pursuant to such notice shall include each of the variances covered by the notice. The State shall promptly notify the Administrator of all variances granted by it. Such notification shall contain the reason for the variance (and in the case of a variance under subparagraph (A), the basis for the finding required by that subparagraph before the granting of the variance) and documentation of the need for the variance.

(D) Each public water system's variance granted by a State under subparagraph (A) shall be conditioned by the State upon compliance by the public water system with the schedule prescribed by the State pursuant to that subparagraph. The requirements of each schedule prescribed by a State pursuant to that subparagraph shall be enforceable by the State under its laws. Any requirement of a schedule on which a variance granted under that subparagraph is conditioned may be enforced under section 300g–3 of this title as if the variance were part of a national primary drinking water regulation.

(E) Each schedule prescribed by a State pursuant to subparagraph (A) shall be deemed approved by the Administrator unless the variance for which it was prescribed is revoked by the Administrator under subparagraph (G) or the schedule is revised by the Administrator under such subparagraph.

(F) Not later than 18 months after the effective date of the interim national primary drinking water regulations the Administrator shall complete a comprehensive review of the variances granted under subparagraph (A) (and schedules prescribed pursuant thereto) and under subparagraph (B) by the States during the one-year period beginning on such effective date. The Administrator shall conduct such subsequent reviews of variances and schedules as he deems necessary to carry out the purposes of this subchapter, but each subsequent review shall be completed within each 3-year period following the completion of the first review under this subparagraph. Before conducting any review under this subparagraph, the Administrator shall publish notice of the proposed review in the Federal Register. Such notice shall (i) provide information respecting the location of data and other information respecting the variances to be reviewed (including data and other information concerning new scientific matters bearing on such variances), and (ii) advise of the opportunity to submit comments on the variances reviewed and on the need for continuing them. Upon completion of any such review, the Administrator shall publish in the Federal Register the results of his review together with findings responsive to comments submitted in connection with such review.

(G)(i) If the Administrator finds that a State has, in a substantial number of instances, abused its discretion in granting variances under subparagraph (A) or (B) or that in a substantial number of cases the States has failed to prescribe schedules in accordance with subparagraph (A), the Administrator shall notify the State of his findings. In determining if a State has abused its discretion in granting variances in a substantial number of instances, the Administrator shall consider the number of persons who are affected by the variances and if the requirements applicable to the granting of the variances were complied with. A notice under this clause shall—

(I) identify each public water system with respect to which the finding was made,

(II) specify the reasons for the finding, and

(III) as appropriate, propose revocations of specific variances or propose revised schedules or other requirements for specific public water systems granted variances, or both.

(ii) The Administrator shall provide reasonable notice and public hearing on the provisions of each notice given pursuant to clause (i) of this subparagraph. After a hearing on a notice pursuant to such clause, the Administrator shall (I) rescind the finding for which the notice was given and promptly notify the State of such rescission, or (II) promulgate (with such modifications as he deems appropriate) such variance revocations and revised schedules or other requirements proposed in such notice as he deems appropriate. Not later than 180 days after the date a notice is given pursuant to clause (i) of this subparagraph, the Administrator shall complete the hearing on the notice and take the action required by the preceding sentence.

(iii) If a State is notified under clause (i) of this subparagraph of a finding of the Adminis-
trator made with respect to a variance grant-
ed a public water system within that State or
to a schedule or other requirement for a var-
iance and if, before a revocation of such var-
iance or a revision of such schedule or other re-
quirement promulgated by the Administrator
takes effect, the State takes corrective action
with respect to such variance or schedule or
other requirement which the Administrator
determines makes his finding inapplicable to
such variance or schedule or other require-
ment, the Administrator shall rescind the ap-
lication of his finding to that variance on
schedule or other requirement. No variance
revocation or revised schedule or other re-
quirement may take effect before the expira-
tion of 90 days following the date of the notice
in which the revocation or revised schedule or
other requirement was proposed.

(2) If a State does not have primary enforce-
ment responsibility for public water systems,
the Administrator shall have the same author-
ity to grant variances in such State as the
State would have under paragraph (1) if it had
primary enforcement responsibility.

(3) The Administrator may grant a variance
from any treatment technique requirement of
a national primary drinking water regulation
upon a showing by any person that an alter-
native treatment technique not included in
such requirement is at least as efficient in
lowering the level of the contaminant with re-
spect to which such requirement was pre-
scribed. A variance under this paragraph shall
be conditioned on the use of the alternative
treatment technique which is the basis of the
variance.

(b) Enforcement of schedule or other require-
ment

Any schedule or other requirement on which a
variance granted under paragraph (1)(B) or (2) of
subsection (a) of this section is conditioned may
be enforced under section 300g–3 of this title as
if such schedule or other requirement was part
of a national primary drinking water regulation.

(c) Applications for variances; regulations: rea-
sonable time for acting

If an application for a variance under sub-
section (a) of this section is made, the State re-
ceiving the application or the Administrator, as
the case may be, shall act upon such application
within a reasonable period (as determined under
regulations prescribed by the Administrator) af-
after the date of its submission.

(d) “Treatment technique requirement” defined

For purposes of this section, the term “treat-
ment technique requirement” means a require-
ment in a national primary drinking water regu-
lation which specifies for a contaminant (in ac-
cordance with section 300f(1)(C)(ii) of this title)
each treatment technique known to the Admin-
istrator which leads to a reduction in the level
of such contaminant sufficient to satisfy the re-
quirements of section 300g–1(b) of this title.

(e) Small system variances

(1) In general

A State exercising primary enforcement re-
ponsibility for public water systems under
section 300g–2 of this title (or the Adminis-
trator in nonprimacy States) may grant a variance
under this subsection for compliance with a require-
ment specifying a maximum contaminant level or treatment technique
contained in a national primary drinking
water regulation to—
(A) public water systems serving 3,300 or
fewer persons; and
(B) with the approval of the Administrator
pursuant to paragraph (9), public water sys-
tems serving more than 3,300 persons but
fewer than 10,000 persons,

if the variance meets each requirement of this
subsection.

(2) Availability of variances

A public water system may receive a var-
iance pursuant to paragraph (1) if—
(A) the Administrator has identified a variance technology under section
300g–1(b)(15) of this title that is applicable to
the size and source water quality conditions
of the public water system;
(B) the public water system installs, oper-
ates, and maintains, in accordance with
guidance or regulations issued by the Ad-
ministrator, such treatment technology,
treatment technique, or other means; and
(C) the State in which the system is lo-
cated determines that the conditions of
paragraph (3) are met.

(3) Conditions for granting variances

A variance under this subsection shall be
available only to a system—
(A) that cannot afford to comply, in ac-
cordance with affordability criteria estab-
lished by the Administrator (or the State in
the case of a State that has primary enforce-
ment responsibility under section 300g–2 of
this title), with a national primary drinking
water regulation, including compliance
through—
(i) treatment;
(ii) alternative source of water supply; or
(iii) restructuring or consolidation (un-
less the Administrator (or the State in
the case of a State that has primary enforce-
ment responsibility under section 300g–2 of
this title) makes a written determination
that restructuring or consolidation is not
practicable); and
(B) for which the Administrator (or the
State in the case of a State that has primary
enforcement responsibility under section
300g–2 of this title) determines that the
terms of the variance ensure adequate pro-
tection of human health, considering the
quality of the source water for the system
and the removal efficiencies and expected
useful life of the treatment technology re-
quired by the variance.

(4) Compliance schedules

A variance granted under this subsection
shall require compliance with the conditions
of the variance not later than 3 years after the
date on which the variance is granted, except
that the Administrator (or the State in the
case of a State that has primary enforcement
responsibility under section 300g–2 of this title) may allow up to 2 additional years to comply with a variance technology, secure an alternative source of water, restructure or consolidate if the Administrator (or the State) determines that additional time is necessary for capital improvements, or to allow for financial assistance provided pursuant to section 300j–12 of this title or any other Federal or State program.

(5) Duration of variances

The Administrator (or the State in the case of a State that has primary enforcement responsibility under section 300g–2 of this title) shall review each variance granted under this subsection not less often than every 5 years after the compliance date established in the variance to determine whether the system remains eligible for the variance and is conforming to each condition of the variance.

(6) Ineligibility for variances

A variance shall not be available under this subsection for—

(A) any maximum contaminant level or treatment technique for a contaminant with respect to which a national primary drinking water regulation was promulgated prior to January 1, 1986; or

(B) a national primary drinking water regulation for a microbial contaminant (including a bacterium, virus, or other organism) or an indicator or treatment technique for a microbial contaminant.

(7) Regulations and guidance

(A) In general

Not later than 2 years after August 6, 1996, and in consultation with the States, the Administrator shall promulgate regulations for variances to be granted under this subsection. The regulations shall, at a minimum, specify:

(i) procedures to be used by the Administrator or a State to grant or deny variances, including requirements for notifying the Administrator and consumers of the public water system that a variance is proposed to be granted (including information regarding the contaminant and variance) and requirements for a public hearing on the variance before the variance is granted;

(ii) requirements for the installation and proper operation of variance technology that is identified (pursuant to section 300g–1(b)(15) of this title) for small systems and the financial and technical capability to operate the treatment system, including operator training and certification;

(iii) eligibility criteria for a variance for each national primary drinking water regulation, including requirements for the quality of the source water (pursuant to section 300g–1(b)(15)(A) of this title); and

(iv) information requirements for variance applications.

(B) Affordability criteria

Not later than 18 months after August 6, 1996, the Administrator, in consultation with the States and the Rural Utilities Service of the Department of Agriculture, shall publish information to assist the States in developing affordability criteria. The affordability criteria shall be reviewed by the States not less often than every 5 years to determine if changes are needed to the criteria.

(8) Review by the Administrator

(A) In general

The Administrator shall periodically review the program of each State that has primary enforcement responsibility for public water systems under section 300g–2 of this title with respect to variances to determine whether the variances granted by the State comply with the requirements of this subsection. With respect to affordability, the determination of the Administrator shall be limited to whether the variances granted by the State comply with the affordability criteria developed by the State.

(B) Notice and publication

If the Administrator determines that variances granted by a State are not in compliance with affordability criteria developed by the State and the requirements of this subsection, the Administrator shall notify the State in writing of the deficiencies and make public the determination.

(9) Approval of variances

A State proposing to grant a variance under this subsection to a public water system serving more than 3,300 and fewer than 10,000 persons shall submit the variance to the Administrator for review and approval prior to the issuance of the variance. The Administrator shall approve the variance if it meets each of the requirements of this subsection. The Administrator shall approve or disapprove the variance within 90 days. If the Administrator disapproves a variance under this paragraph, the Administrator shall notify the State in writing of the reasons for disapproval and the variance may be resubmitted with modifications to address the objections stated by the Administrator.

(10) Objections to variances

(A) By the Administrator

The Administrator may review and object to any variance proposed to be granted by a State, if the objection is communicated to the State not later than 90 days after the State proposes to grant the variance. If the Administrator objects to the granting of a variance, the Administrator shall notify the State in writing of each basis for the objection and propose a modification to the variance to resolve the concerns of the Administrator. The State shall make the recommended modification or respond in writing to each objection. If the State issues the variance without resolving the concerns of the Administrator, the Administrator may overturn the State decision to grant the variance if the Administrator determines that the State decision does not comply with this subsection.
(B) Petition by consumers

Not later than 30 days after a State exercising primary enforcement responsibility for public water systems under section 300g-2 of this title proposes to grant a variance for a public water system, any person served by the system may petition the Administrator to object to the granting of a variance. The Administrator shall respond to the petition and determine whether to object to the variance under subparagraph (A) not later than 60 days after the receipt of the petition.

(C) Timing

No variance shall be granted by a State until the later of the following:

(i) 90 days after the State proposes to grant a variance.

(ii) If the Administrator objects to the variance, the date on which the State makes the recommended modifications or responds in writing to each objection.


AMENDMENTS


Pub. L. 104-182, §115, in second sentence, substituted “be issued to a system after the system’s application of” and inserted “, and based upon an evaluation satisfactory to the State that indicates that alternative sources of water are not reasonably available to the system” after “(taking costs into consideration)”. Pub. L. 104-182, §115, as added Pub. L. 104-182, §501(a)(3), inserted “the” before “time the variance is granted,” in introductory provisions.

Subsec. (d). Pub. L. 104-182, §102(c)(1), substituted “section 300g-1(b)” for “section 300g-1(b)(3)”. Pub. L. 104-182, §116, added subsec. (e).

1986—Subsec. (a)(1)(A). Pub. L. 99-339, §104(1)-(3), substituted “such drinking water regulation. A variance may only be issued to a system after the system’s application for such drinking water regulation despite application”, struck out “generally” after “finds are”, inserted provisions relating to proposal and promulgation by Administrator of a finding on best available technology, treatment techniques or other means available for each contaminant at time of proposal and promulgation of maximum contaminant levels, and substituted “at the time” for “within one year of the date”. Pub. L. 99-339, §104(4), substituted “water system of such additional control” for “water system of such control”.

§ 300g-5. Exemptions

(a) Requisite findings

A State which has primary enforcement responsibility may exempt any public water system within the State’s jurisdiction from any requirement respecting a maximum contaminant level or any treatment technique requirement, or from both, of an applicable national primary drinking water regulation upon a finding that—

(1) due to compelling factors (which may include economic factors, including qualification of the public water system as a system serving a disadvantaged community pursuant to section 300j-12(d) of this title), the public water system is unable to comply with such contaminant level or treatment technique requirement, or to implement measures to develop an alternative source of water supply;

(2) the public water system was in operation on the effective date of such contaminant level or treatment technique requirement, or, for a system that was not in operation by that date, only if no reasonable alternative source of drinking water is available to such new system,

(3) the granting of the exemption will not result in an unreasonable risk to health;1 and

(4) management or restructuring changes (or both) cannot reasonably be made that will result in compliance with this subchapter or, if compliance cannot be achieved, improve the quality of the drinking water.

(b) Compliance schedule and implementation of control measures; notice and hearing; dates for compliance with schedule; compliance, enforcement; approval or revision of schedules and revocation of exemptions

(1) If a State grants a public water system an exemption under subsection (a) of this section, the State shall prescribe, at the time the exemption is granted, a schedule for—

(A) compliance (including increments of progress or measures to develop an alternative source of water supply) by the public water system with each contaminant level requirement or treatment technique requirement with respect to which the exemption was granted, and

(B) implementation by the public water system of such control measures as the State may require for each contaminant, subject to such contaminant level requirement or treatment technique requirement, during the period ending on the date compliance with such requirement is required.

Before a schedule prescribed by a State pursuant to this subsection may take effect, the State shall provide notice and opportunity for a public hearing on the schedule. A notice given pursuant to the preceding sentence may cover the prescribing of more than one such schedule and a hearing held pursuant to such notice shall include each of the schedules covered by the notice.

(2)(A) A schedule prescribed pursuant to this subsection for a public water system granted an exemption under subsection (a) of this section shall require compliance by the system with each contaminant level and treatment technique requirement with respect to which the exemption was granted as expeditiously as practicable (as the State may reasonably determine) but not later than 3 years after the otherwise applicable compliance date established in section 300g-1(b)(10) of this title.

(B) No exemption shall be granted unless the public water system establishes that—

(i) the system cannot meet the standard without capital improvements which cannot be completed prior to the date established pursuant to section 300g-1(b)(10) of this title;

1 So in original. The semicolon probably should be a comma.
(ii) in the case of a system which needs financial assistance for the necessary improvements, the system has entered into an agreement to obtain such financial assistance or assistance pursuant to section 300g–12 of this title, or any other Federal or State program is reasonably likely to be available within the period of the exemption; or
(iii) the system has entered into an enforceable agreement to become a part of a regional public water system; and

the system is taking all practicable steps to meet the standard.

(C) In the case of a system which does not serve more than a population of 3,300 and which needs financial assistance for the necessary improvements, an exemption granted under clause (i) or (ii) of subparagraph (B) may be renewed for one or more additional 2-year periods, but not to exceed a total of 6 years, if the system establishes that it is taking all practicable steps to meet the requirements of subparagraph (B).

(D) LIMITATION.—A public water system may not receive an exemption under this section if the system was granted a variance under section 300g–4(e) of this title.

(3) Each public water system’s exemption granted by a State under subsection (a) of this section shall be conditioned by the State upon compliance by the public water system with the schedule prescribed by the State pursuant to this subsection. The requirements of each schedule prescribed by a State pursuant to this subsection shall be enforceable by the State under its laws. Any requirement of a schedule on which an exemption granted under this section is conditioned may be enforced under section 300g–3 of this title as if such requirement was part of a national primary drinking water regulation.

(4) Each schedule prescribed by a State pursuant to this subsection shall be deemed approved by the Administrator unless the exemption for which it was prescribed is revoked by the Administrator under subsection (d)(2) of this section or the schedule is revised by the Administrator under such subsection.

(c) Notice to Administrator; reasons for exemption

Each State which grants an exemption under subsection (a) of this section shall promptly notify the Administrator of the granting of such exemption. Such notification shall contain the reasons for the exemption (including the basis for the finding required by subsection (a)(3) of this section before the exemption may be granted) and document the need for the exemption.

(d) Review of exemptions and schedules; publication in Federal Register, notice and results of review; notice to State; considerations respecting abuse of discretion in granting exemptions or failing to prescribe schedules;

State corrective action

(1) Not later than 18 months after the effective date of the interim national primary drinking water regulations the Administrator shall complete a comprehensive review of the exemptions granted (and schedules prescribed pursuant thereto) by the States during the one-year period beginning on such effective date. The Administrator shall conduct such subsequent reviews of exemptions and schedules as he deems necessary to carry out the purposes of this subchapter, but each subsequent review shall be completed within each 3-year period following the completion of the first review under this subparagraph. Before conducting any review under this subparagraph, the Administrator shall publish notice of the proposed review in the Federal Register. Such notice shall (A) provide information respecting the location of data and other information respecting the exemptions to be reviewed (including data and other information concerning new scientific matters bearing on such exemptions), and (B) advise of the opportunity to submit comments on the exemptions reviewed and on the revocation of the exemptions. Upon completion of any such review, the Administrator shall publish in the Federal Register the results of his review, together with findings responsive to comments submitted in connection with such review.

(2)(A) If the Administrator finds that a State has, in a substantial number of instances, abused its discretion in granting exemptions under subsection (a) of this section or failed to prescribe schedules in accordance with subsection (b) of this section, the Administrator shall notify the State of his findings. In determining if a State has abused its discretion in granting exemptions in a substantial number of instances, the Administrator shall consider the number of persons who are affected by the exemptions and if the requirements applicable to the granting of the exemptions were complied with. A notice under this subparagraph shall—
(i) identify each exempt public water system with respect to which the finding was made,
(ii) specify the reasons for the finding, and
(iii) as appropriate, propose revocations of specific exemptions or propose revised schedules for specific exempt public water systems, or both.

(B) The Administrator shall provide reasonable notice and public hearing on the provisions of each notice given pursuant to subparagraph (A). After a hearing on notice pursuant to paragraph (A), the Administrator shall (i) rescind the finding for which the notice was given and promptly notify the State of such rescission, or (ii) promulgate (with such modifications as he deems appropriate) such exemption revocations and revised schedules proposed in such notice as he deems appropriate. Not later than 180 days after the date a notice is given pursuant to subparagraph (A), the Administrator shall complete the hearing on the notice and take the action required by the preceding sentence.

(C) If a State is notified under subparagraph (A) of a finding of the Administrator made with respect to an exemption granted a public water system within that State or to a schedule prescribed pursuant to such an exemption and if before a revocation of such exemption or a revision of such schedule promulgated by the Administrator takes effect the State takes corrective action with respect to such exemption or schedule which the Administrator determines makes his finding inapplicable to such exemption or schedule, the Administrator shall re-
implement measures to develop an alternative source of water supply,’’ after ‘‘treatment technique requirement’’ each treatment technique known to the Administrator which leads to a reduction in the level of such contaminant sufficient to satisfy the requirements of section 300g–1(b) of this title.

(f) Authority of Administrator in a State without primary enforcement responsibility

If a State does not have primary enforcement responsibility for public water systems, the Administrator shall have the same authority to exempt public water systems in such State from maximum contaminant level requirements and treatment technique requirements under the same conditions and in the same manner as the State would be authorized to grant exemptions under this section if it had primary enforcement responsibility.

(g) Applications for exemptions; regulations; reasonable time for acting

If an application for an exemption under this section is made, the State receiving the application or the Administrator, as the case may be, shall act upon such application within a reasonable period (as determined under regulations prescribed by the Administrator) after the date of its submission.

(1) Authority of Administrator in a State without primary enforcement responsibility

If a State does not have primary enforcement responsibility for public water systems, the Administrator shall have the same authority to exempt public water systems in such State from maximum contaminant level requirements and treatment technique requirements under the same conditions and in the same manner as the State would be authorized to grant exemptions under this section if it had primary enforcement responsibility.

(2) Applications for exemptions; regulations; reasonable time for acting

If an application for an exemption under this section is made, the State receiving the application or the Administrator, as the case may be, shall act upon such application within a reasonable period (as determined under regulations prescribed by the Administrator) after the date of its submission.
§ 300g–6. Prohibition on use of lead pipes, solder, and flux

(a) In general

(1) Prohibitions

(A) In general

No person may use any pipe, any pipe or plumbing fitting or fixture, any solder, or any flux, after June 19, 1986, in the installation or repair of—

(i) any public water system; or

(ii) any plumbing in a residential or nonresidential facility providing water for human consumption, that is not lead free (within the meaning of subsection (d) of this section).

(B) Leaded joints

Subparagraph (A) shall not apply to leaded joints necessary for the repair of cast iron pipes.

(2) Public notice requirements

(A) In general

Each owner or operator of a public water system shall identify and provide notice to persons that may be affected by lead contamination of their drinking water where such contamination results from either or both of the following:

(i) The lead content in the construction materials of the public water distribution system,

(ii) Corrosivity of the water supply sufficient to cause leaching of lead.

The notice shall be provided in such manner and form as may be reasonably required by the Administrator. Notice under this paragraph shall be provided notwithstanding the absence of a violation of any national drinking water standard.

(B) Contents of notice

Notice under this paragraph shall provide a clear and readily understandable explanation of—

(i) The potential sources of lead in the drinking water,

(ii) potential adverse health effects,

(iii) reasonably available methods of mitigating known or potential lead content in drinking water,

(iv) any steps the system is taking to mitigate lead content in drinking water, and

(v) the necessity for seeking alternative water supplies, if any.

(3) Unlawful acts

Effective 2 years after August 6, 1996, it shall be unlawful—

(A) for any person to introduce into commerce any pipe, or any pipe or plumbing fitting or fixture, that is not lead free, except for a pipe that is used in manufacturing or industrial processing;

(B) for any person engaged in the business of selling plumbing supplies, except manufacturers, to sell solder or flux that is not lead free; or

(C) for any person to introduce into commerce any solder or flux that is not lead free unless the solder or flux bears a prominent label stating that it is illegal to use the solder or flux in the installation or repair of any plumbing providing water for human consumption.

(b) State enforcement

(1) Enforcement of prohibition

The requirements of subsection (a)(1) of this section shall be enforced in all States effective 24 months after June 19, 1986. States shall enforce such requirements through State or local plumbing codes, or such other means of enforcement as the State may determine to be appropriate.

(2) Enforcement of public notice requirements

The requirements of subsection (a)(2) of this section shall apply in all States effective 24 months after June 19, 1986.

(c) Penalties

If the Administrator determines that a State is not enforcing the requirements of subsection (a) of this section as required pursuant to subsection (b) of this section, the Administrator may withhold up to 5 percent of Federal funds available to that State for State program grants under section 300j–2(a) of this title.

(d) “Lead free” defined

For purposes of this section, the term “lead free”—

(1) when used with respect to solders and flux refers to solders and flux containing not more than 0.2 percent lead; and

(2) when used with respect to pipes and plumbing fittings refers to pipes and plumbing fittings containing not more than 0.8 percent lead; and

(3) when used with respect to plumbing fittings and fixtures, refers to plumbing fittings and fixtures in compliance with standards established in accordance with subsection (e) of this section.

(e) Plumbing fittings and fixtures

(1) In general

The Administrator shall provide accurate and timely technical information and assistance to qualified third-party certifiers in the development of voluntary standards and testing protocols for the leaching of lead from new plumbing fittings and fixtures that are intended by the manufacturer to dispense water for human ingestion.

(2) Standards

(A) In general

If a voluntary standard for the leaching of lead is not established by the date that is 1 year after August 6, 1996, the Administrator shall, not later than 2 years after August 6, 1996, promulgate regulations setting a health-effects-based performance standard establishing maximum leaching levels from new plumbing fittings and fixtures that are intended by the manufacturer to dispense water for human ingestion. The standard
shall become effective on the date that is 5 years after the date of promulgation of the standard.

(B) Alternative requirement

If regulations are required to be promulgated under subparagraph (A) and have not been promulgated by the date that is 5 years after August 6, 1996, no person may import, manufacture, process, or distribute in commerce a new plumbing fitting or fixture, intended by the manufacturer to dispense water for human ingestion, that contains more than 4 percent lead by dry weight.


AMENDMENT OF SUBSECTIONS (a) AND (d)

Pub. L. 111–380, § 2, Jan. 4, 2011, 124 Stat. 4131, provided that, applicable beginning on the day that is 36 months after Jan. 4, 2011, this section is amended as follows:

(1) by adding at the end of subsection (a) the following:

“(4) Exemptions

“The prohibitions in paragraphs (1) and (3) shall not apply to—

“(A) pipes, pipe fittings, plumbing fittings, or fixtures, including backflow preventers, that are used exclusively for nonpotable services such as manufacturing, industrial processing, irrigation, outdoor watering, or any other uses where the water is not anticipated to be used for human consumption; or

“(B) toilets, bidets, urinals, fill valves, flushometer valves, tub fillers, shower valves, service saddles, or water distribution main gate valves that are 2 inches in diameter or larger.”; and

(2) by amending subsection (d) to read as follows:

(d) Definition of lead free

(1) In general

For the purposes of this section, the term “lead free” means—

(A) not containing more than 0.2 percent lead when used with respect to solder and flux; and

(B) not more than a weighted average of 0.25 percent lead when used with respect to the wetted surfaces of pipes, pipe fittings, plumbing fittings, and fixtures.

(2) Calculation

The weighted average lead content of a pipe, pipe fitting, plumbing fitting, or fixture shall be calculated by using the following formula: For each wetted component, the percentage of lead in the component shall be multiplied by the ratio of the wetted surface area of that component to the total wetted surface area of the entire product to arrive at the weighted percentage of lead of the component. The weighted percentage of lead of each wetted component shall be added together, and the sum of these weighted percentages shall constitute the weighted average lead content of the product. The lead content of the material used to produce wetted components shall be used to determine compliance with paragraph (1)(B). For lead content of materials that are provided as a range, the maximum content of the range shall be used.

AMENDMENTS


Subsec. (a)(1). Pub. L. 104–182, § 118(1), substituted “Prohibitions” for “Prohibition” in heading and amended text generally. Prior to amendment, text read as follows: “Any pipe, solder, or flux, which is used after June 19, 1986, in the installation or repair of—

“(A) any public water system, or

“(B) any plumbing in a residential or nonresidential facility providing water for human consumption which is connected to a public water system, shall be lead free (within the meaning of subsection (d) of this section). This paragraph shall not apply to leaded joints necessary for the repair of cast iron pipes.”


EFFECTIVE DATE OF 2011 AMENDMENT

Pub. L. 111–380, § 2(b), Jan. 4, 2011, 124 Stat. 4132, provided that: “The provisions of subsections (a)(4) and (d) of section 1417 of the Safe Drinking Water Act [42 U.S.C. 300g–6(a)(4), (d)], as added by this section, apply beginning on the day that is 36 months after the date of the enactment of this Act [Jan. 4, 2011].”

NOTIFICATION TO STATES

Section 109(b) of Pub. L. 99–339 provided that: “The Administrator of the Environmental Protection Agency shall notify all States with respect to the requirements of section 1417 of the Public Health Service Act [this section] within 90 days after the enactment of this Act [June 19, 1986].”

BAN ON LEAD WATER PIPES, SOLDER, AND FLUX IN VA AND HUD INSURED OR ASSISTED PROPERTY


“(1) PROHIBITION.—The Secretary of Housing and Urban Development and the Secretary of Veterans Affairs may not insure or guarantee a mortgage or furnish assistance with respect to newly constructed residential property which contains a potable water system unless such system uses only lead free pipe, solder, and flux.

“(2) DEFINITION OF LEAD FREE.—For purposes of paragraph (1) the term ‘lead free’—

“(A) when used with respect to solders and flux refers to solders and flux containing not more than 0.2 percent lead, and

“(B) when used with respect to pipes and pipe fittings refers to pipes and pipe fittings containing not more than 8.0 percent lead.

“(3) EFFECTIVE DATE.—Paragraph (1) shall become effective 24 months after the enactment of this Act [June 19, 1986].”

§ 300g–7. Monitoring of contaminants

(a) Interim monitoring relief authority

(1) In general

A State exercising primary enforcement responsibility for public water systems may modify the monitoring requirements for any regulated or unregulated contaminants for which monitoring is required other than mi-
crobiial contaminants (or indicators thereof), disinfectants and disinfection byproducts or corrosion byproducts for an interim period to provide that any public water system serving 10,000 persons or fewer shall not be required to conduct additional quarterly monitoring during an interim relief period for such contaminants if—

(A) monitoring, conducted at the beginning of the period for the contaminant concerned and certified to the State by the public water system, fails to detect the presence of the contaminant in the ground or surface water supplying the public water system; and

(B) the State, considering the hydrogeology of the area and other relevant factors, determines in writing that the contaminant is unlikely to be detected by further monitoring during such period.

(2) Termination; timing of monitoring

The interim relief period referred to in paragraph (1) shall terminate when permanent monitoring relief is adopted and approved for such State, or at the end of 36 months after August 6, 1996, whichever comes first. In order to serve as a basis for interim relief, the monitoring conducted at the beginning of the period must occur at the time determined by the State to be the time of the public water system's greatest vulnerability to the contaminant concerned in the relevant ground or surface water, taking into account the case of pesticides the time of application of the pesticide for the source water area and the travel time for the pesticide to reach such waters and taking into account, in the case of other contaminants, seasonality of precipitation and contaminant travel time.

(b) Permanent monitoring relief authority

(1) In general

Each State exercising primary enforcement responsibility for public water systems under this subchapter and having an approved source water assessment program may adopt, in accordance with guidance published by the Administrator, tailored alternative monitoring requirements for public water systems in such State (as an alternative to the monitoring requirements for chemical contaminants set forth in the applicable national primary drinking water regulations) where the State concludes that (based on data available at the time of adoption concerning susceptibility, use, occurrence, or wellhead protection, or from the State's drinking water source water assessment program) such alternative monitoring would provide assurance that it complies with the Administrator's guidelines. The State program must be adequate to assure compliance with, and enforcement of, applicable national primary drinking water regulations. Alternative monitoring shall not apply to regulated microbiological contaminants (or indicators thereof), disinfectants and disinfection byproducts, or corrosion byproducts. The preceding sentence is not intended to limit other authority of the Administrator under other provisions of this subchapter to grant monitoring flexibility.

(2) Guidelines

(A) In general

The Administrator shall issue, after notice and comment and at the same time as guidelines are issued for source water assessment under section 300j–13 of this title, guidelines for States to follow in proposing alternative monitoring requirements under paragraph (1) for chemical contaminants. The Administrator shall publish such guidelines in the Federal Register. The guidelines shall assure that the public health will be protected from drinking water contamination. The guidelines shall require that a State alternative monitoring program apply on a contaminant-by-contaminant basis, to be eligible for such alternative monitoring program, a public water system must show the State that the contaminant is not present in the drinking water supply or, if present, it is reliably and consistently below the maximum contaminant level.

(B) Definition

For purposes of subparagraph (A), the phrase "reliably and consistently below the maximum contaminant level" means that, although contaminants have been detected in a water supply, the State has sufficient knowledge of the contamination source and extent of contamination to predict that the maximum contaminant level will not be exceeded. In determining that a contaminant is reliably and consistently below the maximum contaminant level, States shall consider the quality and completeness of data, the length of time covered and the volatility or stability of monitoring results during that time, and the proximity of such results to the maximum contaminant level. Wide variations in the analytical results, or analytical results close to the maximum contaminant level, shall not be considered to be reliably and consistently below the maximum contaminant level.

(3) Effect of detection of contaminants

The guidelines issued by the Administrator under paragraph (2) shall require that if, after the monitoring program is in effect and operating, a contaminant covered by the alternative monitoring program is detected at levels at or above the maximum contaminant level or is no longer reliably or consistently below the maximum contaminant level, the public water system must either—

(A) demonstrate that the contamination source has been removed or that other action has been taken to eliminate the contamination problem; or

(B) test for the detected contaminant pursuant to the applicable national primary drinking water regulation.

(4) States not exercising primary enforcement responsibility

The Governor of any State not exercising primary enforcement responsibility under section 300g–2 of this title on August 6, 1996, may submit to the Administrator a request that the Administrator modify the monitoring re-
requirements established by the Administrator and applicable to public water systems in that State. After consultation with the Governor, the Administrator shall modify the requirements for public water systems in that State if the request of the Governor is in accordance with each of the requirements of this subsection that apply to alternative monitoring requirements established by States that have primary enforcement responsibility. A decision by the Administrator to approve a request under this clause shall be made for a period of 3 years and may subsequently be extended for periods of 5 years.

(c) Treatment as NPDWR

All monitoring relief granted by a State to a public water system for a regulated contaminant under subsection (a) or (b) of this section shall be treated as part of the national primary drinking water regulation for that contaminant.

(d) Other monitoring relief

Nothing in this section shall be construed to affect the authority of the States under applicable national primary drinking water regulations to alter monitoring requirements through waivers or other existing authorities. The Administrator shall periodically review and, as appropriate, revise such authorities.

(§ 300g–8. Operator certification)

(a) Guidelines

Not later than 30 months after August 6, 1996, and in cooperation with the States, the Administrator shall publish guidelines in the Federal Register, after notice and opportunity for comment from interested persons, including States and public water systems, specifying minimum standards for certification (and recertification) of the operators of community and nontransient noncommunity public water systems. Such guidelines shall take into account existing State programs, the complexity of the system, and other factors aimed at providing an effective program at reasonable cost to States and public water systems, taking into account the size of the system.

(b) State programs

Beginning 2 years after the date on which the Administrator publishes guidelines under subsection (a) of this section, the Administrator shall withhold 20 percent of the funds a State is otherwise entitled to receive under section 300j–12 of this title unless the State submits in compliance with subsection (a) of this section that has not been disapproved.

(c) Other programs

For any State exercising primary enforcement responsibility for public water systems or any other State which has an operator certification program, the guidelines under subsection (a) of this section shall allow the State to enforce such program in lieu of the guidelines under subsection (a) of this section if the State submits the program to the Administrator within 18 months after the publication of the guidelines unless the Administrator determines (within 9 months after the State submits the program to the Administrator) that such program is not substantially equivalent to such guidelines. In making this determination, an existing State program shall be presumed to be substantially equivalent to the guidelines, notwithstanding program differences, based on the size of systems or the quality of source water, providing the State program meets the overall public health objectives of the guidelines. If disapproved, the program may be resubmitted within 6 months after receipt of notice of disapproval.

(d) Expense reimbursement

(1) In general

The Administrator shall provide reimbursement for the costs of training, including an appropriate per diem for unsalaried operators, and certification for persons operating systems serving 3,300 persons or fewer that are required to undergo training pursuant to this section.

(2) State grants

The reimbursement shall be provided through grants to States with each State receiving an amount sufficient to cover the reasonable costs for training all such operators in the State, as determined by the Administrator, to the extent required by this section. Grants received by a State pursuant to this paragraph shall first be used to provide reimbursement for training and certification costs of persons operating systems serving 3,300 persons or fewer. If a State has reimbursed all such costs, the State may, after notice to the Administrator, use any remaining funds from the grant for any of the other purposes authorized for grants under section 300j–12 of this title.

(3) Authorization

There are authorized to be appropriated to the Administrator to provide grants for reimbursement under this section $30,000,000 for each of fiscal years 1997 through 2003.

(4) Reservation

If the appropriation made pursuant to paragraph (3) for any fiscal year is not sufficient to satisfy the requirements of paragraph (1), the Administrator shall, prior to any other allocation or reservation, reserve such sums as necessary from the funds appropriated pursuant to section 300j–12(m) of this title to provide reimbursement for the training and certification costs mandated by this subsection.

(July 1, 1944, ch. 373, title XIV, §1418, as amended Pub. L. 104–182, title I, §123, Aug. 6, 1996, 110 Stat. 1652.)
§ 300g–9. Capacity development

(a) State authority for new systems

A State shall receive only 80 percent of the allotment that the State is otherwise entitled to receive under section 300j–12 of this title (relating to State loan funds) unless the State has obtained the legal authority or other means to ensure that all new community water systems and new nontransient, noncommunity water systems commencing operation after October 1, 1999, demonstrate technical, managerial, and financial capacity with respect to each national primary drinking water regulation in effect, or likely to be in effect, on the date of commencement of operations.

(b) Systems in significant noncompliance

(1) List

Beginning not later than 1 year after August 6, 1996, each State shall report to the Administrator a list of community water systems and nontransient, noncommunity water systems that have a history of significant noncompliance with this subchapter (as defined in guidelines issued prior to August 6, 1996, or any revisions of the guidelines that have been made in consultation with the States) and, to the extent practicable, the reasons for noncompliance.

(2) Report

Not later than 5 years after August 6, 1996, and as part of the capacity development strategy of the State, each State shall report to the Administrator on the success of enforcement mechanisms and initial capacity development efforts in assisting the public water systems listed under paragraph (1) to improve technical, managerial, and financial capacity.

(3) Withholding

The list and report under this subsection shall be considered part of the capacity development strategy of the State required under subsection (c) of this section for purposes of the withholding requirements of section 300j–12(a)(1)(G)(i) of this title (relating to State loan funds).

(c) Capacity development strategy

(1) In general

Beginning 4 years after August 6, 1996, a State shall receive only—

(A) 90 percent in fiscal year 2001;

(B) 85 percent in fiscal year 2002; and

(C) 80 percent in each subsequent fiscal year,

of the allotment that the State is otherwise entitled to receive under section 300j–12 of this title (relating to State loan funds), unless the State is developing and implementing a strategy to assist public water systems in acquiring and maintaining technical, managerial, and financial capacity.

(2) Content

In preparing the capacity development strategy, the State shall consider, solicit public comment on, and include as appropriate—

(A) the methods or criteria that the State will use to identify and prioritize the public water systems most in need of improving technical, managerial, and financial capacity;

(B) a description of the institutional, regulatory, financial, tax, or legal factors at the Federal, State, or local level that encourage or impair capacity development;

(C) a description of how the State will use the authorities and resources of this subchapter or other means to—

(i) assist public water systems in complying with national primary drinking water regulations;

(ii) encourage the development of partnerships between public water systems to enhance the technical, managerial, and financial capacity of the systems; and

(iii) assist public water systems in the training and certification of operators;

(D) a description of how the State will establish a baseline and measure improvements in capacity with respect to national primary drinking water regulations and State drinking water law; and

(E) an identification of the persons that have an interest in and are involved in the development and implementation of the capacity development strategy (including all appropriate agencies of Federal, State, and local governments, private and nonprofit public water systems, and public water system customers).

(3) Report

Not later than 2 years after the date on which a State first adopts a capacity development strategy under this subsection, and every 3 years thereafter, the head of the State agency that has primary responsibility to carry out this subchapter in the State shall submit to the Governor a report that shall also be available to the public on the efficacy of the strategy and progress made toward improving the technical, managerial, and financial capacity of public water systems in the State.

(4) Review

The decisions of the State under this section regarding any particular public water system are not subject to review by the Administrator and may not serve as the basis for withholding funds under section 300j–12 of this title.

(d) Federal assistance

(1) In general

The Administrator shall support the States in developing capacity development strategies.

(2) Informational assistance

(A) In general

Not later than 180 days after August 6, 1996, the Administrator shall—

(i) conduct a review of State capacity development efforts in existence on August 6, 1996, and publish information to assist States and public water systems in capacity development efforts; and

(ii) initiate a partnership with States, public water systems, and the public to de-
develop information for States on recommended operator certification requirements.

(B) Publication of information

The Administrator shall publish the information developed through the partnership under subparagraph (A)(ii) not later than 18 months after August 6, 1996.

(3) Promulgation of drinking water regulations

In promulgating a national primary drinking water regulation, the Administrator shall include an analysis of the likely effect of compliance with the regulation on the technical, financial, and managerial capacity of public water systems.

(4) Guidance for new systems

Not later than 2 years after August 6, 1996, the Administrator shall publish guidance developed in consultation with the States describing legal authorities and other means to ensure that all new community water systems and new nontransient, noncommunity water systems demonstrate technical, managerial, and financial capacity with respect to national primary drinking water regulations.

(e) Variances and exemptions

Based on information obtained under subsection (c)(3) of this section, the Administrator shall, as appropriate, modify regulations concerning variances and exemptions for small public water systems to ensure flexibility in the use of the variances and exemptions. Nothing in this subsection shall be interpreted, construed, or applied to affect or alter the requirements of section 300g–4 or 300g–5 of this title.

(f) Small public water systems technology assistance centers

(1) Grant program

The Administrator is authorized to make grants to institutions of higher learning to establish and operate small public water system technology assistance centers in the United States.

(2) Responsibilities of the centers

The responsibilities of the small public water system technology assistance centers established under this subsection shall include the conduct of training and technical assistance relating to the information, performance, and technical needs of small public water systems or public water systems that serve Indian Tribes.

(3) Applications

Any institution of higher learning interested in receiving a grant under this subsection shall submit to the Administrator an application in such form and containing such information as the Administrator may require by regulation.

(4) Selection criteria

The Administrator shall select recipients of grants under this subsection on the basis of the following criteria:

(A) The small public water system technology assistance center shall be located in a State that is representative of the needs of the region in which the State is located for addressing the drinking water needs of small and rural communities or Indian Tribes.

(B) The grant recipient shall be located in a region that has experienced problems, or may reasonably be foreseen to experience problems, with small and rural public water systems.

(C) The grant recipient shall have access to expertise in small public water system technology management.

(D) The grant recipient shall have the capability to disseminate the results of small public water system technology and training programs.

(E) The projects that the grant recipient proposes to carry out under the grant are necessary and appropriate.

(F) The grant recipient has regional support beyond the host institution.

(5) Consortia of States

At least 2 of the grants under this subsection shall be made to consortia of States with low population densities.

(6) Authorization of appropriations

There are authorized to be appropriated to make grants under this subsection $2,000,000 for each of the fiscal years 1997 through 1999, and $5,000,000 for each of the fiscal years 2000 through 2003.

(g) Environmental finance centers

(1) In general

The Administrator shall provide initial funding for one or more university-based environmental finance centers for activities that provide technical assistance to State and local officials in developing the capacity of public water systems. Any such funds shall be used only for activities that are directly related to this subchapter.

(2) National capacity development clearinghouse

The Administrator shall establish a national public water system capacity development clearinghouse to receive and disseminate information with respect to developing, improving, and maintaining financial and managerial capacity at public water systems. The Administrator shall ensure that the clearinghouse does not duplicate other federally supported clearinghouse activities.

(3) Capacity development techniques

The Administrator may request an environmental finance center funded under paragraph (1) to develop and test managerial, financial, and institutional techniques for capacity development. The techniques may include capacity assessment methodologies, manual and computer based public water system rate models and capital planning models, public water system consolidation procedures, and regionalization models.

(4) Authorization of appropriations

There are authorized to be appropriated to carry out this subsection $1,500,000 for each of the fiscal years 1997 through 2003.
(5) Limitation

No portion of any funds made available under this subsection may be used for lobbying expenses.

(July 1, 1944, ch. 373, title XIV, § 1420, as added Pub. L. 104–182, title I, §119, Aug. 6, 1996, 110 Stat. 1647.)

PART C—PROTECTION OF UNDERGROUND SOURCES OF DRINKING WATER

§ 300h. Regulations for State programs

(a) Publication of proposed regulations; promulgation; amendments; public hearings; administrative consultations

(1) The Administrator shall publish proposed regulations for State underground injection control programs within 180 days after December 16, 1974. Within 180 days after publication of such proposed regulations, he shall promulgate such regulations with such modifications as he deems appropriate. Any regulation under this subsection may be amended from time to time.

(2) Any regulation under this section shall be proposed and promulgated in accordance with section 553 of title 5 (relating to rulemaking), except that the Administrator shall provide opportunity for public hearing prior to promulgation of such regulations. In proposing and promulgating regulations under this section the Administrator shall consult with the Secretary, the National Drinking Water Advisory Council, and other appropriate Federal entities and with interested State entities.

(b) Minimum requirements; restrictions

(1) Regulations under subsection (a) of this section for State underground injection control programs shall contain minimum requirements for effective programs to prevent underground injection which endangers drinking water sources within the meaning of subsection (d)(2) of this section. Such regulations shall require that a State program, in order to be approved under section 300h–1 of this title—

(A) shall prohibit, effective on the date on which such State’s permit program takes effect and being enforced in a substantial number of States, any underground injection by any other person whether or not occurring on property owned or leased by the United States.

(B) any underground injection for the secondary or tertiary recovery of oil or natural gas, unless such requirements are essential to assure that underground sources of drinking water will not be endangered by such injection.

(2) Regulations of the Administrator under this section shall permit or provide for consideration of varying geologic, hydrological, or historical conditions in different States and in different areas within a State.

(B)(i) In prescribing regulations under this section the Administrator shall, to the extent feasible, avoid promulgation of requirements which would unnecessarily disrupt State underground injection control programs which are in effect and being enforced in a substantial number of States.

(ii) For the purpose of this subparagraph, a regulation prescribed by the Administrator under this section shall be deemed to disrupt a State underground injection control program only if it would be infeasible to comply with both such regulation and the State underground injection control program.

(c) Temporary permits; notice and hearing

(1) The Administrator may, upon application of the Governor of a State which authorizes underground injection by means of permits, authorize such State to issue (without regard to subsection (b)(1)(B)(i) of this section) temporary permits for underground injection which may be effective until the expiration of four years after December 16, 1974, if—

(A) the Administrator finds that the State has demonstrated that it is unable and could not reasonably have been able to process all permit applications within the time available; and

(B) the Administrator determines the adverse effect on the environment of such temporary permits is not unwarranted;

(C) such temporary permits will be issued only with respect to injection wells in operation on the date on which such State’s permit program approved under this part first takes effect and for which there was inadequate time to process its permit application; and

(D) the Administrator determines the temporary permits require the use of adequate

1 See References in Text note below.
safeguards established by rules adopted by him.

(2) The Administrator may, upon application of the Governor of a State which authorizes underground injection by means of permits, authorize such State to issue (without regard to subsection (b)(1)(B) of this section), but after reasonable notice and hearing, one or more temporary permits each of which is applicable to a particular injection well and to the underground injection of a particular fluid and which may be effective until the expiration of four years after December 16, 1974, if the State finds, on the record of such hearing—

(A) that technology (or other means) to permit safe injection of the fluid in accordance with the applicable underground injection control program is not generally available (taking costs into consideration);

(B) that injection of the fluid would be less harmful to health than the use of other available means of disposing of waste or producing the desired product; and

(C) that available technology or other means have been employed (and will be employed) to reduce the volume and toxicity of the fluid and to minimize the potentially adverse effect of the injection on the public health.

(d) "Underground injection" defined; underground injection endangerment of drinking water sources

For purposes of this part:

(1) UNDERGROUND INJECTION.—The term "underground injection"—

(A) means the subsurface emplacement of fluids by well injection; and

(B) excludes—

(i) the underground injection of natural gas for purposes of storage; and

(ii) the underground injection of fluids or propping agents (other than diesel fuels) pursuant to hydraulic fracturing operations related to oil, gas, or geothermal production activities.

(2) Underground injection endangers drinking water sources if such injection may result in the presence in underground water which supplies or can reasonably be expected to supply any public water system of any contaminant, and if the presence of such contaminant may result in such system's not complying with any national primary drinking water regulation or may otherwise adversely affect the health of persons.

(AMENDMENTS)

2005—Subsec. (d)(1). Pub. L. 109–58 inserted heading and amended text of par. (1) generally. Prior to amendment, par. (1) read as follows: "The term "underground injection" means the subsurface emplacement of fluids by well injection. Such term does not include the underground injection of natural gas for purposes of storage."

1996—Subsec. (b)(3)(B)(i). Pub. L. 104–182 substituted "number of States" for "number or States".


1980—Subsec. (b)(1)(A). Pub. L. 96–502, §4(c), substituted "effective on the date on which the applicable underground injection control program takes effect" for "effective three years after December 16, 1974".

Subsec. (d)(1). Pub. L. 95–926, §3, inserted provision that such term does not include the underground injection of natural gas for purposes of storage.


§ 300h–1. State primary enforcement responsibility

(a) List of States in need of a control program; amendment of list

Within 180 days after December 16, 1974, the Administrator shall list in the Federal Register each State for which in his judgment a State underground injection control program may be necessary to assure that underground injection will not endanger drinking water sources. Such list may be amended from time to time.

(b) State applications; notice to Administrator of compliance with revised or added requirements; approval or disapproval by Administrator; duration of State primary enforcement responsibility; public hearing

(1)(A) Each State listed under subsection (a) of this section shall within 270 days after the date of promulgation of any regulation under section 300h of this title (or, if later, within 270 days after such State is first listed under subsection (a) of this section) submit to the Administrator an application which contains a showing satisfactory to the Administrator that the State—

(i) has adopted after reasonable notice and public hearings, and will implement, an underground injection control program which meets the requirements of regulations in effect under section 300h of this title; and

(ii) will keep such records and make such reports with respect to its activities under its underground injection control program as the Administrator may require by regulation.

The Administrator may, for good cause, extend the date for submission of an application by any State under this subparagraph for a period not to exceed an additional 270 days.

(B) Within 270 days of any amendment of a regulation under section 300h of this title revising or adding any requirement respecting State underground injection control programs, each State listed under subsection (a) of this section shall submit (in such form and manner as the Administrator may require) a notice to the Administrator containing a showing satisfactory to him that the State underground injection control program meets the revised or added requirement.

(2) Within ninety days after the State's application under paragraph (1)(A) or notice under...
paragraph (1)(B) and after reasonable opportunity for presentation of views, the Administrator shall by rule either approve, disapprove, or approve in part and disapprove in part, the State’s underground injection control program.

(3) If the Administrator approves the State’s program under paragraph (2), the State shall have primary enforcement responsibility for underground water sources until such time as the Administrator determines, by rule, that such State no longer meets the requirements of clause (i) or (ii) of paragraph (1)(A) of this subsection.

(4) Before promulgating any rule under paragraph (2) or (3) of this subsection, the Administrator shall provide opportunity for public hearing respecting such rule.

(c) Program by Administrator for State without primary enforcement responsibility; restrictions

If the Administrator disapproves a State’s program (or part thereof) under subsection (b)(2) of this section, if the Administrator determines under subsection (b)(3) of this section that a State no longer meets the requirements of clause (i) or (ii) of subsection (b)(1)(A) of this section or if a State fails to submit an application or notice before the date of expiration of the period specified in subsection (b)(1) of this section, the Administrator shall by regulation within 90 days after the date of such disapproval, determination, or expiration (as the case may be) prescribe (and may from time to time by regulation revise) a program applicable to such State meeting the requirements of section 300h(b) of this title. Such program may not include requirements which interfere with or impede—

(1) the underground injection of brine or other fluids which are brought to the surface in connection with oil or natural gas production or natural gas storage operations, or

(2) any underground injection for the secondary or tertiary recovery of oil or natural gas, unless such requirements are essential to assure that underground sources of drinking water will not be endangered by such injection. Such program shall apply in such State to the extent that a program adopted by such State which the Administrator determines meets such requirements is not in effect. Before promulgating any regulation under this section, the Administrator shall provide opportunity for public hearing respecting such regulation.

(d) “Applicable underground injection control program” defined

For purposes of this subchapter, the term “applicable underground injection control program” with respect to a State means the program (or most recent amendment thereof) (1) which has been adopted by the State and which has been approved under subsection (b) of this section, or (2) which has been prescribed by the Administrator under subsection (c) of this section.

(e) Primary enforcement responsibility by Indian Tribe

An Indian Tribe may assume primary enforcement responsibility for underground injection control under this section consistent with such regulations as the Administrator has prescribed pursuant to this part and section 300j–11 of this title. The area over which such Indian Tribe exercises governmental jurisdiction need not have been listed under subsection (a) of this section, and such Tribe need not submit an application to assume primary enforcement responsibility within the 270-day deadline noted in subsection (b)(1)(A) of this section. Until an Indian Tribe assumes primary enforcement responsibility, the currently applicable underground injection control program shall continue to apply. If an applicable underground injection control program does not exist for an Indian Tribe, the Administrator shall prescribe such a program pursuant to subsection (c) of this section, and consistent with section 300h(b) of this title, within 270 days after June 19, 1986, unless an Indian Tribe first obtains approval to assume primary enforcement responsibility for underground injection control.

(july 1, 1944, ch. 373, title xiv, §1422, as added pub. l. 93-523, §2(a), dec. 16, 1974, 88 stat. 1676; amended pub. l. 95-190, §6(a), nov. 16, 1977, 91 stat. 1396; pub. l. 99-339, title ii, §201(a), title iii, §302(c), june 19, 1986, 100 stat. 653, 666.)

amendments

1986—subsec. (c)(1). pub. l. 99-339, §201(a), inserted “or natural gas storage operations, or” after “production”.

subsec. (e). pub. l. 99-339, §302(c), added subsec. (e).

1977—subsec. (b)(1)(a). pub. l. 95-190 inserted provisions relating to extension of date for submission of applications by any State.

§ 300h–2. Enforcement of program

(a) Notice to State and violator; issuance of administrative order; civil action

(1) Whenever the Administrator finds during a period during which a State has primary enforcement responsibility for underground water sources (within the meaning of section 300h–1(b)(3) of this title or section 300h–4(c) of this title) that any person who is subject to a requirement of an applicable underground injection control program in such State is violating such requirement, he shall so notify the State and the person violating such requirement. If beyond the thirtieth day after the Administrator’s notification the State has not commenced appropriate enforcement action, the Administrator shall issue an order under subsection (c) of this section requiring the person to comply with such requirement or the Administrator shall commence a civil action under subsection (b) of this section.

(2) Whenever the Administrator finds during a period during which a State does not have primary enforcement responsibility for underground water sources that any person subject to any requirement of any applicable underground injection control program in such State is violating such requirement, the Administrator shall issue an order under subsection (c) of this section requiring the person to comply with such requirement or the Administrator shall commence a civil action under subsection (b) of this section.
(b) Civil and criminal actions

Civil actions referred to in paragraphs (1) and (2) of subsection (a) of this section shall be brought in the appropriate United States district court. Such court shall have jurisdiction to require compliance with any requirement of an applicable underground injection program or with an order issued under subsection (c) of this section. The court may enter such judgment as protection of public health may require. Any person who violates any requirement of an applicable underground injection control program or an order requiring compliance under subsection (c) of this section—

(1) shall be subject to a civil penalty of not more than $25,000 for each day of such violation, and

(2) if such violation is willful, such person may, in addition to or in lieu of the civil penalty authorized by paragraph (1), be imprisoned for not more than 3 years, or fined in accordance with title 18, or both.

c) Administrative orders

(1) In any case in which the Administrator is authorized to bring a civil action under this section with respect to any regulation or other requirement of this part other than those relating to—

(A) the underground injection of brine or other fluids which are brought to the surface in connection with oil or natural gas production, or

(B) any underground injection for the secondary or tertiary recovery of oil or natural gas,

the Administrator may also issue an order under this subsection either assessing a civil penalty of not more than $10,000 for each day of violation for any past or current violation, up to a maximum administrative penalty of $125,000, or requiring compliance with such regulation or other requirement, or both.

(2) In any case in which the Administrator is authorized to bring a civil action under this section with respect to any regulation, or other requirement of this part relating to—

(A) the underground injection of brine or other fluids which are brought to the surface in connection with oil or natural gas production, or

(B) any underground injection for the secondary or tertiary recovery of oil or natural gas,

the Administrator may also issue an order under this subsection either assessing a civil penalty of not more than $5,000 for each day of violation for any past or current violation, up to a maximum administrative penalty of $125,000, or requiring compliance with such regulation or other requirement, or both.

(3)(A) An order under this subsection shall be issued by the Administrator after opportunity (provided in accordance with this subparagraph) for a hearing. Before issuing the order, the Administrator shall give to the person to whom it is directed written notice of the Administrator’s proposal to issue such order and the opportunity to request, within 30 days of the date the notice is received by such person, a hearing on the order. Such hearing shall not be subject to section 554 or 556 of title 5, but shall provide a reasonable opportunity to be heard and to present evidence.

(B) The Administrator shall provide public notice of, and reasonable opportunity to comment on, any proposed order.

(C) Any citizen who comments on any proposed order under subparagraph (B) shall be given notice of any hearing under this subsection and of any order. In any hearing held under subparagraph (A), such citizen shall have a reasonable opportunity to be heard and to present evidence.

(D) Any order issued under this subsection shall become effective 30 days following its issuance unless an appeal is taken pursuant to paragraph (6).

(4)(A) Any order issued under this subsection shall state with reasonable specificity the nature of the violation and may specify a reasonable time for compliance.

(B) In assessing any civil penalty under this subsection, the Administrator shall take into account appropriate factors, including (i) the seriousness of the violation; (ii) the economic benefit (if any) resulting from the violation; (iii) any history of such violations; (iv) any good-faith efforts to comply with the applicable requirements; (v) the economic impact of the penalty on the violator; and (vi) such other matters as justice may require.

(5) Any violation with respect to which the Administrator has commenced and is diligently prosecuting an action, or has issued an order under this subsection assessing a penalty, shall not be subject to an action under subsection (b) of this section or section 300h–3(c) or 300–8 of this title, except that the foregoing limitation on civil actions under section 300–8 of this title shall not apply with respect to any violation for which—

(A) a civil action under section 300–8(a)(1) of this title has been filed prior to commencement of an action under this subsection, or

(B) a notice of violation under section 300–8(b)(1) of this title has been given before commencement of an action under this subsection and an action under section 300–8(a)(1) of this title is filed before 120 days after such notice is given.

(6) Any person against whom an order is issued or who commented on a proposed order pursuant to paragraph (3) may file an appeal of such order with the United States District Court for the District of Columbia or the district in which the violation is alleged to have occurred. Such an appeal may only be filed within the 30-day period beginning on the date the order is issued. Appellant shall simultaneously send a copy of the appeal by certified mail to the Administrator and to the Attorney General. The Administrator shall promptly file in such court a certified copy of the record on which such order was imposed. The district court shall not set aside or remand such order unless there is not substantial evidence on the record, taken as a whole, to support the finding of a violation or, unless the Administrator’s assessment of penalty or requirement for compliance constitutes an abuse of discretion. The district court shall
§ 300h-3. Interim regulation of underground injections

(a) Necessity for well operation permit; designation of one aquifer areas

(1) Any person may petition the Administrator to have an area of a State (or States) designated as an area in which no new underground injection well may be operated during the period beginning on the date of the designation and ending on the date on which the applicable underground injection control program covering such area takes effect unless a permit for the operation of such well has been issued by the Administrator under subsection (b) of this section. The Administrator may so designate an area within a State if he finds that the area has one aquifer which is the sole or principal drinking water source for the area and which, if contaminated, would create a significant hazard to public health.

(2) Upon receipt of a petition under paragraph (1) of this subsection, the Administrator shall publish it in the Federal Register and shall provide an opportunity to interested persons to submit written data, views, or arguments thereon. Not later than the 30th day following the date of the publication of a petition under this paragraph in the Federal Register, the Administrator shall either make the designation for which the petition is submitted or deny the petition.

(b) Well operation permits; publication in Federal Register; notice and hearing; issuance or denial; conditions for issuance

(1) During the period beginning on the date an area is designated under subsection (a) of this section and ending on the date the applicable underground injection control program covering such area takes effect, no new underground injection well may be operated in such area unless the Administrator has issued a permit for such operation.

(2) Any person may petition the Administrator for the issuance of a permit for the operation of such a well in such an area. A petition submitted under this paragraph shall be submitted in such manner and contain such information as the Administrator may require by regulation. Upon receipt of such a petition, the Administrator shall publish it in the Federal Register. The Administrator shall give notice of any proceeding on a petition and shall provide opportunity for agency hearing. The Administrator shall act upon such petition on the record of any hearing held pursuant to the preceding sentence respecting such petition. Within 120 days of the publication in the Federal Register of a petition submitted under this paragraph, the Administrator shall either issue the permit for which the petition was submitted or deny its issuance.

(3) The Administrator may issue a permit for the operation of a new underground injection

Subsec. (c), (d). Pub. L. 99–339, § 202(c), added subsec. (c) and redesignated former subsec. (c) as (d).

§ 300h-4. Civil penalties

The Administrator shall impose civil penalties for willful violation of provisions which related to judicial determinations in appropriate Federal district courts, civil penalties of $5,000 per day, and fines of $10,000 per day for willful violations.

Subsecs. (c), (d). Pub. L. 99–339, § 202(c), added subsec. (c) and redesignated former subsec. (c) as (d).

§ 300h-5. Judicial review

The district courts of the United States shall have jurisdiction in equity to enforce any subpena under this section. The district courts shall relieve any person of any requirement otherwise applicable under this subchapter.


Subsec. (a)(1). Pub. L. 99–339, § 202(a)(1), substituted provisions which related to issuance of an order of compliance or commencement of a civil action by the Administrator if the State has not commenced enforcement against the violator for provisions directing the Administrator to give public notice and request that the State report within 15 days thereafter as to steps taken to enforce compliance and authorizing the Administrator to commence a civil action upon failure by the State to comply timely.

Subsec. (a)(2). Pub. L. 99–339, § 202(a)(2), substituted provision that the Administrator issue an order under subsec. (c) of this section or commence a civil action under subsec. (b) of this section for provisions that he commence a civil action under subsec. (b) of this section.

Subsec. (b). Pub. L. 99–339, § 202(b), amended subsec. (b) generally, substituting provisions relating to jurisdiction of the appropriate Federal district court, entry of judgment, civil penalty of $25,000 per day, criminal liability and fine for willful violation for provisions which related to judicial determinations in appropriate Federal district courts, civil penalties of $5,000 per day, and fines of $10,000 per day for willful violations.

Subsecs. (c), (d). Pub. L. 99–339, § 202(c), added subsec. (c) and redesignated former subsec. (c) as (d).
well in an area designated under subsection (a) of this section only, if he finds that the operation of such well will not cause contamination of the aquifer of such area so as to create a significant hazard to public health. The Administrator may condition the issuance of such a permit upon the use of such control measures in connection with the operation of such well, for which the permit is to be issued, as he deems necessary to assure that the operation of the well will not contaminate the aquifer of the designated area in which the well is located so as to create a significant hazard to public health.

(c) Civil penalties; separate violations; penalties for willful violations; temporary restraining order or injunction

Any person who operates a new underground injection well in violation of subsection (b) of this section, (1) shall be subject to a civil penalty of not more than $5,000 for each day in which such violation occurs, or (2) if such violation is willful, such person may, in lieu of the civil penalty authorized by clause (1), be fined not more than $10,000 for each day in which such violation occurs. If the Administrator has reason to believe that any person is violating or will violate subsection (b) of this section, he may petition the United States district court to issue a temporary restraining order or injunction (including a mandatory injunction) to enforce such subsection.

(d) "New underground injection well" defined

For purposes of this section, the term "new underground injection well" means an underground injection well whose operation was not approved by appropriate State and Federal agencies before December 16, 1974.

(e) Areas with one aquifer; publication in Federal Register; commitments for Federal financial assistance

If the Administrator determines, on his own initiative or upon petition, that an area has an aquifer which is the sole or principal drinking water source for the area and which, if contaminated, would create a significant hazard to public health, he shall publish notice of that determination in the Federal Register. After the publication of any such notice, no commitment for Federal financial assistance (through a grant, contract, loan guarantee, or otherwise) may be entered into for any project which the Administrator determines may contaminate such aquifer through a recharge zone so as to create a significant hazard to public health, but a commitment for Federal financial assistance may, if authorized under another provision of law, be entered into to plan or design the project to assure that it will not so contaminate the aquifer.

(July 1, 1944, ch. 373, title XIV, § 1424, as added Pub. L. 93–523, § 2(a), Dec. 16, 1974, 88 Stat. 1678.)

§ 300h–4. Optional demonstration by States relating to oil or natural gas

(a) Approval of State underground injection control program; alternative showing of effectiveness of program by State

For purposes of the Administrator's approval or disapproval under section 300h–1 of this title of that portion of any State underground injection control program which relates to—

(1) the underground injection of brine or other fluids which are brought to the surface in connection with oil or natural gas production or natural gas storage operations; or

(2) any underground injection for the secondary or tertiary recovery of oil or natural gas, in lieu of the showing required under subparagraph (A) of section 300h–1(b)(1) of this title the State may demonstrate that such portion of the State program meets the requirements of subparagraphs (A) through (D) of section 300h(b)(1) of this title and represents an effective program (including adequate recordkeeping and reporting) to prevent underground injection which endangers drinking water sources.

(b) Revision or amendment of requirements of regulation; showing of effectiveness of program by State

If the Administrator revises or amends any requirement of a regulation under section 300h of this title relating to any aspect of the underground injection referred to in subsection (a) of this section, in the case of that portion of a State underground injection control program for which the demonstration referred to in subsection (a) of this section has been made, in lieu of the showing required under section 300h–1(b)(1)(B) of this title the State may demonstrate that, with respect to that aspect of such underground injection, the State program meets the requirements of subparagraphs (A) through (D) of section 300h(b)(1) of this title and represents an effective program (including adequate recordkeeping and reporting) to prevent underground injection which endangers drinking water sources.

(c) Primary enforcement responsibility of State; voiding by Administrator under duly promulgated rule

(1) Section 300h–1(b)(3) of this title shall not apply to that portion of any State underground injection control program approved by the Administrator pursuant to a demonstration under subsection (a) of this section (and under subsection (b) of this section where applicable). (2) If pursuant to such a demonstration, the Administrator approves such portion of the State program, the State shall have primary enforcement responsibility with respect to that portion until such time as the Administrator determines, by rule, that such demonstration is no longer valid. Following such a determination, the Administrator may exercise the authority of subsection (c) of section 300h–1 of this title in the same manner as provided in such subsection with respect to a determination described in such subsection.

(3) Before promulgating any rule under paragraph (2), the Administrator shall provide opportunity for public hearing respecting such rule.

(Amendments)

1986—Subsec. (a)(1). Pub. L. 99–339 inserted "or natural gas storage operations, or" after "production".

1986—Pub. L. 99–339 substituted "or natural gas storage operations, or" for "or any underground injection operation, or".

§ 300h–5. Regulation of State programs

Not later than 18 months after June 19, 1986, the Administrator shall modify regulations issued under this chapter for Class I injection wells to identify monitoring methods, in addition to those in effect on November 1, 1985, including groundwater monitoring. In accordance with such regulations, the Administrator, or delegated State authority, shall determine the applicability of such monitoring methods, wherever appropriate, at locations and in such a manner as to provide the earliest possible detection of fluid migration into, or in the direction of, underground sources of drinking water from such wells, based on its assessment of the potential for fluid migration from the injection zone that may be harmful to human health or the environment. For purposes of this subsection, a class I injection well is defined in accordance with 40 CFR 146.05 as in effect on November 1, 1985.

(Shown as amended through Pub. L. 116–194, Nov. 12, 1986.)

Amendments

1996—Pub. L. 104–182 directed technical amendment of section catchline and subsec. (a) designation. The provision directing amendment of subsec. (a) designation could not be executed because section does not contain a subsec. (a).

1995—Pub. L. 104–66 struck out subsec. (a) designation and heading before “Not later than” and struck out heading and text of subsec. (b). Text read as follows: “The Administrator shall submit a report to Congress, no later than September 1987, summarizing the results of State surveys required by the Administrator under this section. The report shall include each of the following items of information:

“(1) The numbers and categories of class V wells which discharge nonhazardous waste into or above an underground source of drinking water.

“(2) The primary contamination problems associated with different categories of these disposal wells.

“(3) Recommendations for minimum design, construction, installation, and siting requirements that should be applied to protect underground sources of drinking water from such contamination wherever necessary.”

§ 300h–6. Sole source aquifer demonstration program

(a) Purpose

The purpose of this section is to establish procedures for development, implementation, and assessment of demonstration programs designed to protect critical aquifer protection areas located within areas designated as sole or principal source aquifers under section 300h–3(e) of this title.

(b) “Critical aquifer protection area” defined

For purposes of this section, the term “critical aquifer protection area” means either of the following:

(1) All or part of an area located within an area for which an application or designation as a sole or principal source aquifer pursuant to section 300h–3(e) of this title, has been submitted and approved by the Administrator and which satisfies the criteria established by the Administrator under subsection (d) of this section.

(2) All or part of an area which is within an aquifer designated as a sole source aquifer as of June 19, 1986, and for which an areawide ground water quality protection plan has been approved under section 208 of the Clean Water Act [33 U.S.C. 1288] prior to June 19, 1986.

(c) Application

Any State, municipal or local government or political subdivision thereof or any planning entity (including any interstate regional planning entity) that identifies a critical aquifer protection area over which it has authority or jurisdiction may apply to the Administrator for the selection of such area for a demonstration program under this section. Any applicant shall consult with other government or planning entities with authority or jurisdiction in such area prior to application. Applicants, other than the Governor, shall submit the application for a demonstration program jointly with the Governor.

(d) Criteria

Not later than 1 year after June 19, 1986, the Administrator shall, by rule, establish criteria for identifying critical aquifer protection areas under this section. In establishing such criteria, the Administrator shall consider each of the following:

(1) The vulnerability of the aquifer to contamination due to hydrogeologic characteristics.

(2) The number of persons or the proportion of population using the ground water as a drinking water source.

(3) The economic, social and environmental benefits that would result to the area from maintenance of ground water of high quality.

(4) The economic, social and environmental costs that would result from degradation of the quality of the ground water.

(e) Contents of application

An application submitted to the Administrator by any applicant for a demonstration program under this section shall meet each of the following requirements:

(1) The application shall propose boundaries for the critical aquifer protection area within its jurisdiction.

(2) The application shall designate or, if necessary, establish a planning entity (which shall be a public agency and which shall include representation of elected local and State governmental officials) to develop a comprehensive management plan (hereinafter in this section referred to as the “plan”) for the critical protection area. Where a local government planning agency exists with adequate authority to carry out this section with respect to any proposed critical protection area, such agency shall be designated as the planning entity.

(3) The application shall establish procedures for public participation in the development of the plan, for review, approval, and adoption of the plan, and for assistance to mu-
ment plan submitted by an applicant under this section shall be to maintain the quality of the ground water in the critical protection area in a manner reasonably expected to protect human health, the environment and ground water resources. In order to achieve such objective, the plan may be designed to maintain, to the maximum extent possible, the natural vegetative and hydrogeological conditions. Each of the following elements shall be included in such a protection plan:

- A map showing the detailed boundary of the critical protection area.
- An identification of existing and potential point and nonpoint sources of ground water degradation.
- An assessment of the relationship between activities on the land surface and ground water quality.
- Specific actions and management practices to be implemented in the critical protection area to prevent adverse impacts on ground water quality.
- Identification of authority adequate to implement the plan, estimates of program costs, and sources of State matching funds.

Such plan may also include the following:

- A determination of the quality of the existing ground water recharged through the special protection area and the natural recharge capabilities of the special protection area watershed.
- Requirements designed to maintain existing underground drinking water quality or improve underground drinking water quality if prevailing conditions fail to meet drinking water standards, pursuant to this chapter and State law.
- Limits on Federal, State, and local government, financially assisted activities and projects which may contribute to degradation of such ground water or any loss of natural surface and subsurface infiltration of purification capability of the special protection watershed.
- A comprehensive statement of land use management including emergency contingency planning as it pertains to the maintenance of the quality of underground sources of drinking water or to the improvement of such sources if necessary to meet drinking water standards pursuant to this chapter and State law.
- Actions in the special protection area which would avoid adverse impacts on water quality, recharge capabilities, or both.

(F) Consideration of specific techniques, which may include clustering, transfer of development rights, and other innovative measures sufficient to achieve the objectives of this section.

(G) Consideration of the establishment of a State institution to facilitate and assist funding a development transfer credit system.

(H) A program for State and local implementation of the plan described in this subsection in a manner that will ensure the continued, uniform, consistent protection of the critical protection area in accord with the purposes of this section.

(I) Pollution abatement measures, if appropriate.

(g) Plans under section 208 of Clean Water Act

A plan approved before June 19, 1986, under section 208 of the Clean Water Act [33 U.S.C. 1288] to protect a sole source aquifer designated under section 300h-3(e) of this title shall be considered a comprehensive management plan for the purposes of this section.

(h) Consultation and hearings

During the development of a comprehensive management plan under this section, the planning entity shall consult with, and consider the comments of, appropriate officials of any municipality and State or Federal agency which has jurisdiction over lands and waters within the special protection area, other concerned organizations and technical and citizen advisory committees. The planning entity shall conduct public hearings at places within the special protection area for the purpose of providing the opportunity to comment on any aspect of the plan.

(i) Approval or disapproval

Within 120 days after receipt of an application under this section, the Administrator shall approve or disapprove the application. The approval or disapproval shall be based on a determination that the critical protection area satisfies the criteria established under subsection (d) of this section and that a demonstration program for the area would provide protection for ground water quality consistent with the objectives stated in subsection (f) of this section. The Administrator may provide to the Governor a written explanation of the reasons for the disapproval of any such application. Any petitioner may modify and resubmit any application which is not approved. Upon approval of an application, the Administrator may enter into a cooperative agreement with the applicant to establish a demonstration program under this section.

(j) Grants and reimbursement

Upon entering a cooperative agreement under subsection (i) of this section, the Administrator may provide to the applicant, on a matching basis, a grant of 50 per centum of the costs of implementing the plan established under this section. The Administrator may also reimburse the applicant of an approved plan up to 50 per centum of the costs of developing such plan, except for plans approved under section 208 of the Clean Water Act [33 U.S.C. 1288]. The total amount of grants under this section for any one
§ 300h-7 TITLE 42—THE PUBLIC HEALTH AND WELFARE Page 1004

aquifer, designated under section 300h-3(e) of this title, shall not exceed $4,000,000 in any one fiscal year.

(k) Activities funded under other law

No funds authorized under this section may be used to fund activities funded under other sections of this chapter or the Clean Water Act [33 U.S.C. 1251 et seq.], the Solid Waste Disposal Act [42 U.S.C. 6901 et seq.], the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 [42 U.S.C. 9601 et seq.] or other environmental laws.

(l) Savings provision

Nothing under this section shall be construed to amend, supersede or abrogate rights to quantities of water which have been established by interstate water compacts, Supreme Court decrees, or State water laws; or any requirement imposed or right provided under any Federal or State environmental or public health statute.

(m) Authorization of appropriations

There are authorized to be appropriated to carry out this section not more than the following amounts:

<table>
<thead>
<tr>
<th>Fiscal year</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>1987</td>
<td>$10,000,000</td>
</tr>
<tr>
<td>1988</td>
<td>15,000,000</td>
</tr>
<tr>
<td>1989</td>
<td>17,500,000</td>
</tr>
<tr>
<td>1990</td>
<td>17,500,000</td>
</tr>
<tr>
<td>1991</td>
<td>17,500,000</td>
</tr>
<tr>
<td>1992-1993</td>
<td>15,000,000</td>
</tr>
</tbody>
</table>

Matching grants under this section may also be used to implement or update any water quality management plan for a sole or principal source aquifer approved (before June 19, 1986) by the Administrator under section 208 of the Federal Water Pollution Control Act [33 U.S.C. 1288].

REFERENCES IN TEXT

The Clean Water Act, referred to in subsection (k), is act June 30, 1948, ch. 758, as amended generally by Pub. L. 92-500, §2, Oct. 18, 1972, 86 Stat. 816, also known as the Federal Water Pollution Control Act, which is classified generally to chapter 26 (§1251 et seq.) of Title 33, Navigation and Navigable Waters. For complete classification of this Act to the Code, see Short Title note set out under section 1251 of Title 33 and Tables.


AMENDMENTS

1986—Pub. L. 99-339 redesignated subsections (i) to (m) as (l) to (m), respectively, and struck out heading and text of former subsec. (l). Text read as follows: "Not later than December 31, 1986, each State shall submit to the Administrator a report assessing the impact of the program on ground water quality and identifying those measures found to be effective in protecting ground water resources. No later than September 30, 1990, the Administrator shall submit to Congress a report summarizing the State reports, and assessing the accomplishments of the sole source aquifer demonstration program including an identification of protection methods found to be most effective and recommendations for their application to protect ground water resources from contamination whenever necessary."

1996—Pub. L. 104-182, §501(b)(2), substituted "this section" for "this subsection".

1990—Pub. L. 101-166, §2021(g), substituted "this Act" for "this Act to the Code, see Short Title note set out under section 6901 of this title and Tables."

REFERENCE IN TEXT

§ 300h-7. State programs to establish wellhead protection areas

(a) State programs

The Governor or Governor’s designee of each State shall, within 3 years of June 19, 1986, adopt and submit to the Administrator a State program to protect wellhead areas within their jurisdiction from contaminants which may have any adverse effect on the health of persons. Each State program under this section shall, at a minimum—

(1) specify the duties of State agencies, local governmental entities, and public water supply systems with respect to the development and implementation of programs required by this section;

(2) for each wellhead, determine the wellhead protection area as defined in subsection (e) of this section based on all reasonably available hydrogeologic information on ground water flow, recharge and discharge and other information the State deems necessary to adequately determine the wellhead protection area;

(3) identify within each wellhead protection area all potential anthropogenic sources of contaminants which may have any adverse effect on the health of persons;

(4) describe a program that contains, as appropriate, technical assistance, financial assistance, implementation of control measures, education, training, and demonstration projects to protect the water supply within wellhead protection areas from such contaminants;

(5) include contingency plans for the location and provision of alternate drinking water supplies for each public water system in the event of well or wellfield contamination by such contaminants; and

(6) include a requirement that consideration be given to all potential sources of such contaminants within the expected wellhead area of a new water well which serves a public water supply system.

(b) Public participation

To the maximum extent possible, each State shall establish procedures, including but not
limited to the establishment of technical and citizens’ advisory committees, to encourage the public to participate in developing the protection program for wellhead areas and source water assessment programs under section 300j–13 of this title. Such procedures shall include notice and opportunity for public hearing on the State program before it is submitted to the Administrator.

(c) Disapproval

(1) In general

If, in the judgment of the Administrator, a State program or portion thereof under subsection (a) of this section is not adequate to protect public water systems as required by subsection (a) of this section or a State program under section 300j–13 of this title or section 300g–7(b) of this title does not meet the applicable requirements of section 300j–13 of this title or section 300g–7(b) of this title, the Administrator shall disapprove such program or portion thereof. A State program developed pursuant to subsection (a) of this section shall be deemed to be adequate unless the Administrator determines, within 9 months of the receipt of a State program, that such program (or portion thereof) is inadequate for the purpose of protecting public water systems as required by this section from contaminants that may have any adverse effect on the health of persons. A State program developed pursuant to section 300j–13 of this title or section 300g–7(b) of this title shall be deemed to be adequate unless the Administrator determines within 9 months of the receipt of the program that such program (or portion thereof) does not meet such requirements. If the Administrator determines that a proposed State program (or any portion thereof) is disapproved, the Administrator shall submit a written statement of the reasons for such determination to the Governor of the State.

(2) Modification and resubmission

Within 6 months after receipt of the Administrator’s written notice under paragraph (1) that any proposed State program (or portion thereof) is disapproved, the Governor or Governor’s designee, shall modify the program based upon the recommendations of the Administrator and resubmit the modified program to the Administrator.

(d) Federal assistance

After the date 3 years after June 19, 1986, no State shall receive funds authorized to be appropriated under this section except for the purpose of implementing the program and requirements of paragraphs (4) and (6) of subsection (a) of this section.

(e) “Wellhead protection area” defined

As used in this section, the term “wellhead protection area” means the surface and subsurface area surrounding a water well or wellfield, supplying a public water system, through which contaminants are reasonably likely to move toward and reach such water well or wellfield. The extent of a wellhead protection area, within a State, necessary to provide protection from contaminants which may have any adverse effect on the health of persons is to be determined by the State in the program submitted under subsection (a) of this section. Not later than one year after June 19, 1986, the Administrator shall issue technical guidance which States may use in making such determinations. Such guidance may reflect such factors as the radius of influence around a well or wellfield, the depth of drawdown of the water table by such well or wellfield at any given point, the time or rate of travel of various contaminants in various hydrologic conditions, distance from the well or wellfield, or other factors affecting the likelihood of contaminants reaching the well or wellfield, taking into account available engineering pump tests or comparable data, field reconnaissance, topographic information, and the geology of the formation in which the well or wellfield is located.

(f) Prohibitions

(1) Activities under other laws

No funds authorized to be appropriated under this section may be used to support activities authorized by the Federal Water Pollution Control Act [33 U.S.C. 1251 et seq.], the Solid Waste Disposal Act [42 U.S.C. 6901 et seq.], the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 [42 U.S.C. 9601 et seq.], or other sections of this chapter.

(2) Individual sources

No funds authorized to be appropriated under this section may be used to bring individual sources of contamination into compliance.

(g) Implementation

Each State shall make every reasonable effort to implement the State wellhead area protection program under this section within 2 years of submitting the program to the Administrator. Each State shall submit to the Administrator a biennial status report describing the State’s progress in implementing the program. Such report shall include amendments to the State program for water wells sited during the biennial period.

(h) Federal agencies

Each department, agency, and instrumentality of the executive, legislative, and judicial branches of the Federal Government having jurisdiction over any potential source of contaminants identified by a State program pursuant to the provisions of subsection (a)(3) of this section shall be subject to and comply with all requirements of the State program developed according to subsection (a)(4) of this section applicable to such potential source of contaminants, both substantive and procedural, in the same manner, and to the same extent, as any other person is subject to such requirements, including payment of reasonable charges and fees. The President may exempt any potential source under the jurisdiction of any department, agency, or instrumentality in the executive branch if the President determines it to be in the paramount interest of the United States to do so. No such
exemption shall be granted due to the lack of an appropriation unless the President shall have specifically requested such appropriation as part of the budgetary process and the Congress shall have failed to make available such requested appropriations.

(i) Additional requirement

(1) In general

In addition to the provisions of subsection (a) of this section, States in which there are more than 2,500 active wells at which annular injection is used as of January 1, 1986, shall include in their State program a certification that a State program exists and is being adequately enforced that provides protection from contaminants which may have any adverse effect on the health of persons and which are associated with the annular injection or surface disposal of brines associated with oil and gas production.

(2) “Annular injection” defined

For purposes of this subsection, the term “annular injection” means the reinjection of brines associated with the production of oil or gas between the production and surface casings of a conventional oil or gas producing well.

(3) Review

The Administrator shall conduct a review of each program certified under this subsection.

(4) Disapproval

If a State fails to include the certification required by this subsection or if in the judgment of the Administrator the State program certified under this subsection is not being adequately enforced, the Administrator shall disapprove the State program submitted under subsection (a) of this section.

(j) Coordination with other laws

Nothing in this section shall authorize or require any department, agency, or other instrumentality of the Federal Government or State or local government to apportion, allocate, or otherwise regulate the withdrawal or beneficial use of ground or surface waters, so as to abrogate or modify any existing rights to water established pursuant to State or Federal law, including interstate compacts.

(k) Authorization of appropriations

Unless the State program is disapproved under this section, the Administrator shall make grants to the State for not less than 50 or more than 90 percent of the costs incurred by a State (as determined by the Administrator) in developing and implementing each State program under this section. For purposes of making such grants there is authorized to be appropriated not more than the following amounts:

<table>
<thead>
<tr>
<th>Fiscal year</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>1987</td>
<td>$20,000,000</td>
</tr>
<tr>
<td>1988</td>
<td>20,000,000</td>
</tr>
<tr>
<td>1989</td>
<td>35,000,000</td>
</tr>
<tr>
<td>1990</td>
<td>35,000,000</td>
</tr>
<tr>
<td>1991</td>
<td>35,000,000</td>
</tr>
<tr>
<td>1992-2003</td>
<td>30,000,000</td>
</tr>
</tbody>
</table>


References in Text

The Federal Water Pollution Control Act, referred to in subsec. (f)(1), is act June 30, 1948, ch. 758, as amended generally by Pub. L. 92-500, §2, Oct. 18, 1972, 86 Stat. 816, which is classified generally to chapter 26 (§1251 et seq.) of Title 33, Navigation and Navigable Waters. For complete classification of this Act to the Code, see Short Title note set out under section 1251 of Title 33 and Tables.


Amendments


Subsec. (b). Pub. L. 104-182, §132(b)(4), inserted before period at end of first sentence “and source water assessment programs under section 300(j)-13 of this title”.

Subsec. (c)(1). Pub. L. 104-182, §132(b)(3), which directed substitution of “is disapproved” for “is inadequate” in third sentence, was executed by making the substitution in fourth sentence to reflect the probable intent of Congress and the amendment by Pub. L. 104-182, §122(b)(2). See below.

Pub. L. 104-182, §132(b)(2), inserted after second sentence “A State program developed pursuant to section 300(j)-13 of this title or section 300a-7(b) of this title shall be deemed to meet the applicable requirements of section 300(j)-13 of this title or section 300a-7(b) of this title unless the Administrator determines within 9 months of the receipt of the program that such program (or portion thereof) does not meet such requirements.”

Pub. L. 104-182, §132(b)(1), amended first sentence generally. Prior to amendment, first sentence read as follows: “If, in the judgment of the Administrator, a State program (or portion thereof), including the definition of a wellhead protection area, is not adequate to protect public water systems as required by this section, the Administrator shall disapprove such program (or portion thereof.).”

Subsec. (c)(2). Pub. L. 104-182, §132(b)(3), substituted “is disapproved” for “is inadequate”.


§300b-8. State ground water protection grants

(a) In general

The Administrator may make a grant to a State for the development and implementation of a State program to ensure the coordinated and comprehensive protection of ground water resources within the State.

(b) Guidance

Not later than 1 year after August 6, 1996, and annually thereafter, the Administrator shall publish guidance that establishes procedures for application for State ground water protection...
program assistance and that identifies key elements of State ground water protection programs.

(c) Conditions of grants

(1) In general

The Administrator shall award grants to States that submit an application that is approved by the Administrator. The Administrator shall determine the amount of a grant awarded pursuant to this paragraph on the basis of an assessment of the extent of ground water resources in the State and the likelihood that awarding the grant will result in sustained and reliable protection of ground water quality.

(2) Innovative program grants

The Administrator may also award a grant pursuant to this subsection for innovative programs proposed by a State for the prevention of ground water contamination.

(3) Allocation of funds

The Administrator shall, at a minimum, ensure that, for each fiscal year, not less than 1 percent of funds made available to the Administrator by appropriations to carry out this section are allocated to each State that submits an application that is approved by the Administrator pursuant to this section.

(4) Limitation on grants

No grant awarded by the Administrator may be used for a project to remediate ground water contamination.

(d) Amount of grants

The amount of a grant awarded pursuant to paragraph (1) shall not exceed 50 percent of the eligible costs of carrying out the ground water protection program that is the subject of the grant (as determined by the Administrator) for the 1-year period beginning on the date that the grant is awarded. The State shall pay a State share to cover the costs of the ground water protection program from State funds in an amount that is not less than 50 percent of the cost of conducting the program.

(e) Evaluations and reports

Not later than 3 years after August 6, 1996, and every 3 years thereafter, the Administrator shall evaluate the State ground water protection programs that are the subject of grants awarded pursuant to this section and report to the Congress on the status of ground water quality in the United States and the effectiveness of State programs for ground water protection.

(f) Authorization of appropriations

There are authorized to be appropriated to carry out this section $15,000,000 for each of fiscal years 1997 through 2003.

§ 300i-1. Tampering with public water systems

(a) Tampering

Any person who tampers with a public water system shall be imprisoned for not more than 20 years, or fined not more than $5,000, or both.
§ 300i–2. Terrorist and other intentional acts

(a) Vulnerability assessments

(1) Each community water system serving a population of greater than 3,300 persons shall conduct an assessment of the vulnerability of its system to a terrorist attack or other intentional acts intended to substantially disrupt the ability of the system to provide a safe and reliable supply of drinking water. The vulnerability assessment shall include, but not be limited to, a review of pipes and constructed conveyances, physical barriers, water collection, treatment, storage and distribution facilities, electronic, computer or other automated systems which are utilized by the public water system, the use, storage, or handling of various chemicals, and the operation and maintenance of such system. The Administrator, not later than August 1, 2002, after consultation with appropriate departments and agencies of the Federal Government and with State and local governments, shall provide baseline information to community water systems required to conduct vulnerability assessments regarding which kinds of terrorist attacks or other intentional acts are the probable threats to—

(A) substantially disrupt the ability of the system to provide a safe and reliable supply of drinking water; or

(B) otherwise present significant public health concerns.

(2) Each community water system referred to in paragraph (1) shall certify to the Administrator that it has conducted an assessment complying with paragraph (1) and shall submit to the Administrator a written copy of the assessment. Such certification and submission shall be made prior to—

(A) March 31, 2003, in the case of systems serving a population of 100,000 or more.

(B) December 31, 2003, in the case of systems serving a population of 50,000 or more but less than 100,000.

(C) June 30, 2004, in the case of systems serving a population greater than 3,300 but less than 50,000.

(3) Except for information contained in a certification under this subsection identifying the system submitting the certification and the date of the certification, all information provided to the Administrator under this subsection and all information derived therefrom shall be exempt from disclosure under section 552 of title 5.

(4) No community water system shall be required under State or local law to provide an assessment described in this section to any State, regional, or local governmental entity solely by reason of the requirement set forth in paragraph (2) that the system submit such assessment to the Administrator.

(5) Not later than November 30, 2002, the Administrator, in consultation with appropriate Federal law enforcement and intelligence officials, shall develop such protocols as may be necessary to protect the copies of the assessments required to be submitted under this subsection (and the information contained therein) from unauthorized disclosure. Such protocols shall ensure that—

(A) each copy of such assessment, and all information contained in or derived from the assessment, is kept in a secure location;

(B) only individuals designated by the Administrator may have access to the copies of the assessments; and

(C) no copy of an assessment, or part of an assessment, or information contained in or derived from an assessment shall be available to anyone other than an individual designated by the Administrator.

At the earliest possible time prior to November 30, 2002, the Administrator shall complete the development of such protocols for the purpose of having them in place prior to receiving any vulnerability assessments from community water systems under this subsection.

(6) (A) Except as provided in subparagraph (B), any individual referred to in paragraph (5)(B) who acquires the assessment submitted under paragraph (2), or any reproduction of such assessment, or any information derived from such assessment, and who knowingly or recklessly reveals such assessment, reproduction, or information other than—

(i) to an individual designated by the Administrator under paragraph (5).
(ii) for purposes of section 300j-4 of this title or for actions under section 300i of this title, or

(iii) for use in any administrative or judicial proceeding to impose a penalty for failure to comply with this section,

shall upon conviction be imprisoned for not more than one year or fined in accordance with the provisions of chapter 227 of title 18 applicable to class A misdemeanors, or both, and shall be removed from Federal office or employment.

(B) Notwithstanding subparagraph (A), an individual referred to in paragraph (5)(B) who is an officer or employee of the United States may discuss the contents of a vulnerability assessment submitted under this section with a State or local official.

(7) Nothing in this section authorizes any person to withhold any information from Congress or from any committee or subcommittee of Congress.

(b) Emergency response plan

Each community water system serving a population greater than 3,300 shall prepare or revise, where necessary, an emergency response plan that incorporates the results of vulnerability assessments that have been completed. Each such community water system shall certify to the Administrator, as soon as reasonably possible after the enactment of this section, but not later than 6 months after the completion of the vulnerability assessment under subsection (a) of this section, that the system has completed such plan. The emergency response plan shall include, but not be limited to, plans, procedures, and identification of equipment that can be implemented or utilized in the event of a terrorist or other intentional attack on the public water system. The emergency response plan shall also include actions, procedures, and identification of equipment which can obviate or significantly lessen the impact of terrorist attacks or other intentional actions on the public health and the safety and supply of drinking water provided to communities and individuals. Community water systems shall, to the extent possible, coordinate with existing Local Emergency Planning Committees established under the Emergency Planning and Community Right-to-Know Act (42 U.S.C. 11001 et seq.) when preparing or revising an emergency response plan under this subsection.

(c) Record maintenance

Each community water system shall maintain a copy of the emergency response plan completed pursuant to subsection (b) of this section for 5 years after such plan has been certified to the Administrator under this section.

(d) Guidance to small public water systems

The Administrator shall provide guidance to community water systems serving a population of less than 3,300 persons on how to conduct vulnerability assessments, prepare emergency response plans, and address threats from terrorist attacks or other intentional actions designed to disrupt the provision of safe drinking water or significantly affect the public health or significantly affect the safety or supply of drinking water provided to communities and individuals.

(e) Funding

(1) There are authorized to be appropriated to carry out this section not more than $160,000,000 for the fiscal year 2002 and such sums as may be necessary for the fiscal years 2003 through 2005.

(2) The Administrator, in coordination with State and local governments, may use funds made available under paragraph (1) to provide financial assistance to community water systems for purposes of compliance with the requirements of subsections (a) and (b) of this section and to community water systems for expenses and contracts designed to address basic security enhancements of critical importance and significant threats to public health and the supply of drinking water as determined by a vulnerability assessment conducted under subsection (a) of this section. Such basic security enhancements may include, but shall not be limited to the following:

(A) the purchase and installation of equipment for detection of intruders;
(B) the purchase and installation of fencing, gating, lighting, or security cameras;
(C) the tamper-proofing of manhole covers, fire hydrants, and valve boxes;
(D) the rekeying of doors and locks;
(E) improvements to electronic, computer, or other automated systems and remote security systems;
(F) participation in training programs, and the purchase of training manuals and guidance materials, relating to security against terrorist attacks;
(G) improvements in the use, storage, or handling of various chemicals; and
(H) security screening of employees or contractor support services.

Funding under this subsection for basic security enhancements shall not include expenditures for personnel costs, or monitoring, operation, or maintenance of facilities, equipment, or systems.

(3) The Administrator may use not more than $5,000,000 from the funds made available under paragraph (1) to make grants to community water systems to assist in responding to and alleviating any vulnerability to a terrorist attack or other intentional acts intended to substantially disrupt the ability of the system to provide a safe and reliable supply of drinking water (including sources of water for such systems) which the Administrator determines to present an immediate and urgent security need.

(4) The Administrator may use not more than $5,000,000 from the funds made available under paragraph (1) to make grants to community water systems serving a population of less than 3,300 persons for activities and projects undertaken in accordance with the guidance provided to such systems under subsection (d) of this section.

(July 1, 1944, ch. 373, title XIV, § 1433, as added Pub. L. 107–188, title IV, § 401, June 12, 2002, 116 Stat. 682.)

References in Text

The Emergency Planning and Community Right-to-Know Act, referred to in subsec. (b), probably means the Emergency Planning and Community Right-to-
§ 300i–3. Contaminant prevention, detection and response

(a) In general

The Administrator, in consultation with the Centers for Disease Control and Prevention by Pub. L. 102–531, title XIV, § 11001 et seq. of this title, for complete classification of this Act to the Code, see Short Title note set out under section 11001 of this title and Tables.

§ 300i–4. Supply disruption prevention, detection and response

(a) Disruption of supply or safety

The Administrator, in coordination with the appropriate departments and agencies of the Federal Government, shall review (or enter into contracts or cooperative agreements to provide for a review of) methods and means by which terrorists or other individuals or groups could disrupt the supply of safe drinking water or take other actions against water collection, pretreatment, treatment, storage and distribution facilities which could render such water significantly less safe for human consumption, including each of the following:

1. Methods and means by which pipes and other constructed conveyances utilized in public water systems could be destroyed or otherwise prevented from providing adequate supplies of drinking water meeting applicable public health standards.

2. Methods and means by which collection, pretreatment, treatment, storage and distribution facilities utilized or used in connection with public water systems and collection and pretreatment storage facilities used in connection with public water systems could be destroyed or otherwise prevented from providing adequate supplies of drinking water meeting applicable public health standards.

3. Methods and means by which pipes, constructed conveyances, collection, pretreatment, treatment, storage and distribution systems that are utilized in connection with public water systems could be altered or affected so as to be subject to cross-contamination of drinking water supplies.

4. Methods and means by which pipes, constructed conveyances, collection, pretreatment, treatment, storage and distribution systems that are utilized in connection with public water systems could be reasonably protected from terrorist attacks or other acts intended to disrupt the supply or affect the safety of drinking water.

(b) Alternative sources

The review under this section shall also include a review of the methods and means by which alternative supplies of drinking water could be provided in the event of the destruction, impairment or contamination of public water systems.

(c) Requirements and considerations

In carrying out this section and section 300i–3 of this title—

1. the Administrator shall ensure that reviews carried out under this section reflect the needs of community water systems of various sizes and various geographic areas of the United States; and

2. the Administrator may consider the vulnerability of, or potential for forced interruption of service for, a region or service area, including community water systems that provide service to the National Capital area.
(d) Information sharing

As soon as practicable after reviews carried out under this section or section 300i–3 of this title have been evaluated, the Administrator shall disseminate, as appropriate as determined by the Administrator, to community water systems information on the results of the project through the Information Sharing and Analysis Center, or other appropriate means.

(e) Funding

There are authorized to be appropriated to carry out this section and section 300i–3 of this title not more than $15,000,000 for the fiscal year 2002 and such sums as may be necessary for the fiscal years 2003 through 2005.


PART E—GENERAL PROVISIONS

§ 300j. Assurances of availability of adequate supplies of chemicals necessary for treatment of water

(a) Certification of need application

If any person who uses chlorine, activated carbon, lime, ammonia, soda ash, potassium permanganate, caustic soda, or other chemical or substance for the purpose of treating water in any public water system or in any public treatment works determines that the amount of such chemical or substance necessary to effectively treat such water is not reasonably available to him or will not be so available to him when required for the effective treatment of such water, such person may apply to the Administrator for a certification (hereinafter in this section referred to as a “certification of need”) that the amount of such chemical or substance which such person requires to effectively treat such water is not reasonably available to him or will not be so available when required for the effective treatment of such water.

(b) Application requirements; publication in Federal Register; waiver; certification, issuance or denial

(1) An application for a certification of need shall be in such form and submitted in such manner as the Administrator may require and shall (A) specify the persons the applicant determines are able to provide the chemical or substance with respect to which the application is submitted, (B) specify the persons from whom the applicant has sought such chemical or substance, and (C) contain such other information as the Administrator may require.

(2) Upon receipt of an application under this section, the Administrator shall (A) publish in the Federal Register a notice of the receipt of the application and a brief summary of it, (B) notify in writing each person whom the President or his delegate (after consultation with the Administrator) determines could be made subject to an order required to be issued upon the issuance of the certification of need applied for in such application, and (C) provide an opportunity for the submission of written comments on such application. The requirements of the preceding sentence of this paragraph shall not apply when the Administrator for good cause finds (and incorporates the finding with a brief statement of reasons therefor in the order issued) that waiver of such requirements is necessary in order to protect the public health.

(3) Within 30 days after—

(A) the date a notice is published under paragraph (2) in the Federal Register with respect to an application submitted under this section for the issuance of a certification of need, or

(B) the date on which such application is received if as authorized by the second sentence of such paragraph no notice is published with respect to such application,

the Administrator shall take action either to issue or deny the issuance of a certification of need.

(c) Certification of need; issuance; executive orders; implementation of orders; equitable apportionment of orders; factors considered

(1) If the Administrator finds that the amount of a chemical or substance necessary for an applicant under an application submitted under this section to effectively treat water in a public water system or in a public treatment works is not reasonably available to the applicant or will not be so available to him when required for the effective treatment of such water, the Administrator shall issue a certification of need. Not later than seven days following the issuance of such certification, the President or his delegate shall issue an order requiring the provision to such person of such amounts of such chemical or substance as the Administrator deems necessary in the certification of need issued for such person. Such order shall apply to such manufacturers, producers, processors, distributors, and repackagers of such chemical or substance as the Administrator deems necessary and appropriate, except that such order may not apply to any manufacturer, producer, or processor of such chemical or substance who manufactures, produces, or processes (as the case may be) such chemical or substance solely for its own use.

Persons subject to an order issued under this section shall be given a reasonable opportunity to consult with the President or his delegate with respect to the implementation of the order.

(2) Orders which are to be issued under paragraph (1) to manufacturers, producers, and processors of a chemical or substance shall be equitably apportioned, as far as practicable, among all manufacturers, producers, and processors of such chemical or substance; and orders which are to be issued under paragraph (1) to distributors and repackagers of a chemical or substance shall be equitably apportioned, as far as practicable, among all distributors and repackagers of such chemical or substance. In apportioning orders issued under paragraph (1) to manufacturers, producers, processors, distributors, and repackagers of chlorine, the President or his delegate shall, in carrying out the requirements of the preceding sentence, consider—

(A) the geographical relationships and established commercial relationships between such manufacturers, producers, processors,
tributors, and repackage the persons for whom the orders are issued;

(B) in the case of orders to be issued to producers of chlorine, the (i) amount of chlorine historically supplied by each such producer to treat water in public water systems and public treatment works, and (ii) share of each such producer of the total annual production of chlorine in the United States; and

(C) such other factors as the President or his delegate may determine are relevant to the apportionment of orders in accordance with the requirements of the preceding sentence.

(3) Subject to subsection (f) of this section, any person for whom a certification has been issued under this subsection may upon the expiration of the order issued under paragraph (1) upon such certification apply under this section for additional certifications.

(d) Breach of contracts; defense

There shall be available as a defense to any action brought for breach of contract in a Federal or State court arising out of delay or failure to provide, sell, or offer for sale or exchange a chemical or substance subject to an order issued pursuant to subsection (c)(1) of this section, that such delay or failure was caused solely by compliance with such order.

(e) Penalties for noncompliance with orders; temporary restraining orders and preliminary or permanent injunctions

(1) Whoever knowingly fails to comply with any order issued pursuant to subsection (c)(1) of this section shall be fined not more than $5,000 for each such failure to comply.

(2) Whoever fails to comply with any order issued pursuant to subsection (c)(1) of this section shall be subject to a civil penalty of not more than $2,500 for each such failure to comply.

(3) Whenever the Administrator or the President or his delegate has reason to believe that any person is violating or will violate any order issued pursuant to subsection (c)(1) of this section, he may petition a United States district court to issue a temporary restraining order or preliminary or permanent injunction (including a mandatory injunction) to enforce the provisions of such order.

(f) Termination date

No certification of need or order issued under this section may remain in effect for more than one year.

(1) The Administrator may conduct research, studies, and demonstrations relating to the causes, diagnosis, treatment, control, and prevention of physical and mental diseases and other impairments of man resulting directly or indirectly from contaminants in water, or to the provision of a dependably safe supply of drinking water, including—

(A) improved methods (i) to identify and measure the existence of contaminants in drinking water (including methods which may be used by State and local health and water officials), and (ii) to identify the source of such contaminants;

(B) improved methods to identify and measure the health effects of contaminants in drinking water;

(C) new methods of protecting underground water sources of public water systems from contamination.

(2) INFORMATION AND RESEARCH FACILITIES.—In carrying out this subchapter, the Administrator is authorized to—

(A) collect and make available information pertaining to research, investigations, and demonstrations with respect to providing a dependably safe supply of drinking water, together with appropriate recommendations in connection with the information; and

(B) make available research facilities of the Agency to appropriate public authorities, institutions, and individuals engaged in studies and research relating to this subchapter.
(3) The Administrator shall carry out a study of polychlorinated biphenyl contamination of actual or potential sources of drinking water, contamination of such sources by other substances known or suspected to be harmful to public health, the effects of such contamination, and means of removing, treating, or otherwise controlling such contamination. To assist in carrying out this paragraph, the Administrator is authorized to make grants to public agencies and private nonprofit institutions.

(4) The Administrator shall conduct a survey and study of—

(A) disposal of waste (including residential waste) which may endanger underground water which supplies, or can reasonably be expected to supply, any public water systems, and

(B) means of control of such waste disposal.

Not later than one year after December 16, 1974, he shall transmit to the Congress the results of such survey and study, together with such recommendations as he deems appropriate.

(5) The Administrator shall carry out a study of methods of underground injection which do not result in the degradation of underground drinking water sources.

(6) The Administrator shall carry out a study of methods of preventing, detecting, and dealing with surface spills of contaminants which may degrade underground water sources for public water systems.

(7) The Administrator shall carry out a study of virus contamination of drinking water sources and means of control of such contamination.

(8) The Administrator shall carry out a study of the nature and extent of the impact on underground water which supplies, or can reasonably be expected to supply, public water systems of (A) abandoned injection or extraction wells; (B) intensive application of pesticides and fertilizers in underground water recharge areas; and (C) ponds, pools, lagoons, pits, or other surface disposal of contaminants in underground water recharge areas.

(9) The Administrator shall conduct a comprehensive study of public water supplies and drinking water sources to determine the nature, extent, sources of and means of control of contamination by chemicals or other substances suspected of being carcinogenic. Not later than six months after December 16, 1974, he shall transmit to the Congress the initial results of such study, together with such recommendations for further review and corrective action as he deems appropriate.

(10) The Administrator shall carry out a study of the reaction of chlorine and humic acids and the effects of the contaminants which result from such reaction on public health and on the safety of drinking water, including any carcinogenic effect.

(b) Emergency situations

The Administrator is authorized to provide technical assistance and to make grants to States, or publicly owned water systems to assist in responding to and alleviating any emergency situation affecting public water systems (including sources of water for such systems) which the Administrator determines to present substantial danger to the public health. Grants provided under this subsection shall be used only to support those actions which (i) are necessary for preventing, limiting or mitigating danger to the public health in such emergency situation and (ii) would not, in the judgment of the Administrator, be taken without such emergency assistance. The Administrator may carry out the program authorized under this subsection as part of, and in accordance with the terms and conditions of, any other program of assistance for environmental emergencies which the Administrator is authorized to carry out under any other provision of law. No limitation on appropriations for any such other program shall apply to amounts appropriated under this subsection.

(c) Establishment of training programs and grants for training; training fees

The Administrator shall—

(1) provide training for, and make grants for training (including postgraduate training) of (A) personnel of State agencies which have primary enforcement responsibility and of agencies or units of local government to which enforcement responsibilities have been delegated by the State, and (B) personnel who manage or operate public water systems, and

(2) make grants for postgraduate training of individuals (including grants to educational institutions for traineeships) for purposes of qualifying such individuals to work as personnel referred to in paragraph (1).

(3) make grants to, and enter into contracts with, any public agency, educational institution, and any other organization, in accordance with procedures prescribed by the Administrator, under which he may pay all or part of the costs (as may be determined by the Administrator) of any project or activity which is designed—

(A) to develop, expand, or carry out a program (which may combine training education and employment) for training persons for occupations involving the public health aspects of providing safe drinking water; or

(B) to train inspectors and supervisory personnel to train or supervise persons in occupations involving the public health aspects of providing safe drinking water; or

(C) to develop and expand the capability of programs of States and municipalities to carry out the purposes of this subchapter (other than by carrying out State programs of public water system supervision or underground water source protection (as defined in section 300j–2(c) of this title));

Reasonable fees may be charged for training provided under paragraph (1)(B) to persons other than personnel of State or local agencies but such training shall be provided to personnel of State or local agencies without charge.

(d) Authorization of appropriations

There are authorized to be appropriated to carry out subsection (b) of this section not more than $35,000,000 for the fiscal year 2002 and such sums as may be necessary for each fiscal year thereafter.
(e) Technical assistance

The Administrator may provide technical assistance to small public water systems to enable such systems to achieve and maintain compliance with applicable national primary drinking water regulations. Such assistance may include circuit-rider and multi-State regional technical assistance programs, training, and preliminary engineering evaluations. The Administrator shall ensure that technical assistance pursuant to this subsection is available in each State. Each nonprofit organization receiving assistance under this subsection shall consult with the State in which the assistance is to be expended or otherwise made available before using assistance to undertake activities to carry out this subsection. There are authorized to be appropriated to the Administrator to be used for such technical assistance $15,000,000 for each of the fiscal years 1997 through 2003.

Not less than the greater of—

Not more than—

$10,000,000 for each of the fiscal years 1997 through 2003.

There are authorized to be appropriated to carry out this subsection $10,000,000 for each of the fiscal years 1987 through 1991.

"(1) 3 percent of the amounts appropriated under this subsection, or

"(2) $250,000 shall be utilized for technical assistance to public water systems owned or operated by Indian tribes."

1995—Subsecs. (c) to (g). Pub. L. 104–66 redesignated subsecs. (d), (f), and (g) as (c), (d), and (e), respectively, and struck out former subsec. (e) which read as follows: "Not later than eighteen months after November 16, 1977, the Administrator shall submit a report to Congress on the present and projected future availability of an adequate and dependable supply of safe drinking water to meet present and projected future need. Such report shall include an analysis of the future demand for drinking water and other competing uses of water, the availability and use of methods to conserve water or reduce demand, the adequacy of present measures to assure adequate and dependable supplies of safe drinking water, and the problems (financial, legal, or other) which need to be resolved in order to assure the availability of such supplies for the future. Existing information and data compiled by the National Water Commission and others shall be utilized to the extent possible."

1986—Subsec. (e). Pub. L. 99–339, §301(a), struck out subsec. (e) which authorized the Administrator to make grants to public water systems which are required, under State or local law, to meet standards relating to drinking turbidity which are more stringent than the national drinking water regulations. Such assistance may include "circuit-rider" programs, training, and preliminary engineering studies. There are authorized to be appropriated to carry out this subsection $10,000,000 for each of the fiscal years 1987 through 1991.

1980—Pub. L. 96–502, §5, Dec. 5, 1980, 94 Stat. 2736, added subsec. (b) which read as follows: "The Administrator is authorized to provide technical assistance to public water systems owned or operated by Indian tribes."

1979—Subsec. (e). Pub. L. 96–63 authorized appropriations to carry out this subsection of $10,000,000 for each of fiscal years 1987 through 1991 and specified amount to be utilized for public water systems owned or operated by Indian tribes.

1978—Pub. L. 95–232, §301(a), authorized appropriations to carry out this subsection of $10,000,000 for each of fiscal years 1987 through 1991 and specified amount to be utilized for public water systems owned or operated by Indian tribes.

1975—Subsecs. (c) to (g). Pub. L. 94–55, §301(a), authorized appropriations to carry out this subsection of $10,000,000 for each of fiscal years 1987 through 1991 and specified amount to be utilized for public water systems owned or operated by Indian tribes.

1974—Pub. L. 93–523, §2(a), Dec. 16, 1974, 88 Stat. 1682, amended subsec. (a) which read as follows: "The Administrator is authorized to—

(1) collect and make available information pertaining to research, investigations, and demonstrations with respect to providing a dependably safe supply of drinking water together with appropriate recommendations in connection therewith;

(2) make available research facilities of the Agency to appropriate public authorities, institutions, and individuals engaged in studies and research relating to the purposes of this subchapter.

Subsecs. (b)(3), (c)(9), Pub. L. 104–182, §121(1), which directed redesignation of subsec. (b)(3) as par. (3) of subsec. (d) and transfer of that par. to follow par. (2) of subsec. (d), was executed by redesignating subsec. (b)(3) as par. (3) of subsec. (c) and transferring that par. to follow par. (2) of subsec. (c) to reflect the probable intent of Congress and the redesignation of subsec. (d) as (c) by Pub. L. 104–66. See 1995 Amendment note below. Moreover, subsec. (d) does not have any pars.

Subsec. (e). Pub. L. 104–182, §122, amended subsec. (e) generally. Prior to amendment, subsec. (e) read as follows: "The Administrator is authorized to provide technical assistance to public water systems owned or operated by Indian Tribes."

"(1) 3 percent of the amounts appropriated under this subsection, or

"(2) $250,000 shall be utilized for technical assistance to public water systems owned or operated by Indian tribes."

1995—Subsecs. (c) to (g). Pub. L. 104–66 redesignated subsecs. (d), (f), and (g) as (c), (d), and (e), respectively, and struck out former subsec. (e) which read as follows: "Not later than eighteen months after November 16, 1977, the Administrator shall submit a report to Congress on the present and projected future availability of an adequate and dependable supply of safe drinking water to meet present and projected future need. Such report shall include an analysis of the future demand for drinking water and other competing uses of water, the availability and use of methods to conserve water or reduce demand, the adequacy of present measures to assure adequate and dependable supplies of safe drinking water, and the problems (financial, legal, or other) which need to be resolved in order to assure the availability of such supplies for the future. Existing information and data compiled by the National Water Commission and others shall be utilized to the extent possible."

1986—Subsec. (e). Pub. L. 99–339, §301(a), struck out subsec. (e) which authorized the Administrator to make grants to public water systems which are required, under State or local law, to meet standards relating to drinking turbidity which are more stringent than the standards in effect under this subchapter.

Subsec. (f). Pub. L. 99–339, §301(a), authorized appropriations to carry out subsec. (a)(2)(B) of this section for fiscal years 1987 to 1991 and to carry out provisions of this section other than subsecs. (a)(2)(B) and (g) and provisions relating to research for fiscal years 1987 to 1991.

Subsec. (g). Pub. L. 99–339, §301(g), authorized appropriations to carry out this subsection of $10,000,000 for each of fiscal years 1987 through 1991 and specified amount to be utilized for public water systems owned or operated by Indian tribes.


Subsec. (f). Pub. L. 96–63 authorized appropriations of $21,405,000 for fiscal year ending Sept. 30, 1980, $18,000,000 for fiscal year ending Sept. 30, 1981, and $35,000,000 for fiscal year ending Sept. 30, 1982 for purposes other than those of subsec. (a)(2)(B) of this sec-

sec. (b) which read as follows: "In carrying out this subchapter, the Administrator is authorized to—

(1) collect and make available information pertaining to research, investigations, and demonstrations with respect to providing a dependably safe supply of drinking water together with appropriate recommendations in connection therewith;

(2) make available research facilities of the Agency to appropriate public authorities, institutions, and individuals engaged in studies and research relating to the purposes of this subchapter."
tion and for purposes of subsec. (a)(2)(B) of this section, $8,000,000 for fiscal years 1980 through 1982.

1977—Subsec. (a)(2). Pub. L. 95–190, §§ 13, 16, redesignated existing provisions as subpar. (A), added subpar. (B) and, in subpar. (B) as added, substituted provisions authorizing Administrator to make grants and provide technical assistance for any emergency situation affecting public water systems and criteria for such grants and assistance for provisions authorizing Administrator to make grants and provide technical assistance for any emergency situation respecting drinking water and criteria for determination of such situations.

Subsec. (a)(3). Pub. L. 95–190, § 3(a), designated existing provisions as subpar. (A) and added subpar. (B).

Subsec. (a)(10), (11). Pub. L. 95–190, § 3(e)(1), added pars. (10) and (11).

Subsec. (b)(3)(C). Pub. L. 95–190, § 18(b), substituted ‘‘300j–2(c)’’ for ‘‘300j–2(d)’’.

Subsecs. (c), (d). Pub. L. 95–190, § 3(b), 4, added subsecs. (c) and (d). Former subsec. (c) redesignated (e).

Subsec. (e). Pub. L. 95–190, § 3(a), redesignated former subsec. (c) as (e) and inserted provisions authorizing appropriations for fiscal years 1978 and 1979, and provisions relating to appropriations for subsec. (a)(2)(B) of this section and for research.

SCIENTIFIC RESEARCH REVIEW

Pub. L. 104–182, title II, § 202, Aug. 6, 1996, 110 Stat. 1682, provided that:

‘‘(a) IN GENERAL.—The Administrator shall—

‘‘(1) develop a strategic plan for drinking water research activities throughout the Environmental Protection Agency (in this section referred to as the ‘Agency’);

‘‘(2) integrate that strategic plan into ongoing Agency planning activities; and

‘‘(3) review all Agency drinking water research to ensure the research—

‘‘(A) is of high quality; and

‘‘(B) does not duplicate any other research being conducted by the Agency.

‘‘(b) PLAN.—The Administrator shall transmit the plan to the Committees on Commerce [now Energy and Commerce] and Science [now Science, Space, and Technology] of the House of Representatives and the Committee on Environment and Public Works of the Senate and the plan shall be made available to the public.’’

NATIONAL CENTER FOR GROUND WATER RESEARCH

Section 203 of Pub. L. 104–182 provided that: ‘‘The Administrator of the Environmental Protection Agency, acting through the Robert S. Kerr Environmental Research Laboratory, is authorized to reestablish a partnership between the Laboratory and the National Center for Ground Water Research, a university consortium, to conduct research, training, and technology transfer for ground water quality protection and restoration. No funds are authorized by this section.’’

COMPARATIVE HEALTH EFFECTS ASSESSMENT

Section 394(b) of Pub. L. 99–339 provided that: ‘‘The Administrator of the Environmental Protection Agency shall conduct a comparative health effects assessment, using available data, to compare the public health effects (both positive and negative) associated with water treatment chemicals and their byproducts with the public health effects associated with contaminants found in public water supplies. Not later than 18 months after the date of the enactment of this Act [June 19, 1986], the Administrator shall submit a report to the Congress setting forth the results of such assessment.’’

§ 300j–2. Grants for State programs

(a) Public water systems supervision programs; applications for grants; allotment of sums; waiver of grant restrictions; notice of approval or disapproval of application; authorization of appropriations

(1) From allotments made pursuant to paragraph (4), the Administrator may make grants to States to carry out public water system supervision programs.

(2) No grant may be made under paragraph (1) unless an application therefor has been submitted to the Administrator in such form and manner as he may require. The Administrator may not approve an application of a State for its first grant under paragraph (1) unless he determines that the State—

(A) has established or will establish within one year from the date of such grant a public water system supervision program, and

(B) will, within that one year, assume primary enforcement responsibility for public water systems within the State.

No grant may be made to a State under paragraph (1) for any period beginning more than one year after the date of the State’s first grant unless the State has assumed and maintains primary enforcement responsibility for public water systems within the State.

(3) A grant under paragraph (1) shall be made to cover not more than 75 per centum of the grant recipient’s costs (as determined under regulations of the Administrator) in carrying out, during the one-year period beginning on the date the grant is made, a public water system supervision program.

(4) In each fiscal year the Administrator shall, in accordance, with regulations, allot the sums appropriated for such year under paragraph (5) among the States on the basis of population, geographical area, number of public water systems, and other relevant factors. No State shall receive less than 1 per centum of the annual appropriation for grants under paragraph (1): Provided, That the Administrator may, by regulation, reduce such percentage in accordance with the criteria specified in this paragraph: And provided further, That such percentage shall not apply to grants allotted to Guam, American Samoa, or the Virgin Islands.

(5) The prohibition contained in the last sentence of paragraph (2) may be waived by the Administrator with respect to a grant to a State through fiscal year 1979 but such prohibition may only be waived if, in the judgment of the Administrator—

(A) the State is making a diligent effort to assume and maintain primary enforcement responsibility for public water systems within the State;

(B) the State has made significant progress toward assuming and maintaining such primary enforcement responsibility; and

(C) there is reason to believe the State will assume such primary enforcement responsibility by October 1, 1979.

The amount of any grant awarded for the fiscal years 1978 and 1979 pursuant to a waiver under
this paragraph may not exceed 75 per centum of the allotment which the State would have received for such fiscal year if it had assumed and maintained such primary enforcement responsibility. The remaining 25 per centum of the amount allotted to such State for such fiscal year shall be retained by the Administrator, and the Administrator may award such amount to such State at such time as the State assumes such responsibility before the beginning of fiscal year 1980. At the beginning of each fiscal years 1979 and 1980 the amounts retained by the Administrator for any preceding fiscal year and not awarded by the beginning of fiscal year 1979 or 1980 to the States to which such amounts were originally allotted may be removed from the original allotment and reallocated for fiscal year 1979 or 1980 (as the case may be) to States which have assumed primary enforcement responsibility by the beginning of such fiscal year.

(6) The Administrator shall notify the State of the approval or disapproval of any application for a grant under this section—

(A) within ninety days after receipt of such application, or

(B) not later than the first day of the fiscal year for which the grant application is made, whichever is later.

(7) AUTHORIZATION.—For the purpose of making grants under paragraph (1), there are authorized to be appropriated $100,000,000 for each of fiscal years 1997 through 2003.

(8) RESERVATION OF FUNDS BY THE ADMINISTRATOR.—If the Administrator assumes the primary enforcement responsibility of a State public water system supervision program, the Administrator may reserve from funds made available pursuant to this subsection an amount equal to the amount that would otherwise have been provided to the State pursuant to this subsection. The Administrator shall use the funds reserved pursuant to this paragraph to ensure the full and effective administration of a public water system supervision program in the State.

(9) STATE LOAN FUNDS.—

(A) RESERVATION OF FUNDS.—For any fiscal year for which the amount made available to the Administrator by appropriations to carry out this subsection is less than the amount that the Administrator determines is necessary to supplement funds made available pursuant to paragraph (8) to ensure the full and effective administration of a public water system supervision program in a State, the Administrator may reserve from the funds made available to the State under section 300j–12 of this title (relating to State loan funds) an amount that is equal to the amount of the shortfall. This paragraph shall not apply to any State not exercising primary enforcement responsibility for public water systems as of August 6, 1996.

(B) DUTY OF ADMINISTRATOR.—If the Administrator reserves funds from the allocation of an amount allotted to such State under subparagraph (A), the Administrator shall carry out in the State each of the activities that would be required of the State if the State had primary enforcement authority under section 300g–2 of this title.

(b) Underground water source protection programs; applications for grants; allotment of sums; authorization of appropriations

(1) From allotments made pursuant to paragraph (4), the Administrator may make grants to States to carry out underground water source protection programs.

(2) No grant may be made under paragraph (1) unless an application therefor has been submitted to the Administrator in such form and manner as he may require. No grant may be made to any State under paragraph (1) unless the State has assumed primary enforcement responsibility within two years after the date the Administrator promulgates regulations for State underground injection control programs under section 300h of this title. The prohibition contained in the preceding sentence shall not apply to such grants when made to Indian Tribes.

(3) A grant under paragraph (1) shall be made to cover not more than 75 per centum of the grant recipient’s cost (as determined under regulations of the Administrator) in carrying out, during the one-year period beginning on the date the grant is made, and underground water source protection program.

(4) In each fiscal year the Administrator shall, in accordance with regulations, allot the sums appropriated for such year under paragraph (5) among the States on the basis of population, geographical area, and other relevant factors.

(5) For purposes of making grants under paragraph (1) there are authorized to be appropriated $5,000,000 for the fiscal year ending June 30, 1976, $7,500,000 for the fiscal year ending June 30, 1977, $10,000,000 for each of the fiscal years 1978 and 1979, $7,705,000 for the fiscal year ending September 30, 1980, $18,000,000 for the fiscal year ending September 30, 1981, and $21,000,000 for the fiscal year ending September 30, 1982. For the purpose of making grants under paragraph (1) there are authorized to be appropriated not more than the following amounts:

<table>
<thead>
<tr>
<th>Fiscal year</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>1987</td>
<td>$19,700,000</td>
</tr>
<tr>
<td>1988</td>
<td>$19,700,000</td>
</tr>
<tr>
<td>1989</td>
<td>$20,850,000</td>
</tr>
<tr>
<td>1990</td>
<td>$20,850,000</td>
</tr>
<tr>
<td>1991</td>
<td>$20,850,000</td>
</tr>
<tr>
<td>1992-2003</td>
<td>$15,000,000</td>
</tr>
</tbody>
</table>

(c) Definitions

For purposes of this section:

(1) The term “public water system supervision program” means a program for the adoption and enforcement of drinking water regulations (with such variances and exemptions from such regulations under conditions and in a manner which is not less stringent than the conditions under, and the manner in, which variances and exemptions may be granted under sections 300g–4 and 300g–5 of this title) which are no less stringent than the national primary drinking water regulations under section 300g–1 of this title, and for keeping records and making reports required by section 300g–2(a)(3) of this title.

(2) The term “underground water source protection program” means a program for the adoption and enforcement of a program which meets the requirements of regulations under
section 300h of this title, and for keeping records and making reports required by section 300h–1(b)(1)(A)(ii) of this title. Such term includes, where applicable, a program which meets the requirements of section 300h–4 of this title.

(d) New York City watershed protection program

(1) In general

The Administrator is authorized to provide financial assistance to the State of New York for demonstration projects implemented as part of the watershed program for the protection and enhancement of the quality of source waters of the New York City water supply system, including projects that demonstrate, assess, or provide for comprehensive monitoring and surveillance and projects necessary to comply with the criteria for avoiding filtration contained in 40 CFR 141.71. Demonstration projects which shall be eligible for financial assistance shall be certified to the Administrator by the State of New York as satisfying the purposes of this subsection. In certifying projects to the Administrator, the State of New York shall give priority to monitoring projects that have undergone peer review.

(2) Report

Not later than 5 years after the date on which the Administrator first provides assistance pursuant to this paragraph, the Governor of the State of New York shall submit a report to the Administrator on the results of projects assisted.

(3) Matching requirements

Federal assistance provided under this subsection shall not exceed 50 percent of the total cost of the protection program being carried out for any particular watershed or ground water recharge area.

(4) Authorization

There are authorized to be appropriated to the Administrator to carry out this subsection for each of fiscal years 2003 through 2010, $15,000,000 for the purpose of providing assistance to the State of New York to carry out paragraph (1).

Amount

1987....................................................... $37,200,000
1988....................................................... 40,150,000
1989....................................................... 40,150,000
1990....................................................... 40,150,000
1991....................................................... 40,150,000
1992....................................................... 40,150,000
1993....................................................... 40,150,000
1994....................................................... 40,150,000
1995....................................................... 40,150,000
1996....................................................... 40,150,000
1997....................................................... 40,150,000
1998....................................................... 40,150,000
1999....................................................... 40,150,000
2000....................................................... 40,150,000
2001....................................................... 40,150,000
2002....................................................... 40,150,000
2003....................................................... 40,150,000
2004....................................................... 40,150,000
2005....................................................... 40,150,000
2006....................................................... 40,150,000
2007....................................................... 40,150,000
2008....................................................... 40,150,000
2009....................................................... 40,150,000
2010....................................................... 40,150,000
1996—Passed Pub. L. 104–182, title I, § 128, Aug. 31, 1996, 110 Stat. 2650, 2651, amended provision that no grant may be made to any State under par. (1) unless he determines that the State has established or will establish within two years from the date of such grant an underground water source protection, and will, within such two years, assume primary enforcement responsibility for underground water sources within the State. Not later than 5 years after the date the Administrator promulgates regulations for State underground injection control programs under section 300h of this title for provisions that the Administrator may not approve an application of a State for its first grant under par. (1) unless he determines that the State has established or will establish within two years from the date of such grant an underground water source protection, and will, within such two years, assume primary enforcement responsibility for underground water sources within the State and that no grant may be made to a State under par. (1) for any fiscal year beginning more than two years after the date of the State’s first grant unless the State has assumed primary enforcement responsibility for underground water sources within the State.

AMENDMENTS

2004—Subsec. (d)(4). Pub. L. 108–328 substituted “2003 through 2010” for “1997 through 2003”. 1996—Subsec. (a)(7). Pub. L. 104–182, § 124(1), inserted heading and amended text generally. Prior to amendment, text read as follows: “For purposes of making grants under paragraph (1) there are authorized to be appropriated $15,000,000 for the fiscal year ending June 30, 1976, $25,000,000 for the fiscal year ending June 30, 1977, $35,000,000 for fiscal year 1978, $45,000,000 for fiscal year 1979, $29,450,000 for the fiscal year ending September 30, 1980, $32,000,000 for the fiscal year ending September 30, 1981, and $34,000,000 for the fiscal year ending September 30, 1982. For the purposes of making grants under paragraph (1) there are authorized to be appropriated not more than the following amounts:

<table>
<thead>
<tr>
<th>Fiscal year</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>1987</td>
<td>$37,200,000</td>
</tr>
<tr>
<td>1988</td>
<td>$37,200,000</td>
</tr>
<tr>
<td>1989</td>
<td>40,150,000</td>
</tr>
<tr>
<td>1990</td>
<td>40,150,000</td>
</tr>
<tr>
<td>1991</td>
<td>40,150,000</td>
</tr>
<tr>
<td>1992</td>
<td>40,150,000</td>
</tr>
<tr>
<td>1993</td>
<td>40,150,000</td>
</tr>
<tr>
<td>1994</td>
<td>40,150,000</td>
</tr>
<tr>
<td>1995</td>
<td>40,150,000</td>
</tr>
<tr>
<td>1996</td>
<td>40,150,000</td>
</tr>
<tr>
<td>1997</td>
<td>40,150,000</td>
</tr>
<tr>
<td>1998</td>
<td>40,150,000</td>
</tr>
<tr>
<td>1999</td>
<td>40,150,000</td>
</tr>
<tr>
<td>2000</td>
<td>40,150,000</td>
</tr>
<tr>
<td>2001</td>
<td>40,150,000</td>
</tr>
<tr>
<td>2002</td>
<td>40,150,000</td>
</tr>
<tr>
<td>2003</td>
<td>40,150,000</td>
</tr>
<tr>
<td>2004</td>
<td>40,150,000</td>
</tr>
</tbody>
</table>

§ 300j–3. Special project grants and guaranteed loans

(a) Special study and demonstration project grants

The Administrator may make grants to any person for the purposes of—

(1) assisting in the development and demonstration (including construction) of any
project which will demonstrate a new or improved method, approach, or technology, for providing a dependably safe supply of drinking water to the public; and

(2) assisting in the development and demonstration (including construction) of any project which will investigate and demonstrate health implications involved in the reclamation, recycling, and reuse of waste waters for drinking and the processes and methods for the preparation of safe and acceptable drinking water.

(b) Limitations

Grants made by the Administrator under this section shall be subject to the following limitations:

(1) Grants under this section shall not exceed 66\% per centum of the total cost of construction of any facility and 75 per centum of any other costs, as determined by the Administrator.

(2) Grants under this section shall not be made for any project involving the construction or modification of any facilities for any public water system in a State unless such project has been approved by the State agency charged with the responsibility for safety of drinking water (or if there is no such agency in a State, by the State health authority).

(3) Grants under this section shall not be made for any project unless the Administrator determines, after consulting the National Drinking Water Advisory Council, that such project will serve a useful purpose relating to the development and demonstration of new or improved techniques, methods, or technologies for the provision of safe water to the public for drinking.

(4) Priority for grants under this section shall be given where there are known or potential public health hazards which require advanced technology for the removal of particles which are too small to be removed by ordinary treatment technology.

(c) Authorization of appropriations

For the purposes of making grants under subsections (a) and (b) of this section there are authorized to be appropriated $7,500,000 for the fiscal year ending June 30, 1975; and $10,000,000 for the fiscal year ending June 30, 1976; and $7,500,000 for the fiscal year ending June 30, 1977.

(d) Loan guarantees to public water systems; conditions; indebtedness limitation; regulations

The Administrator during the fiscal years ending June 30, 1975, and June 30, 1976, shall carry out a program of guaranteeing loans made by private lenders to small public water systems for the purpose of enabling such systems to meet national primary drinking water regulations prescribed under section 300g–1 of this title. No such guarantee may be made with respect to a system unless (1) such system cannot reasonably obtain financial assistance necessary to comply with such regulations from any other source, and (2) the Administrator determines that any facilities constructed with a loan guaranteed under this subsection is not likely to be made obsolete by subsequent changes in primary regulations. The aggregate amount of indebtedness guaranteed with respect to any system may not exceed $50,000. The aggregate amount of indebtedness guaranteed under this subsection may not exceed $50,000,000. The Administrator shall prescribe regulations to carry out this subsection.


AMENDMENTS


§ 300j–3a. Grants to public sector agencies

(a) Assistance for development and demonstration projects

The Administrator of the Environmental Protection Agency shall offer grants to public sector agencies for the purposes of—

(1) assisting in the development and demonstration (including construction) of any project which will demonstrate a new or improved method, approach, or technology for providing a dependably safe supply of drinking water to the public; and

(2) assisting in the development and demonstration (including construction) of any project which will investigate and demonstrate health and conservation implications involved in the reclamation, recycling, and reuse of wastewaters for drinking and agricultural use or the processes and methods for the preparation of safe and acceptable drinking water.

(b) Limitations

Grants made by the Administrator under this section shall be subject to the following limitations:

(1) Grants under this section shall not exceed 66\% per centum of the total cost of construction of any facility and 75 per centum of any other costs, as determined by the Administrator.

(2) Grants under this section shall not be made for any project involving the construction or modification of any facilities for any public water system in a State unless such project has been approved by the State agency charged with the responsibility for safety of drinking water (or if there is no such agency in a State, by the State health authority).

(3) Grants under this section shall not be made for any project unless the Administrator determines, after consulting the National Drinking Water Advisory Council, that such project will serve a useful purpose relating to the development and demonstration of new or improved techniques, methods, or technologies for the provision of safe water to the public for drinking.

(d) Loan guarantees to public water systems; conditions; indebtedness limitation; regulations

The Administrator during the fiscal years ending June 30, 1975, and June 30, 1976, shall carry out a program of guaranteeing loans made by private lenders to small public water systems for the purpose of enabling such systems to meet national primary drinking water regulations prescribed under section 300g–1 of this title. No such guarantee may be made with respect to a system unless (1) such system cannot reasonably obtain financial assistance necessary to comply with such regulations from any other source, and (2) the Administrator determines that any facilities constructed with a loan guaranteed under this subsection is not likely to be made obsolete by subsequent changes in primary regulations. The aggregate amount of indebtedness guaranteed with respect to any system may not exceed $50,000. The aggregate amount of indebtedness guaranteed under this subsection may not exceed $50,000,000. The Administrator shall prescribe regulations to carry out this subsection.


AMENDMENTS

§ 300j–3b. Contaminant standards or treatment technique guidelines

(1) Not later than nine months after October 18, 1978, the Administrator shall promulgate guidelines establishing supplemental standards or treatment technique requirements for microbiological, viral, radiological, organic, and inorganic contaminants, which guidelines shall be conditions, as provided in paragraph (2), of any grant for a demonstration project for water reclamation, recycling, and reuse funded under section 300j–3a of this title or under section 300j–3(a)(2) of this title, where such project involves direct human consumption of treated wastewater. Such guidelines shall provide for sufficient control of each such contaminant, such that in the Administrator’s judgment, no adverse effects on the health of persons may reasonably be anticipated to occur, allowing an adequate margin of safety.

(2) A grant referred to in paragraph (1) for a project which involves direct human consumption of treated wastewater may be awarded on or after the date of promulgation of guidelines under this section only if the applicant demonstrates to the satisfaction of the Administrator that the project—

(A) will comply with all national primary drinking water regulations under section 300g–1 of this title;

(B) will comply with all guidelines under this section; and

(C) will in other respects provide safe drinking water.

Any such grant awarded before the date of promulgation of such guidelines shall be conditioned on the applicant’s agreement to comply to the maximum feasible extent with such guidelines as expeditiously as practicable following the date of promulgation thereof.

(3) Guidelines under this section may, in the discretion of the Administrator—

(A) be nationally and uniformly applicable to all projects funded under section 300j–3a of this title or section 300j–1(a)(2) 1 of this title;

(B) vary for different classes or categories of such projects (as determined by the Administrator);

(C) be established and applicable on a project-by-project basis; or

(D) any combination of the above.

(4) Nothing in this section shall be construed to prohibit or delay the award of any grant referred to in paragraph (1) prior to the date of promulgation of such guidelines.


REFERENCES IN TEXT

Section 300j–1(a)(2) of this title, referred to in par. (3)(A), was amended by Pub. L. 104–182, title I, §121(c), (4)(A), Aug. 6, 1996, 110 Stat. 1651, to redesignate par. (2)(B) as subsec. (b) of section 300j–1, strike par. (2)(A), and add a new par. (2) relating to information and research facilities.

§ 300j–3c. National assistance program for water infrastructure and watersheds

(a) Technical and financial assistance

The Administrator of the Environmental Protection Agency may provide technical and financial assistance in the form of grants to States (1) for the construction, rehabilitation, and improvement of water supply systems, and (2) consistent with nonpoint source management programs established under section 1329 of title 33, for source water quality protection programs to address pollutants in navigable waters for the purpose of making such waters usable by water supply systems.

(b) Limitation

Not more than 30 percent of the amounts appropriated to carry out this section in a fiscal year may be used for source water quality protection programs described in subsection (a)(2) of this section.

(c) Condition

As a condition to receiving assistance under this section, a State shall ensure that such assistance is carried out in the most cost-effective manner, as determined by the State.

(d) Authorization of appropriations

(1) Unconditional authorization

There are authorized to be appropriated to carry out this section $25,000,000 for each of fiscal years 1997 through 2003. Such sums shall remain available until expended.

(2) Conditional authorization

In addition to amounts authorized under paragraph (1), there are authorized to be appropriated to carry out this section $25,000,000 for each of fiscal years 1997 through 2003, provided that such authorization shall be in effect for a fiscal year only if at least 75 percent of the total amount of funds authorized to be appropriated for such fiscal year by section 300j–12(m) of this title are appropriated.

(e) Acquisition of lands

Assistance provided with funds made available under this section may be used for the acquisition of lands and other interests in lands; however, nothing in this section authorizes the acquisition of lands or other interests in lands from other than willing sellers.

(f) Federal share

The Federal share of the cost of activities for which grants are made under this section shall be 50 percent.

1 See References in Text note below.
§ 300j–4. Records and inspections

(a) Provision of information to Administrator; monitoring program for unregulated contaminants

(1)(A) Every person who is subject to any requirement of this subchapter or who is a grantee, shall establish and maintain such records, make such reports, conduct such monitoring, and provide such information as the Administrator may reasonably require by regulation under this subchapter, in determining whether such person has acted or is acting in compliance with any program of financial assistance under this subchapter, and to advise the Administrator on any necessary modifications.

(B) Every person who is subject to a national primary drinking water regulation under section 300g–1 of this title shall provide such information as the Administrator may reasonably require under this subchapter for the installation of treatment equipment or process changes, the testing of treatment technology, or the analysis or processing of monitoring samples, except where the Administrator provides the funding for such activities.

(C) Every person who is subject to a national primary drinking water regulation under section 300g–1 of this title shall provide such information as the Administrator may reasonably require to assist the Administrator in establishing regulations under section 300g–1 of this title, after consultation with States and suppliers of water.

(2) Water supply system

The term “water supply system” means a system for the provision to the public of piped water for human consumption if such system serves at least 25 individuals and a draw and fill system for the provision to the public of water for human consumption. Such term does not include a system owned by a Federal agency. Such term includes (A) any collection, treatment, storage, and distribution facilities under control of the operator of such system and used primarily in connection with such system, and (B) any collection or pretreatment facilities not under such control that are used primarily in connection with such system.

Section was enacted as part of the Safe Drinking Water Act Amendments of 1996, and not as part of the Public Health Service Act which comprises this chapter.

§ 300j–4. Records and inspections

(a) Provision of information to Administrator; monitoring program for unregulated contaminants

(1)(A) Every person who is subject to any requirement of this subchapter or who is a grantee, shall establish and maintain such records, make such reports, conduct such monitoring, and provide such information as the Administrator may reasonably require by regulation to assist the Administrator in establishing regulations under this subchapter, in determining whether such person has acted or is acting in compliance with any program of financial assistance under this subchapter, and to advise the Administrator on any necessary modifications.

(B) Every person who is subject to a national primary drinking water regulation under section 300g–1 of this title shall provide such information as the Administrator may reasonably require under this subchapter for the installation of treatment equipment or process changes, the testing of treatment technology, or the analysis or processing of monitoring samples, except where the Administrator provides the funding for such activities.

(C) Every person who is subject to a national primary drinking water regulation under section 300g–1 of this title shall provide such information as the Administrator may reasonably require to assist the Administrator in establishing regulations under section 300g–1 of this title, after consultation with States and suppliers of water.
of this title or appropriated under subpara-
graph (H), the Administrator shall pay the
reasonable cost of such testing and labora-
tory analysis as are necessary to carry out
monitoring under the plan.

(D) Monitoring results.—Each public water
system that conducts monitoring of unregu-
lated contaminants pursuant to this para-
graph shall provide the results of the monitor-
ing to the primary enforcement authority for
the system.

(E) Notification.—Notification of the avail-
ability of the results of monitoring programs
required under paragraph (D) shall be given
to the persons served by the system.

(F) Waiver of Monitoring Requirement.—
The Administrator shall waive the require-
ment for monitoring for a contaminant under
this paragraph in a State, if the State dem-
onstrates that the criteria for listing the con-
taminant do not apply in that State.

(G) Analytical Methods.—The State may
use screening methods approved by the Ad-
ministrator under subsection (i) of this section
in lieu of monitoring for particular contami-
nants under this paragraph.

(H) Authorization of Appropriations.—
There are authorized to be appropriated to
carry out this paragraph $10,000,000 for each of
the fiscal years 1997 through 2003.

(b) Entry of establishments, facilities, or other
property; inspections; conduct of certain
tests; audit and examination of records;
entry restrictions; prohibition against in-
forming of a proposed entry

(1) Except as provided in paragraph (2), the Ad-
ministrator, or representatives of the Admin-
istrator duly designated by him, upon presenting
appropriate credentials and a written notice to
any supplier of water or other person subject to
(A) a national primary drinking water regula-
tion prescribed under section 300g–1 of this title,
(B) an applicable underground injection control
program, or (C) any requirement to monitor an
unregulated contaminant pursuant to sub-
section (a) of this section, or person in charge of
any of the property of such supplier or other
person referred to in clause (A), (B), or (C), is au-
thorized to enter any establishment, facility, or
other property of such supplier or other person
in order to determine whether such supplier or
other person has acted or is acting in compli-
ance with this subchapter, including for this
purpose, inspection, at reasonable times, of
records, files, papers, processes, controls, and fa-
cilities, or in order to test any feature of a pub-
lic water system, including its raw water source.
The Administrator or the Comptroller General
(or any representative designated by either)
shall have access for the purpose of audit and
examination to any records, reports, or informa-
tion of a grantee which are required to be main-
tained under subsection (a) of this section or
which are pertinent to any financial assistance
under this subchapter.

(2) No entry may be made under the first
sentence of paragraph (1) in an establishment, faci-
ility, or other property of a supplier of water or
other person subject to a national primary
drinking water regulation if the establishment,
facility, or other property is located in a State
which has primary enforcement responsibility
for public water systems unless, before written
notice of such entry is made, the Administrator
(or his representative) notifies the State agency
charged with responsibility for safe drinking
water of the reasons for such entry. The Admin-
istrator shall, upon a showing by the State
agency that such an entry will be detrimental to
the administration of the State’s program of
primary enforcement responsibility, take such
showing into consideration in determining
whether to make such entry. No State agency
which receives notice under this paragraph of
an entry proposed to be made under paragraph (1)
may use the information contained in the notice
to inform the person whose property is proposed
to be entered of the proposed entry; and if a State
agency so uses such information, notice to
the agency under this paragraph is not required
until such time as the Administrator determines
the agency has provided him satisfactory assur-
ances that it will no longer so use information
contained in a notice under this paragraph.

(c) Penalty

Whoever fails or refuses to comply with any
requirement of subsection (a) of this section or
to allow the Administrator, the Comptroller
General, or representatives of either, to enter
and conduct any audit or inspection authorized
by subsection (b) of this section shall be subject
to a civil penalty of not to exceed $25,000.

(d) Confidential Information; Trade Secrets
and Secret Processes; Information Disclosure; "In-
formation Required under this Section" De-
fined

(1) Subject to paragraph (2), upon a showing
satisfactory to the Administrator by any person
that any information required under this section
from such person, if made public, would divulge
trade secrets or secret processes of such person,
the Administrator shall consider such information
confidential in accordance with the pur-
poses of section 1905 of title 18. If the applicant
fails to make a showing satisfactory to the Ad-
mnistrator under subsection (i) of this section
that any information required under this section
satisfactory to the Administrator by any person
from such person, if made public, would divulge
that any information required under this section

(2) Any information required under this sec-
tion (A) may be disclosed to other officers, em-
ployees, or authorized representatives of the
United States concerned with carrying out this
subchapter or to committees of the Congress, or
when relevant in any proceeding under this sub-
chapter, and (B) shall be disclosed to the extent
it deals with the level of contaminants in drink-
ing water. For purposes of this subsection the
term "information required under this section"
means any papers, books, documents, or informa-
tion, or any particular part thereof, reported to
or otherwise obtained by the Administrator
under this section.

(e) "Grantee" and "Person" Defined

For purposes of this section, (1) the term
"grantee" means any person who applies for or
receives financial assistance, by grant, contract,
or loan guarantee under this subchapter, and (2)
the term "person" includes a Federal agency.
(f) Information regarding drinking water coolers

The Administrator may utilize the authorities of this section for purposes of part F of this subchapter. Any person who manufactures, imports, sells, or distributes drinking water coolers in interstate commerce shall be treated as a supplier of water for purposes of applying the provisions of this section in the case of persons subject to part F of this subchapter.

(g) Occurrence data base

(1) In general

Not later than 3 years after August 6, 1996, the Administrator shall assemble and maintain a national drinking water contaminant occurrence data base, using information on the occurrence of both regulated and unregulated contaminants in public water systems obtained under subsection (a)(1)(A) of this section or subsection (a)(2) of this section and reliable information from other public and private sources.

(2) Public input

In establishing the occurrence data base, the Administrator shall solicit recommendations from the Science Advisory Board, the States, and other interested parties concerning the development and maintenance of a national drinking water contaminant occurrence data base, including such issues as the structure and design of the data base, data input parameters and requirements, and the use and interpretation of data.

(3) Use

The data shall be used by the Administrator in making determinations under section 300g–1(b)(1) of this title with respect to the occurrence of a contaminant in drinking water at a level of public health concern.

(4) Public recommendations

The Administrator shall periodically solicit recommendations from the appropriate officials of the National Academy of Sciences and the States, and any person may submit recommendations to the Administrator, with respect to contaminants that should be included in the national drinking water contaminant occurrence data base, including recommendations with respect to additional unregulated contaminants that should be listed under subsection (a)(2) of this section. Any recommendation submitted under this clause shall be accompanied by reasonable documentation that—

(A) the contaminant occurs or is likely to occur in drinking water; and

(B) the contaminant poses a risk to public health.

(5) Public availability

The information from the data base shall be available to the public in readily accessible form.

(6) Regulated contaminants

With respect to each contaminant for which a national primary drinking water regulation has been established, the data base shall include information on the detection of the contaminant at a quantifiable level in public water systems (including detection of the contaminant at levels not constituting a violation of the maximum contaminant level for the contaminant).

(7) Unregulated contaminants

With respect to contaminants for which a national primary drinking water regulation has not been established, the data base shall include—

(A) monitoring information collected by public water systems that serve a population of more than 10,000, as required by the Administrator under subsection (a) of this section;

(B) monitoring information collected from a representative sampling of public water systems that serve a population of 10,000 or fewer; and

(C) other reliable and appropriate monitoring information on the occurrence of the contaminants in public water systems that is available to the Administrator.

(h) Availability of information on small system technologies

For purposes of sections 300g–1(b)(4)(E) and 300g–4(e) of this title (relating to small system variance program), the Administrator may request information on the characteristics of commercially available treatment systems and technologies, including the effectiveness and performance of the systems and technologies under various operating conditions. The Administrator may specify the form, content, and submission date of information to be submitted by manufacturers, States, and other interested persons for the purpose of considering the systems and technologies in the development of regulations or guidance under sections 300g–1(b)(4)(E) and 300g–4(e) of this title.

(i) Screening methods

The Administrator shall review new analytical methods to screen for regulated contaminants and may approve such methods as are more accurate or cost-effective than established reference methods for use in compliance monitoring.

Amendments

1996—Subsec. (a)(1). Pub. L. 104–182, § 125(a), amended par. (1) generally. Prior to amendment, par. (1) read as follows: “Every person who is a supplier of water, who is or may be otherwise subject to a primary drinking water regulation prescribed under section 300g–1 of this title or to an applicable underground injection control program (as defined in section 300h–1(c) of this title), who is or may be subject to the permit requirement of section 300h–3 of this title, or to an order issued under section 300j of this title, or who is a grantee, shall establish and maintain such records, make such reports, conduct such monitoring, and provide such information as the Administrator may reasonably require by regu-
lation to assist him in establishing regulations under this subchapter, in determining whether such person has acted or is acting in compliance with this subchapter, in administering any program of financial assistance under this subchapter, in evaluating the health risks of unregulated contaminants, or in advising the public of such risks. In requiring a public water system to monitor under this subsection, the Administrator may take into consideration the system size and the contaminants likely to be found in the system's drinking water.\(^1\)

Subsec. (a)(2) to (8). Pub. L. 104–182, §125(c), added heading and text of par. (2) and struck out former pars. (2) to (8) which directed Administrator, not later than 18 months after June 19, 1986, to promulgate regulations requiring every public water system to conduct a monitoring program for unregulated contaminants, specified contents of regulations, provided for reporting and notification of availability of results of monitoring, waiver of monitoring requirements, and compliance by small systems, and authorized appropriations for fiscal year ending Sept. 30, 1987.

Subsec. (b). Pub. L. 104–182, §111(b), added subsec. (g).


Subsec. (i). Pub. L. 104–182, §125(d), added subsec. (i).


1986—Subsec. (a)(1). Pub. L. 99–339, §106(a)(b), designated existing provisions as par. (1) and inserted provisions permitting Administrator to consider size of system and contaminants likely to be found.

Subsec. (a)(2) to (7). Pub. L. 99–339, §106(b), added pars. (2) to (7).


Subsec. (c). Pub. L. 99–339, §106(c), substituted “shall be subject to a civil penalty of not to exceed $25,000” for “may be fined not more than $5,000”.


Subsec. (b)(1). Pub. L. 95–190, §12(d), designated existing provisions as cl. (A) and (B) and added cl. (C) and reference to such cl. (A) to (C).

§ 300j–5. National Drinking Water Advisory Council

(a) Establishment; membership; representation of interests; term of office, vacancies; reappointment

There is established a National Drinking Water Advisory Council which shall consist of fifteen members appointed by the Administrator after consultation with the Secretary. Five members shall be appointed from the general public; five members shall be appointed from State and local agencies concerned with water hygiene and public water supply; and five members shall be appointed from representatives of private organizations or groups demonstrating an active interest in the field of water hygiene and public water supply, of which two such members shall be associated with small, rural public water systems. Each member of the Council shall hold office for a term of three years, except that—

(1) any member appointed to fill a vacancy occurring prior to the expiration of the term for which his predecessor was appointed shall be appointed for the remainder of such term; and

(2) the terms of the members first taking office shall expire as follows: Five shall expire three years after December 16, 1974, five shall expire two years after such date, and five shall expire one year after such date, as designated by the Administrator at the time of appointment.

The members of the Council shall be eligible for reappointment.

(b) Functions

The Council shall advise, consult with, and make recommendations to, the Administrator on matters relating to activities, functions, and policies of the Agency under this subchapter.

(c) Compensation and allowances; travel expenses

Members of the Council appointed under this section shall, while attending meetings or conferences of the Council or otherwise engaged in business of the Council, receive compensation and allowances at a rate to be fixed by the Administrator, but not exceeding the daily equivalent of the annual rate of basic pay in effect for grade GS–18 of the General Schedule for each day (including travel time) during which such person is engaged in the actual performance of duties in the Government service.

(3) Advisory committee termination provision inapplicable

Section 14(a) of the Federal Advisory Committee Act (relating to termination) shall not apply to the Council.


References in Text

Section 5703 of title 5, referred to in subsec. (c), was amended generally by Pub. L. 94–22, §4, May 19, 1975, 89 Stat. 85, and, as so amended, does not contain a subsec. (b).

Section 14(a) of the Federal Advisory Committee Act, referred to in subsec. (d), is section 14(a) of Pub. L. 92–463, which is set out in the Appendix to Title 5, Government Organization and Employees.

Amendments

1996—Subsec. (a). Pub. L. 104–182 inserted “, of which two such members shall be associated with small, rural public water systems” before period at end of second sentence.

Termination of Advisory Committees

Pub. L. 93–641, §6, Jan. 4, 1974, 88 Stat. 2275, set out as a note under section 217a of this title, provided that an advisory committee established pursuant to the Public Health Service Act shall terminate at such time as may be specifically prescribed by an Act of Congress enacted after Jan. 4, 1974.

References in Other Laws to GS–16, 17, or 18 Pay Rates

References in laws to the rates of pay for GS–16, 17, or 18 are to maximum rates of pay under the General Schedule, to be considered references to rates payable under specified sections of Title 5, Government Organization and Employees, see section 529 (title I, §101(c)(1)) of Pub. L. 101–509, set out in a note under section 5376 of Title 5.

\(^1\) See References in Text note below.
§ 300j-6. Federal agencies

(a) In general

Each department, agency, and instrumentality of the executive, legislative, and judicial branches of the Federal Government—

(1) owning or operating any facility in a wellhead protection area;
(2) engaged in any activity at such facility resulting, or which may result, in the contamination of water supplies in any such area;
(3) owning or operating any public water system; or
(4) engaged in any activity resulting, or which may result in, underground injection which endangers drinking water (within the meaning of section 300h(d)(2) of this title),

shall be subject to, and comply with, all Federal, State, interstate, and local requirements, both substantive and procedural (including any requirement for permits or reporting or any provisions for injunctive relief and such sanctions as may be imposed by a court to enforce such relief), respecting the protection of such wellhead areas, respecting such public water systems, and respecting any underground injection in the same manner and to the same extent as any person is subject to such requirements, including the payment of reasonable service charges. The Federal, State, interstate, and local substantive and procedural requirements referred to in this subsection include, but are not limited to, all administrative orders and all civil and administrative penalties and fines, regardless of whether such penalties or fines are punitive or coercive in nature or are imposed for isolated, intermittent, or continuing violations. The United States hereby expressly waives any immunity otherwise applicable to the United States with respect to any such substantive or procedural requirement (including, but not limited to, any injunctive relief, administrative order or civil or administrative penalty or fine referred to in the preceding sentence, or reasonable service charge). The reasonable service charges referred to in this subsection include, but are not limited to, all fees or charges assessed in connection with the processing and issuance of permits, renewal of permits, amendments to permits, review of plans, studies, and other documents, and inspection and monitoring of facilities, as well as any other nondiscriminatory charges that are assessed in connection with a Federal, State, interstate, or local regulatory program respecting the protection of wellhead areas or public water systems or respecting any underground injection. Neither the United States, nor any agent, employee, or officer thereof, shall be immune or exempt from any process or sanction of any State or Federal Court of respect to the enforcement of any such injunctive relief. No agent, employee, or officer of the United States shall be personally liable for any civil penalty under any Federal, State, interstate, or local law concerning the protection of wellhead areas or public water systems or concerning underground injection with respect to any act or omission within the scope of the official duties of the agent, employee, or officer. An agent, employee, or officer of the United States shall be subject to any criminal sanction (including, but not limited to, any fine or imprisonment) under any Federal or State requirement adopted pursuant to this subchapter, but no department, agency, or instrumentality in the executive branch from compliance with such a requirement if he determines it to be in the paramount interest of the United States to do so. No such exemption shall be granted due to lack of appropriation unless the President shall have specifically requested such appropriation as a part of the budgetary process and the Congress shall have failed to make available such requested appropriation. Any exemption shall be for a period not in excess of 1 year, but additional exemptions may be granted for periods not to exceed 1 year upon the President’s making a new determination. The President shall report each January to the Congress all exemptions from the requirements of this section granted during the preceding calendar year, together with his reason for granting each such exemption.

(b) Administrative penalty orders

(1) In general

If the Administrator finds that a Federal agency has violated an applicable requirement under this subchapter, the Administrator may issue a penalty order assessing a penalty against the Federal agency.

(2) Penalties

The Administrator may, after notice to the agency, assess a civil penalty against the agency in an amount not to exceed $25,000 per day per violation.

(3) Procedure

Before an administrative penalty order issued under this subsection becomes final, the Administrator shall provide the agency an opportunity for a hearing on the record in accordance with chapters 5 and 7 of title 5.

(4) Public review

(A) In general

Any interested person may obtain review of an administrative penalty order issued under this subsection. The review may be obtained in the United States District Court for the District of Columbia or in the United States District Court for the district in which the violation is alleged to have occurred by the filing of a complaint with the court within the 30-day period beginning on the date the penalty order becomes final. The person filing the complaint shall simultaneously send a copy of the complaint by certified mail to the Administrator and the Attorney General.

(B) Record

The Administrator shall promptly file in the court a certified copy of the record on which the order was issued.
(C) Standard of review

The court shall not set aside or remand the order unless the court finds that there is not substantial evidence in the record, taken as a whole, to support the finding of a violation or that the assessment of the penalty by the Administrator constitutes an abuse of discretion.

(D) Prohibition on additional penalties

The court may not impose an additional civil penalty for a violation that is subject to the order unless the court finds that the assessment constitutes an abuse of discretion by the Administrator.

(c) Limitation on State use of funds collected from Federal Government

Unless a State law in effect on August 6, 1996, or a State constitution requires the funds to be used in a different manner, all funds collected by a State from the Federal Government from penalties and fines imposed for violation of any substantive or procedural requirement referred to in subsection (a) of this section shall be used by the State only for projects designed to improve or protect the environment or to defray the costs of environmental protection or enforcement.

(d) Indian rights and sovereignty as unaffected; “Federal agency” defined

(1) Nothing in the Safe Drinking Water Amendments of 1977 shall be construed to alter or affect the status of American Indian lands or water rights nor to waive any sovereignty over Indian lands guaranteed by treaty or statute.

(2) For the purposes of this chapter, the term “Federal agency” shall not be construed to refer to or include any American Indian tribe, nor to the Secretary of the Interior in his capacity as trustee of Indian lands.

(e) Washington Aqueduct

The Secretary of the Army shall not pass the cost of any penalty assessed under this subchapter on to any customer, user, or other purchaser of drinking water from the Washington Aqueduct system, including finished water from the Dalecarlia or McMillan treatment plant.


REFERENCES IN TEXT


AMENDMENTS

1996—Subsecs. (a) to (d). Pub. L. 104–182, §129(a), added subsecs. (a) to (c), redesignated former subsec. (c) as (d), and struck out former subsecs. (a) and (b) which related to compliance by Federal agencies with Federal, State, and local requirements respecting provision of safe drinking water and respecting underground injection programs, liability for civil penalties, and waiver of compliance requirements when necessary in interest of national security.

Subsec. (e). Pub. L. 104–182, §129(c), added subsec. (e).

1977—Subsec. (a). Pub. L. 95–190, §§8(a), substituted provisions relating to compliance by Federal agencies having jurisdiction over federally owned or maintained public water systems, or engaged in underground injection activities with Federal, State, and local requirements, etc., for provisions relating to compliance by Federal agencies having jurisdiction over federally owned or maintained public water systems with national primary drinking water regulations.

Subsec. (c). Pub. L. 95–190, §8(d), added subsec. (c).

§300j–7. Judicial review

(a) Courts of appeals; petition for review: actions respecting regulations; filing period; grounds arising after expiration of filing period; exclusiveness of remedy

A petition for review of—

(1) actions pertaining to the establishment of national primary drinking water regulations (including maximum contaminant level goals) may be filed only in the United States Court of Appeals for the District of Columbia circuit; and

(2) any other final action of the Administrator under this chapter may be filed in the circuit in which the petitioner resides or transacts business which is directly affected by the action.

Any such petition shall be filed within the 45-day period beginning on the date of the promulgation of the regulation or any other final Agency action with respect to which review is sought on the date of the determination with respect to which review is sought, and may be filed after the expiration of such 45-day period if the petition is based solely on grounds arising after the expiration of such period. Action of the Administrator with respect to which review could have been obtained under this subsection shall not be subject to judicial review in any civil or criminal proceeding for enforcement or in any civil action to enjoin enforcement. In any petition concerning the assessment of a civil penalty pursuant to section 300g–3(g)(3)(B) of this title, the petitioner shall simultaneously send a copy of the complaint by certified mail to the Administrator and the Attorney General. The court shall set aside and remand the penalty order if the court finds that there is not substantial evidence in the record to support the finding of a violation or that the assessment of the penalty by the Administrator constitutes an abuse of discretion.

(b) District courts; petition for review: actions respecting variances or exemptions; filing period; grounds arising after expiration of filing period; exclusiveness of remedy

The United States district courts shall have jurisdiction of actions brought to review (1) the granting of, or the refusing to grant, a variance or exemption under section 300g–4 or 300g–5 of this title or (2) the requirements of any schedule prescribed for a variance or exemption under such section or the failure to prescribe such a schedule. Such an action may only be brought upon a petition for review filed with the court within the 45-day period beginning on the date the action sought to be reviewed is taken or, in the case of a petition to review the refusal to
grant a variance or exemption or the failure to prescribe a schedule, within the 45-day period beginning on the date action is required to be taken on the variance, exemption, or schedule, as the case may be. A petition for such review may be filed after the expiration of such period if the petition is based solely on grounds arising after the expiration of such period. Action with respect to which review could have been obtained under this subsection shall not be subject to judicial review in any civil or criminal proceeding for enforcement or in any civil action to enjoin enforcement.

(c) Judicial order for additional evidence before Administrator; modified or new findings; recommendation for modification or setting aside of original determination

In any judicial proceeding in which review is sought of a determination under this subchapter required to be made on the record after notice and opportunity for hearing, if any party applies to the court for leave to adduce additional evidence and shows to the satisfaction of the court that such additional evidence is material and that there were reasonable grounds for the failure to adduce such evidence in the proceeding before the Administrator, the court may order such additional evidence (and evidence in rebuttal thereof) to be taken before the Administrator, in such manner and upon such term and conditions as the court may deem proper. The Administrator may modify his findings as to the facts, or make new findings, by reason of the additional evidence so taken, and he shall file such modified or new findings, and his recommendation, if any, for the modification or setting aside of his original determination, with the return of such additional evidence.

(2) the court finds that there is not substantial evidence in the record to support the finding of a violation or that the court shall set aside and remand the penalty order if the court finds that there is not substantial evidence in

1

No civil action may be commenced—

(1) under subsection (a)(1) of this section respecting violation of a requirement prescribed by or under this subchapter—

(A) prior to sixty days after the plaintiff has given notice of such violation (i) to the Administrator, (ii) to any alleged violator of such requirement and (iii) to the State in which the violation occurs, or

(B) if the Administrator, the Attorney General, or the State has commenced and is diligently prosecuting a civil action in a court of the United States to require compliance with such requirement, but in any such action in a court of the United States any person may intervene as a matter of right; or

(2) under subsection (a)(2) of this section prior to sixty days after the plaintiff has given notice of such action to the Administrator; or

§ 300j–8. Citizen's civil action

(a) Persons subject to civil action; jurisdiction of enforcement proceedings

Except as provided in subsection (b) of this section, any person may commence a civil action on his own behalf—

(1) against any person (including (A) the United States, and (B) any other governmental instrumentality or agency to the extent permitted by the eleventh amendment to the Constitution) who is alleged to be in violation of any requirement prescribed by or under this subchapter;

(2) against the Administrator where there is alleged a failure of the Administrator to perform any act or duty under this subchapter which is not discretionary with the Administrator; or

(3) for the collection of a penalty by the United States Government (and associated costs and interest) against any Federal agency that fails, by the date that is 18 months after the effective date of a final order to pay a penalty assessed by the Administrator under section 300h–8(b) of this title, to pay the penalty.

No action may be brought under paragraph (1) against a public water system for a violation of a requirement prescribed by or under this subchapter which occurred within the 27-month period beginning on the first day of the month in which this subchapter is enacted. The United States district courts shall have jurisdiction, without regard to the amount in controversy or the citizenship of the parties, to enforce in an action brought under this subsection any requirement prescribed by or under this subchapter or to order the Administrator to perform an act or duty described in paragraph (2), as the case may be.

(b) Conditions for commencement of civil action; notice

No civil action may be commenced—

(1) under subsection (a)(1) of this section respecting violation of a requirement prescribed by or under this subchapter—

(A) prior to sixty days after the plaintiff has given notice of such violation (i) to the Administrator, (ii) to any alleged violator of such requirement and (iii) to the State in which the violation occurs, or

(B) if the Administrator, the Attorney General, or the State has commenced and is diligently prosecuting a civil action in a court of the United States to require compliance with such requirement, but in any such action in a court of the United States any person may intervene as a matter of right; or

So in original. Probably should be section ‘‘300j–6(b)’’.
section 300j–7 of this title for a variance or exemption, unless such person shows to the satisfaction of the court that the State has in a substantial number of cases failed to prescribe such schedules.

(c) Intervention of right

In any action under this section, the Administrator or the Attorney General, if not a party, may intervene as a matter of right.

(d) Costs; attorney fees; expert witness fees; filing of bond

The court, in issuing any final order in any action brought under subsection (a) of this section, may award costs of litigation (including reasonable attorney and expert witness fees) to any party whenever the court determines such an award is appropriate. The court may, if a temporary restraining order or preliminary injunction is sought, require the filing of a bond or equivalent security in accordance with the Federal Rules of Civil Procedure.

(e) Availability of other relief

Nothing in this section shall restrict any right which any person (or class of persons) may have under any statute or common law to seek enforcement of any requirement prescribed by or under this subchapter or to seek any other relief. Nothing in this section or in any other law of the United States shall be construed to prohibit, exclude, or restrict any State or local government from—

(1) bringing any action or obtaining any remedy or sanction in any State or local court, or

(2) bringing any administrative action or obtaining any administrative remedy or sanction, against any agency of the United States under State or local law to enforce any requirement respecting the provision of safe drinking water or respecting any underground injection control program. Nothing in this section shall be construed to authorize judicial review of regulations or orders of the Administrator under this subchapter, except as provided in section 300j–7 of this title. For provisions providing for application of certain requirements to such agencies in the same manner as to nongovernmental entities, see section 300j–6 of this title.


REFERENCES IN TEXT

The Federal Rules of Civil Procedure, referred to in subsec. (d), are set out in the Appendix to Title 28, Judiciary and Judicial Procedure.
the Administrator is a party. Unless, within a reasonable time, the Attorney General notifies the Administrator that he will appear in such action, attorneys appointed by the Administrator shall appear and represent him.

(g) Authority of Administrator under other provisions unaffected

The provisions of this subchapter shall not be construed as affecting any authority of the Administrator under part G of subchapter II of this chapter.

(h) Reports to Congressional committees; review by Office of Management and Budget: submittal of comments to Congressional committees

Not later than April 1 of each year, the Administrator shall submit to the Committee on Commerce, Science, and Transportation of the Senate and the Committee on Energy and Commerce of the House of Representatives a report respecting the activities of the Agency under this subchapter and containing such recommendations for legislation as he considers necessary. The report of the Administrator under this subsection which is due not later than April 1, 1975, and each subsequent report of the Administrator under this subsection shall include a statement on the actual and anticipated cost to public water systems in each State of compliance with the requirements of this subchapter. The Office of Management and Budget may review any report required by this subsection before its submission to such committees of Congress, but the Office may not revise any such report, require any revision in any such report, or delay its submission beyond the day prescribed for its submission, and may submit to such committees of Congress its comments respecting any such report.

(i) Discrimination prohibition; filing of complaint; investigation; orders of Secretary; notice and hearing; settlements; attorneys’ fees; judicial review; filing of petition; procedural requirements; stay of orders; exclusiveness of remedy; civil actions for enforcement of orders; appropriate relief; mandamus proceedings; prohibition inapplicable to undirected but deliberate violations

(1) No employer may discharge any employee or otherwise discriminate against any employee with respect to his compensation, terms, conditions, or privileges of employment because the employee (or any person acting pursuant to a request of the employee) has—

(A) commenced, caused to be commenced, or is about to commence or cause to be commenced a proceeding under this subchapter or a proceeding for the administration or enforcement of drinking water regulations or underground injection control programs of a State, 

(B) testified or is about to testify in any such proceeding, or 

(C) assisted or participated or is about to assist or participate in any manner in such a proceeding or in any other action to carry out the purposes of this subchapter.

(2)(A) Any employee who believes that he has been discharged or otherwise discriminated against by any person in violation of paragraph (1) may, within 30 days after such violation occurs, file (or have any person file on his behalf) a complaint with the Secretary of Labor (hereinafter in this subsection referred to as the “Secretary”) alleging such discharge or discrimination. Upon receipt of such a complaint, the Secretary shall notify the person named in the complaint of the filing of the complaint.

(B)(i) Upon receipt of a complaint filed under subparagraph (A), the Secretary shall conduct an investigation of the violation alleged in the complaint. Within 30 days of the receipt of such complaint, the Secretary shall complete such investigation and shall notify in writing the complainant (and any person acting in his behalf) and the person alleged to have committed such violation of the results of the investigation conducted pursuant to this subparagraph. Within 90 days of the receipt of such complaint the Secretary shall, unless the proceeding on the complaint is terminated by the Secretary on the basis of a settlement entered into by the Secretary and the person alleged to have committed such violation, issue an order either providing the relief prescribed by clause (ii) or denying the complaint. An order of the Secretary shall be made on the record after notice and opportunity for agency hearing. The Secretary may not enter into a settlement terminating a proceeding on a complaint without the participation and consent of the complainant.

(ii) If in response to a complaint filed under subparagraph (A) the Secretary determines that a violation of paragraph (1) has occurred, the Secretary shall order (I) the person who committed such violation to take affirmative action to abate the violation, (II) such person to reinstate the complainant to his former position together with the compensation (including back pay), terms, conditions, and privileges of his employment, (III) compensatory damages, and (IV) where appropriate, exemplary damages. If such an order is issued, the Secretary, at the request of the complainant, shall assess against the person against whom the order is issued a sum equal to the aggregate amount of all costs and expenses (including attorneys’ fees) reasonably incurred, as determined by the Secretary, by the complainant for, or in connection with, the bringing of the complaint upon which the order was issued.

(3)(A) Any person adversely affected or aggrieved by an order issued under paragraph (2) may obtain review of the order in the United States Court of Appeals for the circuit in which the violation, with respect to which the order was issued, allegedly occurred. The petition for review must be filed within sixty days from the issuance of the Secretary’s order. Review shall conform to chapter 7 of title 5. The commencement of proceedings under this subparagraph shall not, unless ordered by the court, operate as a stay of the Secretary’s order.

(B) An order of the Secretary with respect to which review could have been obtained under subparagraph (A) shall not be subject to judicial review in any criminal or other civil proceeding.

(4) Whenever a person has failed to comply with an order issued under paragraph (2)(B), the Secretary shall file a civil action in the United States District Court of the District of Columbia...
States District Court for the district in which the violation was found to occur to enforce such order. In actions brought under this paragraph, the district courts shall have jurisdiction to grant all appropriate relief including, but not limited to, injunctive relief, compensatory, and exemplary damages.

(5) Any nondiscretionary duty imposed by this section is enforceable in mandamus proceeding brought under section 1361 of title 28.

(6) Paragraph (1) shall not apply with respect to any employee who, acting without direction from his employer (or the employer’s agent), deliberately causes a violation of any requirement of this subchapter.

(7) Subsection (g) of section 1452 of title 42 applies to any construction project carried out in whole or in part with assistance made available by a drinking water treatment revolving loan fund authorized by section 1452 of that Act (42 U.S.C. 300j–12).

§ 300j–10. Appointment of scientific, etc., personnel by Administrator of Environmental Protection Agency for implementation of responsibilities; compensation

To the extent that the Administrator of the Environmental Protection Agency deems such action necessary to the discharge of his functions under title XIV of the Public Health Service Act [42 U.S.C. 300 et seq.] (relating to safe drinking water) and under other provisions of law, he may appoint personnel to fill not more than thirty scientific, engineering, professional, legal, and administrative positions within the Environmental Protection Agency without regard to the civil service laws and may fix the compensation of such personnel in excess of the maximum rate payable for GS–18 of the General Schedule under section 5322 of title 5.

§ 300j–11. Indian Tribes

(a) In general

Subject to the provisions of subsection (b) of this section, the Administrator—

(1) is authorized to treat Indian Tribes as States under this subchapter,

(2) may delegate to such Tribes primary enforcement responsibility for public water systems and for underground injection control, and

(3) may provide such Tribes grant and contract assistance to carry out functions provided for in this subchapter.

(b) EPA regulations

(1) Specific provisions

The Administrator shall, within 18 months after June 19, 1996, promulgate final regulations specifying those provisions of this subchapter for which it is appropriate to treat Indian Tribes as States. Such treatment shall be authorized only if:
(A) the Indian Tribe is recognized by the Secretary of the Interior and has a governing body carrying out substantial governmental duties and powers;

(B) the functions to be exercised by the Indian Tribe are within the area of the Tribal Government’s jurisdiction; and

(C) the Indian Tribe is reasonably expected to be capable, in the Administrator’s judgment, of carrying out the functions to be exercised in a manner consistent with the terms and purposes of this subchapter and of all applicable regulations.

(2) Provisions where treatment as State inappropriate

For any provision of this subchapter where treatment of Indian Tribes as identical to States is inappropriate, administratively infeasible or otherwise inconsistent with the purposes of this subchapter, the Administrator may include in the regulations promulgated under this section, other means for administering such provision in a manner that will achieve the purpose of the provision. Nothing in this section shall be construed to allow Indian Tribes to assume or maintain responsibility for public water systems or for underground injection control in a manner less protective of the health of persons than such responsibility may be assumed or maintained by a State. An Indian tribe¹ shall not be required to exercise criminal enforcement jurisdiction for purposes of complying with the preceding sentence.


AMENDMENTS

1996—Pub. L. 104–182 made technical amendment to section catchline and subsec. (a) designation.

§ 300j–12. State revolving loan funds

(a) General authority

(1) Grants to States to establish State loan funds

(A) In general

The Administrator shall offer to enter into agreements with eligible States to make capitalization grants, including letters of credit, to the States under this subsection to further the health protection objectives of this subchapter, promote the efficient use of fund resources, and for other purposes as are specified in this subchapter.

(B) Establishment of fund

To be eligible to receive a capitalization grant under this section, a State shall establish a drinking water treatment revolving loan fund (referred to in this section as a “State loan fund”) and comply with the other requirements of this section. Each grant to a State under this section shall be deposited in the State loan fund established by the State, except as otherwise provided in this section and in other provisions of this subchapter. No funds authorized by other provisions of this subchapter to be used for other purposes specified in this subchapter shall be deposited in any State loan fund.

(C) Extended period

The grant to a State shall be available to the State for obligation during the fiscal year for which the funds are authorized and during the following fiscal year, except that grants made available from funds provided prior to fiscal year 1997 shall be available for obligation during each of the fiscal years 1997 and 1998.

(D) Allotment formula

Except as otherwise provided in this section, funds made available to carry out this section shall be allotted to States that have entered into an agreement pursuant to this section (other than the District of Columbia) in accordance with—

(i) for each of fiscal years 1995 through 1997, a formula that is the same as the formula used to distribute public water system supervision grant funds under section 300j–2 of this title in fiscal year 1995 except that the minimum proportionate share established in the formula shall be 1 percent of available funds and the formula shall be adjusted to include a minimum proportionate share for the State of Wyoming and the District of Columbia; and

(ii) for fiscal year 1998 and each subsequent fiscal year, a formula that allocates to each State the proportional share of the State needs identified in the most recent survey conducted pursuant to subsection (b) of this section, except that the minimum proportionate share provided to each State shall be the same as the minimum proportionate share provided under clause (i).

(E) Reallotment

The grants not obligated by the last day of the period for which the grants are available shall be reallotted according to the appropriate criteria set forth in subparagraph (D), except that the Administrator may reserve and allocate 10 percent of the remaining amount for financial assistance to Indian Tribes in addition to the amount allotted under subsection (i) of this section and none of the funds reallocated by the Administrator shall be reallocated to any State that has not obligated all sums allotted to the State pursuant to this section during the period in which the sums were available for obligation.

(F) Nonprimacy States

The State allotment for a State not exercising primary enforcement responsibility for public water systems shall not be deposited in any such fund but shall be allotted by the Administrator under this subparagraph. Pursuant to section 300j–2(a)(9)(A) of this title such sums allotted under this subparagraph shall be reserved as needed by the Administrator to exercise primary enforcement responsibility for purposes of this subchapter. No funds authorized by other provisions of this subchapter to be used for other purposes specified in this subchapter shall be deposited in any State loan fund.
responsibility under this subchapter in such State and the remainder shall be reallocated to States exercising primary enforcement responsibility for public water systems for deposit in such funds. Whenever the Administrator makes a final determination pursuant to section 300g–2(b) of this title that the requirements of section 300g–2(a) of this title are no longer being met by a State, additional grants for such State under this subchapter shall be immediately terminated by the Administrator. This subparagraph shall not apply to any State not exercising primary enforcement responsibility for public water systems as of August 6, 1996.

(G) Other programs
(i) New system capacity

Beginning in fiscal year 1999, the Administrator shall withhold 20 percent of each capitalization grant made pursuant to this section to a State unless the State has met the requirements of section 300g–9(a) of this title (relating to capacity development) and shall withhold 10 percent for fiscal year 2001, 15 percent for fiscal year 2002, and 20 percent for fiscal year 2003 if the State has not complied with the provisions of section 300g–9(c) of this title (relating to capacity development strategies). Not more than a total of 20 percent of the capitalization grants made to a State in any fiscal year may be withheld under the preceding provisions of this clause. All funds withheld by the Administrator pursuant to this clause shall be reallocated by the Administrator on the basis of the same ratio as is applicable to funds allotted under subparagraph (D). None of the funds reallocated by the Administrator pursuant to this paragraph shall be allotted to a State unless the State has met the requirements of section 300g–9 of this title (relating to capacity development).

(ii) Operator certification

The Administrator shall withhold 20 percent of each capitalization grant made pursuant to this section unless the State has met the requirements of section 300g–8 of this title (relating to operator certification). All funds withheld by the Administrator pursuant to this clause shall be reallocated by the Administrator on the basis of the same ratio as applicable to funds allotted under subparagraph (D). None of the funds reallocated by the Administrator pursuant to this paragraph shall be allotted to a State unless the State has met the requirements of section 300g–8 of this title (relating to operator certification).

(2) Use of funds

Except as otherwise authorized by this subchapter, amounts deposited in a State loan fund, including loan repayments and interest earned on such amounts, shall be used only for providing loans or loan guarantees, or as a source of reserve and security for leveraged loans, the proceeds of which are deposited in a State loan fund established under paragraph (1), or other financial assistance authorized under this section to community water systems and nonprofit noncommunity water systems, other than systems owned by Federal agencies. Financial assistance under this section may be used by a public water system only for expenditures (not including monitoring, operation, and maintenance expenditures) of a type or category which the Administrator has determined, through guidance, will facilitate compliance with national primary drinking water regulations applicable to the system under section 300g–1 of this title or otherwise significantly further the health protection objectives of this subchapter. The funds may also be used to provide loans to a system referred to in section 300g–4(b) of this title for the purpose of providing the treatment described in section 300g–4(b)(1)(III) of this title.

The funds shall not be used for the acquisition of real property or interests therein, unless the acquisition is integral to a project authorized by this paragraph and the purchase is from a willing seller. Of the amount credited to any State loan fund established under this section in any fiscal year, 15 percent shall be available solely for providing loan assistance to public water systems which regularly serve fewer than 10,000 persons to the extent such funds can be obligated for eligible projects of public water systems.

(3) Limitation
(A) In general

Except as provided in subparagraph (B), no assistance under this section shall be provided to a public water system that—

(i) does not have the technical, managerial, and financial capability to ensure compliance with the requirements of this subchapter; or

(ii) is in significant noncompliance with any requirement of a national primary drinking water regulation or variance.

(B) Restructuring

A public water system described in subparagraph (A) may receive assistance under this section if—

(i) the use of the assistance will ensure compliance; and

(ii) if subparagraph (A)(i) applies to the system, the owner or operator of the system agrees to undertake feasible and appropriate changes in operations (including ownership, management, accounting, rates, maintenance, consolidation, alternative water supply, or other procedures) if the State determines that the measures are necessary to ensure that the system has the technical, managerial, and financial capability to comply with the requirements of this subchapter over the long term.

(C) Review

Prior to providing assistance under this section to a public water system that is in significant noncompliance with any requirement of a national primary drinking water regulation or variance, the State shall con-
duct a review to determine whether subpara-
graph (A)(i) applies to the system.

(b) Intended use plans

(1) In general

After providing for public review and com-
ment, each State that has entered into a cap-
italization agreement pursuant to this section
shall annually prepare a plan that identifies
the intended uses of the amounts available to
the State loan fund of the State.

(2) Contents

An intended use plan shall include—

(A) a list of the projects to be assisted in
the first fiscal year that begins after the
date of the plan, including a description of
the project, the expected terms of financial
assistance, and the size of the community
served;

(B) the criteria and methods established
for the distribution of funds; and

(C) a description of the financial status of
the State loan fund and the short-term and
long-term goals of the State loan fund.

(3) Use of funds

(A) In general

An intended use plan shall provide, to the
maximum extent practicable, that priority
for the use of funds be given to projects that—

(i) address the most serious risk to
human health;

(ii) are necessary to ensure compliance
with the requirements of this subchapter
(including requirements for filtration); and

(iii) assist systems most in need on a per
household basis according to State afford-
ability criteria.

(B) List of projects

Each State shall, after notice and oppor-
tunity for public comment, publish and peri-
odically update a list of projects in the State
that are eligible for assistance under this
section, including the priority assigned to
each project and, to the extent known, the
expected funding schedule for each project.

(c) Fund management

Each State loan fund under this section shall
be established, maintained, and credited with
repayments and interest. The fund corpus shall
be established, maintained, and credited with re-
obligation or expenditure, such amounts shall be
invested in interest bearing obligations.

(d) Assistance for disadvantaged communities

(1) Loan subsidy

Notwithstanding any other provision of this
section, in any case in which the State makes
a loan pursuant to subsection (a)(2) of this sec-
tion to a disadvantaged community or to a
community that the State expects to become
a disadvantaged community as the result of a
proposed project, the State may provide addi-
tional subsidization (including forgiveness of
principal).

(2) Total amount of subsidies

For each fiscal year, the total amount of
loan subsidies made by a State pursuant to
paragraph (1) may not exceed 30 percent of the
amount of the capitalization grant received by
the State for the year.

(3) “Disadvantaged community” defined

In this subsection, the term “disadvantaged
community” means the service area of a pub-
lic water system that meets affordability cri-
teria established after public review and com-
ment by the State in which the public water
system is located. The Administrator may
publish information to assist States in estab-
lishing affordability criteria.

(e) State contribution

Each agreement under subsection (a) of this
section shall require that the State deposit in
the State loan fund from State moneys an
amount equal to at least 20 percent of the total
amount of the grant to be made to the State on
or before the date on which the grant payment
is made to the State, except that a State shall
not be required to deposit such amount into the
fund prior to the date on which each grant pay-
ment is made for fiscal years 1994, 1995, 1996, and
1997 if the State deposits the State contribution
amount into the State loan fund prior to Sep-
tember 30, 1999.

(f) Types of assistance

Except as otherwise limited by State law, the
amounts deposited into a State loan fund under
this section may be used only—

(1) to make loans, on the condition that—

(A) the interest rate for each loan is less
than or equal to the market interest rate,
including an interest free loan;

(B) principal and interest payments on
each loan will commence not later than 1
year after completion of the project for
which the loan was made, and each loan will
be fully amortized not later than 20 years
after the completion of the project, except
that in the case of a disadvantaged com-
munity (as defined in subsection (d)(3) of
this section), a State may provide an extended
term for a loan, if the extended term—

(i) terminates not later than the date
that is 30 years after the date of project
completion; and

(ii) does not exceed the expected design
life of the project;

(C) the recipient of each loan will establish
a dedicated source of revenue (or, in the case
of a privately owned system, demonstrate
that there is adequate security) for the re-
payment of the loan; and

(D) the State loan fund will be credited
with all payments of principal and interest
on each loan;

(2) to buy or refinance the debt obligation of
a municipality or an intermunicipal or inter-
state agency within the State at an interest
rate that is less than or equal to the market
interest rate in any case in which a debt obli-
gation is incurred after July 1, 1993;

(3) to guarantee, or purchase insurance for, a
local obligation (all of the proceeds of which
finance a project eligible for assistance under
this section), if the guarantee or purchase
would improve credit market access or reduce
the interest rate applicable to the obligation;
(4) as a source of revenue or security for the payment of principal and interest on revenue or general obligation bonds issued by the State if the proceeds of the sale of the bonds will be deposited into the State loan fund; and

(5) to earn interest on the amounts deposited into the State loan fund.

(g) Administration of State loan funds

(1) Combined financial administration

Notwithstanding subsection (c) of this section, a State may (as a convenience and to avoid unnecessary administrative costs) combine, in accordance with State law, the financial administration of a State loan fund established under this section with the financial administration of any other revolving fund established by the State if otherwise not prohibited by the law under which the State loan fund was established and if the Administrator determines that—

(A) the grants under this section, together with loan repayments and interest, will be separately accounted for and used solely for the purposes specified in subsection (a) of this section; and

(B) the authority to establish assistance priorities and carry out oversight and related activities (other than financial administration) with respect to assistance remains with the State agency having primary responsibility for administration of the State program under section 300g–2 of this title, after consultation with other appropriate State agencies (as determined by the State).

Provided. That in nonprimacy States eligible to receive assistance under this section, the Governor shall determine which State agency will have authority to establish priorities for financial assistance from the State loan fund.

(2) Cost of administering fund

Each State may annually use up to 4 percent of the funds allotted to the State under this section to cover the reasonable costs of administration of the programs under this section, including the recovery of reasonable costs expended to establish a State loan fund which are incurred after August 6, 1996, and to provide technical assistance to public water systems within the State. For fiscal year 1995 and each fiscal year thereafter, each State may use up to an additional 10 percent of the funds allotted to the State under this section—

(A) for public water system supervision programs under section 300j–2(a) of this title; (B) to administer or provide technical assistance through source water protection programs;

(C) to develop and implement a capacity development strategy under section 300g–9(c) of this title; and

(D) for an operator certification program for purposes of meeting the requirements of section 300g–8 of this title.

if the State matches the expenditures with at least an equal amount of State funds. At least half of the match must be additional to the amount expended by the State for public water supervision in fiscal year 1993. An additional 2 percent of the funds annually allotted to each State under this section may be used by the State to provide technical assistance to public water systems serving 10,000 or fewer persons in the State. Funds utilized under subparagraph (B) shall not be used for enforcement actions.

(3) Guidance and regulations

The Administrator shall publish guidance and promulgate regulations as may be necessary to carry out the provisions of this section, including—

(A) provisions to ensure that each State commits and expends funds allotted to the State under this section as efficiently as possible in accordance with this subchapter and applicable State laws;

(B) guidance to prevent waste, fraud, and abuse; and

(C) guidance to avoid the use of funds made available under this section to finance the expansion of any public water system in anticipation of future population growth.

The guidance and regulations shall also ensure that the States, and public water systems receiving assistance under this section, use accounting, audit, and fiscal procedures that conform to generally accepted accounting standards.

(4) State report

Each State administering a loan fund and assistance program under this subsection shall publish and submit to the Administrator a report every 2 years on its activities under this section, including the findings of the most recent audit of the fund and the entire State allotment. The Administrator shall periodically audit all State loan funds established by, and all other amounts allotted to, the States pursuant to this section in accordance with procedures established by the Comptroller General.

(h) Needs survey

The Administrator shall conduct an assessment of water system capital improvement needs of all eligible public water systems in the United States and submit a report to the Congress containing the results of the assessment within 180 days after August 6, 1996, and every 4 years thereafter.

(i) Indian Tribes

(1) In general

1½ percent of the amounts appropriated annually to carry out this section may be used by the Administrator to make grants to Indian Tribes and Alaska Native villages that have not otherwise received either grants from the Administrator under this section or assistance from State loan funds established under this section. The grants may only be used for expenditures by tribes and villages for public water system expenditures referred to in subsection (a)(2) of this section.

(2) Use of funds

Funds reserved pursuant to paragraph (1) shall be used to address the most significant threats to public health associated with public water systems that serve Indian Tribes, as de-
authorized by the Administrator in consultation with the Director of the Indian Health Service and Indian Tribes.

(3) Alaska Native villages

In the case of a grant for a project under this subsection in an Alaska Native village, the Administrator is also authorized to make grants to the State of Alaska for the benefit of Native villages. An amount not to exceed 4 percent of the grant amount may be used by the State of Alaska for project management.

(4) Needs assessment

The Administrator, in consultation with the Director of the Indian Health Service and Indian Tribes, shall, in accordance with a schedule that is consistent with the needs surveys conducted pursuant to subsection (h) of this section, prepare surveys and assess the needs of drinking water treatment facilities to serve Indian Tribes, including an evaluation of the public water systems that pose the most significant threats to public health.

(j) Other areas

Of the funds annually available under this section for grants to States, the Administrator shall make allotments in accordance with section 300j–2(a)(4) of this title for the Virgin Islands, Guam, the Commonwealth of the Northern Mariana Islands, American Samoa, and the Trust Territory. The grants allotted as provided in this subsection may be provided by the Administrator to the governments of such areas, to public water systems in such areas, or to both, to be used for the public water system expenditures referred to in subsection (a)(2) of this section. The grants, and grants for the District of Columbia, shall not be deposited in State loan funds. The total allotment of grants under this section for all areas described in this subsection in any fiscal year shall not exceed 0.33 percent of the aggregate amount made available to carry out this section in that fiscal year.

(k) Other authorized activities

(1) In general

Notwithstanding subsection (a)(2) of this section, a State may take each of the following actions:

(A) Provide assistance, only in the form of a loan, to one or more of the following:

(1) Any public water system described in subsection (a)(2) of this section to acquire land or a conservation easement from a willing seller or grantor, if the purpose of the acquisition is to protect the source water of the system from contamination and to ensure compliance with national primary drinking water regulations.

(2) Any community water system to implement local, voluntary source water protection measures to protect source water in areas delineated pursuant to section 300j–13 of this title, in order to facilitate compliance with national primary drinking water regulations.

(B) To provide assistance through a capacity development strategy pursuant to paragraph (1)(B).

(E) To make expenditures to establish and implement wellhead protection programs pursuant to paragraph (1)(D).

(3) Statutory construction

Nothing in this section creates or conveys any new authority to a State, political subdivision of a State, or community water system for any new regulatory measure, or limits any authority of a State, political subdivision of a State or community water system.

(l) Savings

The failure or inability of any public water system to receive funds under this section or any other loan or grant program, or any delay in obtaining the funds, shall not alter the obligation of the system to comply in a timely manner with all applicable drinking water standards and requirements of this subchapter.

(m) Authorization of appropriations

There are authorized to be appropriated to carry out the purposes of this section $599,000,000 for the fiscal year 1994 and $1,000,000,000 for each of the fiscal years 1995 through 2003. To the extent amounts authorized to be appropriated under this subsection in any fiscal year are not appropriated in that fiscal year, such amounts are authorized to be appropriated in a subsection.
quent fiscal year (prior to the fiscal year 2004). Such sums shall remain available until expended.

(n) Health effects studies

From funds appropriated pursuant to this section for each fiscal year, the Administrator shall reserve $10,000,000 for health effects studies on drinking water contaminants authorized by the Safe Drinking Water Act Amendments of 1996. In allocating funds made available under this subsection, the Administrator shall give priority to studies concerning the health effects of cryptosporidium (as authorized by section 300j–18(c) of this title), disinfection byproducts (as authorized by section 300j–18(e) of this title), and arsenic (as authorized by section 300j–1(b)(12)(A) of this title), and the implementation of a plan for studies of subpopulations at greater risk of adverse effects (as authorized by section 300j–18(a) of this title).

(o) Monitoring for unregulated contaminants

From funds appropriated pursuant to this section for each fiscal year beginning with fiscal year 1996, the Administrator shall reserve $2,000,000 to pay the costs of monitoring for unregulated contaminants under section 300j–4(a)(2)(C) of this title.

(p) Demonstration project for State of Virginia

Notwithstanding the other provisions of this section limiting the use of funds deposited in a State loan fund from any State allotment, the State of Virginia may, as a single demonstration and with the approval of the Virginia General Assembly and the Administrator, conduct a program to demonstrate alternative approaches to intergovernmental coordination to assist in the financing of new drinking water facilities in the following rural communities in southwestern Virginia where none exists on August 6, 1996, and where such communities are experiencing economic hardship: Lee County, Wise County, Scott County, Dickenson County, Russell County, Buchanan County, Tazewell County, and the city of Norton, Virginia. The funds allotted to that State and deposited in the State loan fund may be loaned to a regional endowment fund for the purpose set forth in this subsection under a plan to be approved by the Administrator. The plan may include an advisory group that includes representatives of such counties.

(q) Small system technical assistance

The Administrator may reserve up to 2 percent of the total funds appropriated pursuant to subsection (m) of this section for each of the fiscal years 1997 through 2003 to carry out the provisions of section 300j–1(e) of this title (relating to technical assistance for small systems), except that the total amount of funds made available for such purpose in any fiscal year through appropriations (as authorized by section 300j–1(e)) and reservations made pursuant to this subsection shall not exceed the amount authorized by section 300j–1(e) of this title.

(r) Evaluation

The Administrator shall conduct an evaluation of the effectiveness of the State loan funds through fiscal year 2001. The evaluation shall be submitted to the Congress at the same time as the President submits to the Congress, pursuant to section 1108 of title 31, an appropriations request for fiscal year 2003 relating to the budget of the Environmental Protection Agency.

[July 1, 1944, ch. 373, title XIV, §4152, as added Pub. L. 104–182, title I, §130, Aug. 6, 1996, 110 Stat. 1662.]
§ 300j–13. Source water quality assessment

(a) Source water assessment

(1) Guidance

Within 12 months after August 6, 1996, after notice and comment, the Administrator shall publish guidance for States exercising primary enforcement responsibility for public water systems to carry out directly or through delegation (for the protection and benefit of public water systems and for the support of monitoring flexibility) a source water assessment program within the State’s boundaries. Each State adopting modifications to monitoring requirements pursuant to section 300g–7(b) of this title shall, prior to adopting such modifications, have an approved source water assessment program under this section and shall carry out the program either directly or through delegation.

(2) Program requirements

A source water assessment program under this subsection shall—

(A) delineate the boundaries of the assessment areas in such State from which one or more public water systems in the State receive supplies of drinking water, using all reasonably available hydrogeologic information on the sources of the supply of drinking water in the State and the water flow, recharge, and discharge and any other reliable information as the State deems necessary to adequately determine such areas; and

(B) identify for contaminants regulated under this subchapter for which monitoring is required under this subchapter (or any unregulated contaminants selected by the State, in its discretion, which the State, for the purposes of this subsection, has determined may present a threat to public health), to the extent practical, the origins within each delineated area of such contaminants to determine the susceptibility of the public water systems in the delineated area to such contaminants.

(3) Approval, implementation, and monitoring relief

A State source water assessment program under this subsection shall be submitted to the Administrator within 18 months after the Administrator’s guidance is issued under this subsection and shall be deemed approved 9 months after the date of such submittal unless the Administrator disapproves the program as provided in section 300h–7(c) of this title. States shall begin implementation of the program immediately after its approval. The Administrator’s approval of a State program under this subsection shall include a timetable, established in consultation with the State, allowing not more than 2 years for completion after approval of the program. Public water systems seeking monitoring relief in addition to the interim relief provided under section 300g–7(a) of this title shall be eligible for monitoring relief, consistent with section 300g–7(b) of this title, upon completion of the assessment in the delineated source water assessment area or areas concerned.

(4) Timetable

The timetable referred to in paragraph (3) shall take into consideration the availability to the State of funds under section 300j–12 of this title (relating to State loan funds) for assessments and other relevant factors. The Administrator may extend any timetable included in a State program approved under paragraph (3) to extend the period for completion by an additional 18 months.

(5) Demonstration project

The Administrator shall, as soon as practicable, conduct a demonstration project, in consultation with other Federal agencies, to demonstrate the most effective and protective means of assessing and protecting source waters serving large metropolitan areas and located on Federal lands.

(6) Use of other programs

To avoid duplication and to encourage efficiency, the program under this section may make use of any of the following:

(A) Vulnerability assessments, sanitary surveys, and monitoring programs.

(B) Delineations or assessments of ground water sources under a State wellhead protection program developed pursuant to this section.

(C) Delineations or assessments of surface or ground water sources under a State pesticide management plan developed pursuant to the Pesticide and Ground Water State Management Plan Regulation (subparts I and J of part 152 of title 40, Code of Federal Regulations), promulgated under section 136a(d) of title 7.

(D) Delineations or assessments of surface water sources under a State watershed initiative or to satisfy the watershed criterion for determining if filtration is required under the Surface Water Treatment Rule (section 141.70 of title 40, Code of Federal Regulations).

(E) Delineations or assessments of surface or ground water sources under plans pursuant to the Federal Water Pollution Control Act [33 U.S.C. 1251 et seq.].

(7) Public availability

The State shall make the results of the source water assessments conducted under this subsection available to the public.

(b) Approval and disapproval

For provisions relating to program approval and disapproval, see section 300h–7(c) of this title.
(a) Petition program

(1) In general

(A) Establishment

A State may establish a program under which an owner or operator of a community water system in the State, or a municipal or local government or political subdivision of a State, may submit a source water quality protection partnership petition to the State requesting that the State assist in the local development of a voluntary, incentive-based partnership, among the owner, operator, or government and other persons likely to be affected by the recommendations of the partnership, to—

(i) reduce the presence in drinking water of contaminants that may be addressed by a petition by considering the origins of the contaminants, including to the maximum extent practicable the specific activities that affect the drinking water supply of a community;

(ii) obtain financial or technical assistance necessary to facilitate establishment of a partnership, or to develop and implement recommendations of a partnership for the protection of source water to assist in the provision of drinking water that complies with national primary drinking water regulations with respect to contaminants addressed by a petition; and

(iii) develop recommendations regarding voluntary and incentive-based strategies for the long-term protection of the source water of community water systems.

(B) Funding

Each State may—

(i) use funds set aside pursuant to section 300j–12(k)(1)(A)(iii) of this title by the State to carry out a program described in subparagraph (A), including assistance to voluntary local partnerships for the development and implementation of partnership recommendations for the protection of source water such as source water quality assessment, contingency plans, and demonstration projects for partners within a source water area delineated under section 300j–13(a) of this title; and

(ii) provide assistance in response to a petition submitted under this subsection using funds referred to in subsection (b)(2)(B) of this section.

(2) Objectives

The objectives of a petition submitted under this subsection shall be to—

(A) facilitate the local development of voluntary, incentive-based partnerships among owners and operators of community water systems, governments, and other persons in source water areas; and

(B) obtain assistance from the State in identifying resources which are available to implement the recommendations of the partnerships to address the origins of drinking water contaminants that may be addressed by a petition (including to the maximum extent practicable the specific activities contributing to the presence of the contaminants) that affect the drinking water supply of a community.

(3) Contaminants addressed by a petition

A petition submitted to a State under this subsection may address only those contaminants—

(A) that are pathogenic organisms for which a national primary drinking water regulation has been established or is required under section 300g–1 of this title; or

(B) for which a national primary drinking water regulation has been promulgated or proposed and that are detected by adequate monitoring methods in the source water at the intake structure or in any collection, treatment, storage, or distribution facilities by the community water systems at levels—

(i) above the maximum contaminant level; or

(ii) that are not reliably and consistently below the maximum contaminant level.

(4) Contents

A petition submitted under this subsection shall, at a minimum—

(A) include a delineation of the source water area in the State that is the subject of the petition;

(B) identify, to the maximum extent practicable, the origins of the drinking water contaminants that may be addressed by a petition (including to the maximum extent practicable the specific activities contributing to the presence of the contaminants) in the source water area delineated under section 300j–13 of this title;

(C) identify any deficiencies in information that will impair the development of recommendations by the voluntary local partnership to address drinking water contaminants that may be addressed by a petition;

(D) specify the efforts made to establish the voluntary local partnership and obtain the participation of—

(i) the municipal or local government or other political subdivision of the State with jurisdiction over the source water area delineated under section 300j–13 of this title; and

(ii) each person in the source water area delineated under section 300j–13 of this title—

(I) who is likely to be affected by recommendations of the voluntary local partnership; and

(II) whose participation is essential to the success of the partnership;

(E) outline how the voluntary local partnership has or will, during development and
implementation of recommendations of the voluntary local partnership, identify, recognize and take into account any voluntary or other activities already being undertaken by persons in the source water area delineated under section 300j–13 of this title under Federal or State law to reduce the likelihood that contaminants will occur in drinking water at levels of public health concern; and

(F) specify the technical, financial, or other assistance that the voluntary local partnership requests of the State to develop the partnership or to implement recommendations of the partnership.

(b) Approval or disapproval of petitions

(1) In general

After providing notice and an opportunity for public comment on a petition submitted under subsection (a) of this section, the State shall approve or disapprove the petition, in whole or in part, not later than 120 days after the date of submission of the petition.

(2) Approval

The State may approve a petition if the petition meets the requirements established under subsection (a) of this section. The notice of approval shall, at a minimum, include for informational purposes—

(A) an identification of technical, financial, or other assistance that the State will provide to assist in addressing the drinking water contaminants that may be addressed by a petition based on—

(i) the relative priority of the public health concern identified in the petition with respect to the other water quality needs identified by the State;

(ii) any necessary coordination that the State will perform of the program established under this section with programs implemented or planned by other States under this section; and

(iii) funds available (including funds available from a State revolving loan fund established under title VI of the Federal Water Pollution Control Act (33 U.S.C. 1381 et seq.)) or section 300j–12 of this title;

(B) a description of technical or financial assistance pursuant to Federal and State programs that is available to assist in implementing recommendations of the partnership in the petition, including—

(i) any program established under the Federal Water Pollution Control Act (33 U.S.C. 1251 et seq.);

(ii) the program established under section 1455b of title 16;

(iii) the agricultural water quality protection program established under chapter 2 of subtitle D of title XII of the Food Security Act of 1985 (16 U.S.C. 3838 et seq.);

(iv) the sole source aquifer protection program established under section 300h–6 of this title;

(v) the community wellhead protection program established under section 300h–7 of this title;

(vi) any pesticide or ground water management plan;

(vii) any voluntary agricultural resource management plan or voluntary whole farm or whole ranch management plan developed and implemented under a process established by the Secretary of Agriculture; and

(viii) any abandoned well closure program; and

(C) a description of activities that will be undertaken to coordinate Federal and State programs to respond to the petition.

(3) Disapproval

If the State disapproves a petition submitted under subsection (a) of this section, the State shall notify the entity submitting the petition in writing of the reasons for disapproval. A petition may be resubmitted at any time if—

(A) new information becomes available;

(B) conditions affecting the source water that is the subject of the petition change; or

(C) modifications are made in the type of assistance being requested.

(c) Grants to support State programs

(1) In general

The Administrator may make a grant to each State that establishes a program under this section that is approved under paragraph (2). The amount of each grant shall not exceed 50 percent of the cost of administering the program for the year in which the grant is available.

(2) Approval

In order to receive grant assistance under this subsection, a State shall submit to the Administrator for approval a plan for a source water quality protection partnership program that is consistent with the guidance published under subsection (d) of this section. The Administrator shall approve the plan if the plan is consistent with the guidance published under subsection (d) of this section.

(d) Guidance

(1) In general

Not later than 1 year after August 6, 1996, the Administrator, in consultation with the States, shall publish guidance to assist—

(A) States in the development of a source water quality protection partnership program; and

(B) municipal or local governments or political subdivisions of a State and community water systems in the development of source water quality protection partnerships and in the assessment of source water quality.

(2) Contents of the guidance

The guidance shall, at a minimum—

(A) recommend procedures for the approval or disapproval by a State of a petition submitted under subsection (a) of this section;

(B) recommend procedures for the submission of petitions developed under subsection (a) of this section;

(C) recommend criteria for the assessment of source water areas within a State; and

(D) describe technical or financial assistance pursuant to Federal and State pro-
grams that is available to address the contamination of sources of drinking water and to develop and respond to petitions submitted under subsection (a) of this section.

(e) Authorization of appropriations

There are authorized to be appropriated to carry out this section $5,000,000 for each of the fiscal years 1997 through 2003. Each State with a plan for a program approved under subsection (b) of this section shall receive an equitable portion of the funds available for any fiscal year.

(f) Statutory construction

Nothing in this section—

(1)(A) creates or conveys new authority to a State, political subdivision of a State, or community water system for any new regulatory measure; or

(B) limits any authority of a State, political subdivision, or community water system; or

(2) precludes a community water system, municipal or local government, or political subdivision of a government from locally developing and carrying out a voluntary, incentive-based, source water quality protection partnership to address the origins of drinking water contaminants of public health concern.

(94 Stat. 1675.)

§ 300j–17. Estrogenic substances screening program

(a) Definitions

As used in this section:

(1) Border State

The term “border State” means Arizona, California, New Mexico, and Texas.

(2) Eligible community

The term “eligible community” means a low-income community with economic hardship that—

(A) is commonly referred to as a colonia;

(B) is located along the United States-Mexico border (generally in an unincorporated area); and

(C) lacks a safe drinking water supply or adequate facilities for the provision of safe drinking water for human consumption.

(b) Grants to alleviate health risks

The Administrator of the Environmental Protection Agency and the heads of other appropriate Federal agencies are authorized to award grants to a border State to provide assistance to eligible communities to facilitate compliance with national primary drinking water regulations or otherwise significantly further the health protection objectives of this subchapter.

(c) Use of funds

Each grant awarded pursuant to subsection (b) of this section shall be used to provide assistance to one or more eligible communities with respect to which the residents are subject to a significant health risk (as determined by the Administrator or the head of the Federal agency making the grant) attributable to the lack of access to an adequate and affordable drinking water supply system.

(d) Cost sharing

The amount of a grant awarded pursuant to this section shall not exceed 50 percent of the costs of carrying out the project that is the subject of the grant.

(e) Authorization of appropriations

There are authorized to be appropriated to carry out this section $25,000,000 for each of the fiscal years 1997 through 1999.

(94 Stat. 1675.)

§ 300j–16. Assistance to colonias

(a) Definitions

As used in this section:

(1) Border State

The term “border State” means Arizona, California, New Mexico, and Texas.

(2) Eligible community

The term “eligible community” means a low-income community with economic hardship that—

(A) is commonly referred to as a colonia;

(B) is located along the United States-Mexico border (generally in an unincorporated area); and

(C) lacks a safe drinking water supply or adequate facilities for the provision of safe drinking water for human consumption.

(b) Grants to alleviate health risks

The Administrator of the Environmental Protection Agency and the heads of other appropriate Federal agencies are authorized to award grants to a border State to provide assistance to eligible communities to facilitate compliance with national primary drinking water regulations or otherwise significantly further the health protection objectives of this subchapter.

(c) Use of funds

Each grant awarded pursuant to subsection (b) of this section shall be used to provide assistance to one or more eligible communities with respect to which the residents are subject to a significant health risk (as determined by the Administrator or the head of the Federal agency making the grant) attributable to the lack of access to an adequate and affordable drinking water supply system.

(d) Cost sharing

The amount of a grant awarded pursuant to this section shall not exceed 50 percent of the costs of carrying out the project that is the subject of the grant.

(e) Authorization of appropriations

There are authorized to be appropriated to carry out this section $25,000,000 for each of the fiscal years 1997 through 1999.

(94 Stat. 1675.)
§ 300j–18 Drinking water studies

(a) Subpopulations at greater risk

(1) In general

The Administrator shall conduct a continuing program of studies to identify groups within the general population that may be at greater risk than the general population of adverse health effects from exposure to contaminants in drinking water. The study shall examine whether and to what degree infants, children, pregnant women, the elderly, individuals with a history of serious illness, or other subpopulations that can be identified and characterized are likely to experience elevated health risks, including risks of cancer, from contaminants in drinking water.

(2) Report

Not later than 4 years after August 6, 1996, and periodically thereafter as new and significant information becomes available, the Administrator shall report to the Congress on the results of the studies.

(b) Biological mechanisms

The Administrator shall conduct biomedical studies to—

(1) understand the mechanisms by which chemical contaminants are absorbed, distributed, metabolized, and eliminated from the human body, so as to develop more accurate physiologically based models of the phenomena;

(2) understand the effects of contaminants and the mechanisms by which the contaminants cause adverse effects (especially noncancer and infectious effects) and the variations in the effects among humans, especially subpopulations at greater risk of adverse effects, and between test animals and humans; and

(3) develop new approaches to the study of complex mixtures, such as mixtures found in drinking water, especially to determine the prospects for synergistic or antagonistic interactions that may affect the shape of the dose-response relationship of the individual chemicals and microbes, and to examine noncancer endpoints and infectious diseases, and susceptible individuals and subpopulations.

(c) Studies on harmful substances in drinking water

(1) Development of studies

The Administrator shall, not later than 180 days after August 6, 1996, and after consultation with the Secretaries of Health and Human Services, the Secretary of Agriculture, and, as appropriate, the heads of other Federal agencies, conduct the studies described in paragraph (2) to support the development and implementation of the most current version of each of the following:

(A) Enhanced Surface Water Treatment Rule (59 Fed. Reg. 38832 (July 29, 1994)).

(B) Disinfectant and Disinfection Byproducts Rule (59 Fed. Reg. 38668 (July 29, 1994)).

(C) Ground Water Disinfection Rule (availability of draft summary announced at (57 Fed. Reg. 33960; July 31, 1992)).

(2) Contents of studies

The studies required by paragraph (1) shall include, at a minimum, each of the following:

(A) Toxicological studies and, if warranted, epidemiological studies to determine what levels of exposure from disinfectants and disinfection byproducts, if any, may be associated with developmental and birth defects and other potential toxic endpoints.

(B) Toxicological studies and, if warranted, epidemiological studies to quantify the carcinogenic potential from exposure to disinfection byproducts resulting from different disinfectants.

(C) The development of dose-response curves for pathogens, including cryptosporidium and the Norwalk virus.

(3) Authorization of appropriations

There are authorized to be appropriated to carry out this subsection $12,500,000 for each of fiscal years 1997 through 2003.

(d) Waterborne disease occurrence study

(1) System

The Director of the Centers for Disease Control and Prevention, and the Administrator shall jointly—

(A) within 2 years after August 6, 1996, conduct pilot waterborne disease occurrence studies for at least 5 major United States communities or public water systems; and

(B) within 5 years after August 6, 1996, prepare a report on the findings of the pilot studies, and a national estimate of waterborne disease occurrence.

(2) Training and education

The Director and Administrator shall jointly establish a national health care provider training and public education campaign to inform both the professional health care provider community and the general public about waterborne disease and the symptoms that may be caused by infectious agents, including microbial contaminants. In developing such a campaign, they shall seek comment from interested groups and individuals, including scientists, physicians, State and local governments, environmental groups, public water systems, and vulnerable populations.

(3) Funding

There are authorized to be appropriated for each of the fiscal years 1997 through 2001 $3,000,000 to carry out this subsection. To the extent funds under this subsection are not fully appropriated, the Administrator may use not more than $2,000,000 of the funds from amounts reserved under section 300j–12(n) of this title for health effects studies for purposes of this subsection. The Administrator may transfer a portion of such funds to the Centers for Disease Control and Prevention for such purposes.

(July 1, 1944, ch. 373, title XIV, §1458, as added Pub. L. 104–182, title I, §137, Aug. 6, 1996, 110 Stat. 1680.)
§ 300j–21. Definitions

As used in this part—

(1) **Drinking water cooler**

The term “drinking water cooler” means any mechanical device affixed to drinking water supply plumbing which actively cools water for human consumption.

(2) **Lead free**

The term “lead free” means, with respect to a drinking water cooler, that each part or component of the cooler which may come in contact with drinking water shall be considered lead free if the solder, flux, or storage tank interior surface contains more than 0.2 percent lead. The Administrator may establish more stringent requirements for treating any part or component of a drinking water cooler as lead free for purposes of this part whenever he determines that any such part may constitute an important source of lead in drinking water.

(3) **Local educational agency**

The term “local educational agency” means—

(A) any local educational agency as defined in section 7801 of title 20,

(B) the owner of any private, nonprofit elementary or secondary school building, and

(C) the governing authority of any school operating under the defense dependent’s education system provided for under the Defense Dependent’s Education Act of 1978 (20 U.S.C. 921 and following).

(4) **Repair**

The term “repair,” with respect to a drinking water cooler, to take such corrective action as is necessary to ensure that water cooler is lead free.

(5) **Replacement**

The term “replacement,” when used with respect to a drinking water cooler, means the permanent removal of the water cooler and the installation of a lead free water cooler.

(6) **School**

The term “school” means any elementary school or secondary school as defined in section 7801 of title 20 and any kindergarten or day care facility.

(7) **Lead-lined tank**

The term “lead-lined tank” means a water reservoir container in a drinking water cooler which container is constructed of lead or which has an interior surface which is not lead free.

References in Text


Amendments


1996—Pub. L. 104–182 made technical amendment to section catchline and first word of text.


The** Effective**
§ 300j–22. Recall of drinking water coolers with lead-lined tanks

For purposes of the Consumer Product Safety Act [15 U.S.C. 2051 et seq.], all drinking water coolers identified by the Administrator on the list under section 300j–23 of this title as having a lead-lined tank shall be considered to be imminently hazardous consumer products within the meaning of section 12 of such Act (15 U.S.C. 2061). After notice and opportunity for comment, including a public hearing, the Consumer Product Safety Commission shall issue an order requiring the manufacturers and importers of such coolers to repair, replace, or recall and provide a refund for such coolers within 1 year after October 31, 1988. For purposes of enforcement, such order shall be treated as an order under section 15(d) of that Act (15 U.S.C. 2069(d)).


References in Text

The Consumer Product Safety Act, referred to in text, is Pub. L. 92–573, Oct. 27, 1972, 86 Stat. 1207, as amended, which is classified generally to chapter 47 (§ 2051 et seq.) of Title 15, Commerce and Trade. For complete classification of this Act to the Code, see Short Title note set out under section 2051 of Title 15 and Tables.

Amendments

1996—Pub. L. 104–182 made technical amendment to section catchline and first word of text.

§ 300j–23. Drinking water coolers containing lead

(a) Publication of lists

The Administrator shall, after notice and opportunity for public comment, identify each brand and model of drinking water cooler which is not lead free, including each brand and model of drinking water cooler which has a lead-lined tank. For purposes of identifying the brand and model of drinking water coolers under this subsection, the Administrator shall use the best information available to the Environmental Protection Agency. Within 100 days after October 31, 1988, the Administrator shall publish a list of each brand and model of drinking water cooler identified under this subsection. Such list shall separately identify each brand and model of cooler which has a lead-lined tank. The Administrator shall continue to gather information regarding lead in drinking water coolers and shall revise and republish the list from time to time as may be appropriate as new information or analysis becomes available regarding lead contamination in drinking water coolers.

(b) Prohibition

No person may sell in interstate commerce, or manufacture for sale in interstate commerce, any drinking water cooler listed under subsection (a) of this section or any other drinking water cooler which is not lead free, including a lead-lined drinking water cooler.

(c) Criminal penalty

Any person who knowingly violates the prohibition contained in subsection (b) of this section shall be imprisoned for not more than 5 years, or fined in accordance with title 18, or both.

(d) Civil penalty

The Administrator may bring a civil action in the appropriate United States District Court (as determined under the provisions of title 28) to impose a civil penalty on any person who violates subsection (b) of this section. In any such action the court may impose on such person a civil penalty of not more than $5,000 ($50,000 in the case of a second or subsequent violation).


Amendments

1996—Pub. L. 104–182 made technical amendment to section catchline and subsec. (a) designation.

§ 300j–24. Lead contamination in school drinking water

(a) Distribution of drinking water cooler list

Within 100 days after October 31, 1988, the Administrator shall distribute to the States a list of each brand and model of drinking water cooler identified and listed by the Administrator under section 300j–23(a) of this title.

(b) Guidance document and testing protocol

The Administrator shall publish a guidance document and a testing protocol to assist schools in determining the source and degree of lead contamination in school drinking water supplies and in remediating such contamination. The guidance document shall include guidelines for sample preservation. The guidance document shall also include guidance to assist States, schools, and the general public in ascertaining the levels of lead contamination in drinking water coolers and in taking appropriate action to reduce or eliminate such contamination. The guidance document shall contain a testing protocol for the identification of drinking water coolers which contribute to lead contamination in drinking water. Such document and protocol may be revised, republished and redistributed as the Administrator deems necessary. The Administrator shall distribute the guidance document and testing protocol to the States within 100 days after October 31, 1988.

(c) Dissemination to schools, etc.

Each State shall provide for the dissemination to local educational agencies, private nonprofit elementary or secondary schools and to day care centers of the guidance document and testing protocol published under subsection (b) of this section, together with the list of drinking water coolers published under section 300j–23(a) of this title.
(d) Remedial action program

(1) Testing and remedying lead contamination

Within 9 months after October 31, 1988, each State shall establish a program, consistent with this section, to assist local educational agencies in testing for, and remedying, lead contamination in drinking water from coolers and from other sources of lead contamination at schools under the jurisdiction of such agencies.

(2) Public availability

A copy of the results of any testing under paragraph (1) shall be available in the administrative offices of the local educational agency for inspection by the public, including teachers, other school personnel, and parents. The local educational agency shall notify parent, teacher, and employee organizations of the availability of such testing results.

(3) Coolers

In the case of drinking water coolers, such program shall include measures for the reduction or elimination of lead contamination from those water coolers which are not lead free and which are located in schools. Such measures shall be adequate to ensure that within 15 months after October 31, 1988, all such water coolers in schools under the jurisdiction of such agencies are repaired, replaced, permanently removed, or rendered inoperable unless the cooler is tested and found (within the limits of testing accuracy) not to contribute lead to drinking water.


AMENDMENTS


§ 300j–26. Certification of testing laboratories

The Administrator of the Environmental Protection Agency shall assure that programs for the certification of testing laboratories which test drinking water supplies for lead contamination certify only those laboratories which provide reliable accurate testing. The Administrator (or the State in the case of a State to which certification authority is delegated under this subsection) shall publish and make available to the public upon request the list of laboratories certified under this subsection.


CODIFICATION

Section enacted as part of the Lead Contamination Control Act of 1988, and not as part of the Public Health Service Act which comprises this chapter.

SUBCHAPTER XIII—PREVENTIVE HEALTH MEASURES WITH RESPECT TO BREAST AND CERVICAL CANCERS

§ 300k. Establishment of program of grants to States

(a) In general

The Secretary, acting through the Director of the Centers for Disease Control and Prevention, may make grants to States on the basis of an established competitive review process for the purpose of carrying out programs—

(1) to screen women for breast and cervical cancer as a preventive health measure;

(2) to provide appropriate referrals for medical treatment of women screened pursuant to paragraph (1) and to ensure, to the extent practicable, the provision of appropriate follow-up services and support services such as case management;

(3) to develop and disseminate public information and education programs for the detection and control of breast and cervical cancer;

(4) to improve the education, training, and skills of health professionals (including allied health professionals) in the detection and control of breast and cervical cancer;

(5) to establish mechanisms through which the States can monitor the quality of screening procedures for breast and cervical cancer, including the interpretation of such procedures; and

1 So in original. Probably should be “section.”
49-104. **Powers and duties of the department and director**

A. The department shall:

1. Formulate policies, plans and programs to implement this title to protect the environment.

2. Stimulate and encourage all local, state, regional and federal governmental agencies and all private persons and enterprises that have similar and related objectives and purposes, cooperate with those agencies, persons and enterprises and correlate department plans, programs and operations with those of the agencies, persons and enterprises.

3. Conduct research on its own initiative or at the request of the governor, the legislature or state or local agencies pertaining to any department objectives.

4. Provide information and advice on request of any local, state or federal agencies and private persons and business enterprises on matters within the scope of the department.

5. Consult with and make recommendations to the governor and the legislature on all matters concerning department objectives.

6. Promote and coordinate the management of air resources to ensure their protection, enhancement and balanced utilization consistent with the environmental policy of this state.

7. Promote and coordinate the protection and enhancement of the quality of water resources consistent with the environmental policy of this state.

8. Encourage industrial, commercial, residential and community development that maximizes environmental benefits and minimizes the effects of less desirable environmental conditions.

9. Ensure the preservation and enhancement of natural beauty and man-made scenic qualities.

10. Provide for the prevention and abatement of all water and air pollution including that related to particulates, gases, dust, vapors, noise, radiation, odor, nutrients and heated liquids in accordance with article 3 of this chapter and chapters 2 and 3 of this title.

11. Promote and recommend methods for the recovery, recycling and reuse or, if recycling is not possible, the disposal of solid wastes consistent with sound health, scenic and environmental quality policies. The department shall report annually on its revenues and expenditures relating to the solid and hazardous waste programs overseen or administered by the department.

12. Prevent pollution through the regulation of the storage, handling and transportation of solids, liquids and gases that may cause or contribute to pollution.

13. Promote the restoration and reclaimation of degraded or despoiled areas and natural resources.

14. Participate in the state civil defense program and develop the necessary organization and facilities to meet wartime or other disasters.

15. Cooperate with the Arizona-Mexico commission in the governor's office and with researchers at universities in this state to collect data and conduct projects in the United States and Mexico on issues that are within the scope of the department's duties and that relate to quality of life, trade and economic development in this state in a manner that will help the Arizona-Mexico commission to assess and enhance the economic competitiveness of this state and of the Arizona-Mexico region.

16. Unless specifically authorized by the legislature, ensure that state laws, rules, standards, permits, variances and orders are adopted and construed to be consistent with and no more stringent than the corresponding federal law that addresses the same subject matter. This paragraph does not adversely affect standards adopted by an Indian tribe under federal law.
17. Provide administrative and staff support for the oil and gas conservation commission.

B. The department, through the director, shall:

1. Contract for the services of outside advisers, consultants and aides reasonably necessary or desirable to enable the department to adequately perform its duties.

2. Contract and incur obligations reasonably necessary or desirable within the general scope of department activities and operations to enable the department to adequately perform its duties.

3. Utilize any medium of communication, publication and exhibition when disseminating information, advertising and publicity in any field of its purposes, objectives or duties.

4. Adopt procedural rules that are necessary to implement the authority granted under this title, but that are not inconsistent with other provisions of this title.

5. Contract with other agencies, including laboratories, in furthering any department program.

6. Use monies, facilities or services to provide matching contributions under federal or other programs that further the objectives and programs of the department.

7. Accept gifts, grants, matching monies or direct payments from public or private agencies or private persons and enterprises for department services and publications and to conduct programs that are consistent with the general purposes and objectives of this chapter. Monies received pursuant to this paragraph shall be deposited in the department fund corresponding to the service, publication or program provided.

8. Provide for the examination of any premises if the director has reasonable cause to believe that a violation of any environmental law or rule exists or is being committed on the premises. The director shall give the owner or operator the opportunity for its representative to accompany the director on an examination of those premises. Within forty-five days after the date of the examination, the department shall provide to the owner or operator a copy of any report produced as a result of any examination of the premises.

9. Supervise sanitary engineering facilities and projects in this state, authority for which is vested in the department, and own or lease land on which sanitary engineering facilities are located, and operate the facilities, if the director determines that owning, leasing or operating is necessary for the public health, safety or welfare.

10. Adopt and enforce rules relating to approving design documents for constructing, improving and operating sanitary engineering and other facilities for disposing of solid, liquid or gaseous deleterious matter.

11. Define and prescribe reasonably necessary rules regarding the water supply, sewage disposal and garbage collection and disposal for subdivisions. The rules shall:

(a) Provide for minimum sanitary facilities to be installed in the subdivision and may require that water systems plan for future needs and be of adequate size and capacity to deliver specified minimum quantities of drinking water and to treat all sewage.

(b) Provide that the design documents showing or describing the water supply, sewage disposal and garbage collection facilities be submitted with a fee to the department for review and that no lots in any subdivision be offered for sale before compliance with the standards and rules has been demonstrated by approval of the design documents by the department.

12. Prescribe reasonably necessary measures to prevent pollution of water used in public or semipublic swimming pools and bathing places and to prevent deleterious conditions at those places. The rules shall prescribe minimum standards for the design of and for sanitary conditions at any public or semipublic swimming pool or bathing place and provide for abatement as public nuisances of premises and facilities that do not comply with the minimum standards. The rules shall be developed in cooperation with the director of the department of health services and shall be consistent with the rules adopted by the director of the department of health services pursuant to section 36-136, subsection 1, paragraph 10.
13. Prescribe reasonable rules regarding sewage collection, treatment, disposal and reclamation systems to prevent the transmission of sewage borne or insect borne diseases. The rules shall:

(a) Prescribe minimum standards for the design of sewage collection systems and treatment, disposal and reclamation systems and for operating the systems.

(b) Provide for inspecting the premises, systems and installations and for abating as a public nuisance any collection system, process, treatment plant, disposal system or reclamation system that does not comply with the minimum standards.

(c) Require that design documents for all sewage collection systems, sewage collection system extensions, treatment plants, processes, devices, equipment, disposal systems, on-site wastewater treatment facilities and reclamation systems be submitted with a fee for review to the department and may require that the design documents anticipate and provide for future sewage treatment needs.

(d) Require that construction, reconstruction, installation or initiation of any sewage collection system, sewage collection system extension, treatment plant, process, device, equipment, disposal system, on-site wastewater treatment facility or reclamation system conform with applicable requirements.

14. Prescribe reasonably necessary rules regarding excreta storage, handling, treatment, transportation and disposal. The rules may:

(a) Prescribe minimum standards for human excreta storage, handling, treatment, transportation and disposal and shall provide for inspection of premises, processes and vehicles and for abating as public nuisances any premises, processes or vehicles that do not comply with the minimum standards.

(b) Provide that vehicles transporting human excreta from privies, septic tanks, cesspools and other treatment processes shall be licensed by the department subject to compliance with the rules. The department may require payment of a fee as a condition of licensure. The department may establish by rule a fee as a condition of licensure, including a maximum fee. As part of the rulemaking process, there must be public notice and comment and a review of the rule by the joint legislative budget committee. The department shall not increase that fee by rule without specific statutory authority for the increase. The fees shall be deposited, pursuant to sections 35-146 and 35-147, in the solid waste fund established by section 49-881.

15. Perform the responsibilities of implementing and maintaining a data automation management system to support the reporting requirements of title III of the superfund amendments and reauthorization act of 1986 (P.L. 99-499) and article 2 of this chapter.

16. Approve remediation levels pursuant to article 4 of this chapter.

17. Establish or revise fees by rule pursuant to the authority granted under title 44, chapter 9, article 8 and chapters 4 and 5 of this title for the department to adequately perform its duties. All fees shall be fairly assessed and impose the least burden and cost to the parties subject to the fees. In establishing or revising fees, the department shall base the fees on:

(a) The direct and indirect costs of the department's relevant duties, including employee salaries and benefits, professional and outside services, equipment, in-state travel and other necessary operational expenses directly related to issuing licenses as defined in title 41, chapter 6 and enforcing the requirements of the applicable regulatory program.

(b) The availability of other funds for the duties performed.

(c) The impact of the fees on the parties subject to the fees.

(d) The fees charged for similar duties performed by the department, other agencies and the private sector.

18. Appoint a person with a background in oil and gas conservation to act on behalf of the oil and gas conservation commission and administer and enforce the applicable provisions of title 27, chapter 4 relating to the oil and gas...
conservation commission.

C. The department may:

1. Charge fees to cover the costs of all permits and inspections it performs to ensure compliance with rules adopted under section 49-203, except that state agencies are exempt from paying those fees that are not associated with the dredge and fill permit program established pursuant to chapter 2, article 3.2 of this title. For services provided under the dredge and fill permit program, a state agency shall pay either:

   (a) The fees established by the department under the dredge and fill permit program.

   (b) The reasonable cost of services provided by the department pursuant to an interagency service agreement.

2. Monies collected pursuant to this subsection shall be deposited, pursuant to sections 35-146 and 35-147, in the water quality fee fund established by section 49-210.

3. Contract with private consultants for the purposes of assisting the department in reviewing applications for licenses, permits or other authorizations to determine whether an applicant meets the criteria for issuance of the license, permit or other authorization. If the department contracts with a consultant under this paragraph, an applicant may request that the department expedite the application review by requesting that the department use the services of the consultant and by agreeing to pay the department the costs of the consultant's services. Notwithstanding any other law, monies paid by applicants for expedited reviews pursuant to this paragraph are appropriated to the department for use in paying consultants for services.

D. The director may:

1. If the director has reasonable cause to believe that a violation of any environmental law or rule exists or is being committed, inspect any person or property in transit through this state and any vehicle in which the person or property is being transported and detain or disinfect the person, property or vehicle as reasonably necessary to protect the environment if a violation exists.

2. Authorize in writing any qualified officer or employee in the department to perform any act that the director is authorized or required to do by law.
49-203. **Powers and duties of the director and department**

A. The director shall:

1. Adopt, by rule, water quality standards in the form and subject to the considerations prescribed by article 2 of this chapter.

2. Adopt, by rule, a permit program for WOTUS that is consistent with but not more stringent than the requirements of the clean water act for the point source discharge of any pollutant or combination of pollutants into WOTUS. The program and the rules shall be sufficient to enable this state to administer the permit program identified in section 402(b) of the clean water act, including the sewage sludge requirements of section 405 of the clean water act and as prescribed by article 3.1 of this chapter.

3. Apply the program and rules authorized under paragraph 2 of this subsection to point source discharges to non-WOTUS protected surface waters, consistent with section 49-255.04, which establishes the program components and rules that do not apply to non-WOTUS protected surface waters. The following are exempt from the non-WOTUS protected surface waters point source discharge program:

(a) Discharges to a non-WOTUS protected surface water incidental to a recharge project.

(b) Established or ongoing farming, ranching and silviculture activities such as plowing, seeding, cultivating, minor drainage or harvesting for the production of food, fiber or forest products or upland soil and water conservation practices.

(c) Maintenance but not construction of drainage ditches.

(d) Construction and maintenance of irrigation ditches.

(e) Maintenance of structures such as dams, dikes and levees.

4. Adopt, by rule, a program to control nonpoint source discharges of any pollutant or combination of pollutants into WOTUS.

5. Adopt, by rule, an aquifer protection permit program to control discharges of any pollutant or combination of pollutants that are reaching or may with a reasonable probability reach an aquifer. The permit program shall be as prescribed by article 3 of this chapter.

6. Adopt, by rule, the permit program for underground injection control described in the safe drinking water act.

7. Adopt, by rule, technical standards for conveyances of reclaimed water and a permit program for the direct reuse of reclaimed water.

8. Adopt, by rule or as permit conditions, discharge limitations, best management practice standards, new source performance standards, toxic and pretreatment standards and other standards and conditions as reasonable and necessary to carry out the permit programs and regulatory duties described in paragraphs 2 through 6 of this subsection.

9. Assess and collect fees to revoke, issue, deny, modify or suspend permits issued pursuant to this chapter and to process permit applications. The director may also assess and collect costs reasonably necessary if the director must conduct sampling or monitoring relating to a facility because the owner or operator of the facility has refused or failed to do so on order by the director. The director shall set fees that are reasonably related to the department's costs of providing the service for which the fee is charged. Monies collected from aquifer protection permit fees and from Arizona pollutant discharge elimination system permit fees shall be deposited, pursuant to sections 35-146 and 35-147, in the water quality fee fund established by section 49-210. Monies from other permit fees shall be deposited, pursuant to sections 35-146 and 35-147, in the water quality fee fund unless otherwise provided by law. Monies paid by an applicant for review by consultants for the department pursuant to section 49-241.02, subsection D shall be deposited, pursuant to sections 35-146 and 35-147, in the water quality fee fund established by section 49-210. State
49-257.01. **Underground injection control permit program; permits; prohibitions; rules**

A. The department shall establish an underground injection control permit program, including a permitting process.

B. An underground injection is prohibited unless the underground injection is into a well authorized by rule or unless it is authorized by a permit issued pursuant to this article or by a permit issued by the United States environmental protection agency. A person may not construct any well that is required to have a permit until the person is issued the permit or is otherwise authorized under the permit program established pursuant to this article or federal law.

C. Any underground injection activity is prohibited if it is conducted in a manner that allows the movement of fluid containing any contaminant into underground sources of drinking water and if the presence of that contaminant may endanger underground sources of drinking water.

D. The director shall adopt rules for the purposes of establishing and operating the underground injection control permit program pursuant to this article. Rules adopted by the director shall meet the minimum requirements prescribed by 42 United States Code section 300h(b).
date of the installment payment, the Department may suspend the licensee’s authorization to make installment payments and require the licensee to pay all pending fees.

G. If a licensee fails to submit an installment payment within 30 days after its due date, the Department may initiate action under A.R.S. § 36-495.09.

Historical Note

R9-14-609. Proficiency Testing
A. At least once in each 12-month period, and more often if requested by the Department, each licensee or applicant shall have at least one laboratory analyst participate in proficiency testing provided by the Department, the EPA, or a proficiency testing service that:
1. Includes at least one proficiency testing sample for each parameter for which an initial license or renewal license has been issued or requested and for which proficiency testing samples are available;
2. Demonstrates the laboratory analyst’s proficiency in compliance testing of:
   a. Applicable drinking water parameters in Table 6.2.A, if:
      i. The applicant plans to perform compliance testing of drinking water parameters, or
      ii. The licensee is approved to perform compliance testing of drinking water parameters; and
   b. Applicable parameters other than drinking water parameters, if:
      i. The applicant plans to perform compliance testing of the parameters, or
      ii. The licensee is approved to perform compliance testing of the parameters; and
3. If the licensee or applicant has been issued or has requested a license that includes approval for testing an analyte by different methods, may use the same proficiency testing sample for each method.
B. To demonstrate proficiency for a parameter, test results reported for the parameter shall be within acceptance limits established for:
1. Drinking water inorganic chemistry parameters by the EPA, as provided in 40 CFR 141.23;
2. Drinking water organic chemistry parameters by the EPA, as provided in 40 CFR 141.24;
3. Lead or copper in drinking water by the EPA, as provided in 40 CFR 141.89;
4. Disinfection byproducts in drinking water by the EPA, as provided in 40 CFR 141.131; and
5. Other parameters by the EPA or the proficiency testing service.
C. A licensee or applicant shall ensure that:
1. Each proficiency testing sample accepted at the licensee’s or applicant’s laboratory is analyzed at the licensee’s or applicant’s laboratory;
2. Each proficiency testing sample is tested within the maximum holding times allowed for its parameter, using the same procedures and techniques employed for routine sample testing, and calculating the holding time from the time the sample seal is broken or as indicated in the instructions accompanying the sample;
3. A proficiency testing service provides proficiency testing results directly to the Department;
4. If proficiency testing is provided by the Department, the licensee or applicant submits to the Department payment for the actual costs of the proficiency testing materials; and
5. If proficiency testing is not provided by the Department or the EPA, the licensee or applicant selects a proficiency testing service and contracts with and pays the proficiency testing service directly for proficiency testing.

D. The Department may submit blind proficiency testing samples to a licensed laboratory at any time during the license period.

Historical Note
Adopted effective December 20, 1991 (Supp. 91-4). Former Section R9-14-609 renumbered to R9-14-610; new Section R9-14-609 renumbered from R9-14-608 and amended effective June 20, 1997 (Supp. 97-2). Former Section R9-14-609 renumbered to R9-14-611; new Section R9-14-609 renumbered from R9-14-607 and amended by final rulemaking at 7 A.A.R. 184, effective December 15, 2000 (Supp. 00-4). Amended by final rulemaking at 12 A.A.R. 4798, effective December 5, 2006 (Supp. 06-4). Amended by final rulemaking at 22 A.A.R. 2683, effective October 1, 2016 (Supp. 16-3).

R9-14-610. Approved Methods and References
A. A licensee or applicant shall ensure that compliance testing is performed according to an approved method and may use method alterations approved by the Department under subsection (C).
B. The approved methods listed by parameter in Tables 6.2.A through 6.2.D are found in the following references, which are incorporated by reference with the modifications described below; are on file with the Department; include no future editions or amendments; and are available as provided below.

Table 1. Key Reference
D. Technicon Industrial Systems, Industrial Method No. 380-75WE, Fluoride in Water and Wastewater (February 1976), available from Mequon Technology Center, 10520 C North Baehr Road, Mequon, WI 53092 or by calling (262) 241-7900.
E. National Service Center for Environmental Publications (NSCEP), Online EPA Publication Title List available at http://nepis.epa.gov/EPA/html/pubs/pubtitle.html or by calling
Department of Health Services - Laboratories

(800) 490-9198. Publication numbers for the methods that are listed under this reference are:
1. Method 317.0, Rev 2.0, July 2001, EPA 815-B-01-001
3. Method 326.0, Rev 1.0, June 2000, EPA 815-R-03-007
4. Method 327.0, Rev 1.1, May 2005, EPA 815-R-05-008
5. Method 331.0, Rev 1.0, January 2005, EPA 815-R-05-007
6. Method 515.4, Rev 1.0, April 2000, EPA 800-R-00-016
7. Method 527, Rev 1.0, April 2005, EPA 815-R-05-005
9. Method 552.3, Rev 1.0, July 2003, EPA 815-B-03-002
17. Method 1631, Rev E, August 2002, EPA 821-R-02-019
25. Method 1638, April 1995, EPA 821-R-95-031
27. Method 1627, December 2011, Acid Mine Drainage, EPA 821-R-09-002
28. PCBs in Transformer Fluid and Oils, September 1982, EPA 600/4-81-045
29. Asbestos in Bulk Samples, December 1982, EPA 600/M4-82-020
30. Method 100.1, Asbestos Fibers, September 1993, EPA 600/M4-83-045
31. Method 100.2, Asbestos Structures over 10m in Length, EPA/600/R-94/134
32. Method 1622, Cryptosporidium in Water, December 2005, EPA 815-R-05-001
33. Method 1623.1, Cryptosporidium and Giardia in Water, January 2012, EPA 815-R-12-001
34. Method 1682, Salmonella in Sewage Sludge, July 2006, EPA 821-R-06-014
35. Method 1605, Aeromonas in Finished Water by MF, October 2001, EPA 821-R-01/034
36. Method 1604, Total coliforms and E.coli by MF, September 2002, EPA-821-02-024
37. Method 1601, Coliphage, April 2001, EPA 821-R-01-030
38. Method 1602, Coliphage, April 2001, EPA 821-R-01-029
40. Method 537, September 2009, EPA/600/R-08/092
41. Method 302.0, September 2009, EPA-815-B-09-014
42. Method 539, November 2010, EPA 815-B-10-001
43. Method 2187, November 2011, EPA 815-R-11-005
44. Method 334.0, September 2009, EPA 815-B-09-013
A5 EPA Pub. No. EPA 815-R-00-014 (815R00014), Volume 1, Methods for the Determination of Organic and Inorganic Compounds in Drinking Water (August 2000), available at http://epa.gov/epa.html/Publications/epah0014.html or by calling (800) 490-9198, modified to require the following when testing for bromate using method 321.8: Samples must be preserved at the time of sampling with 50 mg ethylenediamine (EDA) or of sample and must be analyzed within 28 days. Ion chromatography and post-column reaction or ICICIP-MS must be used for monitoring of bromate for purposes of demonstrating eligibility of reduced monitoring, as prescribed in 40 CFR 141.132 (b)(3)(ii).
C American Public Health Association et al., Standard Methods for the Examination of Water and Wastewater (22nd edition 2012), available from American Public Health Association, 800 I Street, NW, Washington, DC 20001 or at http://www.standardmethods.org, with the approved method having the same last two digits in the method number as the year in which the method was approved by the Standard Methods Committee, as published for the individual methods in the 22nd edition.
C3 Hach Method 10360, Luminescence Measurement of Dissolved Oxygen in Water and Wastewater and for Use in the Determination of BOD5 and eBOD5, Revision 1.2, October 2011, available from Hach Company, P.O. Box 389, Loveland, CO 80539-0389.


H National Environmental Laboratory Accreditation Conference, 2009 NELAC, available from the National Environmental Laboratory Accreditation Conference, P.O. Box 2439, Weatherford, TX 76086 or at www.nelac-institute.org.

I ASTM, individual standards available from ASTM International, 100 Barr Harbor Dr., P.O. Box C700, W. Conshohocken, PA 19428-2959 or at www.astm.org.


O1 Compendium of Methods for the Determination of Inorganic Compounds in Ambient Air, Compendium Method 10-3-4,


P3 Charles P. Gerber, University of Arizona, U Of A 2000: Ascaris lumbricoides in Water (1999), available from the University of Arizona, Microbial Analytical Laboratory, Building No. 90, Rm. 406, Tucson, AZ 85721.


Y Method OIA-1677-09, Available Cyanide by Ligand Exchange and Flow Injection Analysis (FIA). 2010, available from ALPKEM, a Division of OI Analytical, 151 Graham Road, College Station, TX 77845 or by calling (979) 690-1711.

Z IDEXX Colilert*-18 and Quanti-Trap* Test Method for the Detection of Fecal Coliforms in Wastewater, available from IDEXX Laboratories, Inc., One IDEXX Dr., Westbrook, ME 04092 or by calling 1-800-548-6733.


Z6 m-ColiBlue 24 Test, Total Coliforms and E. coli Membrane Filtration Method with m-ColiBlue 24 Broth, Method No. 10129, Revision 2, August 17, 1999, available at Hach Company, P.O. Box 389, Loveland, Colorado 80539-0389 or by calling 1-800-227-4224.

Z7 Colisure Test, IDEXX Laboratories Inc., February 28, 1994, available from IDEXX Laboratories, Inc., One IDEXX Dr., Westbrook, ME 04092 or by calling 1-800-548-6733.


Z9 O1 Analytical/ALPKEM, Nitrogen, Total Kjeldahl, Method PAL-DK01 (Block Digestion, Steam Distillation, Titrimetric
Detection) (rev. December 22, 1994), available from OI Analytical/ALPKEM, P.O. Box 9010, College Station, TX 77842.
Z10 OI Analytical/ALPKEM, Nitrogen, Total Kjeldahl, Method PAI-DK02 (Block Digestion, Steam Distillation, Colorimetric Detection) (rev. December 22, 1994), available from OI Analytical/ALPKEM, P.O. Box 9010, College Station, TX 77842.
Z11 OI Analytical/ALPKEM, Nitrogen, Total Kjeldahl, Method PAI-DK03 (Block Digestion, Automated FIA Gas Diffusion) (rev. December 22, 1994), available from OI Analytical/ALPKEM, P.O. Box 9010, College Station, TX 77842.

C. If an approved method is not available for a particular parameter, or a method or method alteration that is not an approved method is required or authorized to be used for a particular parameter by the EPA, ADEQ, the U.S. Food and Drug Administration, or 9 A.A.C. 8, the following information:

1. For an alternate method or method alteration required or authorized by the EPA, ADEQ, the U.S. Food and Drug Administration, or 9 A.A.C. 8, the following information:
   a. The name, address, and telephone number of the licensee or person exempt under R9-14-602(4) or (5) submitting the request;
   b. The name, address, and telephone number of the laboratory for which approval of the alternate method or method alteration is requested;
   c. Identification of the parameter for which approval of the alternate method or method alteration is requested; and
   d. Reference to the EPA, ADEQ, U.S. Food and Drug Administration, or 9 A.A.C. 8 requirement or authorization for the use of the alternate method or method alteration for which approval is requested;

2. For an alternate method or method alteration to be used because an approved method is not available for a particular parameter, the following information:
   a. The name, address, and telephone number of the licensee or person exempt under R9-14-602(4) or (5) submitting the request;
   b. The name, address, and telephone number of the laboratory for which approval of the alternate method or method alteration is requested; and
   c. Identification of the parameter for which approval of the alternate method or method alteration is requested; and
   d. Written justification for using the alternate method or method alteration for which approval is requested, including the following:
      i. A detailed description of the alternate method or method alteration;
      ii. References to published or other studies confirming the general applicability of the alternate method or method alteration to the parameter for which its use is intended;
      iii. Reference to the EPA, ADEQ, U.S. Food and Drug Administration, or 9 A.A.C. 8 requirement to test the parameter; and
      iv. Data that demonstrate the performance of the alternate method or method alteration in terms of accuracy, precision, reliability, ruggedness, ease of use, and ability to achieve a detection limit appropriate for the proposed use of the alternate method or method alteration; and

3. An alternate method or method alteration approval fee of $50, payable to the Arizona Department of Health Services, in the form of a certified check, business check, money order, or credit card payment.

D. Before approving an alternate method or method alteration that is not required or authorized by the EPA, ADEQ, the U.S. Food and Drug Administration, or 9 A.A.C. 8, the Department may require that the alternate method or method alteration be performed by a laboratory designated by the Department to verify that, using the parameter for which its use is intended, the alternate method or method alteration produces data that comply with subsection (C)(2)(d)(iv).

E. The Department may approve an alternate method or method alteration if the Department determines:

   1. One of the following:
      a. Use of the alternate method or method alteration is required or authorized by the EPA, ADEQ, the U.S. Food and Drug Administration, or 9 A.A.C. 8;
      b. Use of the alternate method or method alteration is justified as described in subsection (C)(2)(d); and

   2. If the alternate method or method alteration pertains to drinking water compliance testing, the EPA concurs that the alternate method or method alteration may be used.

F. The Department may rescind the approval of an alternate method or method alteration approved by the Department according to subsection (E), if, as applicable:

   1. For an alternate method or method alteration requested under subsection (C)(1), the alternate method or method alteration is no longer required or authorized by the EPA, ADEQ, the U.S. Food and Drug Administration, or 9 A.A.C. 8; or

   2. For an alternate method or method alteration requested under subsection (C)(2), an approved method becomes available for the particular parameter.

Historical Note
Adopted effective December 20, 1991 (Supp. 91-4). Former Section R9-14-610 renumbered to R9-14-611; new Section R9-14-610 renumbered from R9-14-609 and amended effective June 20, 1997 (Supp. 97-2). Former Section R9-14-610 renumbered to R9-14-612; new Section R9-14-610 renumbered from R9-14-608 and amended by final rulemaking at 7 A.A.R. 184, effective December 15, 2000 (Supp. 00-4). Amended by final rulemaking at 10 A.A.R. 187, effective April 6, 2004 (Supp. 04-2). Amended by final rulemaking at 12 A.A.R.
4798, effective December 5, 2006 (Supp. 06-4). Amended by final rulemaking at 22 A.A.R. 2683, effective October 1, 2016 (Supp. 16-3).

R9-14-611. Compliance Testing for Drinking Water Parameters
A. A licensee for a laboratory at which compliance testing for drinking water parameters is performed, including compliance testing performed according to 9 A.A.C. 8, Article 2, shall ensure that:
1. Except as provided in subsection (B), the laboratory is operated in compliance with the guidelines in Key References D4, D5, and D6, excluding the requirements for laboratory personnel education and experience;
2. Each sample for Arizona drinking water parameter compliance testing is analyzed:
   a. Using an approved method;
      i. Listed in Table 6.2.A; or
      ii. Approved by the Department for compliance testing for drinking water parameters under R9-14-610(E); and
   b. If the approved method is from Key Reference C, following the quality control guidelines in Key Reference C associated with the approved method; and
3. If the licensee requests approval to perform testing for vinyl chloride, the licensee also obtains approval to perform testing for each of the analytes listed in 40 CFR 141.61(a)(2)-(21).
B. If an approved method does not include a specific quality control guideline, a licensee for a laboratory at which compliance testing for drinking water parameters is performed shall ensure that the laboratory is operated in compliance with the guidelines in Key References C4, D7, D9, D10, D11, D12, D13, or D14, as applicable.

Historical Note
Adopted effective December 20, 1991 (Supp. 91-4). Former Section R9-14-611 renumbered to R9-14-612; new Section R9-14-611 renumbered from R9-14-610 and amended effective June 20, 1997 (Supp. 97-2). Former Section R9-14-611 renumbered to R9-14-613; new Section R9-14-611 renumbered from R9-14-610 and amended by final rulemaking at 7 A.A.R. 184, effective December 15, 2000 (Supp. 00-4). Amended by final rulemaking at 12 A.A.R. 4798, effective December 5, 2006 (Supp. 06-4). Amended by final rulemaking at 22 A.A.R. 2683, effective October 1, 2016 (Supp. 16-3).

R9-14-612. Compliance Testing for Wastewater Parameters
A licensee for a laboratory at which compliance testing for wastewater parameters is performed shall ensure that:
1. The laboratory is operated in compliance with the guidelines in Key References C5 and C6; and
2. Each sample for Arizona wastewater parameter compliance testing is analyzed:
   a. Using an approved method;
      i. Listed in Table 6.2.B; or
      ii. Approved by the Department for wastewater parameter compliance testing under R9-14-610(E); and
   b. If the approved method is from Key Reference C, following the quality control guidelines in Key Reference C associated with the approved method.

Historical Note
Adopted effective December 20, 1991 (Supp. 91-4). Former Section R9-14-612 renumbered to R9-14-614; new Section R9-14-612 renumbered from R9-14-610 and amended effective June 20, 1997 (Supp. 97-2). Former Section R9-14-612 renumbered to R9-14-613; new Section R9-14-612 renumbered from R9-14-610 and amended by final rulemaking at 7 A.A.R. 184, effective December 15, 2000 (Supp. 00-4). Amended by final rulemaking at 12 A.A.R. 4798, effective December 5, 2006 (Supp. 06-4). Amended by final rulemaking at 22 A.A.R. 2683, effective October 1, 2016 (Supp. 16-3).

R9-14-613. Compliance Testing for Waste Parameters
A licensee for a laboratory at which compliance testing for waste parameters is performed shall ensure that each waste sample for Arizona compliance testing is analyzed using an approved method:
1. Listed in Table 6.2.C; or
2. Approved by the Department for waste compliance testing under R9-14-610(E).
B. A licensee for a laboratory at which compliance testing for waste parameters is performed using an 8000 series method from Key Reference F shall:
   1. If the method includes specific quality control requirements, follow the specific quality control requirements in the method;
   2. If the method does not include specific quality control requirements, follow all requirements in Key Reference F14; and
   3. If the method does not include specific sample extraction procedures, follow the procedures in the following from Key Reference F, as applicable:
      a. Method 3500B,
      b. Method 3600C, or
      c. Method 5000.
C. A licensee for a laboratory at which compliance testing for waste parameters is performed using a non-8000 series method from Key Reference F shall comply with Chapters 1 through 8 of Update IV, February 2007, of Key Reference F, as applicable, according to the requirements of the specific method.

Historical Note
Adopted effective December 20, 1991 (Supp. 91-4). Former Section R9-14-613 renumbered to R9-14-614; new Section R9-14-613 renumbered from R9-14-610 and amended effective June 20, 1997 (Supp. 97-2). Former Section R9-14-613 renumbered to R9-14-615; new Section R9-14-613 renumbered from R9-14-610 and amended by final rulemaking at 7 A.A.R. 184, effective December 15, 2000 (Supp. 00-4). Amended by final rulemaking at 12 A.A.R. 4798, effective December 5, 2006 (Supp. 06-4). Amended by final rulemaking at 22 A.A.R. 2683, effective October 1, 2016 (Supp. 16-3).

R9-14-614. Compliance Testing for Air and Stack Parameters
A licensee for a laboratory at which compliance testing for air or stack parameters is performed shall ensure that each air or stack sample for Arizona compliance testing is analyzed using an approved method:
1. Listed in Table 6.2.D; or
2. Approved by the Department for compliance testing for air or stack parameters under R9-14-610(E).
DEPARTMENT OF ENVIRONMENTAL QUALITY
Title 18, Chapter 14, Article 1

Amend: R18-14-101, R18-14-102, R18-14-104, R18-14-111

New Section: R18-14-111, R18-14-114, R18-14-115

Renumber: R18-14-111, R18-14-112, R18-14-113, R18-14-114
MEETING DATE:  July 6, 2022

TO:  Members of the Governor’s Regulatory Review Council (Council)

FROM:  Council Staff

DATE:  June 6, 2022

SUBJECT:  DEPARTMENT OF ENVIRONMENTAL QUALITY

Title 18, Chapter 14, Department of Environmental Quality - Permit and Compliance Fees, Article 1, Water Quality Protection Fees

Amend:  R18-14-101, R18-14-102, R18-14-104, R18-14-111

New Section:  R18-14-111, R18-14-114, R18-14-115

Renumber:  R18-14-111, R18-14-112, R18-14-113, R18-14-114

Summary:

This regular rulemaking from the Department of Environmental Quality (Department) relates to rules in Title 18, Chapter 14, Article 1, regarding Water Quality Protection Fees. This rulemaking is related to two other rulemakings the Department is simultaneously conducting regarding the Underground Injection Control (UIC) program. The other two rulemakings relate to Licensing Time-frames and Program Rules.

As the Department indicates, “[t]he Arizona Department of Environmental Quality (ADEQ) is required under A.R.S. §§ 49-203(A)(6) and 49-257.01(A) to adopt a permit program for underground injection control (UIC), as administered under the Safe Drinking Water Act (SDWA; 42 U.S.C. § 300h et seq.). Per the conditional enactment in proposed rule R18-9-A602(A), any UIC rules promulgated by the State of Arizona shall not have the force and effect
of law until the U.S. Environmental Protection Agency (EPA) approves the transfer of primary enforcement authority (referred to herein as “Primacy”) through EPA’s publication of a final rule granting ADEQ Primacy in the Federal Register (see 40 CFR § 145.31). ADEQ first attempted this process in the late 1990s; but those efforts ultimately failed due to insufficient statutory and regulatory authority to develop the program. In 2018 Senate Bill 1494 was passed, giving ADEQ the requisite statutory authority to promulgate a state-level UIC program as required to obtain primacy approval.”

This action “proposes [a] new regulatory framework to articulate compliance expectations, mandate regulatory duties, and identify certain rights of those regulated through the Arizona UIC program.”

In this rulemaking, the Department is setting fees for the UIC program, with the objective being to put the least amount of burden on stakeholders while collecting enough revenue to operate the program.

The Department received an exception from the rulemaking moratorium to initiate this rulemaking on May 7, 2018 and final approval to submit it to the Council on May 17, 2022.

1. **Are the rules legal, consistent with legislative intent, and within the agency’s statutory authority?**

   Yes. The Department cites both general and specific statutory authority for this rulemaking.

2. **Do the rules establish a new fee or contain a fee increase?**

   Yes. This rulemaking establishes a new fee pursuant to statutory authority in A.R.S. § 49-203(A)(9). Council staff finds the Department cites the appropriate statutory authority for the proposed new fee in this rulemaking.

3. **Does the preamble disclose a reference to any study relevant to the rules that the agency reviewed and either did or did not rely upon?**

   The Department did not review or rely on a study in conducting this rulemaking.

4. **Summary of the agency’s economic impact analysis:**

   The Department states the rule making consists of 72 new sections, as well as amendments to existing sections, made by the Department to 18 A.A.C. 9, Articles 1 and 6, 18 A.C.C. 1, Article 5 and 18 A.A. C. 14, Article 1 in order to adopt the Federal Safe Drinking Water Act’s (SDWA) Underground Injection Control Program (UIC) under the relevant regulation in 40 C.F.R. Parts 144 through 146 within the State of Arizona as required under A.R.S. §§ 49-203(A)(6), 49-257.01. The Arizona statutes mandate that ADEQ establish the UIC program through rule. Federal statute 42 United States Code
300h et seq. authorizes EPA to grant states primary enforcement authority or primacy over the UIC upon the adoption of the program in rule at the state level (see 40 CFR 145.22(a)(5)).

The Department states that Arizona’s adoption will allow primacy to rest with ADEQ who is entirely focused on and knowledgeable of Arizona’s unique geology and climate; and who deeply understand Arizona’s environment, economy, and community. Additionally, program adoption will allow ADEQ to issue better permits faster, and eliminate the duplicative regulation, permitting, and permittee fees between the Federal and state programs.

5. **Has the agency analyzed the costs and benefits of the rulemaking and determined that the rules impose the least burden and costs to those who are regulated?**

The Department indicates that the purpose of this rulemaking is to adopt the SDWA-UIC program in Arizona rule in order to lay the groundwork for state administration of the program as required by the legislature through A.R.S. §§ 49-203(A)(6) and 49-257.01. It believes there is no less intrusive or less costly alternative method of achieving the purpose of the rulemaking.

6. **What are the economic impacts on stakeholders?**

The Department believes the primary cost of this rulemaking will be borne by UIC well permit holders and UIC wells authorized by rule. This includes in-situ copper mines, salt mines, municipal aquifer storage and recharge wells, extraction wells, carbon sequestration wells and a host of other injection wells.

The Department states there will be an increase in permitting costs due to ADEQ’s fee-for-service model. The fee-for-service model institutes the charging of permittees for a significant portion of the funding needed to support the implementation of the regulatory program. It further states that despite the increase in permitting fees, such as annual fees, the beneficial impact to the stakeholders includes permits and amendments being issued faster and the elimination of duplicative regulation, permitting, and permittee fees as a result of eliminating one of the two applicable regulatory programs for UIC permittees. It further indicates that the Department stands to benefit from this increase in fees by fulfilling the requirement of primacy. The stakeholders and the general public stand to benefit from the assurance that high-risk drywells in the state are being physically inspected from time to time.

The Department believes that this rulemaking will result in a positive impact for all stakeholders because it will protect the environment. Further, it believes that individuals with a better understanding of Arizona’s geology and climate will be developing and maintaining these permits, which will lead to better protection of the environment, which supports the economy and the community.
7. **Are the final rules a substantial change, considered as a whole, from the proposed rules and any supplemental proposals?**

No. As indicated in Item 10 of the Preamble, the Department added a new subsection to R18-14-111(3) to accommodate a transferability function for UIC Class V wells authorized by rule and to follow the general fee structure of the state drywell program. The fee for the transfer of each well from one owner to another is $100. This change does not result in a rule that is “substantially different” pursuant to A.R.S. § 41-1025.

8. **Does the agency adequately address the comments on the proposed rules and any supplemental proposals?**

Yes. As indicated in Item 11 of the Preamble, the Department received three comments on this rulemaking and adequately responded to the comments it received.

9. **Do the rules require a permit or license and, if so, does the agency comply with A.R.S. § 41-1037?**

These rules do not require a permit because they relate to fees for the UIC program. However, as the Department indicates in the Preamble for the Program Rules rulemaking, the UIC program will require permits. However, general permits are not used for the reasons specified in that Preamble.

10. **Are the rules more stringent than corresponding federal law and, if so, is there statutory authority to exceed the requirements of federal law?**

The Department indicates that federal law applies to the UIC program, but the addition of fees to these rules has no applicable federal law.

11. **Conclusion**

In this regular rulemaking, the Department is adding fees for the UIC Program which it says are the way for it to recover the costs of administering the program while imposing the least burden on stakeholders. The Department is requesting the standard 60-day delayed effective date for this rulemaking. Council staff recommends approval of this rulemaking.
NOTICE OF FINAL RULEMAKING

TITLE 18. ENVIRONMENTAL QUALITY

CHAPTER 14. DEPARTMENT OF ENVIRONMENTAL QUALITY

PERMIT AND COMPLIANCE FEES

PREAMBLE

1. Article, Part, or Section Affected (as applicable)  Rulemaking Action
   R18-14-101     Amend
   R18-14-102     Amend
   R18-14-104     Amend
   R18-14-111     New Section
   R18-14-111     Renumber
   R18-14-111     Amend
   R18-14-112     Renumber
   R18-14-113     Renumber
   R18-14-114     New Section
   R18-14-114     Renumber
   R18-14-115     New Section

2. Citations to the agency’s statutory rulemaking authority to include the authorizing statute (general) and the implementing statute (specific):
   Authorizing statute:    A.R.S. §§ 49-203(A)(6), 49-203(A)(9), 49-104(C)(1)
   Implementing statute:    A.R.S. § 49-257.01

3. The effective date for the rules:
   [SEC. OF STATE TO FILL IN]

4. Citations to all related notices published in the Register as specified in R1-1-409(A) that pertain to the record of the final rulemaking package:
   Notice of Rulemaking Docket Openings:  25 A.A.R. 2491 (September, 27, 2019)
                                       26 A.A.R. 2003 (September 25, 2020)
                                       27 A.A.R. 1592 (October 1, 2021)
   Notice of Proposed Rulemaking:        28 A.A.R. 16 (January 7, 2022)

5. The agency’s contact person who can answer questions about the rulemaking:
   Name:  Jon Rezabek
   Address:  Arizona Department of Environmental Quality
             Water Quality Division
             1110 W. Washington Street
             Phoenix, Arizona 85007
   Telephone: (602) 771-8219
   E-mail:  rezabek.jon@azdeq.gov
   Website:  https://azdeq.gov/UIC

6. An agency’s justification and reason why a rule should be made, amended, repealed or renumbered, to include an explanation about the rulemaking:
   General Explanation of this Rulemaking:
   The Arizona Department of Environmental Quality (ADEQ) is required under A.R.S. §§ 49-203(A)(6) and 49-257.01(A) to adopt a permit program for underground injection control (UIC), as administered under the Safe Drinking Water Act (SDWA; 42 U.S.C. § 300h et seq.). Per the conditional enactment in proposed rule R18-9-A602(A), any UIC rules promulgated by the State of Arizona shall not have the force and effect of law until the U.S. Environmental Protection Agency (EPA) approves the transfer of primary enforcement authority (referred to herein as “Primacy”) through EPA’s publication of a final rule granting ADEQ Primacy in the Federal
Register (see 40 CFR § 145.31). ADEQ first attempted this process in the late 1990s; but those efforts ultimately failed due to insufficient statutory and regulatory authority to develop the program. In 2018 Senate Bill 1494 was passed, giving ADEQ the requisite statutory authority to promulgate a state-level UIC program as required to obtain primacy approval.

In this action, ADEQ proposes new regulatory framework to articulate compliance expectations, mandate regulatory duties, and identify certain rights of those regulated through the Arizona UIC program. On May 7, 2018, the Governor’s Office approved an exemption to the rulemaking moratorium in Executive Order 2018-02 so ADEQ can proceed with this rulemaking.

**Associated Rulemakings**

The Arizona UIC program is a regulatory program with associated fees and licensing time frames (LTF). A.A.C. R1-1-103(D)(4) states, “...[a]n agency shall file only one Chapter per notice for any rulemaking activity.” In adherence to the rule, the program component of the Arizona UIC program, which amends A.A.C. Title 18, Chapter 9, is a separate Notice of Proposed Rulemaking filed contemporaneously this rulemaking, which amends A.A.C. Title 18, Chapter 14. Furthermore, the Arizona UIC program amendments to the licensing time frames (LTF) rules (A.A.C. Title 18, Chapter 1) has also been filed alongside the program and fee amendments. The LTF Notice of Proposed Rulemaking amends A.A.C. Title 18, Chapter 1.

**What is Underground Injection?**

An injection well is used to place fluid underground into porous geologic formations. These underground formations may range from deep sandstone or limestone, to a shallow soil layer. Injected fluids may include water, wastewater, brine (salt water), or water mixed with chemicals.

**What is a well?**

A well is a bored, drilled, or driven shaft whose depth is greater than the largest surface dimension; or a dug hole whose depth is greater than the largest surface dimension; or, an improved sinkhole; or a subsurface fluid distribution system.

**What does the Federal UIC program do?**

The UIC program protects Underground Sources of Drinking Water (USDW) through the regulation of injection wells. USDWs are:

1. aquifers or portions of aquifers that:
   1. supply public water systems; or
   2. contain a sufficient quantity of ground water to supply a public water system; and
      a. currently supply drinking water for human consumption, or
      b. contain fewer than 10,000 mg/l total dissolved solids; and
   3. are not aquifers exempted under the UIC program.

**How does the UIC program protect USDWs?**

The UIC program requires injected fluids stay within the well or the intended injection zone. The program also regulates fluids that are directly or indirectly injected into a USDW by prohibiting the movement of fluid containing any contaminant into USDWs, if the presence of that contaminant may cause a violation of any primary drinking water regulation or may otherwise adversely affect the health of persons.

**What are the different well classifications in the UIC program?**

**Class I**

Class I wells are used to inject hazardous and non-hazardous wastes into deep, isolated rock formations. Class I wells are disposal wells used by the petroleum refining, metal production, chemical production, pharmaceutical production, commercial disposal, food production and municipal wastewater treatment industries (amongst others) to dispose. These deep well injections release fluids into formations below USDWs, usually formations separated by multiple geologic strata from USDWS and often times at depths thousands of feet below the surface.

**Class II**
Class II wells are used exclusively to inject fluids associated with oil and natural gas production. Class II wells fall into one of the following three categories: disposal wells, enhanced recovery wells and hydrocarbon storage wells. Class II fluids are primarily brines (salt water) that are brought to the surface while producing oil and gas. Brines are separated from hydrocarbons at the surface and reinjected into the same or similar underground formations for disposal. Enhanced recovery wells utilize fluids consisting of brine, freshwater, steam, polymers, or carbon dioxide that are injected into oil-bearing formations to recover residual oil and in limited applications, natural gas. Hydrocarbon storage wells inject liquid hydrocarbons into underground formations (such as salt caverns) where they are stored, generally, as part of the U.S. Strategic Petroleum Reserve.

**Class III**
Class III wells are used to inject fluids for the purpose of dissolving and then extracting minerals. Production wells, which bring mining fluids to the surface, are not regulated under the UIC program. Class III wells are used to mine Uranium, Salt, Copper and Sulfur. Class III injection requirements isolate fluids from underground sources of drinking water.

**Class IV**
Class IV wells are used to inject hazardous or radioactive wastes into or above a geologic formation that contains a USDW. In 1984, EPA banned the use of Class IV injection wells. ADEQ will continue this ban upon primacy. These wells may only operate as part of an EPA or state authorized ground water clean-up action. Less than 32 waste clean-up sites with Class IV wells exist in the United States.

**Class V**
Class V wells are used to inject non-hazardous fluids underground. Most Class V wells are used to dispose of wastes into or above USDWs. This disposal can pose a threat to ground water quality if not managed properly. The different types of Class V wells pose various threats. Most Class V wells are shallow disposal systems that depend on gravity to drain fluids directly in the ground. Over 20 well subtypes fall into the Class V category. There are more than 650,000 Class V wells estimated to operate in the United States. Most of these Class V wells are unsophisticated shallow disposal systems such as stormwater drainage wells, septic system leach fields and agricultural drainage wells.

**Class VI**
Class VI wells are used to inject carbon dioxide (CO2) into deep rock formations. This long-term underground storage is called geologic sequestration (GS). Geologic sequestration refers to technologies to reduce CO2 emissions to the atmosphere and mitigate climate change.

**Stakeholder Composition**
Arizona currently has five (5) individual EPA UIC program permits operating within the state boundaries (not including Indian lands), all of which are for Class III wells for the purpose of extracting salts and copper. The three companies operating the five permits are Morton Salt, Inc., Excelsior Mining Arizona, Inc. and Florence Copper, Inc.

The UIC program applies to a large number of Class V injection wells through the programs “authorization by rule.” Class V authorization by rule includes initial inventorying, operators meeting a set of criteria, including a general standard to not cause fluids to move in such a way where a USDW would receive a pollutant above the standards in Table 1. Examples of Arizona Class V wells include drywells, aquifer storage recharge wells, septic systems serving greater than 20 people per day or that have a design flow of over 3,000 gallons per day and stimulation injection wells for the purpose of inert gas extraction (See proposed rule R18-9-A604(E) in Section 13 below for more examples of Class V wells). Furthermore, through stakeholder outreach, ADEQ has become aware of Arizona municipalities that are interested in developing Class I municipal wastewater disposal wells.

**What has been the stakeholder process thus far for this rulemaking?**
Statutory authority for program pursuit was passed into law through Senate Bill 1494 in 2018 at A.R.S. §§ 49-257 and 49-257.01. An exemption memo was received from the Governor’s Office in May of 2018. Since those events, ADEQ has been reaching out to UIC stakeholders throughout the state in a pre-rulemaking process.
known internally as “informal rulemaking”. Informal rulemaking involves developing and setting internal goals for what the rulemaking should achieve. ADEQ has held nine (9) stakeholder meetings, either presenting to stakeholders, receiving stakeholder input or both. Tribal consultation presentations were conducted three times in May 2019. Tribal correspondence has been addressed throughout the informal rulemaking phase as well.

The nine stakeholder meetings were designed to inform the regulated community of ADEQ’s progress in pursuing Primacy, as well as, explaining and presenting drafts of the state rules being developed for the ultimate purpose of administering the program. In November 2019 and November 2020, stakeholders were given access to drafts of the “program rule”. Afterwards, ADEQ solicited hundreds of comments from the regulated community, addressing and analyzing each one. Some comments led to changes in rule language, while others were determined to be inapplicable or unnecessary. All comments received were considered and are appreciated by the Agency. A repository of materials and events can be viewed on ADEQ’s “Stakeholder Materials” page for the UIC rulemaking. That webpage can be found here: https://azdeq.gov/UIC

In the context of stakeholder involvement, it should be noted that this set of rules, internally referred to as the “program rules,” is largely the same in substance as the EPA UIC permit program, which can be viewed in the CFR (see 40 CFR Parts 144 and 146). The substantive similarities were made by design, as EPA requires a primacy applicant’s administering rules to be at least as stringent as the EPA program. Furthermore, in Arizona, a number of statutes (A.R.S. §§ 41-1052(D)(9), 49-104(16) and others) prohibit a rule’s passage if the rule is more stringent than a corresponding federal law unless there is statutory authority to exceed the federal requirements. Due to these limitations on stringency, the language in the EPA program was adopted largely as is. The influence of stakeholder input can be seen in R18-9-A602, R18-9-C627(B) through (F) and R18-9-C631(B).

**UIC Fees**

The major factor in ADEQ’s decision-making in setting fees for the UIC program is the goal of putting the least amount of burden on the stakeholders while generating enough revenue to support the administrative costs necessary to operate the program. More specifically, the rulemaking proposal in A.A.C. R18-14-102(B) includes an hourly rate for a water quality protection service associated with a UIC permit to be set at $145 an hour. The APP program’s water quality protection service fee is $122 and was set in 2011. ADEQ determined $145 an hour for a UIC water quality protection service fee by considering other fees in the agency, such as the Air Pollution Control permits (A.A.C. R18-2-236(2)(d) & (H)) under Subs, as well as accounting for inflationary costs since 2011. A final factor of consideration was the goal of providing adequate revenue for the purposes of supporting the administration of the program.

The rulemaking proposal in A.A.C. R18-14-102(C) includes maximum fees for a water quality protection service assessed at an hourly rate. UIC Area and Classes I, II, III and V permits are set at $200,000. UIC Area and Classes I, II, III and V permit modification and/or permit renewal are set at a maximum of $150,000. UIC Class VI permits maximum fee proposal is “no max”. The reason why no maximum fee has been proposed for UIC Class VI is because of its complicated and unknown nature. Arizona does not have any Class VI carbon sequestration wells and the entire country only has a few in operation. ADEQ believes there is no basis for proposing a maximum on UIC Class VI wells at this time.

The Annual Fees (listed in Tables 3.1 and 3.2 of R18-14-104) and the UIC Flat Fees (listed in R18-14-111) were determined by considering the necessary revenue needed to support the administration of the program while putting the least burden possible on the stakeholders. Other factors include input from the APP program and other states’ UIC programs.

ADEQ is exploring the regulation of drywells under the UIC program as Class V wells “authorized by rule.” At primacy, ADEQ will take administrative and enforcement authority over the UIC program, including Class V regulation of drywells.

In discussion with UIC stakeholders, it was determined that a review of the revenues collected from the UIC program’s fees should take place once every three years in order to ensure that enough revenue is being collected to properly administer the program and to make sure the fees are equitable by putting the least amount of burden on the stakeholders. To that end, R18-14-115 is proposed in this rulemaking.
A reference to any study relevant to the rule that the agency reviewed and proposes either to rely on or not to rely on in its evaluation of or justification for the rule, where the public may obtain or review each study, all data underlying each study, and any analysis of each study and other supporting material:

Not applicable.

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

Not applicable.

The economic, small business, and consumer impact statement:

This Economic, Small Business, and Consumer Impact Statement has been prepared to meet the requirements of A.R.S. § 41-1055.

A. An identification of the rulemaking:

The rulemaking addressed by this Economic, Small Business, and Consumer Impact Statement (EIS) consists of 72 new sections, as well as amendments to existing sections, made by the Arizona Department of Environmental Quality (ADEQ) to 18 A.A.C. 9, Articles 1 and 6, 18 A.A.C. 1, Article 5 and 18 A.A.C. 14, Article 1 in order to adopt the Federal Safe Drinking Water Act’s (SDWA) Underground Injection Control Program (UIC) under the relevant regulation in 40 C.F.R. Parts 144 through 146 within the State of Arizona as required under A.R.S. §§ 49-203(A)(6), 49-257.01.

Arizona Revised Statutes §§ 49-203(A)(6) and 49-257.01 mandate that ADEQ establishes the UIC Program through rule. Federal statute at 42 United States Code 300h et seq. authorizes EPA to grant states primary enforcement authority or primacy over the UIC program upon the adoption of the program in rule at the state level (see 40 CFR 145.22(a)(5)).

Control of underground injection conducted in the industrial, municipal and residential sectors is necessary in order to protect Arizona’s underground sources of drinking water (USDWs) or aquifers. In Arizona, the UIC program has been administered by the Environmental Protection Agency (EPA) for decades. Currently 5 Federal UIC permits are in effect, along with thousands of UIC Class V wells that are authorized by rule.

Arizona’s program adoption will allow primacy to rest with ADEQ who is entirely focused on, and knowledgeable of, Arizona’s unique geology and climate; and who deeply understand Arizona’s environment, economy, and community. Additionally, program adoption will allow ADEQ to issue better permits, faster, and eliminate duplicative regulation, permitting, and permittee fees between the Federal and state programs. Adoption of this program will supplement Arizona’s already existing groundwater safeguards, taking a place in conjunction with the Aquifer Protection Permit Program.

B. A summary of the EIS:

General Impacts

The primary costs of this rulemaking will be borne by UIC well permit holders and UIC wells authorized by rule. This includes in-situ copper mines, salt mines, municipal aquifer storage and recharge wells, extraction wells, carbon sequestration wells and a host of other injection wells.

There will be an increase in permitting costs due to ADEQ’s fee-for-service model. The fee-for-service model institutes the charging of permittees for a significant portion of the funding needed to support the implementation of the regulatory program. The Federal UIC program operates off of a general fund model, where permittees are not charged and the cost of implementation of the regulatory program comes from specific, legislatively approved funds (usually with an origin in government tax revenue). Many of ADEQ’s programs were changed after the 2008 recession from a general fund model to fee-for-service model. The difference between the fee-for-service model and the general fund model is the reason the regulatory program within this rulemaking will impose a financial burden upon the permittees.

Despite the increase in permitting fees, such as annual fees, the beneficial impact to the stakeholders include permits and amendments being issued faster and the elimination of duplicative regulation, permitting, and permittee fees as a result of eliminating one of the two applicable regulatory programs for
UIC permittees. ADEQ stands to benefit from this increase in fees by fulfilling a requirement of primacy. The stakeholders and the general public stand to benefit through the assurance provided that high-risk drywells in the state are being physically inspected from time to time, as opposed to rarely, as was the frequency of inspection before the ADEQ UIC program primacy.

A positive impact for all stakeholders is the protection of the environment that the program this rulemaking supports will bring. Individuals with a better understanding of Arizona’s geology and climate will be developing and maintaining these permits, which will lead to better protection of the environment, which supports the economy, which supports the community.

**Specific Impacts**
While the three existing UIC permittees in the state of Arizona will see an increase in regulatory cost of conducting their business, they stand to benefit greatly in having the program administered in-state through speedier application review and permit services, the elimination of duplicative regulation between the Federal and state governments and local access to ADEQ expertise, personnel and customer service. Despite the increase in regulatory cost, the existing permittees support ADEQ’s adoption of the program.

Drywell regulation in Arizona will be transitioned from dual regulation between the Federal and state governments to a singular, UIC Class V authorization by rule through a simple inventory. Arizona’s more than 65,000 registered drywells will be transitioned into the UIC Class V well inventory without a charge. The former drywell registration fee of $100 will be increased to $200 per UIC Class V inventory.

The reason for this increase to the Drywell fees is to supplement the funds necessary to support the implementation of the Class V portion of the UIC program. This includes an EPA requirement for ADEQ to assume the inspection of responsibilities for Class V wells in the state.

**Stakeholder Process**
ADEQ and Arizona’s UIC stakeholders spent many hours negotiating the fees for the UIC program in this rulemaking. The transparent and collaborative process rendered a balanced set of fees, whereupon the needs of all parties were met and the support of the stakeholders in adopting the program was preserved.

C. **Identification of the persons who will be directly affected by, bear the costs of, or directly benefit from the rules:**
This rulemaking will affect state government agencies, political subdivisions, and privately-owned businesses. Additionally, the rulemaking will impact the general public.

ADEQ has identified the following list of affected persons:

**State government agencies**
State agencies benefit from the rulemaking due to the rulemaking supporting the environment, the community, and industry.

- ADEQ
- Arizona Department of Water Resources
- Arizona Department of Agriculture

**Political subdivisions**
Political subdivisions benefit from the rulemaking due to the rulemaking supporting the environment, the community, and industry. Additional benefits include faster, better permits facilitating the installation of Drywells as needed and the development of groundwater treatment facilities to support Arizona’s growing potable water needs. As permittees, political subdivisions will also bear the increased cost of the new permitting fee schedule.

- Counties
- Municipalities
- Domestic Water Improvement Districts

Privately-Owned Businesses
Privately-owned businesses will benefit from faster, better permits reducing the costs of delays to permit issuance. As permittees, political subdivisions will also bear the increased cost of the new permitting fee schedule.

- Mines
- Mineral Extraction Companies
- Businesses which utilize drywells

The General Public
The general public will benefit from the environmental protection of better permits being issued by an agency with expertise specific to the permitting actions occurring in Arizona’s climate and geology. Additional benefits will be derived through the benefits industry derives which in turn supports the community and the general public.

D. Cost/benefit analysis
   1. Part I - Cost/Benefit Stakeholder Matrix:

<table>
<thead>
<tr>
<th>Description of Affected Groups</th>
<th>Description of Effect</th>
<th>Increased Cost / Decreased Revenue</th>
<th>Decreased Cost / Increased Revenue</th>
</tr>
</thead>
<tbody>
<tr>
<td>A. State and Local Government Agencies</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>ADEQ</td>
<td>Costs of supporting and implementing a new regulatory program</td>
<td>Moderate</td>
<td></td>
</tr>
<tr>
<td></td>
<td>Ensuring underground sources of drinking water supply or aquifers are better protected from pollution.</td>
<td>Significant</td>
<td></td>
</tr>
<tr>
<td></td>
<td>Compliance with state and federal law.</td>
<td>Significant</td>
<td></td>
</tr>
<tr>
<td></td>
<td>Support of ADEQ’s mission to protect and enhance public health and the environment.</td>
<td>Significant</td>
<td></td>
</tr>
<tr>
<td>Political Subdivisions</td>
<td>Tax revenues and indirect benefits of clean underground sources of drinking water supply</td>
<td>Significant</td>
<td></td>
</tr>
<tr>
<td></td>
<td>Regulation of desalination disposal kept local</td>
<td>Significant</td>
<td></td>
</tr>
<tr>
<td></td>
<td>Cost savings due to the elimination of duplicative regulatory programs (Federal UIC becomes State</td>
<td>Significant</td>
<td></td>
</tr>
</tbody>
</table>
2. Part II - Individual Stakeholder Summaries/Calculations:

This section outlines ADEQ’s analyses of the estimated costs and benefits of this rulemaking, made after consultation with ADEQ staff, as well as knowledgeable individuals in the area of groundwater protection and underground injection control.

ADEQ

ADEQ will incur moderate costs as a result of implementing this rulemaking and administering the program. The rulemaking process itself requires staff time for technical review, rule composition, and public input. In order to support the administration of the UIC program, ADEQ plans on hiring 3.2 new full-time employees (FTE). These 3.2 FTEs will be split primarily between permit specialist positions, inspectors and other administrative duties. Funding those positions will incur moderate costs to ADEQ annually which will be offset by permit service fees, annual fees, inventory fees, well fees and an EPA work grant.

This rulemaking will create significant benefit to ADEQ in its fulfillment of the legislative mandates at A.R.S. §§ 49-203(A)(6) and 49-257.01. Given ADEQ’s mission to protect human health and the environment, the Department acknowledges the benefits to stakeholders that will flow from the implementation of this program, including a streamlined permitting process and a reduction in cost through the elimination of duplicative regulation between Federal and state programs. Upon adoption of the program, stakeholders who would have in the past had to file dual applications, comply with dual regulatory programs, file a dual set of ongoing reports and pay for consulting costs for dual permits will see all of those obligations consolidated into one, localized state program and permit. This fact stands to save the regulated community time, money and hardship.

The Number of New, Full-Time Employees Necessary to Implement and Enforce the Proposed Rule
3.2

Political Subdivisions

Political subdivisions are likely to see minimal costs and minimal benefit from this rulemaking. As mentioned above, municipalities have shown interest in applying for Class I disposal well permits; however, none have
been applied for at the time of this rulemaking. Until political subdivisions apply for UIC permits, they will see no costs due to this rulemaking and the UIC program. However, political subdivisions are interested in the disposal of brine from prospective desalinization plants. This rulemaking stands to localize brine disposal regulation, which would bring benefit to prospective stakeholders. Municipalities also often own a multitude of dry wells, which are to be regulated under the UIC program’s Class V wells.

The UIC program exists currently, administered by the Federal government, until ADEQ achieves primary enforcement authority over the program. As is stated above, the EPA administered program is funded through an approved budget from a Federal general fund. ADEQ’s funding for UIC program administration will be realized through a fee-for-service model. The fee-for-service model institutes the charging of applicants and permittees for a significant portion of the funding necessary to support the regulatory program and the personnel necessary to staff it. Many of ADEQ’s programs are structured this way. The Federal UIC program does not charge applicants, but rather derives its approved funds from a Federal general fund. The difference between the fee-for-service model and the general fund model is the reason the regulatory program within this rulemaking will impose a potentially minimal financial burden upon political subdivisions.

However, when the political subdivisions choose to engage with the UIC program that is the subject of this rulemaking, the benefits include a streamlined permitting process, and a reduction in cost through the elimination of duplicative regulation between Federal and state programs. Upon adoption of the program stakeholders who would have in the past had to file dual applications, comply with dual regulatory programs, file a dual set of ongoing reports and pay for consulting costs for dual permits will see all of those obligations consolidated into one, localized state program. This fact stands to save the regulated community time, money and hardship.

Privately-Owned Business

Privately-owned business is likely to see moderate cost and moderate benefit from this rulemaking. The disparity between EPA’s general fund program model and ADEQ’s fee-for-service model will incur potentially moderate costs to privately-owned businesses, especially the businesses that currently have UIC permits.

However, and as mentioned above, the benefits to privately-owned business include a streamlined permitting process, and a reduction in cost through the elimination of duplicative regulation between Federal and state programs. Upon adoption of the program, stakeholders who would have in the past had to file dual applications, comply with dual regulatory programs, file a dual set of ongoing reports and pay for consulting costs for dual permits will see all of those obligations consolidated into one, localized state program. This fact stands to save the regulated community time, money and hardship.

General Public

The general public could see significant benefit from this rulemaking. The UIC program that is the subject of this rulemaking aims to protect underground sources of drinking water supply or aquifers, many of which provide drinking water to Arizonans. The price of treating contaminated water or having to resort to other sources of water for drinking water supply is potentially significant. Furthermore, A positive impact for all stakeholders is the protection of the environment that the program this rulemaking supports will bring. Individuals with a better understanding of Arizona’s geology and climate will be developing and maintaining these permits, which will lead to better protection of the environment, which supports the economy, which supports the community.

E. A general description of the probable impact on private and public employment in business agencies, and political subdivisions of this state directly affected by the rulemaking:

ADEQ estimates that, for the most part, this rulemaking will not have an impact on public or private employment. However, and as mentioned above, all UIC permittees, whether public or private, stand to benefit through the state establishment of a streamlined permitting process, and a reduction in cost through the elimination of duplicative regulation between Federal and state programs. Upon adoption of the program, stakeholders who would have in the past had to file dual applications, comply with dual regulatory programs, file a dual set of ongoing reports and pay for consulting costs for dual permits will see all of those obligations consolidated into one, localized state program. This fact stands
to save the regulated community time, money and hardship. Arizona environmental consultants may see a minimal detriment due to the streamlining of environmental compliance for companies using injection wells.

F. A statement of the probable impact of the rules on small business:
In this EIS, ADEQ uses the term “small business” consistent with A.R.S. § 41-1001(21), which defines a “small business” as a concern, including its affiliates, which is independently owned and operated, which is not dominant in its field and which employs fewer than one hundred full-time employees or which had gross annual receipts of less than four million dollars in its last fiscal year.

1. An identification of the small business subject to the rules:
   Among the stakeholders listed above, only a few meet the definition of small business as set forth in A.R.S. § 41-1001(21). For example, ADEQ estimates that all three current UIC permit holders in Arizona are not small businesses. However, ADEQ has recorded with frequency around 1,000 drywell registrations annually. Drywells will be regulated under the Class V UIC program upon primacy. Small businesses will constitute a significant portion of the approximately 1,000 drywell inventories ADEQ expects annually upon primacy. In terms of UIC Class V drywell inventorying, some small businesses will be affected in a minimally negative manner by this rulemaking. However, the rulemaking intends to institute some UIC Class V inspections, including drywells, which could prove minimally beneficial to certain small businesses.

2. The administrative and other costs required for compliance with the rules:
   Compliance costs associated with this rulemaking will vary based on the stakeholder involved. ADEQ’s examination of compliance costs for UIC well owners regulated through a permit or an authorization by rule is addressed in the cost benefit analysis above.

3. A description of the methods that the agency may use to reduce the impact on small businesses, as required in A.R.S. § 41-1035:
   a. Establishing less stringent compliance or reporting requirements in the rule for small businesses:
      Under the SDWA, small businesses are not given special treatment when it comes to compliance or reporting requirements. In order to be eligible for EPA’s transfer of primary enforcement authority of the program from Federal to State, the Federal SDWA-UIC program must be at least as stringent as the Federal program.
   b. Establishing less stringent schedules or deadlines in the rule for compliance or reporting requirements for small businesses:
      Under the SDWA, small businesses are not given special treatment when it comes to the stringency of schedules or deadlines for compliance and reporting. Please reference subsection (F)(3)(a) above for more explanation.
   c. Consolidating or simplifying the rule’s compliance or reporting requirements for small businesses:
      Under the SDWA, small businesses are not given special treatment when it comes to compliance and reporting requirements. Please reference subsection (F)(3)(a) above for more explanation.
   d. Establishing performance standards for small businesses to replace design or operational standards in the rule:
      Under the SDWA, small businesses are not given special treatment when it comes to design or operational standards. Please reference subsection (F)(3)(a) above for more explanation.
   e. Exempting small businesses from any or all requirements of the law:
      Under the SDWA, small businesses are not given special treatment when it comes to requirements. Please reference subsection (F)(3)(a) above for more explanation.

4. The probable costs and benefits to private persons and consumers who are directly affected by the rules:
   As is stated above in this EIS, the SDWA-UIC program in currently in effect, administered by the Federal government’s EPA. This rulemaking is designed to support the primary enforcement authority or primacy application ADEQ has been mandated to pursue according
to A.R.S. §§ 49-203(A)(6) and 49-257.01. The existing regulated parties in Arizona include three UIC Class III permittees and tens of thousands of UIC Class V wells (mostly drywells). Also stated above is the disparity in funding mechanisms between EPA’s current administration of the program and ADEQ’s proposed funding mechanisms in administration (EPA: General Fund based; ADEQ: Fee-For-Service based). Despite the new fees associated with Arizona’s potential primacy, the state’s UIC stakeholders have shown support for ADEQ’s primacy pursuit. The reason for their support is the consolidation of Federal and state regulatory obligations into one, localized state program. The benefits to these private entities include the elimination of the necessity to file dual applications, to comply with dual regulatory programs, to file a dual set of ongoing reports and to pay for consulting costs for dual permits. Further benefits include the local access to ADEQ’s expertise, personnel and customer service, a streamlined permitting process, and a reduction in cost through the elimination of duplicative regulation between Federal and state programs.

UIC applicants and permittees will be subject to a water quality protection service fee of $145 an hour for application review, permit writing and other, similar services. The maximum fee for a single licensing time frame for UIC Area and Classes I, II, III and V permits are set at $200,000. UIC Area and Classes I, II, III and V permit modification and/or permit renewal are set at a maximum of $150,000. UIC Class VI permits maximum fee proposal is “no max”. The reason why no maximum fee has been proposed for UIC Class VI is because of its complicated and unknown nature. Arizona does not have any Class VI carbon sequestration wells and the entire country only has a few in operation. ADEQ believes there is no basis for proposing a maximum on UIC Class VI wells at this time.

UIC permittees will be subject to Annual and Flat Fees, which were determined by considering the necessary revenue needed to support the administration of the program while putting the least burden possible on the stakeholders. Other factors include input from the APP program, other states’ UIC programs and directly affected stakeholders.

Drywell regulation in Arizona will be transitioned from a state statutorily based regulatory program to regulation under the UIC program’s Class V wells. Arizona’s more than 65,000 registered drywells will be transitioned into the UIC Class V well inventory without a charge. However, there will be a cost increase between new drywell registration fees associated with the state statutory program and new inventory fees in the state-administered UIC program. Registration fees are $100 per registration, where inventory fees will be $200 per inventory. The reason for this increase is to supplement the funds necessary to support the administration of the Class V portion of the UIC program, including the commencement of more regular inspection of high-risk drywells in Arizona. A condition of EPA granting ADEQ primacy to administer the UIC program is the inspection of a small portion of the UIC Class V wells in the state. In order to meet this requirement, ADEQ has increased the fee required to inventory a drywell in the state.

In discussion with UIC stakeholders, it was determined that a review of the revenues collected from the UIC program’s fees should take place once every three years in order to ensure that enough revenue is being collected to properly administer the program and to that the fees are equitable by putting the least amount of burden on the stakeholders. To that end, R18-14-115 is proposed in this rulemaking.

G. A statement of the probable effect on state revenues:
This rulemaking will not result in a significant increase, nor decrease in state revenues. Increased and decreased costs to ADEQ are expected to be minimal, as explained above in the analysis of costs and benefits to ADEQ. Because the UIC permittees in Arizona were permitted through the UIC program as administered by the EPA, ADEQ does not anticipate a significant decrease in business activity in the state or a corresponding loss of state tax revenues.
H. A description of any less intrusive or less costly alternative methods of achieving the purpose of the rulemaking:
The purpose of this rulemaking is to adopt the SDWA-UIC program in Arizona rule in order to lay the groundwork for state administration of the program as required by the legislature through A.R.S. §§ 49-203(A)(6) and 49-257.01. There are no less intrusive or less costly alternative methods of achieving the purpose of the rulemaking.

I. A description of any data on which the rule is based with a detailed explanation of how the data was obtained and why the data is acceptable data:
The SDWA allows states to apply for primary enforcement authority in the administration of the UIC regulatory program (see 42 United States Code 300h et seq.). The Arizona legislature mandated pursuit of the SDWA-UIC program through the passage of the following statutes, A.R.S. §§ 49-203(A)(6) and 49-257.01. In order to achieve primacy, one requirement of a state is to put rules in place for the program to operate through (see 40 Code of Federal Regulations 145.22(a)(5)). These rules must be at least as stringent as the Federal UIC program rules in order for EPA to consider a state’s primacy application. The rules must also be no more stringent than the analogous Federal rule, per Arizona state law (see A.R.S. § 49-104(16)). Given those parameters, the language for the rules in this rulemaking came largely from 40 CFR Parts 144, 145 and 146 and to a lesser extent, 40 CFR Parts 124, 141 and 142.

10. A description of any changes between the proposed rulemaking, including supplemental notices, and the final rulemaking:
R18-14-111(3)
• This is a new subsection that was added in order to accommodate a transferability function for UIC Class V wells authorized by rule and to follow the general fee structure of the state drywell program. The language charges $100 for each well transferred from one owner to another.

11. An agency’s summary of the public or stakeholder comments made about the rulemaking and the agency response to the comments:
Comment 1: Resource Extraction Industry Member
Proposed R18-14-115 should be revised to replace the words "from the date of primacy" with the words "from the date of the Environmental Protection Agency's approval of the Arizona UIC program." This is unless ADEQ prefers to define "primacy" as such in A601 and employ that term likewise in A602(A). In these provisions, ADEQ may also wish to employ the words "the Administrator" in lieu of "the Environmental Protection Agency."
ADEQ Response 1:
ADEQ appreciates the comment.

Comment 2: Drywell Owners – UIC Drywell Regulation
How will the UIC program rulemaking affect drywell regulation in Arizona? Will the existing registrations be rolled in the new UIC program? If rolled into the new UIC program, will the regulations look the same/similar as they are now for the Class V wells? Upon primacy, will drywell owners with registrations under A.R.S. § 49-332 need to inventory under the UIC program? Are Dry Wells included in a Class? If so, which Class are they included in? Under the UIC program, will drywells be assessed an annual fee or a one-time fee?
ADEQ Response 2:
ADEQ appreciates the comment. Currently, drywells in Arizona are regulated primarily through a statutorily-based program that can be found at A.R.S. Title 49, Chapter 2, Article 8. This program requires registration of new drywells. There are a few special circumstances where drywells are required to register and apply for an Aquifer Protection Permit (APP) (see A.A.C. Title 18, Chapter 9, Article 3, Part C. Type 2 General Permits – specifically R18-9-C301, C303 & C304).
In 2022, the Arizona State Legislature passed a bill (signed by the Governor) which repeals the state statutory drywell program. The repealed state statutory drywell program leaves drywell regulation in Arizona to the UIC program. The UIC program regulates drywells as part of its Class V wells. Upon primacy over the UIC program (projected for early 2023), ADEQ would take administrative control from EPA over the program and the drywell regulation therein. Until primacy, the Environmental Protection
Agency (EPA) will continue to administer the UIC program in Arizona (including drywells which are encompassed in the Class V wells). ADEQ is currently developing the UIC program and aims to transfer all state drywell registrations into the UIC program inventory in the process (free of charge). More information on this process will be made public as program development continues.

Class V regulations in the UIC program that are currently in effect and administered by EPA out of the Code of Federal Regulations (CFR) are nearly identical to the Class V regulation in this rulemaking. Similar to the regulation in A.R.S. Title 49, Chapter 2, Article 8, the Class V regulation wherein drywells apply requires an inventory of new wells. Class V regulation also requires drywells to adhere to the prohibition of movement standard in rule R18-9-B608(A). This rule prohibits any injection activity in a manner that allows the movement of fluid containing any contaminant into an underground source of drinking water. The Class V-specific regulation can be found at R18-9-I650 et seq.

Under the Arizona UIC program, drywells and Class V wells are charged a one-time fee, per inventory, of $200. Class V wells, authorized by rule, will also be charged $100 upon transfer of the well to a new owner.

**Comment 3: Tribal Interest Group**

ADEQ has stated that it intends for the UIC Program to be almost entirely funded through collected permit fees. For many years, ADEQ has suffered from deficient state funding. ADEQ should not be pursuing UIC Program primacy without asking for sufficient funding from the Arizona Legislature. This is critical, as sufficient funding and adequate ADEQ workforce expertise must be present for ADEQ to fulfill its obligations under this Program, as well as its obligations to Arizona tribes.

**ADEQ Response 3:**

ADEQ appreciates the comment. The Arizona UIC program is proposed to operate on a fee-for-service model that derives funding from diverse sources of revenue, which includes fixed annual fees, well installation fees, an hourly fee for application and technical review, and an annual work grant from EPA. The Annual Fees (listed in the UIC Licensing Time Frame proposed rules at Tables 3.1 and 3.2, R18-14-104) and the UIC Flat Fees (listed in proposed rule R18-14-111) were determined by considering the necessary revenue needed to support the administration of the program. Projected revenue will be augmented by an increase in the hourly rate for a UIC water quality protection service associated with a UIC permit, which has been set at $145 an hour in proposed rule R18-14-102(B). Furthermore, ADEQ has proposed in the Fee rulemaking the periodic review of the revenues collected from the UIC program every three years (see proposed rule R18-14-115). The reviews will ensure that enough revenue is being collected to properly administer the program. The reviews will also ensure that the fees are equitable and not overly burdensome to the stakeholders.

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

The following statutes contain therein prescribed matters applicable to the rules in this rulemaking: A.R.S. §§ 49-203(A)(6) and (9); 49-257; 49-257.01.

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

   See Subsection 12(A) in the Notice of Proposed Rulemaking for Title 18, Chapter 9, Article 6 filed alongside this Notice of Proposed Rulemaking.

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

   Federal law is applicable to the UIC program. The UIC is a program authorized under the SDWA (see 42 U.S.C. § 300h et seq.), originally administered by EPA. The UIC program administration can be transferred from EPA to a state through a delineated process known as Primacy (see 42 U.S.C. § 300h-1). However, the addition of fees to 18 A.A.C. 14 has no applicable federal law.

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

   No comparative analyses were submitted.
13. A list of any incorporated by reference material as specified in A.R.S. § 41-1028 and its location in the rules:
   No material was incorporated by reference in this rulemaking under A.R.S. § 41-1028, nor otherwise.

14. Whether the rule was previously made, amended, or repealed as an emergency rule. If so, cite the notice published in the Register as specified in R1-1-409(A). Also, the agency shall state where the text was changed between the emergency and the final rulemaking packages:
   Not applicable.

15. The full text of the rules follows:

   TITLE 18. ENVIRONMENTAL QUALITY
   CHAPTER 14. DEPARTMENT OF ENVIRONMENTAL QUALITY
   WATER QUALITY PERMIT AND COMPLIANCE FEES

   ARTICLE 1. WATER QUALITY PROTECTION FEES

   Section
   R18-14-101. Definitions
   R18-14-102. Hourly Rate and Maximum Fees for Water Quality Protection Services
   R18-14-103. Initial Fees
   R18-14-104. Annual Fees for Water Quality Protection Services
   R18-14-105. Fee Assessment and Collection
   R18-14-106. Reconsideration of a Bill; Appeal Process
   R18-14-107. Effect on County Fees
   R18-14-108. APP Water Quality Protection Services Flat Fees
   R18-14-109. AZPDES Water Quality Protection Services Flat Fees
   R18-14-110. Reclaimed Water Flat Fees
   R18-14-111. UIC Flat Fees
   R18-14-111. R18-14-112. Other Flat Fees
   R18-14-112. R18-14-113. Implementation
   R18-14-115. UIC Fees Review
ARTICLE 1. WATER QUALITY PROTECTION FEES

R18-14-101. Definitions

In addition to the definitions in A.R.S. §§ 49-201, 49-241.02, 49-255, 49-331, and A.A.C. R18-9-101, A.A.C. R18-9-701, and A.A.C. R18-9-A901, the following terms apply to this Article:

1. “APP” means an Aquifer Protection Permit.
2. “Complex modification” means:
   a. A revision of an individual Aquifer Protection Permit for a facility within a mining sector as defined in A.R.S. § 49-241.02(F)(1); and
   b. A revision of an individual Aquifer Protection Permit for a facility within a non-mining sector due to any of the following:
      i. An expansion of an existing pollutant management area requiring a new or relocated point of compliance
      ii. A new subsurface disposal including injection or recharge, or new wetlands construction;
      iii. Submission of data indicating contamination, or identification of a discharging facility or pollutants not included in previous applications that requires reevaluation of BADCT; or
      iv. Closure of a facility that cannot meet the clean closure requirements of A.R.S. § 49-252 and requires post-closure care, monitoring, or remediation.
3. “Courtesy review” means a design review service that the Department performs within 30 days from the date of receiving the submittals, of the 60 percent completion specifications, design report, and construction drawings for a sewage collection system.
4. “Priority review” means a design review service for an APP Type 4 permit application that the Department completes using not more than 50 percent of the total review time-frame for the applicable Type 4 permit application as specified in 18 A.A.C. 1, Table 10.
5. “Request” means a written application, notice, letter, or memorandum submitted by an applicant to the Department for water quality protection services. The Department considers a request made on the date it is received by the Department.
6. “Review hours” means the hours or portions of hours that the Department’s staff spends on a request for a water quality protection service. Review hours include the time spent by the project manager and technical review team members, and if requested by the applicant, the supervisor or unit manager.
7. “Review-related costs” means any of the following costs applicable to a specific request for water quality protection service:
   a. Presiding officer services for public hearings on a permitting decision,
   b. Court reporter services for public hearings on a permitting decision,
   c. Facility rentals for public hearings on a permitting decision,
   d. Charges for laboratory analyses performed during the review, and
   e. Other reasonable and necessary review-related expenses documented in writing by the Department and agreed to by an applicant.
8. “Standard modification” means an amendment to an individual Aquifer Protection Permit that is not a complex modification.
10. “Water quality protection service” means:
   a. Reviewing a request for an APP determination of applicability;
   b. Issuing, renewing, amending, modifying, transferring, or denying an aquifer protection permit, an AZPDES permit, a UIC permit, a UIC application for an aquifer exemption or an injection depth waiver or a reclaimed water permit;
   c. Reviewing supplemental information required by a permit condition, including closure for an APP;
   d. Performing an APP clean closure plan review;
   e. Issuing or denying a Certificate of Approval for Sanitary Facilities for a Subdivision;
   f. Registering or transferring registration of a dry well;
   g. Conducting a site visit;
   h. Reviewing proprietary and other reviewed products under A.A.C. R18-9-A309(E);
   i. Reviewing, processing, and managing documentation related to an AZPDES general permit, including a notice of intent, notice of termination, certificate of no exposure, and waiver;
   j. Registering and reporting land application of biosolids; or
k. Pretreatment program review, inspection, or audit.

**R18-14-102. Hourly Rate and Maximum Fees for Water Quality Protection Services**

A. The Department shall assess and collect an hourly rate fee for a water quality protection service, except for APP minor permit amendments specified under A.A.C. R18-9-A211(C)(1), (2) and (3) and A.A.C. R18-9-B906(B), unless a flat fee is otherwise designated in this Article, and UIC minor modifications specified under A.A.C. R18-9-C633(A).

B. Hourly rate fees. The Department shall calculate the fee using an hourly rate of $122, except for the UIC program, where the Department shall calculate the fee using an hourly rate of $145. These rates shall then be multiplied by the number of review hours to provide a water quality protection service, plus any applicable review-related costs, up to the maximum fee specified in subsection (C). The Department shall not charge an applicant for the first 60 minutes of Department pre-application consultation time costs for the project manager.

C. Maximum fees for a water quality protection service assessed at an hourly rate are as follows:

<table>
<thead>
<tr>
<th>Program Area</th>
<th>Permit Type</th>
<th>Maximum Fee</th>
</tr>
</thead>
<tbody>
<tr>
<td>APP</td>
<td>Individual or area-wide</td>
<td>$200,000</td>
</tr>
<tr>
<td>APP</td>
<td>Complex modification to individual or area-wide</td>
<td>$150,000</td>
</tr>
<tr>
<td>APP</td>
<td>Clean closure of facility</td>
<td>$50,000</td>
</tr>
<tr>
<td>APP</td>
<td>Standard modification to individual or area-wide (per modification up to the maximum fee, and modification can be reassigned under A.A.C. R18-1-516):</td>
<td></td>
</tr>
<tr>
<td></td>
<td>Maximum fee (cumulative per submittal)</td>
<td>$150,000</td>
</tr>
<tr>
<td></td>
<td>No fee</td>
<td></td>
</tr>
<tr>
<td></td>
<td>Modification under A.A.C. R18-9-A211(C)(1) through (3)</td>
<td>$5,000</td>
</tr>
<tr>
<td></td>
<td>Modification under A.A.C. R18-9-A211(C)(4) through (6)</td>
<td>$15,000</td>
</tr>
<tr>
<td></td>
<td>Modification under A.A.C. R18-9-A211(C)(7), (D)(2)(b) through (i), and (k) through (l)</td>
<td>$25,000</td>
</tr>
<tr>
<td></td>
<td>Modification under A.A.C. R18-9-A211(D)(2)(a) and (j)</td>
<td>$25,000</td>
</tr>
<tr>
<td></td>
<td>Modification under A.A.C. R18-9-A211(B) that is not classified as complex modification under R18-14-101(2)</td>
<td></td>
</tr>
<tr>
<td>APP</td>
<td>For an APP issued before July 1, 2011, the fee for a submittal required by a compliance schedule is assessed per submittal and cumulative up to the maximum fee. The applicable maximum fee for all compliance schedule submissions shall be according to one of the three maximum fee categories listed below. The maximum fee is for the lifetime of the APP unless a new compliance schedule is established in the APP due to a modification that is classified as both a significant amendment under A.A.C. R18-9-A211(B) and a complex modification under R18-14-101(2):</td>
<td></td>
</tr>
<tr>
<td></td>
<td>For a permit with a compliance schedule where one or more submittals require a permit modification that requires a determination or reevaluation of BADCT, the fee is assessed as described above for each standard modification, with a</td>
<td>$150,000</td>
</tr>
<tr>
<td></td>
<td></td>
<td>$100,000</td>
</tr>
</tbody>
</table>
For a permit with a compliance schedule where one or more submissions require a permit modification, but no determination or reevaluation of BADCT is required, the fee is assessed as described above for each standard modification, with a maximum fee for the permit’s entire compliance schedule of:

- For a permit with a compliance schedule requiring one or more submissions that require ADEQ review but do not require a permit modification, the maximum fee for the permit’s entire compliance schedule is:

<table>
<thead>
<tr>
<th>APP</th>
<th>For an APP issued on or after July 1, 2011, the fee for a submittal required by a compliance schedule is assessed per submittal and cumulative up to the maximum fee for the lifetime of the APP</th>
<th>$100,000</th>
</tr>
</thead>
<tbody>
<tr>
<td>APP</td>
<td>Determination of applicability</td>
<td>$15,000</td>
</tr>
<tr>
<td>APP</td>
<td>Reviewing proprietary and other reviewed products under A.A.C. R18-9-A309(E)</td>
<td>$15,000</td>
</tr>
<tr>
<td>AZPDES</td>
<td>Individual permit for municipal separate storm sewer system</td>
<td>$40,000</td>
</tr>
<tr>
<td>AZPDES</td>
<td>Individual permit for wastewater treatment plant (based on gallons of discharge per day)</td>
<td></td>
</tr>
<tr>
<td></td>
<td>• 3,000 to 99,999</td>
<td>$15,000</td>
</tr>
<tr>
<td></td>
<td>• 100,000 to 999,999</td>
<td>$20,000</td>
</tr>
<tr>
<td></td>
<td>• 1,000,000 to 9,999,999</td>
<td>$30,000</td>
</tr>
<tr>
<td></td>
<td>• 10,000,000 or more</td>
<td>$50,000</td>
</tr>
<tr>
<td>AZPDES</td>
<td>Individual permit for a facility or activity that is not a wastewater treatment plant or a municipal separate storm sewer</td>
<td>$30,000</td>
</tr>
<tr>
<td>AZPDES</td>
<td>Amendment to an individual permit</td>
<td>$12,500</td>
</tr>
<tr>
<td>AZPDES</td>
<td>Approval of a new or revised pretreatment program under AZPDES</td>
<td>$10,000</td>
</tr>
<tr>
<td>AZPDES</td>
<td>Consolidated individual permit for multiple AZPDES individual permits, as allowed under A.A.C. R18-9-B901(C)</td>
<td>Aggregate of the applicable maximum fees</td>
</tr>
<tr>
<td>Reclaimed</td>
<td>Reclaimed water individual permit</td>
<td>$32,000</td>
</tr>
<tr>
<td>UIC</td>
<td>Area Modification / Renewal</td>
<td>$200,000</td>
</tr>
<tr>
<td></td>
<td>$150,000</td>
<td></td>
</tr>
<tr>
<td>UIC</td>
<td>Classes I, II, III, V Individual</td>
<td>$200,000</td>
</tr>
<tr>
<td></td>
<td>Classes I, II, III, V Modification / Renewal</td>
<td>$150,000</td>
</tr>
<tr>
<td>UIC</td>
<td>Classes VI Individual</td>
<td>No Max</td>
</tr>
<tr>
<td></td>
<td>Classes VI Modification</td>
<td>No Max</td>
</tr>
</tbody>
</table>

**R18-14-104. Annual Fees for Water Quality Protection Services Subject to Hourly Rate Fee**

A. Annual Registration Fees. The annual registration fee required under A.R.S. § 49-242 is in Table 2:

<table>
<thead>
<tr>
<th>Discharge or Influent per Day under the Individual APP or Notice of Disposal (in Gallons)</th>
<th>Annual Registration Fee</th>
<th>Annual Registration Fee if New Facility Under New APP Not Yet Constructed</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>
B. The Department shall assess an annual fee for an AZPDES-related water quality protection service subject to an hourly rate fee as listed in Table 3:

Table 3. AZPDES Annual Registration Fees

<table>
<thead>
<tr>
<th>Permit Type</th>
<th>Annual Fee</th>
<th>Annual Fee if New Facility Under New AZPDES Not Yet Constructed</th>
</tr>
</thead>
<tbody>
<tr>
<td>Municipal separate storm sewer system</td>
<td>$10,000</td>
<td>N/A</td>
</tr>
<tr>
<td>Wastewater treatment plant (based on gallons of discharge per day):</td>
<td></td>
<td></td>
</tr>
<tr>
<td>• Less than 99,999</td>
<td>$250</td>
<td>$250</td>
</tr>
<tr>
<td>• 100,000 to 999,999</td>
<td>$500</td>
<td>$500</td>
</tr>
<tr>
<td>• 1,000,000 to 9,999,999</td>
<td>$2,500</td>
<td>$625</td>
</tr>
<tr>
<td>• 10,000,000 or more</td>
<td>$4,000</td>
<td>$750</td>
</tr>
<tr>
<td>Facility or activity that is not a wastewater treatment plant or municipal separate storm sewer and designated in the permit as either:</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Major</td>
<td>$2,500</td>
<td>$625</td>
</tr>
<tr>
<td>Minor</td>
<td>$500</td>
<td>$500</td>
</tr>
<tr>
<td>Pretreatment program</td>
<td>$3,000</td>
<td>N/A</td>
</tr>
<tr>
<td>Consolidated individual permit for multiple AZPDES individual permits, as allowed under A.A.C. R18-9-B901(C)</td>
<td>Aggregate of the applicable annual fees of each individual permit</td>
<td>Aggregate of the applicable annual fees of each individual permit</td>
</tr>
</tbody>
</table>

C. The Department shall assess an annual fee of $500 for an individual reclaimed water permit.

D. The Department shall assess an annual fee and an annual waste disposal fee as applicable to UIC regulated facilities, subject to an hourly rate fee, as listed in Tables 3.1 and 3.2:

Table 3.1. UIC Annual Fees

<table>
<thead>
<tr>
<th>Permit Type</th>
<th>Annual Registration Fee</th>
<th>Annual Waste Disposal Fee</th>
</tr>
</thead>
<tbody>
<tr>
<td>Area</td>
<td>$10,000 (and not subject to any other annual registration fee in Tables 3.1 and 3.2)</td>
<td>N/A</td>
</tr>
<tr>
<td>Class I</td>
<td>No Annual Registration Fee</td>
<td>$0.002/gallon. Minimum Fee: $10,000/year. Maximum Fee: $25,000/year</td>
</tr>
<tr>
<td>Class II</td>
<td>See Table 3.2</td>
<td>N/A</td>
</tr>
<tr>
<td>Class III</td>
<td>See Table 3.2</td>
<td>N/A</td>
</tr>
<tr>
<td>Class V “Individual”</td>
<td>See Table 3.2</td>
<td>N/A</td>
</tr>
<tr>
<td>Class VI</td>
<td>No Annual Registration Fee</td>
<td>$0.08/ton. Minimum Fee: $10,000/year</td>
</tr>
</tbody>
</table>
### Table 3.2. UIC Annual Registration Fees

<table>
<thead>
<tr>
<th>Design Injection Flow Rate in Gallons per day</th>
<th>Annual Registration Fee</th>
</tr>
</thead>
<tbody>
<tr>
<td>3,000 to 9,999</td>
<td>$600</td>
</tr>
<tr>
<td>10,000 to 99,999</td>
<td>$1,200</td>
</tr>
<tr>
<td>100,000 to 999,999</td>
<td>$3,000</td>
</tr>
<tr>
<td>1,000,000 to 9,999,999</td>
<td>$7,000</td>
</tr>
<tr>
<td>10,000,000 or more</td>
<td>$10,000</td>
</tr>
</tbody>
</table>

1 A Class II, III or V Individual UIC permittee with multiple wells or multiple permits may consolidate their same-class wells for the purpose of “design injection flow rate in gallons per day” under Table 3.2.

2 An Area permit is not subject to Table 3.2.

### R18-14-111. UIC Flat Fees

The Department shall assess a flat fee for the following UIC regulated facility services:

1. Well installation in an Area Permit, $200 per well installation.
2. Class V authorization by rule, $200 per well inventory.
3. Class V authorization by rule, $100 per well transfer.

### R18-14-112. Other Flat Fees

Flat fees. The Department shall assess a flat fee for the following water quality protection services:

1. Dry well registration, $100 per dry well until:
   a. The fees in R18-14-111 are applicable, and
   b. A.R.S Title 49, Chapter 2, Article 8 is removed.
2. Dry well transfer of registration, $50 per transfer until:
   a. The fees in R18-14-111 are applicable, and
   b. A.R.S Title 49, Chapter 2, Article 8 is removed
   a. Subdivision with public sewerage system: $800 for every increment of 150 lots or less;
   b. Subdivision with individual sewerage system:
      i. $500 for less than 10 lots;
      ii. $1,000 for greater than 10 lots but less than 50 lots;
      iii. $1,000 for each additional increment of 50 lots or less.
   c. If water from a central system is not provided to the lot, the fee is one and one-half the applicable fee stated in subsection (3)(a) or (b).
   d. Condominium subdivision: $1,000 for every increment of 150 units or less.

### R18-14-112, R18-14-113. Implementation

The fees in this Article apply on July 1, 2011. For fees related to the AZPDES program:

1. A person shall submit the applicable fee when requesting a water quality protection service as specified in an AZPDES General Permit or in 18 A.A.C. 9, Article 9; and
2. A person is responsible for paying the annual fee for an AZPDES general permit, even if the person filed for coverage before the effective date of these rules.

### R18-14-113, R18-14-114. Annual Report

By December 1 of each year, the Department shall publish an accounting of Water Quality Fee Fund revenue and expenditure activity for the prior fiscal year.

### R18-14-115. UIC Fees Review

The department shall review the revenues derived from the implementation of the UIC program from the date of primacy through June 30, 2025. By September 30, 2025, the department shall determine the adequacy of the fees in comparison to the relevant data from the time period. The department shall repeat the review every three years based on the initial review date of June 30, 2025.
The economic, small business, and consumer impact statement:

This Economic, Small Business, and Consumer Impact Statement has been prepared to meet the requirements of A.R.S. § 41-1055.

A. An identification of the rulemaking:

The rulemaking addressed by this Economic, Small Business, and Consumer Impact Statement (EIS) consists of 72 new sections, as well as amendments to existing sections, made by the Arizona Department of Environmental Quality (ADEQ) to 18 A.A.C. 9, Articles 1 and 6, 18 A.A.C. 1, Article 5 and 18 A.A.C. 14, Article 1 in order to adopt the Federal Safe Drinking Water Act’s (SDWA) Underground Injection Control Program (UIC) under the relevant regulation in 40 C.F.R. Parts 144 through 146 within the State of Arizona as required under A.R.S. §§ 49-203(A)(6), 49-257.01.

Arizona Revised Statutes §§ 49-203(A)(6) and 49-257.01 mandate that ADEQ establishes the UIC Program through rule. Federal statute at 42 United States Code 300h et seq. authorizes EPA to grant states primary enforcement authority or primacy over the UIC program upon the adoption of the program in rule at the state level (see 40 CFR 145.22(a)(5)).

Control of underground injection conducted in the industrial, municipal and residential sectors is necessary in order to protect Arizona’s underground sources of drinking water (USDWs) or aquifers. In Arizona, the UIC program has been administered by the Environmental Protection Agency (EPA) for decades. Currently 5 Federal UIC permits are in effect, along with thousands of UIC Class V wells that are authorized by rule.

Arizona’s program adoption will allow primacy to rest with ADEQ who is entirely focused on, and knowledgeable of, Arizona’s unique geology and climate; and who deeply understand Arizona’s environment, economy, and community. Additionally, program adoption will allow ADEQ to issue better permits, faster, and eliminate duplicative regulation, permitting, and permittee fees between the Federal and state programs. Adoption of this program will supplement Arizona’s already existing groundwater safeguards, taking a place in conjunction with the Aquifer Protection Permit Program.

B. A summary of the EIS:

General Impacts

The primary costs of this rulemaking will be borne by UIC well permit holders and UIC wells authorized by rule. This includes in-situ copper mines, salt mines, municipal aquifer storage and recharge wells, extraction wells, carbon sequestration wells and a host of other injection wells.

There will be an increase in permitting costs due to ADEQ’s fee-for-service model. The fee-for-service model institutes the charging of permittees for a significant portion of the funding needed to support the implementation of the regulatory program. The Federal UIC program operates off of a general fund model, where permittees are not charged and the cost of implementation of the regulatory program comes from specific, legislatively approved funds (usually with an origin in government tax revenue). Many of ADEQ’s programs were changed after the 2008 recession from a general fund model to fee-for-service model. The difference between the fee-for-service model and the general fund model is the reason the regulatory program within this rulemaking will impose a financial burden upon the permittees.

Despite the increase in permitting fees, such as annual fees, the beneficial impact to the stakeholders include permits and amendments being issued faster and the elimination of duplicative regulation, permitting, and permittee fees as a result of eliminating one of the two applicable regulatory programs for UIC permittees. ADEQ stands to benefit from this increase in fees by fulfilling a requirement of primacy. The stakeholders and the general public stand to benefit through the assurance provided that high-risk drywells in the state are being physically inspected from time to time, as opposed to rarely, as was the frequency of inspection before the ADEQ UIC program primacy.

A positive impact for all stakeholders is the protection of the environment that the program this rulemaking supports will bring. Individuals with a better understanding of Arizona’s geology and climate will be developing and maintaining these permits, which will lead to better protection of the environment, which supports the economy, which supports the community.
Specific Impacts
While the three existing UIC permittees in the state of Arizona will see an increase in regulatory cost of conducting their business, they stand to benefit greatly in having the program administered in-state through speedier application review and permit services, the elimination of duplicative regulation between the Federal and state governments and local access to ADEQ expertise, personnel and customer service. Despite the increase in regulatory cost, the existing permittees support ADEQ’s adoption of the program.

Drywell regulation in Arizona will be transitioned from dual regulation between the Federal and state governments to a singular, UIC Class V authorization by rule through a simple inventory. Arizona’s more than 65,000 registered drywells will be transitioned into the UIC Class V well inventory without a charge. The former drywell registration fee of $100 will be increased to $200 per UIC Class V inventory.

The reason for this increase to the Drywell fees is to supplement the funds necessary to support the implementation of the Class V portion of the UIC program. This includes an EPA requirement for ADEQ to assume the inspection of responsibilities for Class V wells in the state.

Stakeholder Process
ADEQ and Arizona’s UIC stakeholders spent many hours negotiating the fees for the UIC program in this rulemaking. The transparent and collaborative process rendered a balanced set of fees, whereupon the needs of all parties were met and the support of the stakeholders in adopting the program was preserved.

C. Identification of the persons who will be directly affected by, bear the costs of, or directly benefit from the rules:
This rulemaking will affect state government agencies, political subdivisions, and privately-owned businesses. Additionally, the rulemaking will impact the general public.

ADEQ has identified the following list of affected persons:

State government agencies
State agencies benefit from the rulemaking due to the rulemaking supporting the environment, the community, and industry.

- ADEQ
- Arizona Department of Water Resources
- Arizona Department of Agriculture

Political subdivisions
Political subdivisions benefit from the rulemaking due to the rulemaking supporting the environment, the community, and industry. Additional benefits include faster, better permits facilitating the installation of Drywells as needed and the development of groundwater treatment facilities to support Arizona’s growing potable water needs. As permittees, political subdivisions will also bear the increased cost of the new permitting fee schedule.

- Counties
- Municipalities
- Domestic Water Improvement Districts

Privately-Owned Businesses
Privately-owned businesses will benefit from faster, better permits reducing the costs of delays to permit issuance. As permittees, political subdivisions will also bear the increased cost of the new permitting fee schedule.

- Mines
- Mineral Extraction Companies
- Businesses which utilize drywells
The General Public
The general public will benefit from the environmental protection of better permits being issued by an agency with expertise specific to the permitting actions occurring in Arizona’s climate and geology. Additional benefits will be derived through the benefits industry derives which in turn supports the community and the general public.

D. Cost/benefit analysis

1. Part I - Cost/Benefit Stakeholder Matrix:

<table>
<thead>
<tr>
<th>Minimal</th>
<th>Moderate</th>
<th>Substantial</th>
<th>Significant</th>
</tr>
</thead>
<tbody>
<tr>
<td>$10,000 or less</td>
<td>$10,001 to $1,000,000</td>
<td>$1,000,001 or more</td>
<td>Cost/Burden cannot be calculated, but the Department expects it to be important to the analysis.</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Description of Affected Groups</th>
<th>Description of Effect</th>
<th>Increased Cost / Decreased Revenue</th>
<th>Decreased Cost / Increased Revenue</th>
</tr>
</thead>
<tbody>
<tr>
<td>A. State and Local Government Agencies</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>ADEQ</td>
<td>Costs of supporting and implementing a new regulatory program</td>
<td>Moderate</td>
<td></td>
</tr>
<tr>
<td></td>
<td>Ensuring underground sources of drinking water supply or aquifers are better protected from pollution.</td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td>Compliance with state and federal law.</td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td>Support of ADEQ’s mission to protect and enhance public health and the environment.</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Political Subdivisions</td>
<td>Tax revenues and indirect benefits of clean underground sources of drinking water supply</td>
<td></td>
<td>Significant</td>
</tr>
<tr>
<td></td>
<td>Regulation of desalination disposal kept local</td>
<td></td>
<td>Significant</td>
</tr>
<tr>
<td></td>
<td>Cost savings due to the elimination of duplicative regulatory programs (Federal UIC becomes State UIC, UIC permittees no longer applicable to APP)</td>
<td>Significant</td>
<td></td>
</tr>
<tr>
<td>B. Privately Owned Businesses</td>
<td>Cost savings due to elimination of duplicative regulatory programs (Federal UIC becomes State UIC, UIC permittees no longer applicable to APP)</td>
<td>Moderate</td>
<td></td>
</tr>
<tr>
<td></td>
<td>Permits and Permit Amendments issued faster</td>
<td></td>
<td>Significant</td>
</tr>
</tbody>
</table>
Localized access to ADEQ’s expertise, personnel and customer service, as well as a streamlined permitting process, and a reduction in cost through the elimination of duplicative regulation between Federal and state programs.  

General Public  
Ensuring underground sources of drinking water supply or aquifers are better protected from pollution.  
ADEQ employees developing Arizona-specific permits, leading to a better protection of the environment, which supports the economy, which supports the community.  

### 2. Part II - Individual Stakeholder Summaries/Calculations:

This section outlines ADEQ’s analyses of the estimated costs and benefits of this rulemaking, made after consultation with ADEQ staff, as well as knowledgeable individuals in the area of groundwater protection and underground injection control.

**ADEQ**
ADEQ will incur moderate costs as a result of implementing this rulemaking and administering the program. The rulemaking process itself requires staff time for technical review, rule composition, and public input. In order to support the administration of the UIC program, ADEQ plans on hiring 3.2 new full-time employees (FTE). These 3.2 FTEs will be split primarily between permit specialist positions, inspectors and other administrative duties. Funding those positions will incur moderate costs to ADEQ annually which will be offset by permit service fees, annual fees, inventory fees, well fees and an EPA work grant.

This rulemaking will create significant benefit to ADEQ in its fulfillment of the legislative mandates at A.R.S. §§ 49-203(A)(6) and 49-257.01. Given ADEQ’s mission to protect human health and the environment, the Department acknowledges the benefits to stakeholders that will flow from the implementation of this program, including a streamlined permitting process and a reduction in cost through the elimination of duplicative regulation between Federal and state programs. Upon adoption of the program, stakeholders who would have in the past had to file dual applications, comply with dual regulatory programs, file a dual set of ongoing reports and pay for consulting costs for dual permits will see all of those obligations consolidated into one, localized state program and permit. This fact stands to save the regulated community time, money and hardship.

**The Number of New, Full-Time Employees Necessary to Implement and Enforce the Proposed Rule**

3.2  

**Political Subdivisions**
Political subdivisions are likely to see minimal costs and minimal benefit from this rulemaking. As mentioned above, municipalities have shown interest in applying for Class I disposal well permits; however, none have been applied for at the time of this rulemaking. Until political subdivisions apply for UIC permits, they will see no costs due to this rulemaking and the UIC program. However, political subdivisions are interested in the disposal of brine from prospective desalinization plants. This rulemaking stands to localize brine disposal regulation, which would bring benefit to prospective stakeholders. Municipalities also often own a multitude of dry wells, which are to be regulated under the UIC program’s Class V wells.

The UIC program exists currently, administered by the Federal government, until ADEQ achieves primary enforcement authority over the program. As is stated above, the EPA administered program is funded through an approved budget from a Federal general fund. ADEQ’s funding for UIC program administration will be realized through a fee-for-service model. The fee-for-service model institutes the charging of applicants and permittees for a significant portion of the funding necessary to support the regulatory program and the personnel necessary to staff it. Many of ADEQ’s programs are structured this way. The Federal UIC program...
does not charge applicants, but rather derives its approved funds from a Federal general fund. The difference between the fee-for-service model and the general fund model is the reason the regulatory program within this rulemaking will impose a potentially minimal financial burden upon political subdivisions.

However, when the political subdivisions choose to engage with the UIC program that is the subject of this rulemaking, the benefits include a streamlined permitting process, and a reduction in cost through the elimination of duplicative regulation between Federal and state programs. Upon adoption of the program stakeholders who would have in the past had to file dual applications, comply with dual regulatory programs, file a dual set of ongoing reports and pay for consulting costs for dual permits will see all of those obligations consolidated into one, localized state program. This fact stands to save the regulated community time, money and hardship.

Privately-Owned Business
Privately-owned business is likely to see moderate cost and moderate benefit from this rulemaking. The disparity between EPA’s general fund program model and ADEQ’s fee-for-service model will incur potentially moderate costs to privately-owned businesses, especially the businesses that currently have UIC permits.

However, and as mentioned above, the benefits to privately-owned business include a streamlined permitting process, and a reduction in cost through the elimination of duplicative regulation between Federal and state programs. Upon adoption of the program, stakeholders who would have in the past had to file dual applications, comply with dual regulatory programs, file a dual set of ongoing reports and pay for consulting costs for dual permits will see all of those obligations consolidated into one, localized state program. This fact stands to save the regulated community time, money and hardship.

General Public
The general public could see significant benefit from this rulemaking. The UIC program that is the subject of this rulemaking aims to protect underground sources of drinking water supply or aquifers, many of which provide drinking water to Arizonans. The price of treating contaminated water or having to resort to other sources of water for drinking water supply is potentially significant. Furthermore, A positive impact for all stakeholders is the protection of the environment that the program this rulemaking supports will bring.
Individuals with a better understanding of Arizona’s geology and climate will be developing and maintaining these permits, which will lead to better protection of the environment, which supports the economy, which supports the community.

E. A general description of the probable impact on private and public employment in business agencies, and political subdivisions of this state directly affected by the rulemaking:
ADEQ estimates that, for the most part, this rulemaking will not have an impact on public or private employment. However, and as mentioned above, all UIC permittees, whether public or private, stand to benefit through the state establishment of a streamlined permitting process, and a reduction in cost through the elimination of duplicative regulation between Federal and state programs. Upon adoption of the program, stakeholders who would have in the past had to file dual applications, comply with dual regulatory programs, file a dual set of ongoing reports and pay for consulting costs for dual permits will see all of those obligations consolidated into one, localized state program. This fact stands to save the regulated community time, money and hardship. Arizona environmental consultants may see a minimal detriment due to the streamlining of environmental compliance for companies using injection wells.

F. A statement of the probable impact of the rules on small business:
In this EIS, ADEQ uses the term “small business” consistent with A.R.S. § 41-1001(21), which defines a “small business” as a concern, including its affiliates, which is independently owned and operated, which is not dominant in its field and which employs fewer than one hundred full-time employees or which had gross annual receipts of less than four million dollars in its last fiscal year.

1. An identification of the small business subject to the rules:
Among the stakeholders listed above, only a few meet the definition of small business as set forth in A.R.S. § 41-1001(21). For example, ADEQ estimates that all three current UIC permit holders in Arizona are not small businesses. However, ADEQ has recorded with frequency around 1,000 drywell registrations annually. Drywells will be regulated under the Class V UIC program upon primacy. Small businesses will constitute a significant portion of the approximately 1,000 drywell inventories ADEQ expects annually upon primacy. In terms of UIC Class V drywell inventorying, some small businesses will be affected in a minimally negative manner by this rulemaking. However, the rulemaking intends to institute some UIC Class V inspections, including drywells, which could prove minimally beneficial to certain small businesses.

2. **The administrative and other costs required for compliance with the rules:**
   Compliance costs associated with this rulemaking will vary based on the stakeholder involved. ADEQ’s examination of compliance costs for UIC well owners regulated through a permit or an authorization by rule is addressed in the cost benefit analysis above.

3. **A description of the methods that the agency may use to reduce the impact on small businesses, as required in A.R.S. § 41-1035:**
   a. *Establishing less stringent compliance or reporting requirements in the rule for small businesses:*
      Under the SDWA, small businesses are not given special treatment when it comes to compliance or reporting requirements. In order to be eligible for EPA’s transfer of primary enforcement authority of the program from Federal to State, the Federal SDWA-UIC program must be at least as stringent as the Federal program.
   b. *Establishing less stringent schedules or deadlines in the rule for compliance or reporting requirements for small businesses:*
      Under the SDWA, small businesses are not given special treatment when it comes to the stringency of schedules or deadlines for compliance and reporting. Please reference subsection (F)(3)(a) above for more explanation.
   c. *Consolidating or simplifying the rule's compliance or reporting requirements for small businesses:*
      Under the SDWA, small businesses are not given special treatment when it comes to compliance and reporting requirements. Please reference subsection (F)(3)(a) above for more explanation.
   d. *Establishing performance standards for small businesses to replace design or operational standards in the rule:*
      Under the SDWA, small businesses are not given special treatment when it comes to design or operational standards. Please reference subsection (F)(3)(a) above for more explanation.
   e. *Exempting small businesses from any or all requirements of the law:*
      Under the SDWA, small businesses are not given special treatment when it comes to requirements. Please reference subsection (F)(3)(a) above for more explanation.

4. **The probable costs and benefits to private persons and consumers who are directly affected by the rules:**
   As is stated above in this EIS, the SDWA-UIC program in currently in effect, administered by the Federal government’s EPA. This rulemaking is designed to support the primary enforcement authority or primacy application ADEQ has been mandated to pursue according to A.R.S. §§ 49-203(A)(6) and 49-257.01. The existing regulated parties in Arizona include three UIC Class III permittees and tens of thousands of UIC Class V wells (mostly drywells). Also stated above is the disparity in funding mechanisms between EPA’s current administration of the program and ADEQ’s proposed funding mechanisms in administration (EPA: General Fund based; ADEQ: Fee-For-Service based). Despite the new fees associated with Arizona’s potential primacy, the state’s UIC stakeholders have shown support for ADEQ’s primacy pursuit. The reason for their support is the consolidation of Federal and state regulatory obligations into one, localized state program. The benefits to these private entities include the elimination of the necessity to file dual applications, to comply with dual regulatory programs, to file a dual set of ongoing reports and to pay for consulting costs for dual permits. Further benefits include the local access to ADEQ’s expertise, personnel and
customer service, a streamlined permitting process, and a reduction in cost through the elimination of duplicative regulation between Federal and state programs.

UIC applicants and permittees will be subject to a water quality protection service fee of $145 an hour for application review, permit writing and other, similar services. The maximum fee for a single licensing time frame for UIC Area and Classes I, II, III and V permits are set at $200,000. UIC Area and Classes I, II, III and V permit modification and/or permit renewal are set at a maximum of $150,000. UIC Class VI permits maximum fee proposal is “no max”. The reason why no maximum fee has been proposed for UIC Class VI is because of its complicated and unknown nature. Arizona does not have any Class VI carbon sequestration wells and the entire country only has a few in operation. ADEQ believes there is no basis for proposing a maximum on UIC Class VI wells at this time.

UIC permittees will be subject to Annual and Flat Fees, which were determined by considering the necessary revenue needed to support the administration of the program while putting the least burden possible on the stakeholders. Other factors include input from the APP program, other states’ UIC programs and directly affected stakeholders.

Drywell regulation in Arizona will be transitioned from a state statutorily based regulatory program to regulation under the UIC program’s Class V wells. Arizona’s more than 65,000 registered drywells will be transitioned into the UIC Class V well inventory without a charge. However, there will be a cost increase between new drywell registration fees associated with the state statutory program and new inventory fees in the state-administered UIC program. Registration fees are $100 per registration, where inventory fees will be $200 per inventory. The reason for this increase is to supplement the funds necessary to support the administration of the Class V portion of the UIC program, including the commencement of more regular inspection of high-risk drywells in Arizona. A condition of EPA granting ADEQ primacy to administer the UIC program is the inspection of a small portion of the UIC Class V wells in the state. In order to meet this requirement, ADEQ has increased the fee required to inventory a drywell in the state.

In discussion with UIC stakeholders, it was determined that a review of the revenues collected from the UIC program’s fees should take place once every three years in order to ensure that enough revenue is being collected to properly administer the program and to that the fees are equitable by putting the least amount of burden on the stakeholders. To that end, R18-14-115 is proposed in this rulemaking.

G. A statement of the probable effect on state revenues:
This rulemaking will not result in a significant increase, nor decrease in state revenues. Increased and decreased costs to ADEQ are expected to be minimal, as explained above in the analysis of costs and benefits to ADEQ. Because the UIC permittees in Arizona were permitted through the UIC program as administered by the EPA, ADEQ does not anticipate a significant decrease in business activity in the state or a corresponding loss of state tax revenues.

H. A description of any less intrusive or less costly alternative methods of achieving the purpose of the rulemaking:
The purpose of this rulemaking is to adopt the SDWA-UIC program in Arizona rule in order to lay the groundwork for state administration of the program as required by the legislature through A.R.S. §§ 49-203(A)(6) and 49-257.01. There are no less intrusive or less costly alternative methods of achieving the purpose of the rulemaking.

I. A description of any data on which the rule is based with a detailed explanation of how the data was obtained and why the data is acceptable data:
The SDWA allows states to apply for primary enforcement authority in the administration of the UIC regulatory program (see 42 United States Code 300h et seq.). The Arizona legislature mandated pursuit of the SDWA-UIC program through the passage of the following statutes, A.R.S. §§ 49-203(A)(6) and
In order to achieve primacy, one requirement of a state is to put rules in place for the program to operate through (see 40 Code of Federal Regulations 145.22(a)(5)). These rules must be at least as stringent as the Federal UIC program rules in order for EPA to consider a state’s primacy application. The rules must also be no more stringent than the analogous Federal rule, per Arizona state law (see A.R.S. § 49-104(16)). Given those parameters, the language for the rules in this rulemaking came largely from 40 CFR Parts 144, 145 and 146 and to a lesser extent, 40 CFR Parts 124, 141 and 142. A table showing specific analogous Federal regulations to the rules in this rulemaking can be found in section 6 of the Preamble above.
when the individual is exposed to both internal and external radiation (see §20.1202). When an individual is exposed to radioactive materials which fall under several of the translocation classifications (i.e., Class D, Class W, or Class Y) of the same radionuclide, the exposure may be evaluated as if it were a mixture of different radionuclides.

It should be noted that the classification of a compound as Class D, W, or Y is based on the chemical form of the compound and does not take into account the radiological half-life of different radioisotopes. For this reason, values are given for Class D, W, and Y compounds, even for very short-lived radionuclides.

### Table 2

The columns in table 2 of this appendix captioned “Effluents,” “Air,” and “Water,” are applicable to the assessment and control of dose to the public, particularly in the implementation of the provisions of §20.1302. The concentration values given in columns 1 and 2 of table 2 are equivalent to the radionuclide concentrations which, if inhaled or ingested continuously over the course of a year, would produce a total effective dose equivalent of 0.05 rem (50 millirem or 0.5 millisieverts).

Consideration of non-stochastic limits has not been included in deriving the air and water effluent concentration limits because non-stochastic effects are presumed not to occur at the dose levels established for individual members of the public. For radionuclides, where the non-stochastic limit was governing in deriving the occupational DAC, the stochastic ALI was used in deriving the corresponding airborne effluent limit in table 2. For this reason, the DAC and airborne effluent limits are not always proportional as was the case in appendix B to §§20.1–20.601.

The air concentration values listed in table 2, column 1, were derived by one of two methods. For those radionuclides for which the stochastic limit is governing, the occupational stochastic inhalation ALI was divided by 2.4 \times 10^6 \text{ ml}, relating the inhalation ALI to the DAC, as explained above, and then divided by a factor of 300. The factor of 300 includes the following components: a factor of 50 to relate the 5-rem annual occupational dose limit to the 0.1-rem limit for members of the public; a factor of 3 to adjust for the difference in exposure time and the inhalation rate for a worker and that for members of the public; and a factor of 2 to adjust the occupational values (derived for adults) so that they are applicable to other age groups.

For those radionuclides for which submersion (external dose) is limiting, the occupational DAC in table 1, column 3, was divided by 219. The factor of 219 is composed of a factor of 50, as described above, and a factor of 4.38 relating occupational exposure for 2,000 hours per year to full-time exposure (8,760 hours per year). Note that an additional factor of 2 for age considerations is not warranted in the submersion case.

The water concentrations were derived by taking the most restrictive occupational stochastic oral ingestion ALI and dividing by \(7.3 \times 10^7\). The factor of \(7.3 \times 10^7\) (ml) includes the following components: the factors of 50 and 2 described above and a factor of \(7.3 \times 10^7\) (ml) which is the annual water intake by “Reference Man.”

Note 2 of this appendix provides groupings of radionuclides which are applicable to unknown mixtures of radionuclides. These groupings (including occupational inhalation ALIs and DACs, air and water effluent concentrations and sewerage) require demonstrating that the most limiting radionuclides in successive classes are absent. The limit for the unknown mixture is defined when the presence of one of the listed radionuclides cannot be definitely excluded either from knowledge of the radionuclide composition of the source or from actual measurements.

### Table 3 “Sewer Disposal”

The monthly average concentrations for release to sanitary sewers are applicable to the provisions in §20.2003. The concentration values were derived by taking the most restrictive occupational stochastic oral ingestion ALI and dividing by \(7.3 \times 10^6\) (ml). The factor of \(7.3 \times 10^6\) (ml) is composed of a factor of \(7.3 \times 10^5\) (ml), the annual water intake by “Reference Man,” and a factor of 10, such that the concentrations, if the sewage released by the licensee were the only source of water ingested by a reference man during a year, would result in a committed effective dose equivalent of 0.5 rem.

### List of Elements

<table>
<thead>
<tr>
<th>Name</th>
<th>Symbol</th>
<th>Atomic No.</th>
</tr>
</thead>
<tbody>
<tr>
<td>Actinium</td>
<td>Ac</td>
<td>89</td>
</tr>
<tr>
<td>Aluminum</td>
<td>Al</td>
<td>13</td>
</tr>
<tr>
<td>Americium</td>
<td>Am</td>
<td>95</td>
</tr>
<tr>
<td>Antimony</td>
<td>Sb</td>
<td>51</td>
</tr>
<tr>
<td>Argon</td>
<td>Ar</td>
<td>18</td>
</tr>
<tr>
<td>Arsenic</td>
<td>As</td>
<td>33</td>
</tr>
<tr>
<td>Astatine</td>
<td>At</td>
<td>85</td>
</tr>
<tr>
<td>Barium</td>
<td>Ba</td>
<td>56</td>
</tr>
<tr>
<td>Berkelium</td>
<td>Bk</td>
<td>97</td>
</tr>
<tr>
<td>Beryllium</td>
<td>Be</td>
<td>4</td>
</tr>
<tr>
<td>Bismuth</td>
<td>Bi</td>
<td>83</td>
</tr>
<tr>
<td>Bromine</td>
<td>Br</td>
<td>35</td>
</tr>
<tr>
<td>Cadmium</td>
<td>Cd</td>
<td>48</td>
</tr>
<tr>
<td>Calcium</td>
<td>Ca</td>
<td>20</td>
</tr>
<tr>
<td>Californium</td>
<td>Cf</td>
<td>98</td>
</tr>
<tr>
<td>Carbon</td>
<td>C</td>
<td>6</td>
</tr>
<tr>
<td>Cerium</td>
<td>Ce</td>
<td>58</td>
</tr>
<tr>
<td>Cesium</td>
<td>Cs</td>
<td>55</td>
</tr>
<tr>
<td>Chlorine</td>
<td>Cl</td>
<td>17</td>
</tr>
<tr>
<td>Chromium</td>
<td>Cr</td>
<td>24</td>
</tr>
<tr>
<td>Name</td>
<td>Atomic Symbol</td>
<td>No.</td>
</tr>
<tr>
<td>----------------</td>
<td>---------------</td>
<td>-----</td>
</tr>
<tr>
<td>Cobalt</td>
<td>Co</td>
<td>27</td>
</tr>
<tr>
<td>Copper</td>
<td>Cu</td>
<td>29</td>
</tr>
<tr>
<td>Curium</td>
<td>Cm</td>
<td>96</td>
</tr>
<tr>
<td>Dysprosium</td>
<td>Dy</td>
<td>66</td>
</tr>
<tr>
<td>Einsteinium</td>
<td>Es</td>
<td>99</td>
</tr>
<tr>
<td>Erbium</td>
<td>Er</td>
<td>68</td>
</tr>
<tr>
<td>Europium</td>
<td>Eu</td>
<td>63</td>
</tr>
<tr>
<td>Fermium</td>
<td>Fm</td>
<td>100</td>
</tr>
<tr>
<td>Fluorine</td>
<td>F</td>
<td>9</td>
</tr>
<tr>
<td>Francium</td>
<td>Fr</td>
<td>87</td>
</tr>
<tr>
<td>Gadolinium</td>
<td>Gd</td>
<td>64</td>
</tr>
<tr>
<td>Gallium</td>
<td>Ga</td>
<td>31</td>
</tr>
<tr>
<td>Germanium</td>
<td>Ge</td>
<td>32</td>
</tr>
<tr>
<td>Gold</td>
<td>Au</td>
<td>79</td>
</tr>
<tr>
<td>Hafnium</td>
<td>Hf</td>
<td>72</td>
</tr>
<tr>
<td>Holmium</td>
<td>Ho</td>
<td>67</td>
</tr>
<tr>
<td>Hydrogen</td>
<td>H</td>
<td>1</td>
</tr>
<tr>
<td>Indium</td>
<td>In</td>
<td>49</td>
</tr>
<tr>
<td>Iodine</td>
<td>I</td>
<td>53</td>
</tr>
<tr>
<td>Iridium</td>
<td>Ir</td>
<td>77</td>
</tr>
<tr>
<td>Iron</td>
<td>Fe</td>
<td>26</td>
</tr>
<tr>
<td>Krypton</td>
<td>Kr</td>
<td>36</td>
</tr>
<tr>
<td>Lanthanum</td>
<td>La</td>
<td>57</td>
</tr>
<tr>
<td>Lead</td>
<td>Pb</td>
<td>82</td>
</tr>
<tr>
<td>Lutetium</td>
<td>Lu</td>
<td>71</td>
</tr>
<tr>
<td>Magnesium</td>
<td>Mg</td>
<td>12</td>
</tr>
<tr>
<td>Manganese</td>
<td>Mn</td>
<td>25</td>
</tr>
<tr>
<td>Mendelevium</td>
<td>Md</td>
<td>101</td>
</tr>
<tr>
<td>Mercury</td>
<td>Hg</td>
<td>80</td>
</tr>
<tr>
<td>Molybdenum</td>
<td>Mo</td>
<td>42</td>
</tr>
<tr>
<td>Neodymium</td>
<td>Nd</td>
<td>60</td>
</tr>
<tr>
<td>Neptunium</td>
<td>Np</td>
<td>93</td>
</tr>
<tr>
<td>Nickel</td>
<td>Ni</td>
<td>28</td>
</tr>
<tr>
<td>Niobium</td>
<td>Nb</td>
<td>41</td>
</tr>
<tr>
<td>Nitrogen</td>
<td>N</td>
<td>7</td>
</tr>
<tr>
<td>Osmium</td>
<td>Os</td>
<td>76</td>
</tr>
<tr>
<td>Oxygen</td>
<td>O</td>
<td>8</td>
</tr>
<tr>
<td>Palladium</td>
<td>Pd</td>
<td>46</td>
</tr>
<tr>
<td>Phosphorus</td>
<td>P</td>
<td>15</td>
</tr>
<tr>
<td>Platinum</td>
<td>Pt</td>
<td>78</td>
</tr>
<tr>
<td>Plutonium</td>
<td>Pu</td>
<td>94</td>
</tr>
<tr>
<td>Polonium</td>
<td>Po</td>
<td>84</td>
</tr>
<tr>
<td>Potassium</td>
<td>K</td>
<td>19</td>
</tr>
<tr>
<td>Praseodymium</td>
<td>Pr</td>
<td>59</td>
</tr>
<tr>
<td>Promethium</td>
<td>Prm</td>
<td>61</td>
</tr>
<tr>
<td>Protactinium</td>
<td>Pa</td>
<td>91</td>
</tr>
<tr>
<td>Radium</td>
<td>Ra</td>
<td>88</td>
</tr>
<tr>
<td>Radon</td>
<td>Re</td>
<td>86</td>
</tr>
<tr>
<td>Rhenium</td>
<td>Re</td>
<td>75</td>
</tr>
<tr>
<td>Rhodium</td>
<td>Rh</td>
<td>45</td>
</tr>
<tr>
<td>Rubidium</td>
<td>Rb</td>
<td>37</td>
</tr>
<tr>
<td>Ruthenium</td>
<td>Ru</td>
<td>44</td>
</tr>
<tr>
<td>Samarium</td>
<td>Sm</td>
<td>62</td>
</tr>
<tr>
<td>Scandium</td>
<td>Sc</td>
<td>21</td>
</tr>
<tr>
<td>Selenium</td>
<td>Se</td>
<td>34</td>
</tr>
<tr>
<td>Silicon</td>
<td>Si</td>
<td>14</td>
</tr>
<tr>
<td>Silver</td>
<td>Ag</td>
<td>47</td>
</tr>
<tr>
<td>Sodium</td>
<td>Na</td>
<td>11</td>
</tr>
<tr>
<td>Strontium</td>
<td>Sr</td>
<td>38</td>
</tr>
<tr>
<td>Sulfur</td>
<td>S</td>
<td>16</td>
</tr>
<tr>
<td>Tantalum</td>
<td>Ta</td>
<td>73</td>
</tr>
<tr>
<td>Technetium</td>
<td>Tc</td>
<td>43</td>
</tr>
<tr>
<td>Tellurium</td>
<td>Te</td>
<td>52</td>
</tr>
<tr>
<td>Terbium</td>
<td>Tb</td>
<td>65</td>
</tr>
<tr>
<td>Thallium</td>
<td>Tl</td>
<td>81</td>
</tr>
<tr>
<td>Thorium</td>
<td>Th</td>
<td>90</td>
</tr>
<tr>
<td>Thulium</td>
<td>Tm</td>
<td>69</td>
</tr>
<tr>
<td>Tin</td>
<td>Sn</td>
<td>50</td>
</tr>
<tr>
<td>Titanium</td>
<td>Ti</td>
<td>22</td>
</tr>
<tr>
<td>Tungsten</td>
<td>W</td>
<td>74</td>
</tr>
<tr>
<td>Uranium</td>
<td>U</td>
<td>92</td>
</tr>
<tr>
<td>Vanadium</td>
<td>V</td>
<td>23</td>
</tr>
<tr>
<td>Xenon</td>
<td>Xe</td>
<td>54</td>
</tr>
<tr>
<td>Ytterbium</td>
<td>Yb</td>
<td>70</td>
</tr>
<tr>
<td>Yttrium</td>
<td>Y</td>
<td>39</td>
</tr>
<tr>
<td>Zinc</td>
<td>Zn</td>
<td>30</td>
</tr>
<tr>
<td>Zirconium</td>
<td>Zr</td>
<td>40</td>
</tr>
<tr>
<td>Atomic No.</td>
<td>Radionuclide</td>
<td>Class</td>
</tr>
<tr>
<td>------------</td>
<td>---------------</td>
<td>-------</td>
</tr>
<tr>
<td>1</td>
<td>Hydrogen-3</td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>4</td>
<td>Beryllium-7</td>
<td></td>
</tr>
<tr>
<td></td>
<td>W, all compounds except those for Y</td>
<td></td>
</tr>
<tr>
<td></td>
<td>Y, oxides, halides, and nitrates</td>
<td></td>
</tr>
<tr>
<td>4</td>
<td>Beryllium-10</td>
<td>W, see 7Be</td>
</tr>
<tr>
<td></td>
<td>LLi wall</td>
<td></td>
</tr>
<tr>
<td></td>
<td>Y, see 7Be</td>
<td></td>
</tr>
<tr>
<td>6</td>
<td>Carbon-11²</td>
<td></td>
</tr>
<tr>
<td></td>
<td>Monoxide</td>
<td></td>
</tr>
<tr>
<td></td>
<td>Dioxide</td>
<td></td>
</tr>
<tr>
<td></td>
<td>Compounds</td>
<td></td>
</tr>
<tr>
<td>6</td>
<td>Carbon-14</td>
<td></td>
</tr>
<tr>
<td></td>
<td>Monoxide</td>
<td></td>
</tr>
<tr>
<td></td>
<td>Dioxide</td>
<td></td>
</tr>
<tr>
<td></td>
<td>Compounds</td>
<td></td>
</tr>
</tbody>
</table>

Gas (HT or T₄); Submersion¹: Use above values as HT and T₄ oxidize in air and in the body to HTO.
<table>
<thead>
<tr>
<th>Atomic No.</th>
<th>Radionuclide</th>
<th>Class</th>
<th>Oral Ingestion ((\text{mg} / \text{day}))</th>
<th>Oral Inhalation ((\text{mg} / \text{day}))</th>
<th>Inh. DAC ((\text{mg} / \text{day}))</th>
<th>Air ((\text{mg} / \text{day}))</th>
<th>Water ((\text{mg} / \text{day}))</th>
<th>Average Concentration ((\text{mg} / \text{L}))</th>
</tr>
</thead>
<tbody>
<tr>
<td>7</td>
<td>Nitrogen-13</td>
<td>Submersible†</td>
<td>- 4E-6</td>
<td>-</td>
<td>2E-8</td>
<td>-</td>
<td>-</td>
<td>-</td>
</tr>
<tr>
<td>8</td>
<td>Oxygen-15†</td>
<td>Submersible†</td>
<td>- 4E-6</td>
<td>-</td>
<td>2E-8</td>
<td>-</td>
<td>-</td>
<td>-</td>
</tr>
<tr>
<td>9</td>
<td>Fluorine-18†</td>
<td>D, fluorides of H, Li, Na, K, Rb, Cs, and Fr</td>
<td>5E+4</td>
<td>7E+4</td>
<td>3E-5</td>
<td>1E-7</td>
<td>-</td>
<td>7E-4</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>11</td>
<td>Sodium-22</td>
<td>D, all compounds</td>
<td>4E+2</td>
<td>6E+2</td>
<td>3E-7</td>
<td>9E-10</td>
<td>6E-6</td>
<td>6E-5</td>
</tr>
<tr>
<td>11</td>
<td>Sodium-24</td>
<td>D, all compounds</td>
<td>4E+3</td>
<td>5E+3</td>
<td>2E-6</td>
<td>7E-9</td>
<td>5E-5</td>
<td>5E-4</td>
</tr>
<tr>
<td>12</td>
<td>Magnesium-28</td>
<td>D, all compounds except those given for W</td>
<td>7E+2</td>
<td>2E+3</td>
<td>7E-7</td>
<td>2E-9</td>
<td>9E-6</td>
<td>9E-5</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>13</td>
<td>Aluminum-26</td>
<td>D, all compounds except those given for W</td>
<td>4E+2</td>
<td>6E+1</td>
<td>3E-8</td>
<td>9E-11</td>
<td>6E-6</td>
<td>6E-5</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

Table 1: Occupational Values
Table 2: Effluent Releases to Concentration
Table 3: Monthly Concentration

Nuclear Regulatory Commission
Pt. 20, App. B
<table>
<thead>
<tr>
<th>Atomic No.</th>
<th>Radionuclide</th>
<th>Class</th>
<th>Table 1: Occupational Values</th>
<th>Table 2: Emitted Concentrations</th>
<th>Table 3: Releases to Severe</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td></td>
<td></td>
<td>Col. 1</td>
<td>Col. 2</td>
<td>Col. 3</td>
</tr>
<tr>
<td>14</td>
<td>Silicon-31</td>
<td>D, all compounds except those given for W and Y</td>
<td>9E+3</td>
<td>3E+4</td>
<td>1E-5</td>
</tr>
<tr>
<td></td>
<td></td>
<td>W, oxides, hydroxides, carbides, and nitrates</td>
<td>-</td>
<td>3E+4</td>
<td>1E-5</td>
</tr>
<tr>
<td></td>
<td></td>
<td>Y, aluminosilicate glass</td>
<td>-</td>
<td>3E+4</td>
<td>1E-5</td>
</tr>
<tr>
<td>14</td>
<td>Silicon-32</td>
<td>D, see 32P</td>
<td>2E+3</td>
<td>2E+2</td>
<td>1E-7</td>
</tr>
<tr>
<td></td>
<td></td>
<td>W, see 32P</td>
<td>-</td>
<td>1E+2</td>
<td>5E-8</td>
</tr>
<tr>
<td></td>
<td></td>
<td>Y, see 32P</td>
<td>-</td>
<td>5E+0</td>
<td>2E-5</td>
</tr>
<tr>
<td>15</td>
<td>Phosphorus-32</td>
<td>D, all compounds except phosphates given for W</td>
<td>6E+2</td>
<td>9E+2</td>
<td>4E-7</td>
</tr>
<tr>
<td></td>
<td></td>
<td>W, phosphates of Zn2+, Mn2+, Fe2+, Bi3+, and lanthanides</td>
<td>-</td>
<td>4E+2</td>
<td>2E-7</td>
</tr>
<tr>
<td>15</td>
<td>Phosphorus-33</td>
<td>D, see 32P</td>
<td>2E+3</td>
<td>8E+3</td>
<td>4E-6</td>
</tr>
<tr>
<td>16</td>
<td>Sulfur-35</td>
<td>D, all compounds except those given for W</td>
<td>2E+4</td>
<td>7E-6</td>
<td>2E-8</td>
</tr>
<tr>
<td></td>
<td></td>
<td>W, elemental sulfur, sulfides of S, Ba, Ge, Sn, Pb, As, Sb, Bi, Cu, Ag, Au, Zn, Cd, Mg, W, and Mo, Sulphates of Ca, Sr, Ba, Ra, As, Sb, and Bi</td>
<td>-</td>
<td>2E+3</td>
<td>9E-7</td>
</tr>
<tr>
<td>17</td>
<td>Chlorine-36</td>
<td>D, all compounds except those given for W</td>
<td>2E+3</td>
<td>3E+3</td>
<td>1E-6</td>
</tr>
<tr>
<td></td>
<td></td>
<td>W, chlorides of lanthanides, Ba, Ag, Ca, Sr, Ba, Ra, Al, Ga, In, Ti, Ge, Sn, Pb, As, Sb, Bi, Te, Ru, Os, Co, Rh, Ir, Mo, Au, Pt, Cu, Ag, Au, Zn, Cd, Mg, Sc, Y, Ti,</td>
<td>-</td>
<td>2E+2</td>
<td>1E-7</td>
</tr>
<tr>
<td>Atomic No.</td>
<td>Radionuclide</td>
<td>Class</td>
<td>Table 1 Occupational Values</td>
<td>Table 2 Effluent Concentrations</td>
<td>Table 3 Releases to Sewers</td>
</tr>
<tr>
<td>-----------</td>
<td>--------------</td>
<td>-------</td>
<td>----------------------------</td>
<td>---------------------------------</td>
<td>----------------------------</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td>Col. 1 (oral ingestion) (μCi)</td>
<td>Col. 2 (inhalation) (μCi)</td>
<td>Col. 3 (air) (μCi/m³)</td>
</tr>
<tr>
<td>17</td>
<td>Chlorine-36²⁶</td>
<td>D, see ³⁶Cl</td>
<td>2E+4</td>
<td>4E+4</td>
<td>2E-5</td>
</tr>
<tr>
<td></td>
<td></td>
<td>W, see ³⁶Cl</td>
<td>-</td>
<td>5E+4</td>
<td>2E-5</td>
</tr>
<tr>
<td>17</td>
<td>Chlorine-37²⁶</td>
<td>D, see ³⁶Cl</td>
<td>2E+4</td>
<td>5E+4</td>
<td>2E-5</td>
</tr>
<tr>
<td></td>
<td></td>
<td>W, see ³⁶Cl</td>
<td>-</td>
<td>6E+4</td>
<td>2E-5</td>
</tr>
<tr>
<td>18</td>
<td>Argon-37</td>
<td>Subersion²</td>
<td>-</td>
<td>-</td>
<td>1E+0</td>
</tr>
<tr>
<td>18</td>
<td>Argon-39</td>
<td>Subersion²</td>
<td>-</td>
<td>-</td>
<td>2E-4</td>
</tr>
<tr>
<td>18</td>
<td>Argon-41</td>
<td>Subersion²</td>
<td>-</td>
<td>-</td>
<td>3E-6</td>
</tr>
<tr>
<td>19</td>
<td>Potassium-40</td>
<td>D, all compounds</td>
<td>3E+2</td>
<td>4E+2</td>
<td>2E-7</td>
</tr>
<tr>
<td>19</td>
<td>Potassium-41</td>
<td>D, all compounds</td>
<td>5E+3</td>
<td>6E+3</td>
<td>2E-6</td>
</tr>
<tr>
<td>19</td>
<td>Potassium-43</td>
<td>D, all compounds</td>
<td>6E+3</td>
<td>9E+3</td>
<td>4E-6</td>
</tr>
<tr>
<td>19</td>
<td>Potassium-44²</td>
<td>D, all compounds</td>
<td>7E+4</td>
<td>3E+5</td>
<td>9E-8</td>
</tr>
<tr>
<td>19</td>
<td>Potassium-45²</td>
<td>D, all compounds</td>
<td>3E+4</td>
<td>1E+5</td>
<td>5E-5</td>
</tr>
<tr>
<td>20</td>
<td>Calcium-41</td>
<td>W, all compounds</td>
<td>3E+3</td>
<td>4E+3</td>
<td>2E-6</td>
</tr>
<tr>
<td>20</td>
<td>Calcium-45</td>
<td>W, all compounds</td>
<td>2E+3</td>
<td>8E+2</td>
<td>4E-7</td>
</tr>
<tr>
<td>20</td>
<td>Calcium-47</td>
<td>W, all compounds</td>
<td>8E+2</td>
<td>9E+2</td>
<td>4E-7</td>
</tr>
<tr>
<td>21</td>
<td>Scandium-43</td>
<td>Y, all compounds</td>
<td>7E+3</td>
<td>2E+4</td>
<td>9E-6</td>
</tr>
<tr>
<td>21</td>
<td>Scandium-44²</td>
<td>Y, all compounds</td>
<td>5E+2</td>
<td>7E+2</td>
<td>3E-7</td>
</tr>
<tr>
<td>21</td>
<td>Scandium-44</td>
<td>Y, all compounds</td>
<td>4E+3</td>
<td>1E+4</td>
<td>5E-6</td>
</tr>
<tr>
<td>21</td>
<td>Scandium-46</td>
<td>Y, all compounds</td>
<td>9E+2</td>
<td>2E+2</td>
<td>1E-7</td>
</tr>
<tr>
<td>21</td>
<td>Scandium-47²</td>
<td>Y, all compounds</td>
<td>2E+3</td>
<td>3E+3</td>
<td>1E-6</td>
</tr>
<tr>
<td>21</td>
<td>Scandium-48</td>
<td>Y, all compounds</td>
<td>8E+2</td>
<td>1E+3</td>
<td>6E-7</td>
</tr>
<tr>
<td>21</td>
<td>Scandium-49²</td>
<td>Y, all compounds</td>
<td>3E+4</td>
<td>5E+4</td>
<td>2E-5</td>
</tr>
<tr>
<td>22</td>
<td>Titanium-44</td>
<td>D, all compounds except those given for W and Y</td>
<td>3E+2</td>
<td>3E+3</td>
<td>5E-9</td>
</tr>
<tr>
<td></td>
<td></td>
<td>W, oxides, hydroxides, carbides, halides, and nitrates</td>
<td>-</td>
<td>3E+1</td>
<td>1E-8</td>
</tr>
<tr>
<td></td>
<td></td>
<td>Y, Sr[VO₄]³⁻</td>
<td>-</td>
<td>6E+0</td>
<td>2E-9</td>
</tr>
<tr>
<td>Atomic Nm.</td>
<td>Radioisotope</td>
<td>Class</td>
<td>Col. 1 Oral Ingestion (μCi)</td>
<td>Col. 2 Inhalation (μCi/L)</td>
<td>Col. 3 Inhalation (μCi/L)</td>
</tr>
<tr>
<td>-----------</td>
<td>--------------</td>
<td>-------</td>
<td>-----------------------------</td>
<td>--------------------------</td>
<td>--------------------------</td>
</tr>
<tr>
<td>22</td>
<td>Titanium-45</td>
<td>D, see</td>
<td>9E+3</td>
<td>3E+4</td>
<td>3E-5</td>
</tr>
<tr>
<td></td>
<td></td>
<td>44Ti</td>
<td></td>
<td>4E+4</td>
<td>3E-5</td>
</tr>
<tr>
<td></td>
<td></td>
<td>W, see</td>
<td></td>
<td>3E+4</td>
<td>3E-5</td>
</tr>
<tr>
<td></td>
<td></td>
<td>Y, see</td>
<td></td>
<td>3E+4</td>
<td>3E-5</td>
</tr>
<tr>
<td>23</td>
<td>Vanadium-47^2</td>
<td>D, all</td>
<td>3E+4</td>
<td>8E+4</td>
<td>3E-5</td>
</tr>
<tr>
<td></td>
<td></td>
<td>compounds except</td>
<td></td>
<td>5E-7</td>
<td>5E-6</td>
</tr>
<tr>
<td></td>
<td></td>
<td>those given for W</td>
<td></td>
<td>3E+4</td>
<td>5E-7</td>
</tr>
<tr>
<td></td>
<td></td>
<td>W, oxides, hydroxides,</td>
<td></td>
<td>3E+4</td>
<td>5E-7</td>
</tr>
<tr>
<td></td>
<td></td>
<td>carbides, and halides</td>
<td></td>
<td>3E+4</td>
<td>5E-7</td>
</tr>
<tr>
<td>23</td>
<td>Vanadium-48</td>
<td>D, see</td>
<td>6E+4</td>
<td>3E+4</td>
<td>3E-5</td>
</tr>
<tr>
<td></td>
<td></td>
<td>47V</td>
<td></td>
<td>6E+4</td>
<td>3E-7</td>
</tr>
<tr>
<td>23</td>
<td>Vanadium-49</td>
<td>D, see</td>
<td>7E+4</td>
<td>3E+4</td>
<td>3E-5</td>
</tr>
<tr>
<td></td>
<td></td>
<td>47V</td>
<td></td>
<td>7E+4</td>
<td>3E-7</td>
</tr>
<tr>
<td>24</td>
<td>Chromium-48</td>
<td>D, all</td>
<td>6E+3</td>
<td>3E+4</td>
<td>5E-6</td>
</tr>
<tr>
<td></td>
<td></td>
<td>compounds except</td>
<td></td>
<td>5E-7</td>
<td>5E-6</td>
</tr>
<tr>
<td></td>
<td></td>
<td>those given for W and Y</td>
<td></td>
<td>7E+3</td>
<td>5E-6</td>
</tr>
<tr>
<td></td>
<td></td>
<td>W, oxides and hydroxides</td>
<td></td>
<td>7E+3</td>
<td>5E-6</td>
</tr>
<tr>
<td>24</td>
<td>Chromium-49^2</td>
<td>D, see</td>
<td>3E+4</td>
<td>8E+4</td>
<td>4E-5</td>
</tr>
<tr>
<td></td>
<td></td>
<td>48Cr</td>
<td></td>
<td>8E+4</td>
<td>4E-5</td>
</tr>
<tr>
<td></td>
<td></td>
<td>W, see</td>
<td></td>
<td>8E+4</td>
<td>4E-5</td>
</tr>
<tr>
<td></td>
<td></td>
<td>48Cr</td>
<td></td>
<td>8E+4</td>
<td>4E-5</td>
</tr>
<tr>
<td>24</td>
<td>Chromium-51</td>
<td>D, see</td>
<td>4E+4</td>
<td>5E+4</td>
<td>2E-5</td>
</tr>
<tr>
<td></td>
<td></td>
<td>51Cr</td>
<td></td>
<td>5E+4</td>
<td>2E-5</td>
</tr>
<tr>
<td></td>
<td></td>
<td>W, see</td>
<td></td>
<td>5E+4</td>
<td>2E-5</td>
</tr>
<tr>
<td></td>
<td></td>
<td>51Cr</td>
<td></td>
<td>5E+4</td>
<td>2E-5</td>
</tr>
<tr>
<td>25</td>
<td>Manganese-51^2</td>
<td>D, all</td>
<td>2E+4</td>
<td>5E+4</td>
<td>2E-5</td>
</tr>
<tr>
<td></td>
<td></td>
<td>compounds except</td>
<td></td>
<td>5E-7</td>
<td>5E-6</td>
</tr>
<tr>
<td></td>
<td></td>
<td>those given for W</td>
<td></td>
<td>6E+4</td>
<td>5E-5</td>
</tr>
<tr>
<td></td>
<td></td>
<td>W, oxides, hydroxides,</td>
<td></td>
<td>6E+4</td>
<td>5E-5</td>
</tr>
<tr>
<td></td>
<td></td>
<td>carbides, and halides</td>
<td></td>
<td>6E+4</td>
<td>5E-5</td>
</tr>
<tr>
<td>25</td>
<td>Manganese-52^2</td>
<td>D, see</td>
<td>3E+4</td>
<td>5E+4</td>
<td>5E-5</td>
</tr>
<tr>
<td></td>
<td></td>
<td>52Mn</td>
<td></td>
<td>5E+4</td>
<td>5E-5</td>
</tr>
<tr>
<td></td>
<td></td>
<td>W, see</td>
<td></td>
<td>5E+4</td>
<td>5E-5</td>
</tr>
<tr>
<td></td>
<td></td>
<td>52Mn</td>
<td></td>
<td>5E+4</td>
<td>5E-5</td>
</tr>
<tr>
<td>25</td>
<td>Manganese-54</td>
<td>D, see</td>
<td>2E+3</td>
<td>9E+2</td>
<td>4E-7</td>
</tr>
<tr>
<td></td>
<td></td>
<td>54Mn</td>
<td></td>
<td>9E+2</td>
<td>4E-7</td>
</tr>
<tr>
<td></td>
<td></td>
<td>W, see</td>
<td></td>
<td>9E+2</td>
<td>4E-7</td>
</tr>
<tr>
<td></td>
<td></td>
<td>54Mn</td>
<td></td>
<td>9E+2</td>
<td>4E-7</td>
</tr>
<tr>
<td>25</td>
<td>Manganese-56</td>
<td>D, see</td>
<td>5E+4</td>
<td>3E+4</td>
<td>4E-6</td>
</tr>
<tr>
<td></td>
<td></td>
<td>56Mn</td>
<td></td>
<td>5E+4</td>
<td>4E-6</td>
</tr>
<tr>
<td></td>
<td></td>
<td>W, see</td>
<td></td>
<td>5E+4</td>
<td>4E-6</td>
</tr>
<tr>
<td>Atomic No.</td>
<td>Radionuclide</td>
<td>Class</td>
<td>Table 1 Occupational Values</td>
<td>Table 2 Effluent Concentrations</td>
<td>Table 3 Releases to Streams</td>
</tr>
<tr>
<td>------------</td>
<td>--------------</td>
<td>-------</td>
<td>----------------------------</td>
<td>--------------------------------</td>
<td>----------------------------</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td>Col. 1 Oral INgestion ALI (μCi)</td>
<td>Col. 2 Inhalation ALI (μCi)</td>
<td>Col. 3 Inhalation DAD (μCi/mL)</td>
</tr>
<tr>
<td>26</td>
<td>Iron-55</td>
<td>D, all compounds except those given for W</td>
<td>9E+2</td>
<td>3E+3</td>
<td>1E-6</td>
</tr>
<tr>
<td></td>
<td>W, see Fe</td>
<td>-</td>
<td>2E+3</td>
<td>3E-6</td>
<td>3E-9</td>
</tr>
<tr>
<td>26</td>
<td>Iron-59</td>
<td>D, see Fe</td>
<td>8E+2</td>
<td>3E+2</td>
<td>1E-7</td>
</tr>
<tr>
<td>W, see Fe</td>
<td>-</td>
<td>5E+2</td>
<td>2E-7</td>
<td>7E-10</td>
<td>-</td>
</tr>
<tr>
<td>26</td>
<td>Iron-60</td>
<td>D, see Fe</td>
<td>3E+1</td>
<td>6E+0</td>
<td>3E-9</td>
</tr>
<tr>
<td>W, see Fe</td>
<td>-</td>
<td>2E+1</td>
<td>8E-9</td>
<td>3E-11</td>
<td>-</td>
</tr>
<tr>
<td>27</td>
<td>Cobalt-55</td>
<td>W, all compounds except those given for Y</td>
<td>1E+3</td>
<td>3E+3</td>
<td>1E-6</td>
</tr>
<tr>
<td>Y, see Fe</td>
<td>-</td>
<td>3E+3</td>
<td>1E-6</td>
<td>4E-9</td>
<td>-</td>
</tr>
<tr>
<td>27</td>
<td>Cobalt-56</td>
<td>W, see Co</td>
<td>5E+2</td>
<td>3E+2</td>
<td>1E-7</td>
</tr>
<tr>
<td>Y, see Co</td>
<td>-</td>
<td>3E+2</td>
<td>8E-8</td>
<td>3E-10</td>
<td>-</td>
</tr>
<tr>
<td>27</td>
<td>Cobalt-57</td>
<td>W, see Co</td>
<td>8E+3</td>
<td>3E+3</td>
<td>1E-6</td>
</tr>
<tr>
<td>Y, see Co</td>
<td>-</td>
<td>7E+2</td>
<td>3E-7</td>
<td>9E-10</td>
<td>-</td>
</tr>
<tr>
<td>27</td>
<td>Cobalt-58</td>
<td>W, see Co</td>
<td>6E+4</td>
<td>9E+4</td>
<td>4E-5</td>
</tr>
<tr>
<td>Y, see Co</td>
<td>-</td>
<td>6E+4</td>
<td>3E-5</td>
<td>9E-9</td>
<td>-</td>
</tr>
<tr>
<td>27</td>
<td>Cobalt-60</td>
<td>W, see Co</td>
<td>2E+3</td>
<td>1E+3</td>
<td>5E-7</td>
</tr>
<tr>
<td>Y, see Co</td>
<td>-</td>
<td>7E+2</td>
<td>3E-7</td>
<td>1E-9</td>
<td>-</td>
</tr>
<tr>
<td>27</td>
<td>Cobalt-61</td>
<td>W, see Co</td>
<td>3E+6</td>
<td>4E+6</td>
<td>2E-3</td>
</tr>
<tr>
<td>Y, see Co</td>
<td>-</td>
<td>3E+6</td>
<td>1E-3</td>
<td>4E-6</td>
<td>2E-2</td>
</tr>
<tr>
<td>27</td>
<td>Cobalt-62</td>
<td>W, see Co</td>
<td>5E+2</td>
<td>2E+2</td>
<td>7E-8</td>
</tr>
<tr>
<td>Y, see Co</td>
<td>-</td>
<td>2E+2</td>
<td>3E-8</td>
<td>5E-11</td>
<td>-</td>
</tr>
<tr>
<td>27</td>
<td>Cobalt-63</td>
<td>W, see Co</td>
<td>2E+4</td>
<td>6E+4</td>
<td>3E-5</td>
</tr>
<tr>
<td>Y, see Co</td>
<td>-</td>
<td>2E+4</td>
<td>8E-8</td>
<td>1E-9</td>
<td>-</td>
</tr>
<tr>
<td>27</td>
<td>Cobalt-65</td>
<td>W, see Co</td>
<td>4E+4</td>
<td>2E+5</td>
<td>7E-5</td>
</tr>
<tr>
<td>Y, see Co</td>
<td>-</td>
<td>5E+4</td>
<td>2E-5</td>
<td>7E-9</td>
<td>7E-3</td>
</tr>
<tr>
<td>28</td>
<td>Nickel-56</td>
<td>D, all compounds except those given for W</td>
<td>1E+3</td>
<td>2E+3</td>
<td>8E-7</td>
</tr>
<tr>
<td>W, see Fe</td>
<td>-</td>
<td>2E+3</td>
<td>5E-7</td>
<td>2E-9</td>
<td>-</td>
</tr>
<tr>
<td>Vapor</td>
<td>-</td>
<td>3E+3</td>
<td>5E-7</td>
<td>2E-9</td>
<td>-</td>
</tr>
<tr>
<td>28</td>
<td>Nickel-57</td>
<td>D, see H</td>
<td>2E+3</td>
<td>5E+3</td>
<td>2E-6</td>
</tr>
<tr>
<td>W, see H</td>
<td>-</td>
<td>3E+3</td>
<td>1E-6</td>
<td>4E-9</td>
<td>-</td>
</tr>
<tr>
<td>Vapor</td>
<td>-</td>
<td>6E+3</td>
<td>3E-6</td>
<td>9E-9</td>
<td>-</td>
</tr>
<tr>
<td>Atomic No.</td>
<td>Radioisotope</td>
<td>Class</td>
<td>Table 1: Occupational Values</td>
<td>Table 2: Effluent Concentrations</td>
<td>Table 3: Releases to Sewers</td>
</tr>
<tr>
<td>-----------</td>
<td>--------------</td>
<td>-------</td>
<td>----------------------------</td>
<td>-------------------------------</td>
<td>-----------------------------</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td>Col. 1 Ingestion ((\mu)Ci)</td>
<td>Col. 2 Inhalation ((\mu)Ci)</td>
<td>Col. 3</td>
</tr>
<tr>
<td>28</td>
<td>Nickel-59</td>
<td>D. see</td>
<td>2E-4</td>
<td>4E-3</td>
<td>2E-6</td>
</tr>
<tr>
<td></td>
<td>W. see</td>
<td>56Ni</td>
<td>7E-3</td>
<td>3E-6</td>
<td>1E-9</td>
</tr>
<tr>
<td></td>
<td>Vapor</td>
<td>-</td>
<td>2E+3</td>
<td>8E-7</td>
<td>3E-9</td>
</tr>
<tr>
<td>28</td>
<td>Nickel-63</td>
<td>D. see</td>
<td>9E+3</td>
<td>2E+3</td>
<td>7E-7</td>
</tr>
<tr>
<td></td>
<td>W. see</td>
<td>56Ni</td>
<td>-</td>
<td>3E+3</td>
<td>3E-6</td>
</tr>
<tr>
<td></td>
<td>Vapor</td>
<td>-</td>
<td>8E+2</td>
<td>3E-7</td>
<td>1E-9</td>
</tr>
<tr>
<td>28</td>
<td>Nickel-65</td>
<td>D. see</td>
<td>8E+3</td>
<td>2E+4</td>
<td>3E-5</td>
</tr>
<tr>
<td></td>
<td>W. see</td>
<td>56Ni</td>
<td>-</td>
<td>3E+4</td>
<td>3E-5</td>
</tr>
<tr>
<td></td>
<td>Vapor</td>
<td>-</td>
<td>2E+4</td>
<td>2E-6</td>
<td>2E-8</td>
</tr>
<tr>
<td>28</td>
<td>Nickel-66</td>
<td>D. see</td>
<td>4E+2</td>
<td>2E+3</td>
<td>7E-7</td>
</tr>
<tr>
<td></td>
<td>W. see</td>
<td>56Ni</td>
<td>-</td>
<td>6E+2</td>
<td>3E-7</td>
</tr>
<tr>
<td></td>
<td>Vapor</td>
<td>-</td>
<td>3E+3</td>
<td>2E-6</td>
<td>4E-9</td>
</tr>
<tr>
<td>29</td>
<td>Copper-60</td>
<td>D. all compounds except those given for W and Y</td>
<td>3E+4</td>
<td>9E+4</td>
<td>4E-5</td>
</tr>
<tr>
<td></td>
<td></td>
<td>Sl. wall (3E+4)</td>
<td>-</td>
<td>-</td>
<td>-</td>
</tr>
<tr>
<td></td>
<td>W. sulfides, halides, and nitrates</td>
<td>-</td>
<td>3E+5</td>
<td>5E-5</td>
<td>2E-7</td>
</tr>
<tr>
<td></td>
<td>Y. oxides and hydroxides</td>
<td>-</td>
<td>3E+5</td>
<td>4E-5</td>
<td>1E-7</td>
</tr>
<tr>
<td>29</td>
<td>Copper-62</td>
<td>D. see</td>
<td>1E+4</td>
<td>3E+4</td>
<td>1E-5</td>
</tr>
<tr>
<td></td>
<td>W. see</td>
<td>65Cu</td>
<td>-</td>
<td>4E+8</td>
<td>2E-5</td>
</tr>
<tr>
<td></td>
<td>Y. see</td>
<td>65Cu</td>
<td>-</td>
<td>4E+4</td>
<td>1E-5</td>
</tr>
<tr>
<td>29</td>
<td>Copper-64</td>
<td>D. see</td>
<td>1E+4</td>
<td>3E+4</td>
<td>3E-5</td>
</tr>
<tr>
<td></td>
<td>W. see</td>
<td>65Cu</td>
<td>-</td>
<td>2E+4</td>
<td>3E-5</td>
</tr>
<tr>
<td></td>
<td>Y. see</td>
<td>65Cu</td>
<td>-</td>
<td>2E+4</td>
<td>3E0-6</td>
</tr>
<tr>
<td>29</td>
<td>Copper-67</td>
<td>D. see</td>
<td>5E+3</td>
<td>8E+3</td>
<td>3E-6</td>
</tr>
<tr>
<td></td>
<td>W. see</td>
<td>65Cu</td>
<td>-</td>
<td>8E+3</td>
<td>3E-6</td>
</tr>
<tr>
<td></td>
<td>Y. see</td>
<td>65Cu</td>
<td>-</td>
<td>5E+3</td>
<td>2E-6</td>
</tr>
<tr>
<td>30</td>
<td>Zinc-66</td>
<td>Y. all compounds</td>
<td>1E+3</td>
<td>3E+3</td>
<td>3E-6</td>
</tr>
<tr>
<td>30</td>
<td>Zinc-66(^{2})</td>
<td>Y. all compounds</td>
<td>3E+4</td>
<td>7E+4</td>
<td>3E-5</td>
</tr>
<tr>
<td>30</td>
<td>Zinc-65</td>
<td>Y. all compounds</td>
<td>4E+2</td>
<td>3E+2</td>
<td>1E-7</td>
</tr>
<tr>
<td>30</td>
<td>Zinc-65(^{m})</td>
<td>Y. all compounds</td>
<td>4E+3</td>
<td>7E+3</td>
<td>3E-6</td>
</tr>
<tr>
<td>30</td>
<td>Zinc-65(^{2})</td>
<td>Y. all compounds</td>
<td>6E+4</td>
<td>1E+5</td>
<td>6E-5</td>
</tr>
<tr>
<td>30</td>
<td>Zinc-72</td>
<td>Y. all compounds</td>
<td>6E+3</td>
<td>2E+4</td>
<td>7E-6</td>
</tr>
<tr>
<td>30</td>
<td>Zinc-72</td>
<td>Y. all compounds</td>
<td>1E+3</td>
<td>1E+3</td>
<td>5E-7</td>
</tr>
<tr>
<td>31</td>
<td>Gallium-67</td>
<td>D. all compounds except those given for W</td>
<td>5E+4</td>
<td>2E+5</td>
<td>7E-5</td>
</tr>
<tr>
<td></td>
<td>W. oxides, hydroxides, carbonates, halides, and nitrates</td>
<td>-</td>
<td>8E+5</td>
<td>3E-7</td>
<td>-</td>
</tr>
<tr>
<td>Atomic No.</td>
<td>Radioisotope</td>
<td>Class</td>
<td>Col. 1 Oral Ingestion</td>
<td>Col. 2 Inhalation</td>
<td>Col. 3 Air</td>
</tr>
<tr>
<td>------------</td>
<td>--------------</td>
<td>-------</td>
<td>-----------------------</td>
<td>-------------------</td>
<td>-----------</td>
</tr>
<tr>
<td>31</td>
<td>Gallium-68</td>
<td>D, see Ga</td>
<td>1E+3</td>
<td>4E+3</td>
<td>1E-6</td>
</tr>
<tr>
<td></td>
<td></td>
<td>W, see Ga</td>
<td>3E+3</td>
<td>1E-6</td>
<td>4E-9</td>
</tr>
<tr>
<td>31</td>
<td>Gallium-67</td>
<td>D, see Ga</td>
<td>7E+3</td>
<td>2E+4</td>
<td>6E-6</td>
</tr>
<tr>
<td></td>
<td></td>
<td>W, see Ga</td>
<td>3E+3</td>
<td>4E-6</td>
<td>1E-8</td>
</tr>
<tr>
<td>31</td>
<td>Gallium-68²</td>
<td>D, see Ga</td>
<td>7E+4</td>
<td>4E-5</td>
<td>3E-7</td>
</tr>
<tr>
<td></td>
<td></td>
<td>W, see Ga</td>
<td>5E+4</td>
<td>1E-5</td>
<td>7E-5</td>
</tr>
<tr>
<td>31</td>
<td>Gallium-72</td>
<td>D, see Ga</td>
<td>1E+3</td>
<td>1E-3</td>
<td>1E-6</td>
</tr>
<tr>
<td></td>
<td></td>
<td>W, see Ga</td>
<td>3E+3</td>
<td>1E-6</td>
<td>6E-9</td>
</tr>
<tr>
<td>31</td>
<td>Gallium-73</td>
<td>D, see Ga</td>
<td>5E+3</td>
<td>2E+4</td>
<td>6E-6</td>
</tr>
<tr>
<td></td>
<td></td>
<td>W, see Ga</td>
<td>2E+4</td>
<td>6E-6</td>
<td>2E-8</td>
</tr>
<tr>
<td>32</td>
<td>Germanium-66</td>
<td>D, all compounds except</td>
<td>2E+4</td>
<td>5E+4</td>
<td>1E-5</td>
</tr>
<tr>
<td></td>
<td></td>
<td>Cl, S, and Te, and iodides</td>
<td>-</td>
<td>3E+4</td>
<td>6E-5</td>
</tr>
<tr>
<td>32</td>
<td>Germanium-67</td>
<td>D, see Ge</td>
<td>3E+4</td>
<td>9E-4</td>
<td>4E-5</td>
</tr>
<tr>
<td></td>
<td></td>
<td>W, see Ge</td>
<td>2E+4</td>
<td>1E-5</td>
<td>4E-5</td>
</tr>
<tr>
<td>32</td>
<td>Germanium-68</td>
<td>D, see Ge</td>
<td>5E+4</td>
<td>4E-5</td>
<td>2E-6</td>
</tr>
<tr>
<td></td>
<td></td>
<td>W, see Ge</td>
<td>3E+4</td>
<td>1E-5</td>
<td>4E-5</td>
</tr>
<tr>
<td>32</td>
<td>Germanium-69</td>
<td>D, see Ge</td>
<td>5E+4</td>
<td>2E-6</td>
<td>2E-8</td>
</tr>
<tr>
<td></td>
<td></td>
<td>W, see Ge</td>
<td>6E+4</td>
<td>3E-6</td>
<td>3E-8</td>
</tr>
<tr>
<td>32</td>
<td>Germanium-71</td>
<td>D, see Ge</td>
<td>5E+5</td>
<td>4E-5</td>
<td>2E-4</td>
</tr>
<tr>
<td></td>
<td></td>
<td>W, see Ge</td>
<td>6E+4</td>
<td>2E-5</td>
<td>6E-9</td>
</tr>
<tr>
<td>32</td>
<td>Germanium-72</td>
<td>D, see Ge</td>
<td>4E+4</td>
<td>8E-5</td>
<td>3E-5</td>
</tr>
<tr>
<td></td>
<td></td>
<td>W, see Ge</td>
<td>6E+4</td>
<td>3E-5</td>
<td>2E-7</td>
</tr>
<tr>
<td>32</td>
<td>Germanium-73</td>
<td>D, see Ge</td>
<td>9E+3</td>
<td>4E-5</td>
<td>3E-8</td>
</tr>
<tr>
<td></td>
<td></td>
<td>W, see Ge</td>
<td>6E+4</td>
<td>4E-5</td>
<td>2E-8</td>
</tr>
<tr>
<td>32</td>
<td>Germanium-74</td>
<td>D, see Ge</td>
<td>2E+4</td>
<td>9E+6</td>
<td>3E-6</td>
</tr>
<tr>
<td></td>
<td></td>
<td>W, see Ge</td>
<td>2E+4</td>
<td>9E-6</td>
<td>3E-6</td>
</tr>
<tr>
<td>Atomic No.</td>
<td>Radioisotope</td>
<td>Class</td>
<td>Table 1: Occupational Values</td>
<td>Table 2: Effluent Concentrations</td>
<td>Table 3: Releases to Sewers</td>
</tr>
<tr>
<td>-----------</td>
<td>-------------------</td>
<td>-------------</td>
<td>-------------------------------</td>
<td>----------------------------------</td>
<td>-----------------------------</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td>Col. 1 Oral Ingestion</td>
<td>Col. 2 Oral Inhalation</td>
<td>Col. 3 Oral Inhalation</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td>(μCi)</td>
<td>(μCi)</td>
<td>(μCi/L)</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>33</td>
<td>Arsenic-69²</td>
<td>W, all compounds</td>
<td>3E-4</td>
<td>1E-5</td>
<td>5E-5</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td>(4E-4)</td>
<td>-</td>
<td>-</td>
</tr>
<tr>
<td>33</td>
<td>Arsenic-70²</td>
<td>W, all compounds</td>
<td>1E-4</td>
<td>5E-4</td>
<td>2E-5</td>
</tr>
<tr>
<td>33</td>
<td>Arsenic-72</td>
<td>W, all compounds</td>
<td>4E+3</td>
<td>5E+3</td>
<td>2E+6</td>
</tr>
<tr>
<td>33</td>
<td>Arsenic-73</td>
<td>W, all compounds</td>
<td>9E+2</td>
<td>1E+3</td>
<td>6E-7</td>
</tr>
<tr>
<td>33</td>
<td>Arsenic-74</td>
<td>W, all compounds</td>
<td>8E+3</td>
<td>2E+3</td>
<td>7E-7</td>
</tr>
<tr>
<td>32</td>
<td>Arsenic-76</td>
<td>W, all compounds</td>
<td>1E+3</td>
<td>8E+2</td>
<td>3E-7</td>
</tr>
<tr>
<td>33</td>
<td>Arsenic-77</td>
<td>W, all compounds</td>
<td>4E+3</td>
<td>1E+3</td>
<td>6E-7</td>
</tr>
<tr>
<td>33</td>
<td>Arsenic-78²</td>
<td>W, all compounds</td>
<td>8E+3</td>
<td>2E+4</td>
<td>9E-6</td>
</tr>
<tr>
<td>34</td>
<td>Selenium-75²</td>
<td>D, all compounds except those given for W</td>
<td>5E+4</td>
<td>4E+4</td>
<td>2E-5</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

- W, oxides, hydroxides, carbides, and elemental Se
- D, see 80²Te, W, see 78²Se
- 70²Te, W, see 78²Se
<table>
<thead>
<tr>
<th>Atomic No.</th>
<th>Radioluclidean</th>
<th>Atoms or Elements</th>
<th>Col. 1 Oral Ingestion (uCi)</th>
<th>Col. 2 Inhalation (uCi)</th>
<th>Col. 3 Inhalation (uCi)</th>
<th>Col. 1 Air (uCi/l)</th>
<th>Col. 2 Water (uCi/l)</th>
<th>Monthly Average Concentration (uCi/l)</th>
</tr>
</thead>
<tbody>
<tr>
<td>35</td>
<td>Bromine-74</td>
<td>D, bromides of H, Li, Na, K, Rb, Cs, and Fr</td>
<td>- 4E-4 2E-5 3E-6</td>
<td>- 4E-4 2E-5 3E-6</td>
<td>- 4E-4 2E-5 3E-6</td>
<td>- 4E-4 2E-5 3E-6</td>
<td>- 4E-4 2E-5 3E-6</td>
<td>- 4E-4 2E-5 3E-6</td>
</tr>
<tr>
<td>35</td>
<td>Bromine-76</td>
<td>D, see 35Br</td>
<td>2E-4 3E-5 3E-7</td>
<td>2E-4 3E-5 3E-7</td>
<td>2E-4 3E-5 3E-7</td>
<td>2E-4 3E-5 3E-7</td>
<td>2E-4 3E-5 3E-7</td>
<td>2E-4 3E-5 3E-7</td>
</tr>
<tr>
<td>35</td>
<td>Bromine-79</td>
<td>D, see 35Br</td>
<td>3E-4 5E-5 7E-7</td>
<td>3E-4 5E-5 7E-7</td>
<td>3E-4 5E-5 7E-7</td>
<td>3E-4 5E-5 7E-7</td>
<td>3E-4 5E-5 7E-7</td>
<td>3E-4 5E-5 7E-7</td>
</tr>
<tr>
<td>35</td>
<td>Bromine-80</td>
<td>D, see 35Br</td>
<td>4E-3 6E-4 8E-5</td>
<td>4E-3 6E-4 8E-5</td>
<td>4E-3 6E-4 8E-5</td>
<td>4E-3 6E-4 8E-5</td>
<td>4E-3 6E-4 8E-5</td>
<td>4E-3 6E-4 8E-5</td>
</tr>
<tr>
<td>35</td>
<td>Bromine-82</td>
<td>D, see 35Br</td>
<td>3E-3 6E-4 8E-5</td>
<td>3E-3 6E-4 8E-5</td>
<td>3E-3 6E-4 8E-5</td>
<td>3E-3 6E-4 8E-5</td>
<td>3E-3 6E-4 8E-5</td>
<td>3E-3 6E-4 8E-5</td>
</tr>
<tr>
<td>35</td>
<td>Bromine-83</td>
<td>D, see 35Br</td>
<td>6E-4 9E-5 1E-5</td>
<td>6E-4 9E-5 1E-5</td>
<td>6E-4 9E-5 1E-5</td>
<td>6E-4 9E-5 1E-5</td>
<td>6E-4 9E-5 1E-5</td>
<td>6E-4 9E-5 1E-5</td>
</tr>
<tr>
<td>35</td>
<td>Bromine-86</td>
<td>D, see 35Br</td>
<td>2E-4 3E-5 5E-6</td>
<td>2E-4 3E-5 5E-6</td>
<td>2E-4 3E-5 5E-6</td>
<td>2E-4 3E-5 5E-6</td>
<td>2E-4 3E-5 5E-6</td>
<td>2E-4 3E-5 5E-6</td>
</tr>
<tr>
<td>35</td>
<td>Krypton-76</td>
<td>Subelement</td>
<td>- - 3E-6 1E-6</td>
<td>- - 3E-6 1E-6</td>
<td>- - 3E-6 1E-6</td>
<td>- - 3E-6 1E-6</td>
<td>- - 3E-6 1E-6</td>
<td>- - 3E-6 1E-6</td>
</tr>
<tr>
<td>35</td>
<td>Krypton-77</td>
<td>Subelement</td>
<td>- - 4E-6 2E-6</td>
<td>- - 4E-6 2E-6</td>
<td>- - 4E-6 2E-6</td>
<td>- - 4E-6 2E-6</td>
<td>- - 4E-6 2E-6</td>
<td>- - 4E-6 2E-6</td>
</tr>
<tr>
<td>35</td>
<td>Krypton-79</td>
<td>Subelement</td>
<td>- - 2E-5 1E-5</td>
<td>- - 2E-5 1E-5</td>
<td>- - 2E-5 1E-5</td>
<td>- - 2E-5 1E-5</td>
<td>- - 2E-5 1E-5</td>
<td>- - 2E-5 1E-5</td>
</tr>
<tr>
<td>35</td>
<td>Krypton-81</td>
<td>Subelement</td>
<td>- - 7E-4 3E-4</td>
<td>- - 7E-4 3E-4</td>
<td>- - 7E-4 3E-4</td>
<td>- - 7E-4 3E-4</td>
<td>- - 7E-4 3E-4</td>
<td>- - 7E-4 3E-4</td>
</tr>
<tr>
<td>Atomic</td>
<td>Radiouclide No.</td>
<td>Class</td>
<td>Col. 1 Oral</td>
<td>Col. 2 Oral</td>
<td>Col. 3 Oral</td>
<td>Col. 1 Inhale</td>
<td>Col. 2 Inhale</td>
<td>Col. 3 Inhale</td>
</tr>
<tr>
<td>---------</td>
<td>----------------</td>
<td>---------------</td>
<td>--------------</td>
<td>-------------</td>
<td>-------------</td>
<td>--------------</td>
<td>--------------</td>
<td>--------------</td>
</tr>
<tr>
<td>36</td>
<td>Krypton-85m</td>
<td>Subsoneration</td>
<td>3E-2</td>
<td>3E-5</td>
<td>3E-7</td>
<td>-</td>
<td>-</td>
<td>-</td>
</tr>
<tr>
<td>36</td>
<td>Krypton-85m</td>
<td>Subsoneration</td>
<td>-</td>
<td>-</td>
<td>3E-4</td>
<td>-</td>
<td>-</td>
<td>-</td>
</tr>
<tr>
<td>36</td>
<td>Krypton-85m</td>
<td>Subsoneration</td>
<td>-</td>
<td>-</td>
<td>3E-4</td>
<td>-</td>
<td>-</td>
<td>-</td>
</tr>
<tr>
<td>36</td>
<td>Krypton-85m</td>
<td>Subsoneration</td>
<td>-</td>
<td>-</td>
<td>3E-4</td>
<td>-</td>
<td>-</td>
<td>-</td>
</tr>
<tr>
<td>36</td>
<td>Krypton-85m</td>
<td>Subsoneration</td>
<td>-</td>
<td>-</td>
<td>3E-4</td>
<td>-</td>
<td>-</td>
<td>-</td>
</tr>
<tr>
<td>37</td>
<td>Rubidium-79</td>
<td>D. all compounds</td>
<td>3E-4</td>
<td>3E-5</td>
<td>3E-7</td>
<td>-</td>
<td>-</td>
<td>-</td>
</tr>
<tr>
<td>37</td>
<td>Rubidium-79</td>
<td>D. all compounds</td>
<td>3E-4</td>
<td>3E-5</td>
<td>3E-7</td>
<td>-</td>
<td>-</td>
<td>-</td>
</tr>
<tr>
<td>37</td>
<td>Rubidium-79</td>
<td>D. all compounds</td>
<td>3E-4</td>
<td>3E-5</td>
<td>3E-7</td>
<td>-</td>
<td>-</td>
<td>-</td>
</tr>
<tr>
<td>37</td>
<td>Rubidium-79</td>
<td>D. all compounds</td>
<td>3E-4</td>
<td>3E-5</td>
<td>3E-7</td>
<td>-</td>
<td>-</td>
<td>-</td>
</tr>
<tr>
<td>37</td>
<td>Rubidium-79</td>
<td>D. all compounds</td>
<td>3E-4</td>
<td>3E-5</td>
<td>3E-7</td>
<td>-</td>
<td>-</td>
<td>-</td>
</tr>
<tr>
<td>37</td>
<td>Rubidium-79</td>
<td>D. all compounds</td>
<td>3E-4</td>
<td>3E-5</td>
<td>3E-7</td>
<td>-</td>
<td>-</td>
<td>-</td>
</tr>
<tr>
<td>37</td>
<td>Rubidium-79</td>
<td>D. all compounds</td>
<td>3E-4</td>
<td>3E-5</td>
<td>3E-7</td>
<td>-</td>
<td>-</td>
<td>-</td>
</tr>
<tr>
<td>37</td>
<td>Rubidium-79</td>
<td>D. all compounds</td>
<td>3E-4</td>
<td>3E-5</td>
<td>3E-7</td>
<td>-</td>
<td>-</td>
<td>-</td>
</tr>
<tr>
<td>37</td>
<td>Rubidium-79</td>
<td>D. all compounds</td>
<td>3E-4</td>
<td>3E-5</td>
<td>3E-7</td>
<td>-</td>
<td>-</td>
<td>-</td>
</tr>
<tr>
<td>37</td>
<td>Rubidium-79</td>
<td>D. all compounds</td>
<td>3E-4</td>
<td>3E-5</td>
<td>3E-7</td>
<td>-</td>
<td>-</td>
<td>-</td>
</tr>
<tr>
<td>38</td>
<td>Strontium-85</td>
<td>D. all soluble compounds</td>
<td>3E-4</td>
<td>3E-5</td>
<td>3E-7</td>
<td>-</td>
<td>-</td>
<td>-</td>
</tr>
<tr>
<td>38</td>
<td>Strontium-85</td>
<td>D. all soluble compounds</td>
<td>3E-4</td>
<td>3E-5</td>
<td>3E-7</td>
<td>-</td>
<td>-</td>
<td>-</td>
</tr>
<tr>
<td>38</td>
<td>Strontium-85</td>
<td>D. all soluble compounds</td>
<td>3E-4</td>
<td>3E-5</td>
<td>3E-7</td>
<td>-</td>
<td>-</td>
<td>-</td>
</tr>
<tr>
<td>38</td>
<td>Strontium-85</td>
<td>D. all soluble compounds</td>
<td>3E-4</td>
<td>3E-5</td>
<td>3E-7</td>
<td>-</td>
<td>-</td>
<td>-</td>
</tr>
<tr>
<td>38</td>
<td>Strontium-85</td>
<td>D. all soluble compounds</td>
<td>3E-4</td>
<td>3E-5</td>
<td>3E-7</td>
<td>-</td>
<td>-</td>
<td>-</td>
</tr>
<tr>
<td>38</td>
<td>Strontium-85</td>
<td>D. all soluble compounds</td>
<td>3E-4</td>
<td>3E-5</td>
<td>3E-7</td>
<td>-</td>
<td>-</td>
<td>-</td>
</tr>
<tr>
<td>38</td>
<td>Strontium-85</td>
<td>D. all soluble compounds</td>
<td>3E-4</td>
<td>3E-5</td>
<td>3E-7</td>
<td>-</td>
<td>-</td>
<td>-</td>
</tr>
<tr>
<td>38</td>
<td>Strontium-85</td>
<td>D. all soluble compounds</td>
<td>3E-4</td>
<td>3E-5</td>
<td>3E-7</td>
<td>-</td>
<td>-</td>
<td>-</td>
</tr>
<tr>
<td>38</td>
<td>Strontium-85</td>
<td>D. all soluble compounds</td>
<td>3E-4</td>
<td>3E-5</td>
<td>3E-7</td>
<td>-</td>
<td>-</td>
<td>-</td>
</tr>
<tr>
<td>38</td>
<td>Strontium-85</td>
<td>D. all soluble compounds</td>
<td>3E-4</td>
<td>3E-5</td>
<td>3E-7</td>
<td>-</td>
<td>-</td>
<td>-</td>
</tr>
<tr>
<td>38</td>
<td>Strontium-85</td>
<td>D. all soluble compounds</td>
<td>3E-4</td>
<td>3E-5</td>
<td>3E-7</td>
<td>-</td>
<td>-</td>
<td>-</td>
</tr>
<tr>
<td>Atomic No.</td>
<td>Radiouclide</td>
<td>Class</td>
<td>Col. 1 (Occupational Values)</td>
<td>Col. 2 (Effluent Concentrations)</td>
<td>Col. 3 (Releases to Sewers)</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>-----------</td>
<td>-------------</td>
<td>-------</td>
<td>-------------------------------</td>
<td>-------------------------------</td>
<td>----------------------------</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td>Col. 1 (Optimum)</td>
<td>Col. 2 (Optimum)</td>
<td>Col. 3 (Optimum)</td>
<td>Col. 1 (Optimum)</td>
<td>Col. 2 (Optimum)</td>
<td>Col. 3 (Optimum)</td>
</tr>
<tr>
<td>38</td>
<td>Strontium-89</td>
<td>D, see Sr</td>
<td>6E+2</td>
<td>8E+2</td>
<td>4E-7</td>
<td>3E-9</td>
<td>-</td>
<td>-</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td>6E+2</td>
<td>8E+2</td>
<td>4E-7</td>
<td>3E-9</td>
<td>-</td>
<td>-</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td>6E+2</td>
<td>8E+2</td>
<td>4E-7</td>
<td>3E-9</td>
<td>-</td>
<td>-</td>
</tr>
<tr>
<td></td>
<td></td>
<td>Y, see Sr</td>
<td>5E+2</td>
<td>7E-2</td>
<td>6E-8</td>
<td>2E-10</td>
<td>-</td>
<td>-</td>
</tr>
<tr>
<td>38</td>
<td>Strontium-89</td>
<td>D, see Sr</td>
<td>3E+1</td>
<td>2E+1</td>
<td>8E-9</td>
<td>-</td>
<td>-</td>
<td>-</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td>4E+0</td>
<td>2E-9</td>
<td>6E-12</td>
<td>-</td>
<td>-</td>
<td>-</td>
</tr>
<tr>
<td>38</td>
<td>Strontium-91</td>
<td>D, see Sr</td>
<td>2E+3</td>
<td>6E+3</td>
<td>2E-6</td>
<td>8E-9</td>
<td>2E-5</td>
<td>2E-4</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td>4E+3</td>
<td>1E-6</td>
<td>5E-9</td>
<td>-</td>
<td>-</td>
<td>-</td>
</tr>
<tr>
<td>38</td>
<td>Strontium-92</td>
<td>D, see Sr</td>
<td>3E+3</td>
<td>9E+3</td>
<td>4E-6</td>
<td>1E-8</td>
<td>4E-5</td>
<td>4E-4</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td>7E+3</td>
<td>3E-6</td>
<td>9E-9</td>
<td>-</td>
<td>-</td>
<td>-</td>
</tr>
<tr>
<td>39</td>
<td>Yttrium-89</td>
<td>W, all compounds except those given for Y</td>
<td>2E+4</td>
<td>6E+4</td>
<td>2E-5</td>
<td>8E-8</td>
<td>3E-4</td>
<td>3E-3</td>
</tr>
<tr>
<td></td>
<td></td>
<td>Y, oxides and hydroxides</td>
<td>5E+4</td>
<td>2E-5</td>
<td>8E-8</td>
<td>-</td>
<td>-</td>
<td>-</td>
</tr>
<tr>
<td>39</td>
<td>Yttrium-89</td>
<td>W, see Y</td>
<td>3E+3</td>
<td>3E+3</td>
<td>1E-6</td>
<td>5E-9</td>
<td>2E-5</td>
<td>2E-4</td>
</tr>
<tr>
<td></td>
<td></td>
<td>Y, see Y</td>
<td>3E+3</td>
<td>3E+3</td>
<td>1E-6</td>
<td>5E-9</td>
<td>-</td>
<td>-</td>
</tr>
<tr>
<td>39</td>
<td>Yttrium-87</td>
<td>W, see Y</td>
<td>2E+3</td>
<td>3E+3</td>
<td>1E-6</td>
<td>5E-9</td>
<td>3E-5</td>
<td>3E-4</td>
</tr>
<tr>
<td></td>
<td></td>
<td>Y, see Y</td>
<td>3E+3</td>
<td>3E+3</td>
<td>1E-6</td>
<td>5E-9</td>
<td>-</td>
<td>-</td>
</tr>
<tr>
<td>39</td>
<td>Yttrium-88</td>
<td>W, see Y</td>
<td>3E+3</td>
<td>3E+2</td>
<td>1E-7</td>
<td>3E-10</td>
<td>3E-5</td>
<td>3E-4</td>
</tr>
<tr>
<td></td>
<td></td>
<td>Y, see Y</td>
<td>2E+2</td>
<td>1E-7</td>
<td>3E-10</td>
<td>-</td>
<td>-</td>
<td>-</td>
</tr>
<tr>
<td>39</td>
<td>Yttrium-89</td>
<td>W, see Y</td>
<td>6E+3</td>
<td>1E+4</td>
<td>5E-6</td>
<td>2E-8</td>
<td>3E-4</td>
<td>3E-3</td>
</tr>
<tr>
<td></td>
<td></td>
<td>Y, see Y</td>
<td>4E+3</td>
<td>5E-6</td>
<td>2E-8</td>
<td>-</td>
<td>-</td>
<td>-</td>
</tr>
<tr>
<td>39</td>
<td>Yttrium-90</td>
<td>W, see Y</td>
<td>4E+2</td>
<td>7E-2</td>
<td>3E-7</td>
<td>9E-10</td>
<td>-</td>
<td>-</td>
</tr>
<tr>
<td></td>
<td></td>
<td>Y, see Y</td>
<td>6E+2</td>
<td>7E-6</td>
<td>7E-10</td>
<td>-</td>
<td>-</td>
<td>-</td>
</tr>
<tr>
<td>39</td>
<td>Yttrium-90</td>
<td>W, see Y</td>
<td>5E+5</td>
<td>2E+5</td>
<td>1E-4</td>
<td>3E-7</td>
<td>2E-3</td>
<td>2E-2</td>
</tr>
<tr>
<td></td>
<td></td>
<td>Y, see Y</td>
<td>2E+5</td>
<td>7E-5</td>
<td>2E-7</td>
<td>-</td>
<td>-</td>
<td>-</td>
</tr>
<tr>
<td>39</td>
<td>Yttrium-91</td>
<td>W, see Y</td>
<td>5E+2</td>
<td>2E+2</td>
<td>7E-2</td>
<td>2E-10</td>
<td>-</td>
<td>-</td>
</tr>
<tr>
<td></td>
<td></td>
<td>Y, see Y</td>
<td>5E+2</td>
<td>2E+2</td>
<td>7E-2</td>
<td>-</td>
<td>-</td>
<td>-</td>
</tr>
<tr>
<td>39</td>
<td>Yttrium-92</td>
<td>W, see Y</td>
<td>3E+3</td>
<td>9E+3</td>
<td>4E-6</td>
<td>1E-8</td>
<td>6E-6</td>
<td>6E-5</td>
</tr>
<tr>
<td></td>
<td></td>
<td>Y, see Y</td>
<td>8E+3</td>
<td>3E-6</td>
<td>1E-8</td>
<td>-</td>
<td>-</td>
<td>-</td>
</tr>
<tr>
<td>39</td>
<td>Yttrium-93</td>
<td>W, see Y</td>
<td>3E+3</td>
<td>3E+3</td>
<td>1E-6</td>
<td>4E-9</td>
<td>5E-9</td>
<td>5E-8</td>
</tr>
<tr>
<td></td>
<td></td>
<td>Y, see Y</td>
<td>2E+3</td>
<td>1E-6</td>
<td>4E-9</td>
<td>-</td>
<td>-</td>
<td>-</td>
</tr>
<tr>
<td>39</td>
<td>Yttrium-94</td>
<td>W, see Y</td>
<td>2E+4</td>
<td>8E+4</td>
<td>3E-5</td>
<td>1E-7</td>
<td>-</td>
<td>-</td>
</tr>
<tr>
<td></td>
<td></td>
<td>Y, see Y</td>
<td>8E+4</td>
<td>3E-5</td>
<td>1E-7</td>
<td>-</td>
<td>-</td>
<td>-</td>
</tr>
<tr>
<td>39</td>
<td>Yttrium-95</td>
<td>W, see Y</td>
<td>4E+4</td>
<td>2E+5</td>
<td>6E-5</td>
<td>2E-7</td>
<td>-</td>
<td>-</td>
</tr>
<tr>
<td></td>
<td></td>
<td>Y, see Y</td>
<td>3E+4</td>
<td>6E-5</td>
<td>2E-7</td>
<td>-</td>
<td>-</td>
<td>-</td>
</tr>
</tbody>
</table>

395
<table>
<thead>
<tr>
<th>Atomic Number</th>
<th>Radioisotope</th>
<th>Oral Ingestion (pCi/L)</th>
<th>Oral Inhalation (pCi/L)</th>
<th>Air (pCi/L)</th>
<th>Water (pCi/L)</th>
<th>Monthly Average Concentration (pCi/L)</th>
</tr>
</thead>
<tbody>
<tr>
<td>396</td>
<td>Zirconium-96</td>
<td>4.3 ± 3</td>
<td>2.3 ± 1</td>
<td>2.3 ± 1</td>
<td>2.3 ± 1</td>
<td>2.3 ± 1</td>
</tr>
<tr>
<td></td>
<td></td>
<td>W. oxides, hydroxides, halides, and nitrates</td>
<td>2.3 ± 1</td>
<td>2.3 ± 1</td>
<td>2.3 ± 1</td>
<td>2.3 ± 1</td>
</tr>
<tr>
<td></td>
<td></td>
<td>Y. carbonate</td>
<td>2.3 ± 1</td>
<td>2.3 ± 1</td>
<td>2.3 ± 1</td>
<td>2.3 ± 1</td>
</tr>
<tr>
<td>40</td>
<td>Zirconium-96</td>
<td>4.3 ± 3</td>
<td>2.3 ± 1</td>
<td>2.3 ± 1</td>
<td>2.3 ± 1</td>
<td>2.3 ± 1</td>
</tr>
<tr>
<td></td>
<td></td>
<td>W. oxides, hydroxides, halides, and nitrates</td>
<td>2.3 ± 1</td>
<td>2.3 ± 1</td>
<td>2.3 ± 1</td>
<td>2.3 ± 1</td>
</tr>
<tr>
<td></td>
<td></td>
<td>Y. carbonate</td>
<td>2.3 ± 1</td>
<td>2.3 ± 1</td>
<td>2.3 ± 1</td>
<td>2.3 ± 1</td>
</tr>
<tr>
<td>40</td>
<td>Zirconium-99</td>
<td>4.3 ± 3</td>
<td>2.3 ± 1</td>
<td>2.3 ± 1</td>
<td>2.3 ± 1</td>
<td>2.3 ± 1</td>
</tr>
<tr>
<td></td>
<td></td>
<td>W. oxides, hydroxides, halides, and nitrates</td>
<td>2.3 ± 1</td>
<td>2.3 ± 1</td>
<td>2.3 ± 1</td>
<td>2.3 ± 1</td>
</tr>
<tr>
<td></td>
<td></td>
<td>Y. carbonate</td>
<td>2.3 ± 1</td>
<td>2.3 ± 1</td>
<td>2.3 ± 1</td>
<td>2.3 ± 1</td>
</tr>
<tr>
<td>40</td>
<td>Zirconium-93</td>
<td>4.3 ± 3</td>
<td>2.3 ± 1</td>
<td>2.3 ± 1</td>
<td>2.3 ± 1</td>
<td>2.3 ± 1</td>
</tr>
<tr>
<td></td>
<td></td>
<td>W. oxides, hydroxides, halides, and nitrates</td>
<td>2.3 ± 1</td>
<td>2.3 ± 1</td>
<td>2.3 ± 1</td>
<td>2.3 ± 1</td>
</tr>
<tr>
<td></td>
<td></td>
<td>Y. carbonate</td>
<td>2.3 ± 1</td>
<td>2.3 ± 1</td>
<td>2.3 ± 1</td>
<td>2.3 ± 1</td>
</tr>
<tr>
<td>40</td>
<td>Zirconium-97</td>
<td>4.3 ± 3</td>
<td>2.3 ± 1</td>
<td>2.3 ± 1</td>
<td>2.3 ± 1</td>
<td>2.3 ± 1</td>
</tr>
<tr>
<td></td>
<td></td>
<td>W. oxides, hydroxides, halides, and nitrates</td>
<td>2.3 ± 1</td>
<td>2.3 ± 1</td>
<td>2.3 ± 1</td>
<td>2.3 ± 1</td>
</tr>
<tr>
<td></td>
<td></td>
<td>Y. carbonate</td>
<td>2.3 ± 1</td>
<td>2.3 ± 1</td>
<td>2.3 ± 1</td>
<td>2.3 ± 1</td>
</tr>
<tr>
<td>41</td>
<td>Nickel-58</td>
<td>4.3 ± 3</td>
<td>2.3 ± 1</td>
<td>2.3 ± 1</td>
<td>2.3 ± 1</td>
<td>2.3 ± 1</td>
</tr>
<tr>
<td></td>
<td></td>
<td>W. oxides, hydroxides, halides, and nitrates</td>
<td>2.3 ± 1</td>
<td>2.3 ± 1</td>
<td>2.3 ± 1</td>
<td>2.3 ± 1</td>
</tr>
<tr>
<td></td>
<td></td>
<td>Y. carbonate</td>
<td>2.3 ± 1</td>
<td>2.3 ± 1</td>
<td>2.3 ± 1</td>
<td>2.3 ± 1</td>
</tr>
<tr>
<td>Atomic Number</td>
<td>Radionuclide</td>
<td>Class</td>
<td>Table 1</td>
<td>Occupational Values</td>
<td>Table 2</td>
<td>Effluent Concentrations</td>
</tr>
<tr>
<td>---------------</td>
<td>--------------</td>
<td>-------</td>
<td>---------</td>
<td>-------------------</td>
<td>---------</td>
<td>------------------------</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td>Col. 1</td>
<td>Ingestion (μCi)</td>
<td></td>
<td>Air (μCi/ml)</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td>Col. 2</td>
<td>Inhalation (μCi)</td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td>Col. 3</td>
<td>Ingestion (μCi/ml)</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

41  Molybdenum-95  W, see 95Mo  Y, see 95Mo  2E-3  3E-3  5E-7  2E-9  3E-5  3E-4
41  Molybdenum-96  W, see 96Mo  Y, see 96Mo  1E-3  3E-3  3E-6  4E-9  2E-5  2E-4
41  Molybdenum-97  W, see 97Mo  Y, see 97Mo  2E-4  3E-4  3E-5  1E-7  3E-4  3E-3
41  Molybdenum-99  W, see 99Mo  Y, see 99Mo  3E-4  5E-4  2E-5  6E-8  2E-4  2E-3
42  Molybdenum-99m D, all compounds except those given for W, Y, oxides, hydroxides, and MoO3  4E-3  7E-3  3E-6  1E-8  3E-5  3E-4
42  Molybdenum-99m D, see 99Mo  Y, see 99Mo  9E-3  2E-4  7E-6  2E-8  6E-5  6E-4
47  Molybdenum-99 D, see 99Mo  Y, see 99Mo  4E-4  5E-4  2E-6  8E-9  5E-5  5E-4
47  Molybdenum-99 D, see 99Mo  Y, see 99Mo  2E-4  2E-3  6E-8  2E-10  5E-6  5E-5
42  Molybdenum-99 D, see 99Mo  Y, see 99Mo  5E-4  3E-4  1E-6  4E-9  4E-4
42  Molybdenum-99 D, see 99Mo  Y, see 99Mo  1E-4  1E-4  6E-7  2E-9  2E-4
42  Molybdenum-100 D, see 100Mo  4E-4  6E-4  6E-5  2E-8  2E-3
43  Technetium-99m D, all compounds except those listed for W, Y, oxides, hydroxides, halides, and nitrates  7E-4  2E-5  6E-5  2E-7  1E-3  1E-2
43  Technetium-99 D, see 99Mo  Y, see 99Mo  1E-4  1E-4  6E-5  4E-7  2E-4
43  Technetium-99 D, see 99Mo  Y, see 99Mo  1E-4  1E-4  6E-5  4E-7  2E-4
43  Technetium-99 D, see 99Mo  Y, see 99Mo  6E-4  4E-4  2E-5  6E-8  2E-4  2E-3
43  Technetium-99 D, see 99Mo  Y, see 99Mo  3E-4  8E-5  2E-6  6E-8  2E-4  2E-3
43  Technetium-99 D, see 99Mo  Y, see 99Mo  4E-4  5E-4  1E-6  5E-9  5E-5  5E-4
43  Technetium-99 D, see 99Mo  Y, see 99Mo  2E-4  2E-3  6E-8  2E-10  5E-6  5E-5
43  Technetium-99 D, see 99Mo  Y, see 99Mo  4E-4  6E-4  6E-5  2E-8  2E-3
43  Technetium-99 D, see 99Mo  Y, see 99Mo  1E-4  1E-4  6E-5  4E-7  2E-4
<table>
<thead>
<tr>
<th>Radioactive Isotope</th>
<th>Class</th>
<th>Col. 1 Oral Ingestion (dCi)</th>
<th>Col. 2 Inhalation (dCi)</th>
<th>Col. 3 Air (mcCi/m3)</th>
<th>Col. 1 Effluent Concentration (mcCi/l)</th>
<th>Col. 2 Release to Severe (mcCi/l)</th>
<th>Monthly Average Concentration (mcCi/l)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Technetium-99m</td>
<td>D, see</td>
<td>4E+4</td>
<td>5E+4</td>
<td>2E+5</td>
<td>7E+8</td>
<td>5E+4</td>
<td>5E+3</td>
</tr>
<tr>
<td></td>
<td>W, see</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Technetium-99m</td>
<td>D, see</td>
<td>2E+3</td>
<td>2E+3</td>
<td>2E-3</td>
<td>2E-3</td>
<td>1E-4</td>
<td>1E-4</td>
</tr>
<tr>
<td></td>
<td>W, see</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Technetium-99m</td>
<td>D, see</td>
<td>8E+6</td>
<td>2E+5</td>
<td>2E-7</td>
<td>3E-7</td>
<td>1E-3</td>
<td>1E-2</td>
</tr>
<tr>
<td></td>
<td>W, see</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Technetium-101m</td>
<td>D, see</td>
<td>9E+4</td>
<td>3E+5</td>
<td>5E-7</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td>W, see</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Technetium-104m</td>
<td>D, see</td>
<td>7E+4</td>
<td>3E+5</td>
<td>1E-7</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td>W, see</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Rutherford-36m</td>
<td>D, all compounds except those given for W and Y</td>
<td>2E+4</td>
<td>4E+4</td>
<td>2E+5</td>
<td>6E+8</td>
<td>2E-3</td>
<td>2E-3</td>
</tr>
<tr>
<td></td>
<td>W, halides</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td>Y, oxides and hydroxides</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Rutherford-92m</td>
<td>D, see</td>
<td>8E+6</td>
<td>2E+6</td>
<td>3E-8</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td>W, see</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Rutherford-103m</td>
<td>D, see</td>
<td>2E+3</td>
<td>3E+3</td>
<td>2E-9</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td>W, see</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Rutherford-105m</td>
<td>D, see</td>
<td>5E+3</td>
<td>3E+3</td>
<td>2E-9</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td>W, see</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Rutherford-106m</td>
<td>D, see</td>
<td>2E+7</td>
<td>1E+1</td>
<td>2E-10</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td>W, see</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Rutherford-95m</td>
<td>D, all compounds except those given for W and Y</td>
<td>2E+4</td>
<td>6E+4</td>
<td>2E+5</td>
<td>8E+8</td>
<td>2E-3</td>
<td>2E-3</td>
</tr>
<tr>
<td></td>
<td>W, halides</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td>Y, oxides and hydroxides</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Rutherford-99m</td>
<td>D, see</td>
<td>2E+3</td>
<td>2E+3</td>
<td>2E-9</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td>W, see</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

398
<table>
<thead>
<tr>
<th>Atomic No.</th>
<th>Radioisotope</th>
<th>Class</th>
<th>Col. 1 Oral Ingestion (pCi)</th>
<th>Col. 2 Inhalation (pCi/L)</th>
<th>Col. 3 Air (pCi/L)</th>
<th>Col. 4 Water (pCi/L)</th>
<th>Monthly Average Concentration (pCi/L)</th>
</tr>
</thead>
<tbody>
<tr>
<td>45</td>
<td>Rhodium-100</td>
<td>D, sep</td>
<td>2E+3</td>
<td>5E+3</td>
<td>2E-6</td>
<td>2E-9</td>
<td>2E-5</td>
</tr>
<tr>
<td></td>
<td></td>
<td>W, sep</td>
<td>4E+3</td>
<td>2E-6</td>
<td>5E-9</td>
<td>-</td>
<td>-</td>
</tr>
<tr>
<td></td>
<td></td>
<td>Y, sep</td>
<td>4E+3</td>
<td>2E-6</td>
<td>5E-9</td>
<td>-</td>
<td>-</td>
</tr>
<tr>
<td>45</td>
<td>Rhodium-100m</td>
<td>D, sep</td>
<td>3E+4</td>
<td>5E+6</td>
<td>2E-8</td>
<td>8E-5</td>
<td>8E-4</td>
</tr>
<tr>
<td></td>
<td></td>
<td>W, sep</td>
<td>4E+3</td>
<td>2E-6</td>
<td>2E-9</td>
<td>-</td>
<td>-</td>
</tr>
<tr>
<td></td>
<td></td>
<td>Y, sep</td>
<td>2E+3</td>
<td>2E-6</td>
<td>2E-8</td>
<td>-</td>
<td>-</td>
</tr>
<tr>
<td>45</td>
<td>Rhodium-101</td>
<td>D, sep</td>
<td>5E+2</td>
<td>2E-7</td>
<td>7E-12</td>
<td>3E-5</td>
<td>3E-4</td>
</tr>
<tr>
<td></td>
<td></td>
<td>W, sep</td>
<td>2E+2</td>
<td>2E-7</td>
<td>2E-9</td>
<td>-</td>
<td>-</td>
</tr>
<tr>
<td></td>
<td></td>
<td>Y, sep</td>
<td>2E+2</td>
<td>2E-7</td>
<td>2E-10</td>
<td>-</td>
<td>-</td>
</tr>
<tr>
<td>45</td>
<td>Rhodium-103</td>
<td>D, sep</td>
<td>3E+5</td>
<td>2E-7</td>
<td>7E-10</td>
<td>-</td>
<td>-</td>
</tr>
<tr>
<td></td>
<td></td>
<td>W, sep</td>
<td>3E+5</td>
<td>2E-7</td>
<td>7E-10</td>
<td>-</td>
<td>-</td>
</tr>
<tr>
<td></td>
<td></td>
<td>Y, sep</td>
<td>3E+5</td>
<td>2E-7</td>
<td>7E-10</td>
<td>-</td>
<td>-</td>
</tr>
<tr>
<td>45</td>
<td>Rhodium-102</td>
<td>D, sep</td>
<td>6E+2</td>
<td>2E-7</td>
<td>2E-10</td>
<td>-</td>
<td>-</td>
</tr>
<tr>
<td></td>
<td></td>
<td>W, sep</td>
<td>2E+2</td>
<td>2E-7</td>
<td>2E-10</td>
<td>-</td>
<td>-</td>
</tr>
<tr>
<td></td>
<td></td>
<td>Y, sep</td>
<td>2E+2</td>
<td>2E-7</td>
<td>2E-10</td>
<td>-</td>
<td>-</td>
</tr>
<tr>
<td>45</td>
<td>Rhodium-103m</td>
<td>D, sep</td>
<td>4E+5</td>
<td>2E-6</td>
<td>2E-6</td>
<td>6E-3</td>
<td>6E-2</td>
</tr>
<tr>
<td></td>
<td></td>
<td>W, sep</td>
<td>2E+6</td>
<td>2E-6</td>
<td>2E-6</td>
<td>-</td>
<td>-</td>
</tr>
<tr>
<td></td>
<td></td>
<td>Y, sep</td>
<td>2E+6</td>
<td>2E-6</td>
<td>2E-6</td>
<td>-</td>
<td>-</td>
</tr>
<tr>
<td>45</td>
<td>Rhodium-105</td>
<td>D, sep</td>
<td>4E+3</td>
<td>2E-6</td>
<td>2E-6</td>
<td>2E-8</td>
<td>-</td>
</tr>
<tr>
<td></td>
<td></td>
<td>W, sep</td>
<td>4E+3</td>
<td>2E-6</td>
<td>2E-6</td>
<td>2E-8</td>
<td>-</td>
</tr>
<tr>
<td></td>
<td></td>
<td>Y, sep</td>
<td>4E+3</td>
<td>2E-6</td>
<td>2E-6</td>
<td>2E-8</td>
<td>-</td>
</tr>
<tr>
<td>46</td>
<td>Palladium-100</td>
<td>D, all</td>
<td>1E+3</td>
<td>1E+3</td>
<td>6E-7</td>
<td>2E-9</td>
<td>2E-5</td>
</tr>
<tr>
<td></td>
<td></td>
<td>W, sep</td>
<td>1E+3</td>
<td>5E-7</td>
<td>2E-9</td>
<td>-</td>
<td>-</td>
</tr>
<tr>
<td></td>
<td></td>
<td>Y, sep</td>
<td>1E+3</td>
<td>5E-7</td>
<td>2E-9</td>
<td>-</td>
<td>-</td>
</tr>
<tr>
<td>46</td>
<td>Palladium-101</td>
<td>D, sep</td>
<td>1E+4</td>
<td>3E+4</td>
<td>3E-5</td>
<td>8E-8</td>
<td>2E-4</td>
</tr>
<tr>
<td></td>
<td></td>
<td>W, sep</td>
<td>3E+4</td>
<td>3E-5</td>
<td>5E-8</td>
<td>-</td>
<td>-</td>
</tr>
<tr>
<td></td>
<td></td>
<td>Y, sep</td>
<td>3E+4</td>
<td>3E-5</td>
<td>5E-8</td>
<td>-</td>
<td>-</td>
</tr>
<tr>
<td>46</td>
<td>Palladium-103</td>
<td>D, sep</td>
<td>1E+4</td>
<td>3E-6</td>
<td>5E-9</td>
<td>-</td>
<td>-</td>
</tr>
<tr>
<td></td>
<td></td>
<td>W, sep</td>
<td>1E+4</td>
<td>3E-6</td>
<td>5E-9</td>
<td>-</td>
<td>-</td>
</tr>
<tr>
<td></td>
<td></td>
<td>Y, sep</td>
<td>1E+4</td>
<td>3E-6</td>
<td>5E-9</td>
<td>-</td>
<td>-</td>
</tr>
<tr>
<td>46</td>
<td>Palladium-107</td>
<td>D, sep</td>
<td>1E+4</td>
<td>9E+6</td>
<td>-</td>
<td>-</td>
<td>-</td>
</tr>
<tr>
<td></td>
<td></td>
<td>W, sep</td>
<td>1E+4</td>
<td>9E+6</td>
<td>-</td>
<td>-</td>
<td>-</td>
</tr>
<tr>
<td></td>
<td></td>
<td>Y, sep</td>
<td>1E+4</td>
<td>9E+6</td>
<td>-</td>
<td>-</td>
<td>-</td>
</tr>
</tbody>
</table>

Table 1: Occupational Values

Table 2: Effluent Concentrations

Table 3: Releases to Seawater
<table>
<thead>
<tr>
<th>Atomic No.</th>
<th>Isotope</th>
<th>Class</th>
<th>Col. 1 Oral Ingestion</th>
<th>Col. 2 Inhalation</th>
<th>Col. 3 Air</th>
<th>Col. 3 Water</th>
<th>Col. 3 Average Concentration</th>
</tr>
</thead>
<tbody>
<tr>
<td>46</td>
<td>Pd-109</td>
<td></td>
<td>2E+3</td>
<td>6E+3</td>
<td>3E-6</td>
<td>3E-6</td>
<td>3E-6</td>
</tr>
<tr>
<td>47</td>
<td>Ag-102b</td>
<td></td>
<td>2E+3</td>
<td>6E+3</td>
<td>3E-6</td>
<td>3E-6</td>
<td>3E-6</td>
</tr>
<tr>
<td>47</td>
<td>Ag-102c</td>
<td></td>
<td>2E+3</td>
<td>6E+3</td>
<td>3E-6</td>
<td>3E-6</td>
<td>3E-6</td>
</tr>
<tr>
<td>47</td>
<td>Ag-102d</td>
<td></td>
<td>2E+3</td>
<td>6E+3</td>
<td>3E-6</td>
<td>3E-6</td>
<td>3E-6</td>
</tr>
<tr>
<td>47</td>
<td>Ag-102e</td>
<td></td>
<td>2E+3</td>
<td>6E+3</td>
<td>3E-6</td>
<td>3E-6</td>
<td>3E-6</td>
</tr>
<tr>
<td>47</td>
<td>Ag-102f</td>
<td></td>
<td>2E+3</td>
<td>6E+3</td>
<td>3E-6</td>
<td>3E-6</td>
<td>3E-6</td>
</tr>
<tr>
<td>47</td>
<td>Ag-102g</td>
<td></td>
<td>2E+3</td>
<td>6E+3</td>
<td>3E-6</td>
<td>3E-6</td>
<td>3E-6</td>
</tr>
<tr>
<td>47</td>
<td>Ag-102h</td>
<td></td>
<td>2E+3</td>
<td>6E+3</td>
<td>3E-6</td>
<td>3E-6</td>
<td>3E-6</td>
</tr>
<tr>
<td>47</td>
<td>Ag-102i</td>
<td></td>
<td>2E+3</td>
<td>6E+3</td>
<td>3E-6</td>
<td>3E-6</td>
<td>3E-6</td>
</tr>
<tr>
<td>47</td>
<td>Ag-102j</td>
<td></td>
<td>2E+3</td>
<td>6E+3</td>
<td>3E-6</td>
<td>3E-6</td>
<td>3E-6</td>
</tr>
<tr>
<td>47</td>
<td>Ag-102k</td>
<td></td>
<td>2E+3</td>
<td>6E+3</td>
<td>3E-6</td>
<td>3E-6</td>
<td>3E-6</td>
</tr>
<tr>
<td>47</td>
<td>Ag-102l</td>
<td></td>
<td>2E+3</td>
<td>6E+3</td>
<td>3E-6</td>
<td>3E-6</td>
<td>3E-6</td>
</tr>
<tr>
<td>47</td>
<td>Ag-102m</td>
<td></td>
<td>2E+3</td>
<td>6E+3</td>
<td>3E-6</td>
<td>3E-6</td>
<td>3E-6</td>
</tr>
<tr>
<td>47</td>
<td>Ag-102n</td>
<td></td>
<td>2E+3</td>
<td>6E+3</td>
<td>3E-6</td>
<td>3E-6</td>
<td>3E-6</td>
</tr>
<tr>
<td>47</td>
<td>Ag-102o</td>
<td></td>
<td>2E+3</td>
<td>6E+3</td>
<td>3E-6</td>
<td>3E-6</td>
<td>3E-6</td>
</tr>
<tr>
<td>47</td>
<td>Ag-102p</td>
<td></td>
<td>2E+3</td>
<td>6E+3</td>
<td>3E-6</td>
<td>3E-6</td>
<td>3E-6</td>
</tr>
<tr>
<td>47</td>
<td>Ag-102q</td>
<td></td>
<td>2E+3</td>
<td>6E+3</td>
<td>3E-6</td>
<td>3E-6</td>
<td>3E-6</td>
</tr>
<tr>
<td>47</td>
<td>Ag-102r</td>
<td></td>
<td>2E+3</td>
<td>6E+3</td>
<td>3E-6</td>
<td>3E-6</td>
<td>3E-6</td>
</tr>
<tr>
<td>47</td>
<td>Ag-102s</td>
<td></td>
<td>2E+3</td>
<td>6E+3</td>
<td>3E-6</td>
<td>3E-6</td>
<td>3E-6</td>
</tr>
<tr>
<td>47</td>
<td>Ag-102t</td>
<td></td>
<td>2E+3</td>
<td>6E+3</td>
<td>3E-6</td>
<td>3E-6</td>
<td>3E-6</td>
</tr>
<tr>
<td>47</td>
<td>Ag-102u</td>
<td></td>
<td>2E+3</td>
<td>6E+3</td>
<td>3E-6</td>
<td>3E-6</td>
<td>3E-6</td>
</tr>
<tr>
<td>47</td>
<td>Ag-102v</td>
<td></td>
<td>2E+3</td>
<td>6E+3</td>
<td>3E-6</td>
<td>3E-6</td>
<td>3E-6</td>
</tr>
<tr>
<td>47</td>
<td>Ag-102w</td>
<td></td>
<td>2E+3</td>
<td>6E+3</td>
<td>3E-6</td>
<td>3E-6</td>
<td>3E-6</td>
</tr>
<tr>
<td>47</td>
<td>Ag-102x</td>
<td></td>
<td>2E+3</td>
<td>6E+3</td>
<td>3E-6</td>
<td>3E-6</td>
<td>3E-6</td>
</tr>
<tr>
<td>47</td>
<td>Ag-102y</td>
<td></td>
<td>2E+3</td>
<td>6E+3</td>
<td>3E-6</td>
<td>3E-6</td>
<td>3E-6</td>
</tr>
<tr>
<td>47</td>
<td>Ag-102z</td>
<td></td>
<td>2E+3</td>
<td>6E+3</td>
<td>3E-6</td>
<td>3E-6</td>
<td>3E-6</td>
</tr>
</tbody>
</table>

**Notes:**
- "St. wall" indicates standards for wall levels.
- "Lb. wall" indicates levels for wall levels.
- "Liver" indicates levels for liver.
- "Stomach" indicates levels for stomach.
- "Intestine" indicates levels for intestine.
- "Blood" indicates levels for blood.
- "Urine" indicates levels for urine.
- "Saliva" indicates levels for saliva.
- "Sweat" indicates levels for sweat.
- "Milk" indicates levels for milk.
- "Semen" indicates levels for semen.
- "Effluent Concentrations" refer to levels in effluent.
<table>
<thead>
<tr>
<th>AtomicRadionuclide No.</th>
<th>Class</th>
<th>Table 1: Occupational Values</th>
<th>Table 2: Effluent Concentrations</th>
<th>Table 3: Releases to Sewers</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td></td>
<td>Col. 1</td>
<td>Col. 2</td>
<td>Col. 3</td>
</tr>
<tr>
<td></td>
<td></td>
<td>Oral</td>
<td>Inhalation</td>
<td>All</td>
</tr>
<tr>
<td>47 Silver-115&lt;sup&gt;2&lt;/sup&gt;</td>
<td>D, see 109Ag</td>
<td>2E-6</td>
<td>4E-5</td>
<td>1E-7</td>
</tr>
<tr>
<td></td>
<td>W, see 107Ag</td>
<td>-</td>
<td>4E-5</td>
<td>4E-6</td>
</tr>
<tr>
<td>48 Cesium-134&lt;sup&gt;2&lt;/sup&gt;</td>
<td>D, all compounds except those given for W and Y</td>
<td>2E-6</td>
<td>3E-5</td>
<td>9E-6</td>
</tr>
<tr>
<td></td>
<td>W, nitrates, chlorides, and nitrates</td>
<td>-</td>
<td>3E-5</td>
<td>3E-5</td>
</tr>
<tr>
<td></td>
<td>Y, nitrates and hydroxides</td>
<td>-</td>
<td>3E-5</td>
<td>3E-5</td>
</tr>
<tr>
<td>49 Cesium-137&lt;sup&gt;2&lt;/sup&gt;</td>
<td>D, see 134Cs</td>
<td>2E-4</td>
<td>2E-5</td>
<td>5E-6</td>
</tr>
<tr>
<td></td>
<td>W, see 134Cs</td>
<td>-</td>
<td>2E-6</td>
<td>2E-5</td>
</tr>
<tr>
<td></td>
<td>Y, see 134Cs</td>
<td>-</td>
<td>2E-4</td>
<td>2E-5</td>
</tr>
<tr>
<td>49 Cesium-138&lt;sup&gt;2&lt;/sup&gt;</td>
<td>D, see 134Cs</td>
<td>3E-4</td>
<td>4E-3</td>
<td>1E-5</td>
</tr>
<tr>
<td></td>
<td>W, see 134Cs</td>
<td>-</td>
<td>1E-7</td>
<td>3E-8</td>
</tr>
<tr>
<td></td>
<td>Y, see 134Cs</td>
<td>-</td>
<td>1E-7</td>
<td>3E-8</td>
</tr>
<tr>
<td>49 Cesium-139&lt;sup&gt;2&lt;/sup&gt;</td>
<td>D, see 134Cs</td>
<td>2E-4</td>
<td>2E-5</td>
<td>5E-6</td>
</tr>
<tr>
<td></td>
<td>W, see 134Cs</td>
<td>-</td>
<td>2E-6</td>
<td>2E-5</td>
</tr>
<tr>
<td></td>
<td>Y, see 134Cs</td>
<td>-</td>
<td>2E-4</td>
<td>2E-5</td>
</tr>
</tbody>
</table>

**Note:** The values in the table are in units of µCi/ml.
<table>
<thead>
<tr>
<th>Atomic No.</th>
<th>Radioisotope</th>
<th>Class</th>
<th>Col. 1 Occupational Values (μCi/L)</th>
<th>Col. 2 Effluent Concentrations (μCi/L)</th>
<th>Col. 3 Monthly Average Concentration (μCi/L)</th>
</tr>
</thead>
<tbody>
<tr>
<td>48</td>
<td>Cadmium-117</td>
<td>D, see 110m-114m</td>
<td>5E-3</td>
<td>2E-4</td>
<td>2E-5</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>49</td>
<td>Indium-109</td>
<td>D, all compounds except those given for W</td>
<td>2E-6</td>
<td>4E-6</td>
<td>2E-5</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>49</td>
<td>Indium-109</td>
<td>(90.1 min)</td>
<td>2E-6</td>
<td>4E-6</td>
<td>2E-5</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>49</td>
<td>Indium-110</td>
<td>D, see 110m-114m</td>
<td>5E-3</td>
<td>2E-4</td>
<td>2E-5</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>49</td>
<td>Indium-111</td>
<td>D, see 110m-114m</td>
<td>5E-3</td>
<td>2E-4</td>
<td>2E-5</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>49</td>
<td>Indium-112</td>
<td>D, see 110m-114m</td>
<td>5E-3</td>
<td>2E-4</td>
<td>2E-5</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>49</td>
<td>Indium-113</td>
<td>D, see 110m-114m</td>
<td>5E-3</td>
<td>2E-4</td>
<td>2E-5</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>49</td>
<td>Indium-114</td>
<td>D, see 110m-114m</td>
<td>5E-3</td>
<td>2E-4</td>
<td>2E-5</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>50</td>
<td>Tin-110</td>
<td>D, all compounds except those given for W</td>
<td>2E-6</td>
<td>4E-6</td>
<td>2E-5</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>50</td>
<td>Tin-112</td>
<td>D, see 110m-114m</td>
<td>2E-6</td>
<td>4E-6</td>
<td>2E-5</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Atomic</td>
<td>Radioisotope</td>
<td>Class</td>
<td>Table 1 Occupational Values</td>
<td>Table 2 Effluent Concentrations</td>
<td>Table 3 Releases to Sewers</td>
</tr>
<tr>
<td>---------</td>
<td>---------------</td>
<td>--------</td>
<td>----------------------------</td>
<td>-------------------------------</td>
<td>-----------------------------</td>
</tr>
<tr>
<td>No.</td>
<td></td>
<td></td>
<td>Col. 1 Oral Ingestion (uCi/l)</td>
<td>Col. 2 Inhalation (uCi/l)</td>
<td>Col. 3 Air (uCi/m³)</td>
</tr>
<tr>
<td>50</td>
<td>Tm-113</td>
<td>D, see 113mSn</td>
<td>2E^3</td>
<td>1E+3</td>
<td>5E-7</td>
</tr>
<tr>
<td></td>
<td>W, see 113mSn</td>
<td></td>
<td>-</td>
<td>5E+2</td>
<td>2E-7</td>
</tr>
<tr>
<td>50</td>
<td>Tm-112m</td>
<td>D, see 112mSn</td>
<td>2E^3</td>
<td>1E+3</td>
<td>5E-7</td>
</tr>
<tr>
<td></td>
<td>W, see 112mSn</td>
<td></td>
<td>-</td>
<td>5E+2</td>
<td>2E-7</td>
</tr>
<tr>
<td>50</td>
<td>Tm-112h</td>
<td>D, see 112hSn</td>
<td>3E^3</td>
<td>1E+3</td>
<td>1E-6</td>
</tr>
<tr>
<td></td>
<td>W, see 112hSn</td>
<td></td>
<td>-</td>
<td>5E+2</td>
<td>2E-7</td>
</tr>
<tr>
<td>50</td>
<td>Tm-112a</td>
<td>D, see 112aSn</td>
<td>3E^3</td>
<td>1E+3</td>
<td>1E-6</td>
</tr>
<tr>
<td></td>
<td>W, see 112aSn</td>
<td></td>
<td>-</td>
<td>5E+2</td>
<td>2E-7</td>
</tr>
<tr>
<td>50</td>
<td>Tm-112</td>
<td>D, see 112Sn</td>
<td>6E^3</td>
<td>1E+4</td>
<td>6E-6</td>
</tr>
<tr>
<td></td>
<td>W, see 112Sn</td>
<td></td>
<td>-</td>
<td>5E+2</td>
<td>2E-7</td>
</tr>
<tr>
<td>50</td>
<td>Tm-123</td>
<td>D, see 123mSn</td>
<td>5E^4</td>
<td>1E+5</td>
<td>5E-5</td>
</tr>
<tr>
<td></td>
<td>W, see 123mSn</td>
<td></td>
<td>-</td>
<td>5E+2</td>
<td>2E-7</td>
</tr>
<tr>
<td>50</td>
<td>Tm-123</td>
<td>D, see 123Sn</td>
<td>5E^2</td>
<td>1E+2</td>
<td>3E-7</td>
</tr>
<tr>
<td></td>
<td>W, see 123Sn</td>
<td></td>
<td>-</td>
<td>5E+2</td>
<td>2E-7</td>
</tr>
<tr>
<td>50</td>
<td>Tm-129</td>
<td>D, see 129mSn</td>
<td>4E^2</td>
<td>1E+2</td>
<td>4E-7</td>
</tr>
<tr>
<td></td>
<td>W, see 129mSn</td>
<td></td>
<td>-</td>
<td>4E+2</td>
<td>1E-7</td>
</tr>
<tr>
<td>50</td>
<td>Tm-129</td>
<td>D, see 129Sn</td>
<td>3E^2</td>
<td>2E+2</td>
<td>2E-8</td>
</tr>
<tr>
<td></td>
<td>W, see 129Sn</td>
<td></td>
<td>-</td>
<td>2E+2</td>
<td>2E-8</td>
</tr>
<tr>
<td>50</td>
<td>Tm-127</td>
<td>D, see 127mSn</td>
<td>7E+3</td>
<td>2E+6</td>
<td>8E-6</td>
</tr>
<tr>
<td></td>
<td>W, see 127mSn</td>
<td></td>
<td>-</td>
<td>2E+6</td>
<td>8E-6</td>
</tr>
<tr>
<td>50</td>
<td>Tm-127</td>
<td>D, see 127Sn</td>
<td>9E+3</td>
<td>3E+4</td>
<td>1E-5</td>
</tr>
<tr>
<td></td>
<td>W, see 127Sn</td>
<td></td>
<td>-</td>
<td>4E+4</td>
<td>1E-5</td>
</tr>
<tr>
<td>51</td>
<td>Antimony-115</td>
<td>D, all compounds except those given for W</td>
<td>8E+4</td>
<td>2E+5</td>
<td>1E+4</td>
</tr>
<tr>
<td></td>
<td>W, oxides, hydroxides, halides, sulfides, sulfoxides, and nitrates</td>
<td></td>
<td>3E^5</td>
<td>1E+4</td>
<td>4E+7</td>
</tr>
<tr>
<td>51</td>
<td>Antimony-115a</td>
<td>D, see 115mSn</td>
<td>2E+4</td>
<td>7E+4</td>
<td>3E-5</td>
</tr>
<tr>
<td></td>
<td>W, see 115mSn</td>
<td></td>
<td>-</td>
<td>7E+5</td>
<td>3E-5</td>
</tr>
<tr>
<td>51</td>
<td>Antimony-115b</td>
<td>D, see 115mSn</td>
<td>7E+4</td>
<td>8E+4</td>
<td>1E+4</td>
</tr>
<tr>
<td></td>
<td>W, see 115mSn</td>
<td></td>
<td>-</td>
<td>3E^5</td>
<td>1E+4</td>
</tr>
<tr>
<td>51</td>
<td>Antimony-115c</td>
<td>D, see 115mSn</td>
<td>7E+4</td>
<td>8E+4</td>
<td>1E+4</td>
</tr>
<tr>
<td></td>
<td>W, see 115mSn</td>
<td></td>
<td>-</td>
<td>3E^5</td>
<td>1E+4</td>
</tr>
<tr>
<td>Atomic No.</td>
<td>Radioisotope</td>
<td>Class</td>
<td>Oral Ingestion</td>
<td>Inhala.</td>
<td>Air</td>
</tr>
<tr>
<td>-----------</td>
<td>--------------</td>
<td>-------</td>
<td>----------------</td>
<td>---------</td>
<td>-----</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td>(dCi)</td>
<td>(dCi)</td>
<td>(dCi/m³)</td>
</tr>
<tr>
<td>51</td>
<td>Antimony-110m</td>
<td>D, see</td>
<td>0.5 ± 0.1</td>
<td>2 ± 0.1</td>
<td>1 ± 0.1</td>
</tr>
<tr>
<td></td>
<td></td>
<td>V, see</td>
<td>0.5 ± 0.1</td>
<td>2 ± 0.1</td>
<td>1 ± 0.1</td>
</tr>
<tr>
<td>51</td>
<td>Antimony-110</td>
<td>D, see</td>
<td>0.5 ± 0.1</td>
<td>2 ± 0.1</td>
<td>1 ± 0.1</td>
</tr>
<tr>
<td></td>
<td></td>
<td>V, see</td>
<td>0.5 ± 0.1</td>
<td>2 ± 0.1</td>
<td>1 ± 0.1</td>
</tr>
<tr>
<td>89</td>
<td>Actinium-225</td>
<td>D, see</td>
<td>0.5 ± 0.1</td>
<td>2 ± 0.1</td>
<td>1 ± 0.1</td>
</tr>
<tr>
<td></td>
<td></td>
<td>V, see</td>
<td>0.5 ± 0.1</td>
<td>2 ± 0.1</td>
<td>1 ± 0.1</td>
</tr>
</tbody>
</table>

**Table 2: Emission Concentrations**

<table>
<thead>
<tr>
<th>Monthly Average Concentration (dCi/m³)</th>
<th>dCi/m³</th>
</tr>
</thead>
<tbody>
<tr>
<td>Atomic No.</td>
<td>Radionuclide</td>
</tr>
<tr>
<td>-----------</td>
<td>-------------</td>
</tr>
<tr>
<td>52</td>
<td>Tellurium-210</td>
</tr>
<tr>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
</tr>
<tr>
<td>52</td>
<td>Tellurium-212m</td>
</tr>
<tr>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
</tr>
<tr>
<td>52</td>
<td>Tellurium-212l</td>
</tr>
<tr>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
</tr>
<tr>
<td>52</td>
<td>Tellurium-212m</td>
</tr>
<tr>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
</tr>
<tr>
<td>52</td>
<td>Tellurium-212m</td>
</tr>
<tr>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
</tr>
<tr>
<td>52</td>
<td>Tellurium-212m</td>
</tr>
<tr>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
</tr>
<tr>
<td>52</td>
<td>Tellurium-212m</td>
</tr>
<tr>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
</tr>
<tr>
<td>52</td>
<td>Tellurium-212m</td>
</tr>
<tr>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
</tr>
<tr>
<td>52</td>
<td>Tellurium-212m</td>
</tr>
<tr>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
</tr>
<tr>
<td>52</td>
<td>Tellurium-212m</td>
</tr>
<tr>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
</tr>
<tr>
<td>52</td>
<td>Tellurium-212m</td>
</tr>
<tr>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
</tr>
</tbody>
</table>

Table 1: Occupational Values

<table>
<thead>
<tr>
<th>Al (uCi)</th>
<th>Inh (uCi)</th>
<th>Int (uCi/m³)</th>
<th>Air (uCi/m³)</th>
<th>Water (uCi/m³)</th>
<th>Monthly Average Concentration (uCi/m³)</th>
</tr>
</thead>
</table>

Table 2: Effluent Concentrations

<table>
<thead>
<tr>
<th>Col. 1</th>
<th>Col. 2</th>
<th>Col. 3</th>
<th>Col. 1</th>
<th>Col. 2</th>
<th>Col. 3</th>
<th>Col. 4</th>
<th>Col. 5</th>
<th>Col. 6</th>
<th>Col. 7</th>
<th>Col. 8</th>
<th>Col. 9</th>
<th>Col. 10</th>
<th>Col. 11</th>
</tr>
</thead>
</table>

Table 3: Releases to Sewers
<table>
<thead>
<tr>
<th>Atomic No.</th>
<th>Radioisotope</th>
<th>Class</th>
<th>Table 1 Occupational Values</th>
<th>Table 2 Effluent Concentrations</th>
<th>Table 3 Releases to Sewers</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td></td>
<td></td>
<td>Col. 1 Oral Ingestion (μCi)</td>
<td>Col. 2 Implantation (μCi)</td>
<td>Col. 3 Air (μCi/m³)</td>
</tr>
<tr>
<td>52</td>
<td>Tellurium-132</td>
<td>D, see 132Te</td>
<td>2E-2 2E-2 Thyroid (7E-2) 9E-6</td>
<td>- 9E-6</td>
<td>9E-5</td>
</tr>
<tr>
<td></td>
<td></td>
<td>W, see 132Te</td>
<td>- 2E-2 9E-6 Thyroid (6E-6) 9E-10</td>
<td>- 9E-10</td>
<td>-</td>
</tr>
<tr>
<td>52</td>
<td>Tellurium-132m²</td>
<td>D, see 132Te</td>
<td>3E-3 2E-6 Thyroid (6E-6) 2E-6</td>
<td>2E-6 9E-5 9E-4</td>
<td>2E-8</td>
</tr>
<tr>
<td></td>
<td></td>
<td>W, see 132Te</td>
<td>- 2E-6 Thyroid (6E-6)</td>
<td>2E-8</td>
<td>-</td>
</tr>
<tr>
<td>52</td>
<td>Tellurium-132m²²</td>
<td>D, see 132Te</td>
<td>1E-4 2E-4 Thyroid (6E-6) 9E-6</td>
<td>2E-8 4E-4 4E-3</td>
<td>2E-6</td>
</tr>
<tr>
<td></td>
<td></td>
<td>W, see 132Te</td>
<td>- 2E-6 Thyroid (6E-6)</td>
<td>2E-8</td>
<td>-</td>
</tr>
<tr>
<td>52</td>
<td>Tellurium-132m²²</td>
<td>D, see 132Te</td>
<td>2E-4 1E-5 Thyroid (2E-4) 2E-4</td>
<td>1E-5 2E-3</td>
<td>1E-6</td>
</tr>
<tr>
<td></td>
<td></td>
<td>W, see 132Te</td>
<td>- 1E-5 Thyroid (6E-6)</td>
<td>1E-6</td>
<td>-</td>
</tr>
<tr>
<td>53</td>
<td>Iodine-122I²</td>
<td>D, all compounds</td>
<td>1E-4 2E-4 9E-6 3E-6</td>
<td>2E-6</td>
<td>2E-3</td>
</tr>
<tr>
<td>53</td>
<td>Iodine-122I²</td>
<td>D, all compounds</td>
<td>4E-3 9E-6 4E-6</td>
<td>- 2E-6</td>
<td>2E-3</td>
</tr>
<tr>
<td>53</td>
<td>Iodine-123I</td>
<td>D, all compounds</td>
<td>4E-4 5E-4 Thyroid (1E-4)</td>
<td>8E-6</td>
<td>1E-4 1E-3</td>
</tr>
<tr>
<td>53</td>
<td>Iodine-123I</td>
<td>D, all compounds</td>
<td>1E-4 2E-4 8E-6</td>
<td>- 8E-6</td>
<td>1E-3</td>
</tr>
<tr>
<td>53</td>
<td>Iodine-123I</td>
<td>D, all compounds</td>
<td>1E-4 5E-4 Thyroid (6E-6)</td>
<td>1E-4</td>
<td>4E-4 4E-3</td>
</tr>
<tr>
<td>53</td>
<td>Iodine-123I</td>
<td>D, all compounds</td>
<td>3E-3 6E-3 3E-6</td>
<td>- 3E-6</td>
<td>1E-3</td>
</tr>
<tr>
<td>53</td>
<td>Iodine-124I</td>
<td>D, all compounds</td>
<td>5E-1 8E-1 3E-8</td>
<td>- 3E-8</td>
<td>1E-3</td>
</tr>
<tr>
<td>53</td>
<td>Iodine-125I</td>
<td>D, all compounds</td>
<td>4E-1 6E-1 Thyroid (2E-1)</td>
<td>3E-8</td>
<td>2E-5</td>
</tr>
<tr>
<td>53</td>
<td>Iodine-126I</td>
<td>D, all compounds</td>
<td>2E-1 4E-1 Thyroid (7E-1) 6E-1</td>
<td>3E-8</td>
<td>2E-5</td>
</tr>
<tr>
<td>53</td>
<td>Iodine-126I²</td>
<td>D, all compounds</td>
<td>4E-6 5E-6 5E-6</td>
<td>2E-7</td>
<td>2E-3</td>
</tr>
<tr>
<td>53</td>
<td>Iodine-126I²</td>
<td>D, all compounds</td>
<td>5E-4 9E-4 3E-4</td>
<td>- 3E-4</td>
<td>2E-3</td>
</tr>
<tr>
<td>53</td>
<td>Iodine-129I</td>
<td>D, all compounds</td>
<td>5E-2 9E-2 Thyroid (2E-2) 4E-2</td>
<td>-</td>
<td>1E-2</td>
</tr>
</tbody>
</table>
## Nuclear Regulatory Commission

### Pt. 20, App. B

<table>
<thead>
<tr>
<th>Atomic No.</th>
<th>Radionuclide</th>
<th>Class</th>
<th>Table 1 Occupational Values</th>
<th>Table 2 Effluent Concentrations</th>
<th>Table 3 Releases to Sewers</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td></td>
<td></td>
<td>Col. 1 Oral Ingestion (μCi)</td>
<td>Col. 2 Inhalation (μCi)</td>
<td>Col. 3 Inhalation (μCi)</td>
</tr>
<tr>
<td>53</td>
<td>Iodine-130</td>
<td>0, all compounds</td>
<td>4E+3</td>
<td>Thyroid (1E+3)</td>
<td>3E+7</td>
</tr>
<tr>
<td>53</td>
<td>Iodine-131</td>
<td>0, all compounds</td>
<td>3E+1</td>
<td>Thyroid (1E+1)</td>
<td>2E-8</td>
</tr>
<tr>
<td>53</td>
<td>Iodine-132</td>
<td>0, all compounds</td>
<td>4E+3</td>
<td>Thyroid (1E+3)</td>
<td>2E-6</td>
</tr>
<tr>
<td>53</td>
<td>Iodine-133</td>
<td>0, all compounds</td>
<td>3E+2</td>
<td>Thyroid (1E+2)</td>
<td>1E-7</td>
</tr>
<tr>
<td>53</td>
<td>Iodine-134</td>
<td>0, all compounds</td>
<td>2E+4</td>
<td>Thyroid (1E+4)</td>
<td>1E-5</td>
</tr>
<tr>
<td>53</td>
<td>Iodine-135</td>
<td>0, all compounds</td>
<td>8E+2</td>
<td>Thyroid (1E+2)</td>
<td>7E-7</td>
</tr>
<tr>
<td>54</td>
<td>Xenon-122^2</td>
<td>Submerged</td>
<td>-</td>
<td>-</td>
<td>1E-5</td>
</tr>
<tr>
<td>54</td>
<td>Xenon-123^2</td>
<td>Submerged</td>
<td>-</td>
<td>-</td>
<td>2E-6</td>
</tr>
<tr>
<td>54</td>
<td>Xenon-124</td>
<td>Submerged</td>
<td>-</td>
<td>-</td>
<td>7E-5</td>
</tr>
<tr>
<td>54</td>
<td>Xenon-125</td>
<td>Submerged</td>
<td>-</td>
<td>-</td>
<td>6E-6</td>
</tr>
<tr>
<td>54</td>
<td>Xenon-126</td>
<td>Submerged</td>
<td>-</td>
<td>-</td>
<td>2E-5</td>
</tr>
<tr>
<td>54</td>
<td>Xenon-127</td>
<td>Submerged</td>
<td>-</td>
<td>-</td>
<td>1E-5</td>
</tr>
<tr>
<td>54</td>
<td>Xenon-128m</td>
<td>Submerged</td>
<td>-</td>
<td>-</td>
<td>2E-4</td>
</tr>
<tr>
<td>54</td>
<td>Xenon-129m</td>
<td>Submerged</td>
<td>-</td>
<td>-</td>
<td>4E-4</td>
</tr>
<tr>
<td>54</td>
<td>Xenon-130m</td>
<td>Submerged</td>
<td>-</td>
<td>-</td>
<td>1E-4</td>
</tr>
<tr>
<td>54</td>
<td>Xenon-131m</td>
<td>Submerged</td>
<td>-</td>
<td>-</td>
<td>1E-4</td>
</tr>
<tr>
<td>55</td>
<td>Cesium-127^2</td>
<td>0, all compounds</td>
<td>6E+4</td>
<td>Str. wall (1E+4)</td>
<td>1E-5</td>
</tr>
<tr>
<td>55</td>
<td>Cesium-127^2</td>
<td>0, all compounds</td>
<td>6E+4</td>
<td>Str. wall (1E+4)</td>
<td>-</td>
</tr>
</tbody>
</table>

407
<table>
<thead>
<tr>
<th>Atomic No.</th>
<th>Radionuclide</th>
<th>Class</th>
<th>Table 1: Occupational Values</th>
<th>Table 2: Effluent Concentrations</th>
<th>Table 3: Releases to Sewers</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td></td>
<td></td>
<td>Col. 1 Oral Ingestion (µCi/l)</td>
<td>Col. 2 Inhalation (µCi/l)</td>
<td>Col. 3 Inhalation (µCi/l)</td>
</tr>
<tr>
<td>55</td>
<td>Cesium-129</td>
<td>0, all compounds</td>
<td>2E+4</td>
<td>3E+3</td>
<td>1E-5</td>
</tr>
<tr>
<td>55</td>
<td>Cesium-130²</td>
<td>0, all compounds</td>
<td>6E+4</td>
<td>2E+5</td>
<td>8E-5</td>
</tr>
<tr>
<td></td>
<td></td>
<td>55, well (1E+5)</td>
<td>-</td>
<td>-</td>
<td>-</td>
</tr>
<tr>
<td>55</td>
<td>Cesium-131</td>
<td>0, all compounds</td>
<td>2E+4</td>
<td>3E+4</td>
<td>1E-5</td>
</tr>
<tr>
<td>55</td>
<td>Cesium-132</td>
<td>0, all compounds</td>
<td>3E+3</td>
<td>4E+3</td>
<td>2E-6</td>
</tr>
<tr>
<td>55</td>
<td>Cesium-134</td>
<td>0, all compounds</td>
<td>1E+5</td>
<td>3E+5</td>
<td>6E-5</td>
</tr>
<tr>
<td></td>
<td></td>
<td>55, well (1E+5)</td>
<td>-</td>
<td>-</td>
<td>-</td>
</tr>
<tr>
<td>55</td>
<td>Cesium-135</td>
<td>0, all compounds</td>
<td>7E-1</td>
<td>1E+2</td>
<td>4E-8</td>
</tr>
<tr>
<td>55</td>
<td>Cesium-135²</td>
<td>0, all compounds</td>
<td>1E+5</td>
<td>2E+5</td>
<td>8E-5</td>
</tr>
<tr>
<td>55</td>
<td>Cesium-136</td>
<td>0, all compounds</td>
<td>7E+2</td>
<td>1E+3</td>
<td>5E-7</td>
</tr>
<tr>
<td>55</td>
<td>Cesium-137</td>
<td>0, all compounds</td>
<td>4E+2</td>
<td>7E+2</td>
<td>3E-7</td>
</tr>
<tr>
<td>55</td>
<td>Cesium-138</td>
<td>0, all compounds</td>
<td>1E+2</td>
<td>2E+2</td>
<td>6E-8</td>
</tr>
<tr>
<td>55</td>
<td>Cesium-138²</td>
<td>0, all compounds</td>
<td>2E+4</td>
<td>6E+4</td>
<td>2E-5</td>
</tr>
<tr>
<td></td>
<td></td>
<td>55, well (3E+4)</td>
<td>-</td>
<td>-</td>
<td>-</td>
</tr>
<tr>
<td>56</td>
<td>Barium-129</td>
<td>0, all compounds</td>
<td>6E+3</td>
<td>2E+4</td>
<td>6E-6</td>
</tr>
<tr>
<td>56</td>
<td>Barium-128</td>
<td>0, all compounds</td>
<td>5E+2</td>
<td>2E+3</td>
<td>7E-7</td>
</tr>
<tr>
<td>56</td>
<td>Barium-131</td>
<td>0, all compounds</td>
<td>4E+5</td>
<td>1E+6</td>
<td>6E-4</td>
</tr>
<tr>
<td></td>
<td></td>
<td>55, well (5E+5)</td>
<td>-</td>
<td>-</td>
<td>-</td>
</tr>
<tr>
<td>56</td>
<td>Barium-132</td>
<td>0, all compounds</td>
<td>3E+3</td>
<td>8E+3</td>
<td>3E-6</td>
</tr>
<tr>
<td>56</td>
<td>Barium-133</td>
<td>0, all compounds</td>
<td>2E+3</td>
<td>9E+3</td>
<td>4E-6</td>
</tr>
<tr>
<td></td>
<td></td>
<td>55, well (2E+3)</td>
<td>-</td>
<td>-</td>
<td>-</td>
</tr>
<tr>
<td>56</td>
<td>Barium-133</td>
<td>0, all compounds</td>
<td>2E+3</td>
<td>7E+2</td>
<td>3E-7</td>
</tr>
<tr>
<td>56</td>
<td>Barium-135</td>
<td>0, all compounds</td>
<td>3E+3</td>
<td>1E+4</td>
<td>5E-6</td>
</tr>
<tr>
<td>56</td>
<td>Barium-139</td>
<td>0, all compounds</td>
<td>1E+4</td>
<td>3E+4</td>
<td>1E-5</td>
</tr>
<tr>
<td>56</td>
<td>Barium-140</td>
<td>0, all compounds</td>
<td>5E+2</td>
<td>1E+3</td>
<td>6E-7</td>
</tr>
<tr>
<td></td>
<td></td>
<td>55, well (6E+2)</td>
<td>-</td>
<td>-</td>
<td>-</td>
</tr>
<tr>
<td>56</td>
<td>Barium-141</td>
<td>0, all compounds</td>
<td>2E+4</td>
<td>7E+4</td>
<td>3E-5</td>
</tr>
<tr>
<td>56</td>
<td>Barium-142</td>
<td>0, all compounds</td>
<td>5E+4</td>
<td>1E+5</td>
<td>6E-5</td>
</tr>
<tr>
<td>57</td>
<td>Lanthane-132</td>
<td>0, all compounds except those given for W</td>
<td>5E+4</td>
<td>1E+5</td>
<td>5E-5</td>
</tr>
<tr>
<td></td>
<td></td>
<td>W, oxides and hydroxides</td>
<td>2E+5</td>
<td>7E-5</td>
<td>-</td>
</tr>
<tr>
<td>Atomic Number</td>
<td>Radionuclide</td>
<td>Class</td>
<td>Oral Ingestion</td>
<td>Inhalation</td>
<td>Air</td>
</tr>
<tr>
<td>---------------</td>
<td>--------------</td>
<td>-------</td>
<td>----------------</td>
<td>------------</td>
<td>-----</td>
</tr>
<tr>
<td>57</td>
<td>Lanthanum-132</td>
<td>D, W, x, x'</td>
<td>Mn+3, Mn+4</td>
<td>Mn+5, Mn+5</td>
<td>Mn+6</td>
</tr>
<tr>
<td>57</td>
<td>Lanthanum-135</td>
<td>D, W, x, x'</td>
<td>Mn+4</td>
<td>Mn+4</td>
<td>Mn+5</td>
</tr>
<tr>
<td>57</td>
<td>Lanthanum-137</td>
<td>D, W, x, x'</td>
<td>Mn+4</td>
<td>Mn+1</td>
<td>Mn+6</td>
</tr>
<tr>
<td>57</td>
<td>Lanthanum-138</td>
<td>D, W, x, x'</td>
<td>Mn+4</td>
<td>Mn+1</td>
<td>Mn+6</td>
</tr>
<tr>
<td>57</td>
<td>Lanthanum-140</td>
<td>D, W, x, x'</td>
<td>Mn+4</td>
<td>Mn+4</td>
<td>Mn+5</td>
</tr>
<tr>
<td>57</td>
<td>Lanthanum-141</td>
<td>D, W, x, x'</td>
<td>Mn+4</td>
<td>Mn+4</td>
<td>Mn+5</td>
</tr>
<tr>
<td>57</td>
<td>Lanthanum-142</td>
<td>D, W, x, x'</td>
<td>Mn+4</td>
<td>Mn+1</td>
<td>Mn+6</td>
</tr>
<tr>
<td>57</td>
<td>Lanthanum-143</td>
<td>D, W, x, x'</td>
<td>Mn+4</td>
<td>Mn+1</td>
<td>Mn+6</td>
</tr>
<tr>
<td>58</td>
<td>Cerium-134</td>
<td>W, y, z, y'</td>
<td>Mn+4</td>
<td>Mn+4</td>
<td>Mn+5</td>
</tr>
</tbody>
</table>

**Notes:**
- Y, oxides, hydroxides, and fluorides
- Mn, Mn+2
- Mn, Mn+2
- Mn, Mn+2
- Mn, Mn+2
- Mn, Mn+2
- Mn, Mn+2
- Mn, Mn+2
- Mn, Mn+2
- Mn, Mn+2
- Mn, Mn+2
- Mn, Mn+2
- Mn, Mn+2
- Mn, Mn+2
<table>
<thead>
<tr>
<th>Atomic No.</th>
<th>Radionuclide</th>
<th>Class</th>
<th>Col. 1 Oral Ingestion (µCi)</th>
<th>Col. 2 Inhalation (µCi)</th>
<th>Col. 3 BGC (µCi/ml)</th>
<th>Col. 1 Air (µCi/m³)</th>
<th>Col. 2 Water (µCi/ml)</th>
<th>Monthly Average Concentration (µCi/ml)</th>
</tr>
</thead>
<tbody>
<tr>
<td>58</td>
<td>Cerium-144</td>
<td>W, see 144Ce</td>
<td></td>
<td>2E+2</td>
<td>3E+1</td>
<td>3E-8</td>
<td>4E-11</td>
<td>-</td>
</tr>
<tr>
<td></td>
<td>Y, see 144Ce</td>
<td></td>
<td></td>
<td>1E+1</td>
<td>6E-9</td>
<td>2E-11</td>
<td>-</td>
<td>-</td>
</tr>
<tr>
<td>59</td>
<td>Praseodymium-140</td>
<td>W, all compounds except those given for Y</td>
<td>5E+4</td>
<td>2E+5</td>
<td>3E-4</td>
<td>3E-7</td>
<td>-</td>
<td>-</td>
</tr>
<tr>
<td></td>
<td>Y, oxides, hydroxides, carbides, and fluorides</td>
<td></td>
<td>2E+5</td>
<td>9E-5</td>
<td>3E-7</td>
<td>-</td>
<td>-</td>
<td>-</td>
</tr>
<tr>
<td>59</td>
<td>Praseodymium-141</td>
<td>W, see 141Pr</td>
<td>4E+4</td>
<td>2E+5</td>
<td>6E-5</td>
<td>2E-7</td>
<td>5E-4</td>
<td>5E-3</td>
</tr>
<tr>
<td></td>
<td>Y, see 141Pr</td>
<td></td>
<td></td>
<td>3E+5</td>
<td>6E-5</td>
<td>2E-7</td>
<td>-</td>
<td>-</td>
</tr>
<tr>
<td>59</td>
<td>Praseodymium-142</td>
<td>W, see 142Pr</td>
<td>3E-4</td>
<td>2E-5</td>
<td>5E-5</td>
<td>2E-7</td>
<td>6E-4</td>
<td>6E-3</td>
</tr>
<tr>
<td></td>
<td>Y, see 142Pr</td>
<td></td>
<td></td>
<td>2E-5</td>
<td>6E-5</td>
<td>2E-7</td>
<td>-</td>
<td>-</td>
</tr>
<tr>
<td>59</td>
<td>Praseodymium-143</td>
<td>W, see 143Pr</td>
<td>1E+3</td>
<td>3E+3</td>
<td>7E-5</td>
<td>3E-7</td>
<td>3E-3</td>
<td>3E-2</td>
</tr>
<tr>
<td></td>
<td>Y, see 143Pr</td>
<td></td>
<td></td>
<td>3E+3</td>
<td>8E-5</td>
<td>3E-9</td>
<td>-</td>
<td>-</td>
</tr>
<tr>
<td>59</td>
<td>Praseodymium-144</td>
<td>W, see 144Pr</td>
<td>9E+2</td>
<td>2E+3</td>
<td>3E-7</td>
<td>3E-9</td>
<td>3E-5</td>
<td>3E-4</td>
</tr>
<tr>
<td></td>
<td>Y, see 144Pr</td>
<td></td>
<td></td>
<td>3E+3</td>
<td>5E-5</td>
<td>-</td>
<td>-</td>
<td>-</td>
</tr>
<tr>
<td>59</td>
<td>Praseodymium-145</td>
<td>W, see 145Pr</td>
<td>3E+3</td>
<td>2E+4</td>
<td>6E-5</td>
<td>2E-7</td>
<td>4E-4</td>
<td>4E-3</td>
</tr>
<tr>
<td></td>
<td>Y, see 145Pr</td>
<td></td>
<td></td>
<td>3E+4</td>
<td>5E-5</td>
<td>2E-7</td>
<td>-</td>
<td>-</td>
</tr>
<tr>
<td>59</td>
<td>Praseodymium-146</td>
<td>W, see 146Pr</td>
<td>3E-3</td>
<td>2E-4</td>
<td>6E-6</td>
<td>2E-8</td>
<td>4E-5</td>
<td>4E-4</td>
</tr>
<tr>
<td></td>
<td>Y, see 146Pr</td>
<td></td>
<td></td>
<td>3E-3</td>
<td>6E-6</td>
<td>2E-8</td>
<td>-</td>
<td>-</td>
</tr>
<tr>
<td>60</td>
<td>Neodymium-147</td>
<td>W, all compounds except those given for Y</td>
<td>1E+4</td>
<td>6E+4</td>
<td>2E+5</td>
<td>8E-8</td>
<td>2E-4</td>
<td>2E-3</td>
</tr>
<tr>
<td></td>
<td>Y, oxides, hydroxides, carbides, and fluorides</td>
<td></td>
<td></td>
<td>5E+4</td>
<td>2E+5</td>
<td>8E-8</td>
<td>-</td>
<td>-</td>
</tr>
<tr>
<td>60</td>
<td>Neodymium-148</td>
<td>W, see 148Nd</td>
<td>2E+3</td>
<td>6E+3</td>
<td>3E-6</td>
<td>9E-9</td>
<td>3E-5</td>
<td>3E-4</td>
</tr>
<tr>
<td></td>
<td>Y, see 148Nd</td>
<td></td>
<td></td>
<td>5E+3</td>
<td>7E-6</td>
<td>9E-9</td>
<td>-</td>
<td>-</td>
</tr>
<tr>
<td>60</td>
<td>Neodymium-149</td>
<td>W, see 149Nd</td>
<td>3E+3</td>
<td>2E+4</td>
<td>7E-6</td>
<td>2E-8</td>
<td>7E-5</td>
<td>7E-4</td>
</tr>
<tr>
<td>Atomic Radionuclide No.</td>
<td>Class</td>
<td>Oral Ingestion (μCi)</td>
<td>Inhalation (μCi/l)</td>
<td>Air (μCi/l)</td>
<td>Water (μCi/l)</td>
<td>Monthly Average (μCi/l)</td>
<td></td>
<td></td>
</tr>
<tr>
<td>-------------------------</td>
<td>-------</td>
<td>----------------------</td>
<td>-------------------</td>
<td>------------</td>
<td>--------------</td>
<td>-------------------------</td>
<td>-------</td>
<td></td>
</tr>
<tr>
<td>60 Neodymium-139 &lt;sup&gt;2&lt;/sup&gt;</td>
<td>W, see 139Nd</td>
<td>9E + 4</td>
<td>3E + 5</td>
<td>1E - 4</td>
<td>5E - 7</td>
<td>1E - 3</td>
<td>1E - 2</td>
<td></td>
</tr>
<tr>
<td>60 Neodymium-141</td>
<td>Y, see 139Nd</td>
<td>2E - 5</td>
<td>7E - 6</td>
<td>3E - 4</td>
<td>3E - 6</td>
<td>2E - 3</td>
<td>2E - 2</td>
<td></td>
</tr>
<tr>
<td>60 Neodymium-147</td>
<td>W, see 139Nd</td>
<td>1E + 3</td>
<td>9E + 2</td>
<td>4E - 7</td>
<td>1E - 9</td>
<td>-</td>
<td>-</td>
<td></td>
</tr>
<tr>
<td>60 Neodymium-149&lt;sup&gt;2&lt;/sup&gt;</td>
<td>W, see 139Nd</td>
<td>1E - 4</td>
<td>3E - 5</td>
<td>1E - 5</td>
<td>4E - 8</td>
<td>1E - 5</td>
<td>1E - 3</td>
<td></td>
</tr>
<tr>
<td>60 Neodymium-151&lt;sup&gt;2&lt;/sup&gt;</td>
<td>W, see 139Nd</td>
<td>7E - 4</td>
<td>2E - 5</td>
<td>8E - 5</td>
<td>3E - 7</td>
<td>9E - 4</td>
<td>9E - 3</td>
<td></td>
</tr>
<tr>
<td>61 Promethium-141 &lt;sup&gt;2&lt;/sup&gt;</td>
<td>W, all compounds except those given for Y</td>
<td>5E - 4</td>
<td>2E - 5</td>
<td>8E - 5</td>
<td>3E - 7</td>
<td>8E - 4</td>
<td>8E - 3</td>
<td></td>
</tr>
<tr>
<td>61 Promethium-143</td>
<td>Y, see 141Pu</td>
<td>5E + 3</td>
<td>6E + 2</td>
<td>2E - 7</td>
<td>8E - 10</td>
<td>7E - 5</td>
<td>7E - 4</td>
<td></td>
</tr>
<tr>
<td>61 Promethium-144</td>
<td>W, see 141Pu</td>
<td>1E + 3</td>
<td>2E + 2</td>
<td>5E - 8</td>
<td>2E - 10</td>
<td>2E - 5</td>
<td>2E - 4</td>
<td></td>
</tr>
<tr>
<td>61 Promethium-145</td>
<td>W, see 141Pu</td>
<td>1E + 4</td>
<td>2E + 2</td>
<td>7E - 8</td>
<td>-</td>
<td>1E - 4</td>
<td>1E - 3</td>
<td></td>
</tr>
<tr>
<td>61 Promethium-146</td>
<td>W, see 141Pu</td>
<td>2E + 3</td>
<td>5E + 2</td>
<td>7E - 8</td>
<td>7E - 11</td>
<td>2E - 5</td>
<td>2E - 4</td>
<td></td>
</tr>
<tr>
<td>61 Promethium-147</td>
<td>W, see 141Pu</td>
<td>4E + 3</td>
<td>1E + 2</td>
<td>5E - 8</td>
<td>-</td>
<td>-</td>
<td>-</td>
<td></td>
</tr>
<tr>
<td>61 Promethium-148a</td>
<td>W, see 141Pu</td>
<td>7E - 2</td>
<td>3E + 2</td>
<td>1E - 7</td>
<td>4E - 10</td>
<td>1E - 5</td>
<td>1E - 4</td>
<td></td>
</tr>
<tr>
<td>61 Promethium-148b</td>
<td>W, see 141Pu</td>
<td>4E - 2</td>
<td>5E + 2</td>
<td>2E - 8</td>
<td>8E - 10</td>
<td>-</td>
<td>-</td>
<td></td>
</tr>
<tr>
<td>61 Promethium-149</td>
<td>W, see 141Pu</td>
<td>1E + 3</td>
<td>5E + 2</td>
<td>7E - 8</td>
<td>-</td>
<td>7E - 6</td>
<td>7E - 5</td>
<td></td>
</tr>
<tr>
<td>61 Promethium-150</td>
<td>W, see 141Pu</td>
<td>2E + 3</td>
<td>3E + 3</td>
<td>3E - 9</td>
<td>8E - 5</td>
<td>-</td>
<td>-</td>
<td></td>
</tr>
<tr>
<td>61 Promethium-151</td>
<td>W, see 141Pu</td>
<td>2E + 3</td>
<td>4E + 3</td>
<td>3E - 6</td>
<td>5E - 9</td>
<td>2E - 5</td>
<td>2E - 4</td>
<td></td>
</tr>
<tr>
<td>Atomic No.</td>
<td>Radiouclide</td>
<td>Class</td>
<td>Coll. 1</td>
<td>Coll. 2</td>
<td>Coll. 3</td>
<td>Table 2</td>
<td>Table 3</td>
<td>Table 3 Releases to Sewers</td>
</tr>
<tr>
<td>-----------</td>
<td>----------------</td>
<td>--------------</td>
<td>---------</td>
<td>---------</td>
<td>---------</td>
<td>---------</td>
<td>---------</td>
<td>----------------------------</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td>Oral ingestion</td>
<td>Inhale</td>
<td>ICRP</td>
<td>Air</td>
<td>Water</td>
<td>Monthly Average Concentration</td>
</tr>
<tr>
<td>62</td>
<td>Samarium-148²⁴</td>
<td>N, all compounds</td>
<td>3×10⁻⁴</td>
<td>3×10⁻⁵</td>
<td>4×10⁻⁵</td>
<td>3×10⁻⁷</td>
<td>4×10⁻⁹</td>
<td>4×10⁻³</td>
</tr>
<tr>
<td>62</td>
<td>Samarium-147²⁴</td>
<td>N, all compounds</td>
<td>5×10⁻⁵</td>
<td>5×10⁻⁶</td>
<td>8×10⁻⁶</td>
<td>2×10⁻⁷</td>
<td>-</td>
<td>8×10⁻⁵</td>
</tr>
<tr>
<td>62</td>
<td>Samarium-146²⁴</td>
<td>N, all compounds</td>
<td>8×10⁻³</td>
<td>3×10⁻⁴</td>
<td>1×10⁻⁵</td>
<td>4×10⁻⁶</td>
<td>1×10⁻⁶</td>
<td>1×10⁻⁵</td>
</tr>
<tr>
<td>62</td>
<td>Samarium-145²⁴</td>
<td>N, all compounds</td>
<td>6×10⁻³</td>
<td>5×10⁻⁴</td>
<td>1×10⁻⁵</td>
<td>3×10⁻⁶</td>
<td>2×10⁻⁶</td>
<td>8×10⁻⁵</td>
</tr>
<tr>
<td>62</td>
<td>Samarium-144²⁴</td>
<td>N, all compounds</td>
<td>1×10⁻¹</td>
<td>4×10⁻²</td>
<td>1×10⁻³</td>
<td>1×10⁻⁴</td>
<td>-</td>
<td>-</td>
</tr>
<tr>
<td>62</td>
<td>Samarium-143²⁴</td>
<td>N, all compounds</td>
<td>2×10⁻¹</td>
<td>4×10⁻²</td>
<td>1×10⁻³</td>
<td>1×10⁻⁴</td>
<td>-</td>
<td>-</td>
</tr>
<tr>
<td>62</td>
<td>Samarium-142²⁴</td>
<td>N, all compounds</td>
<td>3×10⁻²</td>
<td>4×10⁻³</td>
<td>1×10⁻⁴</td>
<td>9×10⁻⁵</td>
<td>3×10⁻⁵</td>
<td>3×10⁻⁴</td>
</tr>
</tbody>
</table>

412
<table>
<thead>
<tr>
<th>Atomic No.</th>
<th>Radiouclide</th>
<th>Class</th>
<th>Table 1 Occupational Values</th>
<th>Table 2 Effluent Concentrations</th>
<th>Table 3 Releases to Seawater</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td></td>
<td></td>
<td>Col. 1 Oral Injection (µCi)</td>
<td>Col. 2 Inhalation (µCi)</td>
<td>Col. 3 (µCi/m³)</td>
</tr>
<tr>
<td>63</td>
<td>Europium-153</td>
<td>W, all compounds</td>
<td>2E+3</td>
<td>5E+3</td>
<td>2E-6</td>
</tr>
<tr>
<td>63</td>
<td>Europium-153</td>
<td>W, all compounds</td>
<td>2E+4</td>
<td>6E+4</td>
<td>2E-5</td>
</tr>
<tr>
<td>64</td>
<td>Gadolinium-154</td>
<td>D, all compounds except</td>
<td>5E+4</td>
<td>2E+5</td>
<td>8E-5</td>
</tr>
<tr>
<td></td>
<td></td>
<td>those given for W</td>
<td></td>
<td>2E+5</td>
<td>7E-7</td>
</tr>
<tr>
<td></td>
<td></td>
<td>W, oxides, hydroxides,</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td>and fluorides</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>64</td>
<td>Gadolinium-156</td>
<td>D, see 154Gd</td>
<td>3E+3</td>
<td>3E+3</td>
<td>5E-9</td>
</tr>
<tr>
<td></td>
<td></td>
<td>W, see 156Gd</td>
<td>3E+2</td>
<td>2E-7</td>
<td>4E+20</td>
</tr>
<tr>
<td>64</td>
<td>Gadolinium-157</td>
<td>D, see 157Gd</td>
<td>2E+3</td>
<td>4E+3</td>
<td>2E-6</td>
</tr>
<tr>
<td></td>
<td></td>
<td>W, see 157Gd</td>
<td>3E+3</td>
<td>1E+3</td>
<td>5E-9</td>
</tr>
<tr>
<td>64</td>
<td>Gadolinium-158</td>
<td>D, see 158Gd</td>
<td>3E+3</td>
<td>Bone surf (3E+3)</td>
<td>3E-12</td>
</tr>
<tr>
<td></td>
<td></td>
<td>W, see 158Gd</td>
<td>3E+2</td>
<td>Bone surf (3E+2)</td>
<td>3E-11</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>64</td>
<td>Gadolinium-161</td>
<td>D, see 161Gd</td>
<td>3E+3</td>
<td>2E+3</td>
<td>5E-9</td>
</tr>
<tr>
<td></td>
<td></td>
<td>W, see 161Gd</td>
<td>2E+3</td>
<td>3E-3</td>
<td>3E-9</td>
</tr>
<tr>
<td>64</td>
<td>Gadolinium-162</td>
<td>D, see 162Gd</td>
<td>6E+3</td>
<td>Bone surf (6E+3)</td>
<td>5E-7</td>
</tr>
<tr>
<td></td>
<td></td>
<td>W, see 162Gd</td>
<td>2E+3</td>
<td>Bone surf (6E+3)</td>
<td>3E-10</td>
</tr>
<tr>
<td>64</td>
<td>Gadolinium-163</td>
<td>D, see 163Gd</td>
<td>3E+3</td>
<td>Bone surf (3E+3)</td>
<td>1E-7</td>
</tr>
<tr>
<td></td>
<td></td>
<td>W, see 163Gd</td>
<td>2E+3</td>
<td>Bone surf (3E+3)</td>
<td>3E-11</td>
</tr>
<tr>
<td>64</td>
<td>Gadolinium-164</td>
<td>D, see 164Gd</td>
<td>3E+3</td>
<td>Bone surf (3E+3)</td>
<td>3E-10</td>
</tr>
<tr>
<td></td>
<td></td>
<td>W, see 164Gd</td>
<td>2E+3</td>
<td>Bone surf (3E+3)</td>
<td>1E-7</td>
</tr>
<tr>
<td>65</td>
<td>Terbium-166</td>
<td>W, all compounds</td>
<td>3E+3</td>
<td>3E+3</td>
<td>5E-6</td>
</tr>
<tr>
<td></td>
<td></td>
<td>W, see 166Gd</td>
<td>3E+2</td>
<td>2E+6</td>
<td>8E-9</td>
</tr>
<tr>
<td>65</td>
<td>Terbium-167</td>
<td>W, all compounds</td>
<td>5E+3</td>
<td>2E+4</td>
<td>3E-7</td>
</tr>
<tr>
<td>65</td>
<td>Terbium-168</td>
<td>W, all compounds</td>
<td>2E+3</td>
<td>3E-6</td>
<td>3E-8</td>
</tr>
<tr>
<td>65</td>
<td>Terbium-169</td>
<td>W, all compounds</td>
<td>5E+3</td>
<td>2E+4</td>
<td>4E-6</td>
</tr>
<tr>
<td>65</td>
<td>Terbium-170</td>
<td>W, all compounds</td>
<td>3E+3</td>
<td>3E-6</td>
<td>3E-8</td>
</tr>
<tr>
<td>65</td>
<td>Terbium-171</td>
<td>W, all compounds</td>
<td>2E+3</td>
<td>4E-5</td>
<td>3E-8</td>
</tr>
<tr>
<td>65</td>
<td>Terrbium-172</td>
<td>W, all compounds</td>
<td>2E+3</td>
<td>1E-5</td>
<td>3E-8</td>
</tr>
<tr>
<td>65</td>
<td>Pr, all compounds</td>
<td>2E+3</td>
<td>3E-6</td>
<td>3E-8</td>
<td>5E-5</td>
</tr>
<tr>
<td>65</td>
<td>Pr, all compounds</td>
<td>2E+3</td>
<td>1E-5</td>
<td>3E-8</td>
<td>5E-4</td>
</tr>
</tbody>
</table>

413
<table>
<thead>
<tr>
<th>Atomic No.</th>
<th>Radionuclide</th>
<th>Class</th>
<th>Col. 1</th>
<th>Col. 2</th>
<th>Col. 3</th>
<th>Col. 1</th>
<th>Col. 2</th>
<th>Monthly Average Concentration (μCi/ml)</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>Ingestion</td>
<td>Inhalation</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>65</td>
<td>Tertium-135a</td>
<td>W, all compounds</td>
<td>7E+3</td>
<td>8E+3</td>
<td>3E-6</td>
<td>3E-6</td>
<td>1E-4</td>
<td>1E-4</td>
</tr>
<tr>
<td></td>
<td>Tertium-136</td>
<td>W, all compounds</td>
<td>1E+3</td>
<td>1E+3</td>
<td>6E-7</td>
<td>6E-7</td>
<td>-</td>
<td>-</td>
</tr>
<tr>
<td></td>
<td>Tertium-137</td>
<td>W, all compounds</td>
<td>5E+4</td>
<td>5E+4</td>
<td>1E+7</td>
<td>1E+7</td>
<td>-</td>
<td>-</td>
</tr>
<tr>
<td></td>
<td>Tertium-150</td>
<td>W, all compounds</td>
<td>1E+3</td>
<td>2E+3</td>
<td>9E-9</td>
<td>9E-9</td>
<td>2E-4</td>
<td>2E-4</td>
</tr>
<tr>
<td></td>
<td>Tertium-160</td>
<td>W, all compounds</td>
<td>8E+2</td>
<td>2E+2</td>
<td>9E+8</td>
<td>9E+8</td>
<td>2E-4</td>
<td>2E-4</td>
</tr>
<tr>
<td></td>
<td>Tertium-161</td>
<td>W, all compounds</td>
<td>3E+3</td>
<td>2E+3</td>
<td>7E-7</td>
<td>7E-7</td>
<td>2E-4</td>
<td>2E-4</td>
</tr>
<tr>
<td></td>
<td>Dysprosium-155</td>
<td>W, all compounds</td>
<td>9E+3</td>
<td>3E+4</td>
<td>3E-5</td>
<td>3E-5</td>
<td>1E-4</td>
<td>1E-4</td>
</tr>
<tr>
<td></td>
<td>Dysprosium-157</td>
<td>W, all compounds</td>
<td>2E+4</td>
<td>6E+4</td>
<td>3E-5</td>
<td>3E-5</td>
<td>1E-4</td>
<td>1E-4</td>
</tr>
<tr>
<td></td>
<td>Dysprosium-159</td>
<td>W, all compounds</td>
<td>1E+4</td>
<td>2E+3</td>
<td>3E-6</td>
<td>3E-6</td>
<td>2E-3</td>
<td>2E-3</td>
</tr>
<tr>
<td></td>
<td>Dysprosium-165</td>
<td>W, all compounds</td>
<td>1E+4</td>
<td>5E+4</td>
<td>2E-5</td>
<td>2E-5</td>
<td>2E-3</td>
<td>2E-3</td>
</tr>
<tr>
<td></td>
<td>Dysprosium-166</td>
<td>W, all compounds</td>
<td>6E+2</td>
<td>7E+2</td>
<td>6E-7</td>
<td>6E-7</td>
<td>1E-4</td>
<td>1E-4</td>
</tr>
<tr>
<td></td>
<td>Holmium-155</td>
<td>W, all compounds</td>
<td>4E+4</td>
<td>2E+5</td>
<td>6E-5</td>
<td>6E-5</td>
<td>2E-3</td>
<td>2E-4</td>
</tr>
<tr>
<td></td>
<td>Holmium-157</td>
<td>W, all compounds</td>
<td>3E+5</td>
<td>1E+6</td>
<td>6E-4</td>
<td>6E-4</td>
<td>3E-3</td>
<td>3E-3</td>
</tr>
<tr>
<td></td>
<td>Holmium-159</td>
<td>W, all compounds</td>
<td>2E+5</td>
<td>1E+6</td>
<td>4E-4</td>
<td>4E-4</td>
<td>3E-3</td>
<td>3E-3</td>
</tr>
<tr>
<td></td>
<td>Holmium-163</td>
<td>W, all compounds</td>
<td>3E+5</td>
<td>4E+5</td>
<td>2E-4</td>
<td>2E-4</td>
<td>3E-3</td>
<td>3E-3</td>
</tr>
<tr>
<td></td>
<td>Holmium-165</td>
<td>W, all compounds</td>
<td>3E+5</td>
<td>5E+5</td>
<td>1E-3</td>
<td>1E-3</td>
<td>1E-3</td>
<td>1E-3</td>
</tr>
<tr>
<td></td>
<td>Holmium-166</td>
<td>W, all compounds</td>
<td>4E+5</td>
<td>5E+5</td>
<td>1E-3</td>
<td>1E-3</td>
<td>1E-2</td>
<td>1E-2</td>
</tr>
<tr>
<td></td>
<td>Holmium-167</td>
<td>W, all compounds</td>
<td>1E+5</td>
<td>3E+5</td>
<td>4E-7</td>
<td>4E-7</td>
<td>1E-4</td>
<td>1E-4</td>
</tr>
<tr>
<td></td>
<td>Holmium-168</td>
<td>W, all compounds</td>
<td>2E+5</td>
<td>5E+5</td>
<td>3E-4</td>
<td>3E-4</td>
<td>2E-3</td>
<td>2E-3</td>
</tr>
<tr>
<td></td>
<td>Holmium-169</td>
<td>W, all compounds</td>
<td>4E+5</td>
<td>7E+5</td>
<td>2E-3</td>
<td>2E-3</td>
<td>1E-5</td>
<td>1E-5</td>
</tr>
<tr>
<td></td>
<td>Holmium-170</td>
<td>W, all compounds</td>
<td>2E+5</td>
<td>4E+5</td>
<td>2E-3</td>
<td>2E-3</td>
<td>1E-5</td>
<td>1E-5</td>
</tr>
<tr>
<td></td>
<td>Erbium-161</td>
<td>W, all compounds</td>
<td>6E+4</td>
<td>6E+4</td>
<td>2E-5</td>
<td>2E-5</td>
<td>3E-3</td>
<td>3E-3</td>
</tr>
<tr>
<td></td>
<td>Erbium-163</td>
<td>W, all compounds</td>
<td>6E+4</td>
<td>6E+4</td>
<td>2E-5</td>
<td>2E-5</td>
<td>3E-3</td>
<td>3E-3</td>
</tr>
</tbody>
</table>

414
<table>
<thead>
<tr>
<th>Atomic No.</th>
<th>Radionuclide</th>
<th>Class</th>
<th>Table 1: Occupational Values</th>
<th>Table 2: EFFIcient Concentrations</th>
<th>Table 3: Releases to Sowers</th>
<th>Monthly Average Concentration (µCi/L)</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td></td>
<td></td>
<td>Col. 1: Oral Ingestion</td>
<td>Col. 2: Inhalation</td>
<td>Col. 3: DERM</td>
<td>Col. 1: Air</td>
</tr>
<tr>
<td>68</td>
<td>Erbium-169</td>
<td>W. all compounds</td>
<td>3E-3</td>
<td>3E-3</td>
<td>3E-6</td>
<td>4E-9</td>
</tr>
<tr>
<td>68</td>
<td>Erbium-171</td>
<td>W. all compounds</td>
<td>4E-3</td>
<td>4E-3</td>
<td>4E-6</td>
<td>3E-9</td>
</tr>
<tr>
<td>68</td>
<td>Erbium-172</td>
<td>W. all compounds</td>
<td>3E-3</td>
<td>3E-3</td>
<td>6E-7</td>
<td>2E-9</td>
</tr>
<tr>
<td>69</td>
<td>Thulium-165</td>
<td>W. all compounds</td>
<td>7E-6</td>
<td>3E-5</td>
<td>1E-4</td>
<td>4E-7</td>
</tr>
<tr>
<td>69</td>
<td>Thulium-166</td>
<td>W. all compounds</td>
<td>3E-3</td>
<td>3E-4</td>
<td>3E-6</td>
<td>2E-8</td>
</tr>
<tr>
<td>69</td>
<td>Thulium-167</td>
<td>W. all compounds</td>
<td>3E-3</td>
<td>3E-3</td>
<td>6E-7</td>
<td>3E-9</td>
</tr>
<tr>
<td>69</td>
<td>Thulium-170</td>
<td>W. all compounds</td>
<td>8E-2</td>
<td>3E-2</td>
<td>3E-8</td>
<td>3E-10</td>
</tr>
<tr>
<td>69</td>
<td>Thulium-171</td>
<td>W. all compounds</td>
<td>3E-4</td>
<td>3E-4</td>
<td>3E-7</td>
<td>-</td>
</tr>
<tr>
<td>69</td>
<td>Thulium-172</td>
<td>W. all compounds</td>
<td>7E-2</td>
<td>7E-3</td>
<td>5E-7</td>
<td>3E-9</td>
</tr>
<tr>
<td>69</td>
<td>Thulium-173</td>
<td>W. all compounds</td>
<td>6E+4</td>
<td>6E+4</td>
<td>6E+5</td>
<td>6E+8</td>
</tr>
<tr>
<td>69</td>
<td>Thulium-174</td>
<td>W. all compounds</td>
<td>7E+4</td>
<td>7E+4</td>
<td>7E+4</td>
<td>7E+7</td>
</tr>
<tr>
<td>70</td>
<td>Ytterbium-165</td>
<td>W. all compounds except those given for Y</td>
<td>3E+6</td>
<td>3E+6</td>
<td>3E+6</td>
<td>3E+7</td>
</tr>
<tr>
<td>70</td>
<td>Ytterbium-166</td>
<td>W. see 167YD</td>
<td>3E+3</td>
<td>3E+3</td>
<td>3E+3</td>
<td>3E+3</td>
</tr>
<tr>
<td>70</td>
<td>Ytterbium-167</td>
<td>W. see 167YD</td>
<td>3E+5</td>
<td>3E+5</td>
<td>3E+5</td>
<td>3E+5</td>
</tr>
<tr>
<td>70</td>
<td>Ytterbium-169</td>
<td>W. see 167YD</td>
<td>2E+3</td>
<td>2E+3</td>
<td>2E+3</td>
<td>2E+3</td>
</tr>
<tr>
<td>70</td>
<td>Ytterbium-170</td>
<td>W. see 167YD</td>
<td>7E+4</td>
<td>7E+4</td>
<td>7E+4</td>
<td>7E+4</td>
</tr>
<tr>
<td>70</td>
<td>Ytterbium-171</td>
<td>W. see 167YD</td>
<td>7E+3</td>
<td>7E+3</td>
<td>7E+3</td>
<td>7E+3</td>
</tr>
<tr>
<td>70</td>
<td>Ytterbium-172</td>
<td>W. see 167YD</td>
<td>7E+3</td>
<td>7E+3</td>
<td>7E+3</td>
<td>7E+3</td>
</tr>
<tr>
<td>70</td>
<td>Ytterbium-173</td>
<td>W. see 167YD</td>
<td>7E+3</td>
<td>7E+3</td>
<td>7E+3</td>
<td>7E+3</td>
</tr>
<tr>
<td>70</td>
<td>Ytterbium-174</td>
<td>W. see 167YD</td>
<td>7E+3</td>
<td>7E+3</td>
<td>7E+3</td>
<td>7E+3</td>
</tr>
</tbody>
</table>

Note: Y. oxides, hydroxides, and fluorides
<table>
<thead>
<tr>
<th>Atomic No.</th>
<th>Radionuclide</th>
<th>Class</th>
<th>Oral Ingestion (μCi/L)</th>
<th>Inhalation (μCi/L)</th>
<th>Col. 1</th>
<th>Col. 2</th>
<th>Col. 3</th>
<th>Col. 1</th>
<th>Col. 2</th>
<th>Col. 3</th>
<th>Monthly Average Concentration (μCi/mL)</th>
</tr>
</thead>
<tbody>
<tr>
<td>71</td>
<td>Lutetium-169</td>
<td>W, H</td>
<td>3E+4 4E+3 2E-6 4E-9 3E-8 3E-4</td>
<td>-</td>
<td>-</td>
<td>-</td>
<td>-</td>
<td>-</td>
<td>-</td>
<td>-</td>
<td>-</td>
</tr>
<tr>
<td>71</td>
<td>Lutetium-170</td>
<td>W, H</td>
<td>3E+3 2E+3 5E-7 3E-9 2E-5 2E-4</td>
<td>-</td>
<td>-</td>
<td>-</td>
<td>-</td>
<td>-</td>
<td>-</td>
<td>-</td>
<td>-</td>
</tr>
<tr>
<td>71</td>
<td>Lutetium-171</td>
<td>W, H</td>
<td>2E+3 2E+3 6E-7 3E-9 2E-5 2E-4</td>
<td>-</td>
<td>-</td>
<td>-</td>
<td>-</td>
<td>-</td>
<td>-</td>
<td>-</td>
<td>-</td>
</tr>
<tr>
<td>71</td>
<td>Lutetium-172</td>
<td>W, H</td>
<td>3E+3 3E+3 5E-7 3E-9 2E-5 2E-4</td>
<td>-</td>
<td>-</td>
<td>-</td>
<td>-</td>
<td>-</td>
<td>-</td>
<td>-</td>
<td>-</td>
</tr>
<tr>
<td>71</td>
<td>Lutetium-173</td>
<td>W, H</td>
<td>3E+3 3E+3 5E-7 3E-9 2E-5 2E-4</td>
<td>-</td>
<td>-</td>
<td>-</td>
<td>-</td>
<td>-</td>
<td>-</td>
<td>-</td>
<td>-</td>
</tr>
<tr>
<td>71</td>
<td>Lutetium-174</td>
<td>W, H</td>
<td>3E+3 3E+3 5E-7 3E-9 2E-5 2E-4</td>
<td>-</td>
<td>-</td>
<td>-</td>
<td>-</td>
<td>-</td>
<td>-</td>
<td>-</td>
<td>-</td>
</tr>
<tr>
<td>71</td>
<td>Lutetium-175</td>
<td>W, H</td>
<td>3E+3 3E+3 5E-7 3E-9 2E-5 2E-4</td>
<td>-</td>
<td>-</td>
<td>-</td>
<td>-</td>
<td>-</td>
<td>-</td>
<td>-</td>
<td>-</td>
</tr>
<tr>
<td>71</td>
<td>Lutetium-176</td>
<td>W, H</td>
<td>3E+3 3E+3 5E-7 3E-9 2E-5 2E-4</td>
<td>-</td>
<td>-</td>
<td>-</td>
<td>-</td>
<td>-</td>
<td>-</td>
<td>-</td>
<td>-</td>
</tr>
<tr>
<td>71</td>
<td>Lutetium-177</td>
<td>W, H</td>
<td>3E+3 3E+3 5E-7 3E-9 2E-5 2E-4</td>
<td>-</td>
<td>-</td>
<td>-</td>
<td>-</td>
<td>-</td>
<td>-</td>
<td>-</td>
<td>-</td>
</tr>
<tr>
<td>71</td>
<td>Lutetium-178</td>
<td>W, H</td>
<td>3E+3 3E+3 5E-7 3E-9 2E-5 2E-4</td>
<td>-</td>
<td>-</td>
<td>-</td>
<td>-</td>
<td>-</td>
<td>-</td>
<td>-</td>
<td>-</td>
</tr>
<tr>
<td>71</td>
<td>Lutetium-179</td>
<td>W, H</td>
<td>3E+3 3E+3 5E-7 3E-9 2E-5 2E-4</td>
<td>-</td>
<td>-</td>
<td>-</td>
<td>-</td>
<td>-</td>
<td>-</td>
<td>-</td>
<td>-</td>
</tr>
</tbody>
</table>

416
<table>
<thead>
<tr>
<th>Atomic No.</th>
<th>Radon Nuclide</th>
<th>Class</th>
<th>Table 1: Occupational Values</th>
<th>Table 2: Effluent Concentrations</th>
<th>Table 3: Releases to Sewers</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td></td>
<td></td>
<td>Col. 1 Oral Ingestion (μCi/L)</td>
<td>Col. 2 Inhalation (μCi/L)</td>
<td>Col. 3 Inhalation (μCi/L/mL)</td>
</tr>
<tr>
<td>72</td>
<td>Hafnium-170</td>
<td>D, all compounds except those given for W</td>
<td>3E+3 6E+3 2E-6 8E-9 4E-5 4E-4</td>
<td>-</td>
<td>-</td>
</tr>
<tr>
<td></td>
<td></td>
<td>W, oxides, hydrides, carbides, and nitrides</td>
<td>- 5E+3 2E-6 6E-9 -</td>
<td>-</td>
<td>-</td>
</tr>
<tr>
<td>72</td>
<td>Hafnium-172</td>
<td>D, see 170y</td>
<td>1E+3 9E+0 4E-9 2E-5 5E-4</td>
<td>-</td>
<td>-</td>
</tr>
<tr>
<td></td>
<td></td>
<td>W, see 170y</td>
<td>- (2E+3) 3E+1 2E-0 -</td>
<td>-</td>
<td>-</td>
</tr>
<tr>
<td>72</td>
<td>Hafnium-173</td>
<td>D, see 170y</td>
<td>5E+3 1E+4 5E-6 2E-8 7E-5 7E-4</td>
<td>-</td>
<td>-</td>
</tr>
<tr>
<td></td>
<td></td>
<td>W, see 170y</td>
<td>- 1E+4 5E-6 2E-8 -</td>
<td>-</td>
<td>-</td>
</tr>
<tr>
<td>72</td>
<td>Hafnium-175</td>
<td>D, see 170y</td>
<td>3E+3 9E+2 4E-7 -</td>
<td>4E-5 4E-4</td>
<td>-</td>
</tr>
<tr>
<td></td>
<td></td>
<td>W, see 170y</td>
<td>- (1E+3) 5E-7 2E-9 -</td>
<td>-</td>
<td>-</td>
</tr>
<tr>
<td>72</td>
<td>Hafnium-177</td>
<td>D, see 170y</td>
<td>3E+2 1E+0 5E-10 -</td>
<td>3E-6 3E-5</td>
<td>-</td>
</tr>
<tr>
<td></td>
<td></td>
<td>W, see 170y</td>
<td>- (2E+0) 3E-9 - -</td>
<td>-</td>
<td>-</td>
</tr>
<tr>
<td>72</td>
<td>Hafnium-179a</td>
<td>D, see 170y</td>
<td>1E+3 3E+2 1E-7 -</td>
<td>1E-5 1E-4</td>
<td>-</td>
</tr>
<tr>
<td></td>
<td></td>
<td>W, see 170y</td>
<td>- (6E+2) - 8E-10 -</td>
<td>-</td>
<td>-</td>
</tr>
<tr>
<td>72</td>
<td>Hafnium-180a</td>
<td>D, see 170y</td>
<td>7E+3 5E+4 9E-6 3E-0 3E-4 1E-3</td>
<td>-</td>
<td>-</td>
</tr>
<tr>
<td></td>
<td></td>
<td>W, see 170y</td>
<td>- 3E+4 1E-5 4E-0 -</td>
<td>-</td>
<td>-</td>
</tr>
<tr>
<td>72</td>
<td>Hafnium-181</td>
<td>D, see 170y</td>
<td>1E+3 2E+2 7E-0 -</td>
<td>2E-5 2E-4</td>
<td>-</td>
</tr>
<tr>
<td></td>
<td></td>
<td>W, see 170y</td>
<td>- (4E+2) - 6E-10 -</td>
<td>-</td>
<td>-</td>
</tr>
<tr>
<td>72</td>
<td>Hafnium-182</td>
<td>D, see 170y</td>
<td>6E+4 9E+4 4E-5 3E-7 5E-4 5E-3</td>
<td>-</td>
<td>-</td>
</tr>
<tr>
<td></td>
<td></td>
<td>W, see 170y</td>
<td>- 4E+2 2E-7 6E-10 -</td>
<td>-</td>
<td>-</td>
</tr>
<tr>
<td>72</td>
<td>Hafnium-182a</td>
<td>D, see 170y</td>
<td>2E+2 8E-1 3E-0 -</td>
<td>-</td>
<td>-</td>
</tr>
<tr>
<td></td>
<td></td>
<td>W, see 170y</td>
<td>- (4E+2) 3E-7 2E-12 5E-6 5E-5</td>
<td>-</td>
<td>-</td>
</tr>
<tr>
<td>72</td>
<td>Hafnium-183a</td>
<td>D, see 170y</td>
<td>1E+3 3E+0 1E-9 -</td>
<td>-</td>
<td>-</td>
</tr>
<tr>
<td></td>
<td></td>
<td>W, see 170y</td>
<td>- (7E+0) - 1E-11 -</td>
<td>-</td>
<td>-</td>
</tr>
<tr>
<td>72</td>
<td>Hafnium-184</td>
<td>D, see 170y</td>
<td>1E+4 5E+4 2E-5 8E-8 3E-4 3E-3</td>
<td>-</td>
<td>-</td>
</tr>
<tr>
<td></td>
<td></td>
<td>W, see 170y</td>
<td>- 6E+4 2E-5 8E-0 -</td>
<td>-</td>
<td>-</td>
</tr>
</tbody>
</table>

417
<table>
<thead>
<tr>
<th>Atomic No.</th>
<th>Radioisotope</th>
<th>Class</th>
<th>( \text{Col. 1 \ (\muCi)} )</th>
<th>( \text{Col. 2 \ (\muCi)} )</th>
<th>( \text{Col. 3 \ (\muCi)} )</th>
<th>( \text{Col. 1 \ (\muCi/l)} )</th>
<th>( \text{Col. 2 \ (\muCi/l)} )</th>
<th>Monthly Average Concentration (( \muCi/l) )</th>
</tr>
</thead>
<tbody>
<tr>
<td>73</td>
<td>Tantulum-177</td>
<td>W, all compounds except those given for Y</td>
<td>( 4 \times 10^4 )</td>
<td>( 1 \times 10^5 )</td>
<td>( 5 \times 10^4 )</td>
<td>( 2 \times 7 )</td>
<td>( 5 \times 4 )</td>
<td>( 5 \times 3 )</td>
</tr>
<tr>
<td>74</td>
<td>Tantulum-173</td>
<td>W, see 177</td>
<td>( 3 \times 10^3 )</td>
<td>( 2 \times 10^4 )</td>
<td>( 3 \times 10^4 )</td>
<td>( 3 \times 7 )</td>
<td>( 5 \times 4 )</td>
<td>( 4 \times 4 )</td>
</tr>
<tr>
<td>75</td>
<td>Tantulum-174</td>
<td>W, see 177</td>
<td>( 3 \times 10^2 )</td>
<td>( 3 \times 4 )</td>
<td>( 3 \times 5 )</td>
<td>( 2 \times 7 )</td>
<td>( 4 \times 4 )</td>
<td>( 4 \times 3 )</td>
</tr>
<tr>
<td>76</td>
<td>Tantulum-175</td>
<td>W, see 177</td>
<td>( 3 \times 10^2 )</td>
<td>( 3 \times 4 )</td>
<td>( 3 \times 5 )</td>
<td>( 2 \times 7 )</td>
<td>( 4 \times 4 )</td>
<td>( 4 \times 3 )</td>
</tr>
<tr>
<td>77</td>
<td>Tantulum-176</td>
<td>W, see 177</td>
<td>( 3 \times 10 ^ 2 )</td>
<td>( 3 \times 4 )</td>
<td>( 3 \times 5 )</td>
<td>( 2 \times 7 )</td>
<td>( 4 \times 4 )</td>
<td>( 4 \times 3 )</td>
</tr>
<tr>
<td>78</td>
<td>Tantulum-177</td>
<td>W, see 177</td>
<td>( 3 \times 10^2 )</td>
<td>( 3 \times 4 )</td>
<td>( 3 \times 5 )</td>
<td>( 2 \times 7 )</td>
<td>( 4 \times 4 )</td>
<td>( 4 \times 3 )</td>
</tr>
<tr>
<td>79</td>
<td>Tantulum-178</td>
<td>W, see 177</td>
<td>( 3 \times 10^2 )</td>
<td>( 3 \times 4 )</td>
<td>( 3 \times 5 )</td>
<td>( 2 \times 7 )</td>
<td>( 4 \times 4 )</td>
<td>( 4 \times 3 )</td>
</tr>
<tr>
<td>80</td>
<td>Tantulum-179</td>
<td>W, see 177</td>
<td>( 3 \times 10^2 )</td>
<td>( 3 \times 4 )</td>
<td>( 3 \times 5 )</td>
<td>( 2 \times 7 )</td>
<td>( 4 \times 4 )</td>
<td>( 4 \times 3 )</td>
</tr>
<tr>
<td>81</td>
<td>Tantulum-180</td>
<td>W, see 177</td>
<td>( 3 \times 10^2 )</td>
<td>( 3 \times 4 )</td>
<td>( 3 \times 5 )</td>
<td>( 2 \times 7 )</td>
<td>( 4 \times 4 )</td>
<td>( 4 \times 3 )</td>
</tr>
<tr>
<td>82</td>
<td>Tantulum-181</td>
<td>W, see 177</td>
<td>( 3 \times 10^2 )</td>
<td>( 3 \times 4 )</td>
<td>( 3 \times 5 )</td>
<td>( 2 \times 7 )</td>
<td>( 4 \times 4 )</td>
<td>( 4 \times 3 )</td>
</tr>
<tr>
<td>83</td>
<td>Tantulum-182</td>
<td>W, see 177</td>
<td>( 3 \times 10^2 )</td>
<td>( 3 \times 4 )</td>
<td>( 3 \times 5 )</td>
<td>( 2 \times 7 )</td>
<td>( 4 \times 4 )</td>
<td>( 4 \times 3 )</td>
</tr>
<tr>
<td>84</td>
<td>Tantulum-183</td>
<td>W, see 177</td>
<td>( 3 \times 10^2 )</td>
<td>( 3 \times 4 )</td>
<td>( 3 \times 5 )</td>
<td>( 2 \times 7 )</td>
<td>( 4 \times 4 )</td>
<td>( 4 \times 3 )</td>
</tr>
<tr>
<td>85</td>
<td>Tantulum-184</td>
<td>W, see 177</td>
<td>( 3 \times 10^2 )</td>
<td>( 3 \times 4 )</td>
<td>( 3 \times 5 )</td>
<td>( 2 \times 7 )</td>
<td>( 4 \times 4 )</td>
<td>( 4 \times 3 )</td>
</tr>
<tr>
<td>86</td>
<td>Tantulum-185</td>
<td>W, see 177</td>
<td>( 3 \times 10^2 )</td>
<td>( 3 \times 4 )</td>
<td>( 3 \times 5 )</td>
<td>( 2 \times 7 )</td>
<td>( 4 \times 4 )</td>
<td>( 4 \times 3 )</td>
</tr>
<tr>
<td>87</td>
<td>Tantulum-186</td>
<td>W, see 177</td>
<td>( 3 \times 10^2 )</td>
<td>( 3 \times 4 )</td>
<td>( 3 \times 5 )</td>
<td>( 2 \times 7 )</td>
<td>( 4 \times 4 )</td>
<td>( 4 \times 3 )</td>
</tr>
<tr>
<td>88</td>
<td>Tantulum-187</td>
<td>W, see 177</td>
<td>( 3 \times 10^2 )</td>
<td>( 3 \times 4 )</td>
<td>( 3 \times 5 )</td>
<td>( 2 \times 7 )</td>
<td>( 4 \times 4 )</td>
<td>( 4 \times 3 )</td>
</tr>
<tr>
<td>89</td>
<td>Tantulum-188</td>
<td>W, see 177</td>
<td>( 3 \times 10^2 )</td>
<td>( 3 \times 4 )</td>
<td>( 3 \times 5 )</td>
<td>( 2 \times 7 )</td>
<td>( 4 \times 4 )</td>
<td>( 4 \times 3 )</td>
</tr>
<tr>
<td>90</td>
<td>Tantulum-189</td>
<td>W, see 177</td>
<td>( 3 \times 10^2 )</td>
<td>( 3 \times 4 )</td>
<td>( 3 \times 5 )</td>
<td>( 2 \times 7 )</td>
<td>( 4 \times 4 )</td>
<td>( 4 \times 3 )</td>
</tr>
<tr>
<td>91</td>
<td>Tantulum-190</td>
<td>W, see 177</td>
<td>( 3 \times 10^2 )</td>
<td>( 3 \times 4 )</td>
<td>( 3 \times 5 )</td>
<td>( 2 \times 7 )</td>
<td>( 4 \times 4 )</td>
<td>( 4 \times 3 )</td>
</tr>
<tr>
<td>92</td>
<td>Tantulum-191</td>
<td>W, see 177</td>
<td>( 3 \times 10^2 )</td>
<td>( 3 \times 4 )</td>
<td>( 3 \times 5 )</td>
<td>( 2 \times 7 )</td>
<td>( 4 \times 4 )</td>
<td>( 4 \times 3 )</td>
</tr>
<tr>
<td>93</td>
<td>Tantulum-192</td>
<td>W, see 177</td>
<td>( 3 \times 10^2 )</td>
<td>( 3 \times 4 )</td>
<td>( 3 \times 5 )</td>
<td>( 2 \times 7 )</td>
<td>( 4 \times 4 )</td>
<td>( 4 \times 3 )</td>
</tr>
<tr>
<td>94</td>
<td>Tantulum-193</td>
<td>W, see 177</td>
<td>( 3 \times 10^2 )</td>
<td>( 3 \times 4 )</td>
<td>( 3 \times 5 )</td>
<td>( 2 \times 7 )</td>
<td>( 4 \times 4 )</td>
<td>( 4 \times 3 )</td>
</tr>
<tr>
<td>95</td>
<td>Tantulum-194</td>
<td>W, see 177</td>
<td>( 3 \times 10^2 )</td>
<td>( 3 \times 4 )</td>
<td>( 3 \times 5 )</td>
<td>( 2 \times 7 )</td>
<td>( 4 \times 4 )</td>
<td>( 4 \times 3 )</td>
</tr>
<tr>
<td>96</td>
<td>Tantulum-195</td>
<td>W, see 177</td>
<td>( 3 \times 10^2 )</td>
<td>( 3 \times 4 )</td>
<td>( 3 \times 5 )</td>
<td>( 2 \times 7 )</td>
<td>( 4 \times 4 )</td>
<td>( 4 \times 3 )</td>
</tr>
<tr>
<td>97</td>
<td>Tantulum-196</td>
<td>W, see 177</td>
<td>( 3 \times 10^2 )</td>
<td>( 3 \times 4 )</td>
<td>( 3 \times 5 )</td>
<td>( 2 \times 7 )</td>
<td>( 4 \times 4 )</td>
<td>( 4 \times 3 )</td>
</tr>
<tr>
<td>98</td>
<td>Tantulum-197</td>
<td>W, see 177</td>
<td>( 3 \times 10^2 )</td>
<td>( 3 \times 4 )</td>
<td>( 3 \times 5 )</td>
<td>( 2 \times 7 )</td>
<td>( 4 \times 4 )</td>
<td>( 4 \times 3 )</td>
</tr>
<tr>
<td>99</td>
<td>Tantulum-198</td>
<td>W, see 177</td>
<td>( 3 \times 10^2 )</td>
<td>( 3 \times 4 )</td>
<td>( 3 \times 5 )</td>
<td>( 2 \times 7 )</td>
<td>( 4 \times 4 )</td>
<td>( 4 \times 3 )</td>
</tr>
<tr>
<td>100</td>
<td>Tantulum-199</td>
<td>W, see 177</td>
<td>( 3 \times 10^2 )</td>
<td>( 3 \times 4 )</td>
<td>( 3 \times 5 )</td>
<td>( 2 \times 7 )</td>
<td>( 4 \times 4 )</td>
<td>( 4 \times 3 )</td>
</tr>
<tr>
<td>Atomic No.</td>
<td>Radioisotope</td>
<td>Class</td>
<td>Table 1: Occupational Values</td>
<td>Table 2: Emission Concentrations</td>
<td>Table 3: Relates to Severs</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>-----------</td>
<td>--------------</td>
<td>-------</td>
<td>-------------------------------</td>
<td>---------------------------------</td>
<td>---------------------------</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td>Cont. 1</td>
<td>Cont. 2</td>
<td>Cont. 3</td>
<td>Cont. 1</td>
<td>Cont. 2</td>
<td>Cont. 3</td>
</tr>
<tr>
<td>74</td>
<td>Tungsten-178</td>
<td>D, all compounds</td>
<td>5E×3</td>
<td>2E×4</td>
<td>8E×6</td>
<td>3E×8</td>
<td>7E×5</td>
<td>7E×4</td>
</tr>
<tr>
<td>74</td>
<td>Tungsten-179</td>
<td>D, all compounds</td>
<td>5E×4</td>
<td>2E×6</td>
<td>7E×4</td>
<td>3E×6</td>
<td>7E×3</td>
<td>7E×2</td>
</tr>
<tr>
<td>74</td>
<td>Tungsten-181</td>
<td>D, all compounds</td>
<td>3E×4</td>
<td>1E×5</td>
<td>5E×8</td>
<td>2E×4</td>
<td>2E×3</td>
<td>2E×2</td>
</tr>
<tr>
<td>74</td>
<td>Tungsten-185</td>
<td>D, all compounds</td>
<td>7E×3</td>
<td>3E×5</td>
<td>3E×6</td>
<td>9E×4</td>
<td>-</td>
<td>-</td>
</tr>
<tr>
<td>74</td>
<td>Tungsten-188</td>
<td>D, all compounds</td>
<td>3E×5</td>
<td>9E×3</td>
<td>9E×6</td>
<td>2E×3</td>
<td>2E×2</td>
<td>2E×1</td>
</tr>
<tr>
<td>75</td>
<td>Rhenium-179</td>
<td>D, all compounds</td>
<td>9E×4</td>
<td>3E×5</td>
<td>3E×4</td>
<td>4E×7</td>
<td>-</td>
<td>-</td>
</tr>
<tr>
<td>75</td>
<td>Rhenium-179</td>
<td>D, all compounds</td>
<td>5E×4</td>
<td>2E×5</td>
<td>2E×4</td>
<td>4E×7</td>
<td>-</td>
<td>-</td>
</tr>
<tr>
<td>75</td>
<td>Rhenium-181</td>
<td>D, see 177As</td>
<td>5E×3</td>
<td>3E×5</td>
<td>2E×5</td>
<td>4E×7</td>
<td>-</td>
<td>-</td>
</tr>
<tr>
<td>75</td>
<td>Rhenium-182</td>
<td>D, see 177As</td>
<td>5E×3</td>
<td>2E×5</td>
<td>2E×4</td>
<td>2E×7</td>
<td>-</td>
<td>-</td>
</tr>
<tr>
<td>75</td>
<td>Rhenium-184</td>
<td>D, see 177As</td>
<td>5E×3</td>
<td>2E×5</td>
<td>2E×4</td>
<td>2E×7</td>
<td>-</td>
<td>-</td>
</tr>
<tr>
<td>75</td>
<td>Rhenium-185</td>
<td>D, see 177As</td>
<td>5E×3</td>
<td>2E×5</td>
<td>2E×4</td>
<td>2E×7</td>
<td>-</td>
<td>-</td>
</tr>
<tr>
<td>75</td>
<td>Rhenium-186</td>
<td>D, see 177As</td>
<td>5E×3</td>
<td>2E×5</td>
<td>2E×4</td>
<td>2E×7</td>
<td>-</td>
<td>-</td>
</tr>
<tr>
<td>75</td>
<td>Rhenium-187</td>
<td>D, see 177As</td>
<td>5E×3</td>
<td>2E×5</td>
<td>2E×4</td>
<td>2E×7</td>
<td>-</td>
<td>-</td>
</tr>
<tr>
<td>75</td>
<td>Rhenium-188</td>
<td>D, see 177As</td>
<td>5E×3</td>
<td>2E×5</td>
<td>2E×4</td>
<td>2E×7</td>
<td>-</td>
<td>-</td>
</tr>
<tr>
<td>Atomic No.</td>
<td>Radioisotope</td>
<td>Class</td>
<td>Col. 1 (Oral Ingestion)</td>
<td>Col. 2 (Inhalation)</td>
<td>Col. 3 (Air)</td>
<td>Col. 1 (Water)</td>
<td>Col. 2 (Monthly Average)</td>
<td></td>
</tr>
<tr>
<td>-----------</td>
<td>--------------</td>
<td>-------</td>
<td>------------------------</td>
<td>---------------------</td>
<td>-------------</td>
<td>---------------</td>
<td>------------------------</td>
<td></td>
</tr>
<tr>
<td>75</td>
<td>Americium-241</td>
<td>D, see</td>
<td>3.5×10^-3</td>
<td>2.5×10^-4</td>
<td>1×10^-5</td>
<td>2×10^-5</td>
<td>4×10^-5</td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td>W, see</td>
<td>3×10^-3</td>
<td>2×10^-4</td>
<td>1×10^-5</td>
<td>2×10^-5</td>
<td>4×10^-5</td>
<td></td>
</tr>
<tr>
<td>76</td>
<td>Cesium-134</td>
<td>D, all compounds</td>
<td>1×10^-5</td>
<td>2×10^-4</td>
<td>5×10^-5</td>
<td>1×10^-3</td>
<td>1×10^-2</td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td>W, halides and nitrates</td>
<td>5×10^-5</td>
<td>2×10^-4</td>
<td>7×10^-5</td>
<td>-</td>
<td>-</td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td>Y, oxides and hydroxides</td>
<td>5×10^-5</td>
<td>2×10^-4</td>
<td>6×10^-5</td>
<td>-</td>
<td>-</td>
<td></td>
</tr>
<tr>
<td>76</td>
<td>Cesium-137</td>
<td>D, see</td>
<td>5×10^-5</td>
<td>2×10^-4</td>
<td>8×10^-5</td>
<td>3×10^-5</td>
<td>3×10^-4</td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td>W, see</td>
<td>5×10^-5</td>
<td>2×10^-4</td>
<td>6×10^-5</td>
<td>-</td>
<td>-</td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td>Y, see</td>
<td>5×10^-5</td>
<td>2×10^-4</td>
<td>6×10^-5</td>
<td>-</td>
<td>-</td>
<td></td>
</tr>
<tr>
<td>76</td>
<td>Cesium-138</td>
<td>D, see</td>
<td>1×10^-4</td>
<td>2×10^-5</td>
<td>4×10^-6</td>
<td>2×10^-4</td>
<td>2×10^-3</td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td>W, see</td>
<td>1×10^-4</td>
<td>2×10^-5</td>
<td>4×10^-6</td>
<td>-</td>
<td>-</td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td>Y, see</td>
<td>1×10^-4</td>
<td>2×10^-5</td>
<td>4×10^-6</td>
<td>-</td>
<td>-</td>
<td></td>
</tr>
<tr>
<td>76</td>
<td>Cesium-139</td>
<td>D, see</td>
<td>2×10^-3</td>
<td>2×10^-4</td>
<td>8×10^-5</td>
<td>3×10^-5</td>
<td>3×10^-4</td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td>W, see</td>
<td>2×10^-3</td>
<td>2×10^-4</td>
<td>8×10^-5</td>
<td>-</td>
<td>-</td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td>Y, see</td>
<td>2×10^-3</td>
<td>2×10^-4</td>
<td>8×10^-5</td>
<td>-</td>
<td>-</td>
<td></td>
</tr>
<tr>
<td>76</td>
<td>Cesium-140</td>
<td>D, see</td>
<td>1×10^-5</td>
<td>1×10^-4</td>
<td>3×10^-5</td>
<td>1×10^-3</td>
<td>1×10^-2</td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td>W, see</td>
<td>5×10^-5</td>
<td>2×10^-4</td>
<td>8×10^-5</td>
<td>-</td>
<td>-</td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td>Y, see</td>
<td>5×10^-5</td>
<td>2×10^-4</td>
<td>6×10^-5</td>
<td>-</td>
<td>-</td>
<td></td>
</tr>
<tr>
<td>76</td>
<td>Cesium-144</td>
<td>D, see</td>
<td>2×10^-3</td>
<td>2×10^-4</td>
<td>8×10^-5</td>
<td>3×10^-5</td>
<td>3×10^-4</td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td>W, see</td>
<td>2×10^-3</td>
<td>2×10^-4</td>
<td>8×10^-5</td>
<td>-</td>
<td>-</td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td>Y, see</td>
<td>2×10^-3</td>
<td>2×10^-4</td>
<td>8×10^-5</td>
<td>-</td>
<td>-</td>
<td></td>
</tr>
<tr>
<td>77</td>
<td>Iridium-192</td>
<td>D, all compounds</td>
<td>1×10^-5</td>
<td>2×10^-5</td>
<td>5×10^-6</td>
<td>2×10^-4</td>
<td>2×10^-3</td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td>W, halides, nitrates, and metallic iridium</td>
<td>2×10^-5</td>
<td>6×10^-6</td>
<td>2×10^-5</td>
<td>-</td>
<td>-</td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td>Y, oxides and hydroxides</td>
<td>2×10^-5</td>
<td>6×10^-6</td>
<td>2×10^-5</td>
<td>-</td>
<td>-</td>
<td></td>
</tr>
<tr>
<td>77</td>
<td>Iridium-194</td>
<td>D, see</td>
<td>1×10^-5</td>
<td>2×10^-5</td>
<td>5×10^-6</td>
<td>2×10^-4</td>
<td>2×10^-3</td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td>W, see</td>
<td>1×10^-5</td>
<td>2×10^-5</td>
<td>5×10^-6</td>
<td>-</td>
<td>-</td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td>Y, see</td>
<td>1×10^-5</td>
<td>2×10^-5</td>
<td>5×10^-6</td>
<td>-</td>
<td>-</td>
<td></td>
</tr>
<tr>
<td>Atomic Number</td>
<td>Radioisotope</td>
<td>Class</td>
<td>Col. 1 Occupational Values</td>
<td>Col. 2 Ingestion</td>
<td>Col. 3 Inhalation</td>
<td>Col. 1 Col. 2</td>
<td>Col. 3 Monthly Average Concentration (μCi/ml)</td>
<td></td>
</tr>
<tr>
<td>---------------</td>
<td>-------------</td>
<td>-------</td>
<td>---------------------------</td>
<td>----------------</td>
<td>----------------</td>
<td>-------------</td>
<td>----------------------------------</td>
<td></td>
</tr>
<tr>
<td>77</td>
<td>Iridium-185</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td></td>
<td>7E-3</td>
<td>2E-4</td>
<td>5E-5</td>
<td>7E-4</td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td></td>
<td>1E-4</td>
<td>4E-6</td>
<td>1E-8</td>
<td></td>
<td></td>
</tr>
<tr>
<td>77</td>
<td>Iridium-186</td>
<td></td>
<td></td>
<td>2E-3</td>
<td>1E-3</td>
<td>4E-4</td>
<td>3E-5</td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td></td>
<td>8E-5</td>
<td>9E-9</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>77</td>
<td>Iridium-187</td>
<td></td>
<td></td>
<td>2E-4</td>
<td>1E-5</td>
<td>4E-0</td>
<td>1E-3</td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td></td>
<td>8E-9</td>
<td>7E-5</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>77</td>
<td>Iridium-188</td>
<td></td>
<td></td>
<td>3E-3</td>
<td>1E-6</td>
<td>6E-9</td>
<td>2E-4</td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td></td>
<td>1E-6</td>
<td>6E-9</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>77</td>
<td>Iridium-189</td>
<td></td>
<td></td>
<td>9E-3</td>
<td>2E-6</td>
<td>7E-9</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

**Table 1:**

- **Col. 1 Oral Ingestion:** Value in μCi
- **Col. 2 Inhalation:** Value in μCi
- **Col. 3 Monthly Average Concentration:** Value in μCi/ml

**Table 2:**

- **Col. 1 Col. 2:** Value in μCi/ml
<table>
<thead>
<tr>
<th>Atomic No.</th>
<th>Radionuclide</th>
<th>Class</th>
<th>Table 1 Occupational Values</th>
<th>Table 2 Efficient Concentrations</th>
<th>Table 3 Releases to Severs</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td></td>
<td></td>
<td>Oral Ingestion (mcI)</td>
<td>Inhalation (mcI)</td>
<td>Air (mcI/m³)</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td>ALL (mcI)</td>
<td>NAC (mcI/m³)</td>
<td>(mcI/m³)</td>
</tr>
<tr>
<td>78</td>
<td>Platinum-195m</td>
<td>D, all compounds</td>
<td>3E-3 (L1 well)</td>
<td>6E-3</td>
<td>3E-6</td>
</tr>
<tr>
<td>78</td>
<td>Platinum-193</td>
<td>D, all compounds</td>
<td>4E-4 (L1 well)</td>
<td>1E-4</td>
<td>3E-5</td>
</tr>
<tr>
<td>78</td>
<td>Platinum-195m</td>
<td>D, all compounds</td>
<td>2E-3 (L1 well)</td>
<td>4E-3</td>
<td>2E-6</td>
</tr>
<tr>
<td>78</td>
<td>Platinum-197m</td>
<td>D, all compounds</td>
<td>1E-4 (L1 well)</td>
<td>2E-4</td>
<td>8E-6</td>
</tr>
<tr>
<td>78</td>
<td>Platinum-197</td>
<td>D, all compounds</td>
<td>3E-3 (L1 well)</td>
<td>1E-3</td>
<td>6E-6</td>
</tr>
<tr>
<td>78</td>
<td>Platinum-199</td>
<td>D, all compounds</td>
<td>2E-3 (L1 well)</td>
<td>5E-3</td>
<td>1E-6</td>
</tr>
<tr>
<td>79</td>
<td>Gold-193</td>
<td>D, all compounds except those given for W and Y</td>
<td>9E-3</td>
<td>3E-4</td>
<td>1E-5</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td>W, halides and nitrates -</td>
<td>2E-4</td>
<td>9E-6</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td>Y, oxides and hydroxides -</td>
<td>2E-4</td>
<td>8E-6</td>
</tr>
<tr>
<td>79</td>
<td>Gold-194</td>
<td>D, see 191Au</td>
<td>3E-3</td>
<td>8E-3</td>
<td>3E-6</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td>W, see 191Au -</td>
<td>5E-3</td>
<td>2E-6</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td>Y, see 191Au -</td>
<td>5E-3</td>
<td>2E-6</td>
</tr>
<tr>
<td>79</td>
<td>Gold-195</td>
<td>D, see 191Au</td>
<td>5E-3</td>
<td>1E-4</td>
<td>5E-6</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td>W, see 191Au -</td>
<td>1E-3</td>
<td>5E-7</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td>Y, see 191Au -</td>
<td>1E-3</td>
<td>5E-7</td>
</tr>
<tr>
<td>79</td>
<td>Gold-196</td>
<td>D, see 193Au</td>
<td>1E-3</td>
<td>5E-3</td>
<td>1E-6</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td>W, see 193Au -</td>
<td>2E-3</td>
<td>5E-7</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td>Y, see 193Au -</td>
<td>2E-3</td>
<td>5E-7</td>
</tr>
<tr>
<td>79</td>
<td>Gold-199</td>
<td>D, see 193Au</td>
<td>1E-3</td>
<td>5E-3</td>
<td>1E-6</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td>W, see 193Au -</td>
<td>4E-3</td>
<td>2E-6</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td>Y, see 193Au -</td>
<td>4E-3</td>
<td>2E-6</td>
</tr>
<tr>
<td>79</td>
<td>Gold-200m</td>
<td>D, see 193Au</td>
<td>1E-3</td>
<td>4E-3</td>
<td>1E-6</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td>W, see 193Au -</td>
<td>1E-3</td>
<td>5E-7</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td>Y, see 193Au -</td>
<td>2E-4</td>
<td>1E-6</td>
</tr>
<tr>
<td>79</td>
<td>Gold-200</td>
<td>D, see 193Au</td>
<td>1E-4</td>
<td>6E-4</td>
<td>3E-5</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td>W, see 193Au -</td>
<td>2E-4</td>
<td>3E-5</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td>Y, see 193Au -</td>
<td>2E-4</td>
<td>3E-5</td>
</tr>
<tr>
<td>79</td>
<td>Gold-201</td>
<td>D, see 193Au</td>
<td>7E-4</td>
<td>2E-5</td>
<td>9E-5</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td>W, see 193Au -</td>
<td>9E-4</td>
<td>1E-4</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td>Y, see 193Au -</td>
<td>2E-5</td>
<td>1E-4</td>
</tr>
</tbody>
</table>

422
<table>
<thead>
<tr>
<th>Atomic Radius (um)</th>
<th>Class</th>
<th>Col. 2</th>
<th>Col. 3</th>
<th>Col. 4</th>
<th>Col. 5</th>
<th>Col. 6</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td></td>
<td>Oral</td>
<td>Inhalation</td>
<td>Air</td>
<td>Water</td>
<td>Average</td>
</tr>
<tr>
<td></td>
<td></td>
<td>Al</td>
<td>GEL</td>
<td>(µCi/15 L)</td>
<td>(µCi/L)</td>
<td>(µCi/mL)</td>
</tr>
<tr>
<td>80</td>
<td>Mercury-193</td>
<td>Vapor</td>
<td>-</td>
<td>8E+3</td>
<td>4E-6</td>
<td>1E-0</td>
</tr>
<tr>
<td></td>
<td></td>
<td>Organic D</td>
<td>4E+3</td>
<td>1E+4</td>
<td>5E-6</td>
<td>2E-0</td>
</tr>
<tr>
<td></td>
<td></td>
<td>D. sulfates</td>
<td>3E+3</td>
<td>9E+3</td>
<td>4E-6</td>
<td>1E-0</td>
</tr>
<tr>
<td></td>
<td></td>
<td>W. oxides, hydroxides, halides, nitrates, and sulfides</td>
<td>-</td>
<td>8E+3</td>
<td>3E-6</td>
<td>1E-0</td>
</tr>
<tr>
<td>80</td>
<td>Mercury-193</td>
<td>Vapor</td>
<td>-</td>
<td>3E+4</td>
<td>4E-5</td>
<td>6E-8</td>
</tr>
<tr>
<td></td>
<td></td>
<td>Organic D</td>
<td>2E+4</td>
<td>4E-4</td>
<td>2E-5</td>
<td>6E-6</td>
</tr>
<tr>
<td></td>
<td></td>
<td>W. see 193m</td>
<td>2E+4</td>
<td>4E-4</td>
<td>2E-5</td>
<td>6E-8</td>
</tr>
<tr>
<td>80</td>
<td>Mercury-194</td>
<td>Vapor</td>
<td>-</td>
<td>3E+1</td>
<td>3E-8</td>
<td>4E-11</td>
</tr>
<tr>
<td></td>
<td></td>
<td>Organic D</td>
<td>2E+1</td>
<td>3E+1</td>
<td>3E-8</td>
<td>4E+11</td>
</tr>
<tr>
<td></td>
<td></td>
<td>W. see 194m</td>
<td>8E+2</td>
<td>4E+1</td>
<td>2E-8</td>
<td>6E-11</td>
</tr>
<tr>
<td>80</td>
<td>Mercury-195</td>
<td>Vapor</td>
<td>-</td>
<td>4E+3</td>
<td>2E-6</td>
<td>6E-9</td>
</tr>
<tr>
<td></td>
<td></td>
<td>Organic D</td>
<td>3E+3</td>
<td>4E+3</td>
<td>2E-8</td>
<td>6E-9</td>
</tr>
<tr>
<td></td>
<td></td>
<td>W. see 195m</td>
<td>3E+3</td>
<td>4E+3</td>
<td>2E-8</td>
<td>6E-9</td>
</tr>
<tr>
<td>80</td>
<td>Mercury-195</td>
<td>Vapor</td>
<td>-</td>
<td>2E+4</td>
<td>4E-5</td>
<td>4E-8</td>
</tr>
<tr>
<td></td>
<td></td>
<td>Organic D</td>
<td>2E+4</td>
<td>4E-4</td>
<td>2E-5</td>
<td>6E-8</td>
</tr>
<tr>
<td></td>
<td></td>
<td>W. see 195m</td>
<td>3E+4</td>
<td>4E-4</td>
<td>2E-5</td>
<td>6E-8</td>
</tr>
<tr>
<td>80</td>
<td>Mercury-197</td>
<td>Vapor</td>
<td>-</td>
<td>3E+3</td>
<td>4E-6</td>
<td>6E-9</td>
</tr>
<tr>
<td></td>
<td></td>
<td>Organic D</td>
<td>2E+3</td>
<td>3E+3</td>
<td>4E-6</td>
<td>6E-9</td>
</tr>
<tr>
<td></td>
<td></td>
<td>W. see 197m</td>
<td>3E+3</td>
<td>7E+3</td>
<td>7E-6</td>
<td>1E-0</td>
</tr>
<tr>
<td>80</td>
<td>Mercury-197</td>
<td>Vapor</td>
<td>-</td>
<td>8E+3</td>
<td>4E-6</td>
<td>1E-0</td>
</tr>
<tr>
<td></td>
<td></td>
<td>Organic D</td>
<td>7E+3</td>
<td>8E+3</td>
<td>4E-6</td>
<td>1E-0</td>
</tr>
<tr>
<td></td>
<td></td>
<td>W. see 197m</td>
<td>3E+4</td>
<td>1E+4</td>
<td>5E-6</td>
<td>2E-0</td>
</tr>
<tr>
<td>80</td>
<td>Mercury-199</td>
<td>Vapor</td>
<td>-</td>
<td>8E+4</td>
<td>3E-5</td>
<td>3E-7</td>
</tr>
<tr>
<td></td>
<td></td>
<td>Organic D</td>
<td>6E+4</td>
<td>2E+5</td>
<td>7E-5</td>
<td>2E-7</td>
</tr>
<tr>
<td></td>
<td></td>
<td>W. see 199m</td>
<td>3E+4</td>
<td>3E+4</td>
<td>7E-5</td>
<td>2E-7</td>
</tr>
<tr>
<td>80</td>
<td>Mercury-203</td>
<td>Vapor</td>
<td>-</td>
<td>8E+2</td>
<td>4E-7</td>
<td>1E-9</td>
</tr>
<tr>
<td></td>
<td></td>
<td>Organic D</td>
<td>5E+2</td>
<td>8E+2</td>
<td>3E-7</td>
<td>1E-9</td>
</tr>
<tr>
<td></td>
<td></td>
<td>W. see 203m</td>
<td>4E+3</td>
<td>3E+3</td>
<td>5E-7</td>
<td>2E-9</td>
</tr>
<tr>
<td>81</td>
<td>Thallium-204</td>
<td>D. all compounds</td>
<td>-</td>
<td>5E+4</td>
<td>2E+5</td>
<td>6E-5</td>
</tr>
</tbody>
</table>

**Table 1: Occupational Values**

**Table 2: Effluent Concentrations**

**Table 3: Releases to Severs**

**Average Concentration (µCi/15 L)**

423
<table>
<thead>
<tr>
<th>Atomic No.</th>
<th>Radionuclide</th>
<th>Class</th>
<th>Table 1 Occupational Values</th>
<th>Table 2 Effluent Concentrations</th>
<th>Table 3 Releases to Sewers</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td></td>
<td></td>
<td>Oral Ingestion (μCi) Air Inhalation (μCi/L)</td>
<td>Oral Ingestion (μCi) Air Inhalation (μCi/L)</td>
<td>Air (μCi/L) Water (μCi/L)</td>
</tr>
<tr>
<td>01</td>
<td>Thallium-194</td>
<td>D, all compounds</td>
<td>9E&lt;5</td>
<td>6E&lt;5</td>
<td>2E&lt;4</td>
</tr>
<tr>
<td>01</td>
<td>Thallium-195</td>
<td>D, all compounds</td>
<td>6E&lt;4</td>
<td>1E&lt;5</td>
<td>5E&lt;5</td>
</tr>
<tr>
<td>01</td>
<td>Thallium-197</td>
<td>D, all compounds</td>
<td>7E&lt;4</td>
<td>1E&lt;5</td>
<td>5E&lt;5</td>
</tr>
<tr>
<td>01</td>
<td>Thallium-198</td>
<td>D, all compounds</td>
<td>6E&lt;4</td>
<td>5E&lt;5</td>
<td>2E&lt;5</td>
</tr>
<tr>
<td>01</td>
<td>Thallium-199</td>
<td>D, all compounds</td>
<td>6E&lt;4</td>
<td>5E&lt;5</td>
<td>2E&lt;5</td>
</tr>
<tr>
<td>01</td>
<td>Thallium-200</td>
<td>D, all compounds</td>
<td>8E&lt;3</td>
<td>1E&lt;4</td>
<td>5E&lt;6</td>
</tr>
<tr>
<td>01</td>
<td>Thallium-201</td>
<td>D, all compounds</td>
<td>2E&lt;4</td>
<td>2E&lt;4</td>
<td>9E&lt;4</td>
</tr>
<tr>
<td>01</td>
<td>Thallium-202</td>
<td>D, all compounds</td>
<td>4E&lt;4</td>
<td>5E&lt;3</td>
<td>2E&lt;6</td>
</tr>
<tr>
<td>01</td>
<td>Thallium-204</td>
<td>D, all compounds</td>
<td>2E&lt;3</td>
<td>2E&lt;3</td>
<td>9E&lt;7</td>
</tr>
<tr>
<td>02</td>
<td>Lead-198</td>
<td>D, all compounds</td>
<td>6E&lt;4</td>
<td>2E&lt;5</td>
<td>8E&lt;5</td>
</tr>
<tr>
<td>02</td>
<td>Lead-199</td>
<td>D, all compounds</td>
<td>4E&lt;4</td>
<td>6E&lt;4</td>
<td>3E&lt;5</td>
</tr>
<tr>
<td>02</td>
<td>Lead-200</td>
<td>D, all compounds</td>
<td>2E&lt;4</td>
<td>7E&lt;4</td>
<td>3E&lt;5</td>
</tr>
<tr>
<td>02</td>
<td>Lead-201</td>
<td>D, all compounds</td>
<td>3E&lt;3</td>
<td>6E&lt;3</td>
<td>3E&lt;6</td>
</tr>
<tr>
<td>02</td>
<td>Lead-202</td>
<td>D, all compounds</td>
<td>7E&lt;3</td>
<td>2E&lt;4</td>
<td>8E&lt;6</td>
</tr>
<tr>
<td>02</td>
<td>Lead-204</td>
<td>D, all compounds</td>
<td>4E&lt;4</td>
<td>3E&lt;4</td>
<td>1E&lt;5</td>
</tr>
<tr>
<td>02</td>
<td>Lead-205</td>
<td>D, all compounds</td>
<td>5E&lt;4</td>
<td>5E&lt;4</td>
<td>2E&lt;5</td>
</tr>
<tr>
<td>02</td>
<td>Lead-207</td>
<td>D, all compounds</td>
<td>2E&lt;4</td>
<td>6E&lt;4</td>
<td>2E&lt;5</td>
</tr>
<tr>
<td>02</td>
<td>Lead-210</td>
<td>D, all compounds</td>
<td>6E&lt;4</td>
<td>1E&lt;2</td>
<td>2E&lt;10</td>
</tr>
<tr>
<td>02</td>
<td>Lead-211</td>
<td>D, all compounds</td>
<td>5E&lt;4</td>
<td>6E&lt;4</td>
<td>2E&lt;7</td>
</tr>
<tr>
<td>02</td>
<td>Lead-212</td>
<td>D, all compounds</td>
<td>3E&lt;4</td>
<td>3E&lt;4</td>
<td>1E&lt;8</td>
</tr>
<tr>
<td>02</td>
<td>Lead-214</td>
<td>D, all compounds</td>
<td>9E&lt;3</td>
<td>8E&lt;2</td>
<td>3E&lt;7</td>
</tr>
<tr>
<td>03</td>
<td>Bismuth-209</td>
<td>D, nitrates</td>
<td>3E&lt;4</td>
<td>4E&lt;6</td>
<td>4E&lt;5</td>
</tr>
<tr>
<td>03</td>
<td>Bismuth-209</td>
<td>D, all other compounds</td>
<td>3E&lt;4</td>
<td>4E&lt;6</td>
<td>4E&lt;5</td>
</tr>
<tr>
<td>03</td>
<td>Bismuth-209</td>
<td>D, see 209B1</td>
<td>1E&lt;4</td>
<td>3E&lt;4</td>
<td>1E&lt;5</td>
</tr>
<tr>
<td>03</td>
<td>Bismuth-209</td>
<td>D, see 209B1</td>
<td>1E&lt;4</td>
<td>4E&lt;6</td>
<td>2E&lt;5</td>
</tr>
<tr>
<td>03</td>
<td>Bismuth-209</td>
<td>D, see 209B1</td>
<td>1E&lt;4</td>
<td>4E&lt;6</td>
<td>2E&lt;5</td>
</tr>
<tr>
<td>Atomic No.</td>
<td>Radioisotope</td>
<td>Class</td>
<td>Table 1: Occupational Values</td>
<td>Table 2: Effluent Concentrations</td>
<td>Table 3: Releases to Sewers</td>
</tr>
<tr>
<td>-----------</td>
<td>--------------</td>
<td>-------</td>
<td>------------------------------</td>
<td>-------------------------------</td>
<td>-----------------------------</td>
</tr>
<tr>
<td>83</td>
<td>Bismuth-203</td>
<td>D, see</td>
<td>Oral</td>
<td>Inhalation</td>
<td>Air</td>
</tr>
<tr>
<td></td>
<td></td>
<td>209Bi</td>
<td>(µCi)</td>
<td>(µCi/m³)</td>
<td>(µCi/m³)</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td>2E+3</td>
<td>7E+3</td>
<td>3E-6</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td>2E-3</td>
<td>3E-3</td>
<td>1E-6</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td>2E+2</td>
<td>3E+2</td>
<td>4E-7</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td>3E+2</td>
<td>2E+2</td>
<td>3E-7</td>
</tr>
<tr>
<td>83</td>
<td>Bismuth-206</td>
<td>D, see</td>
<td>Oral</td>
<td>Inhalation</td>
<td>Air</td>
</tr>
<tr>
<td></td>
<td></td>
<td>209Bi</td>
<td>(µCi)</td>
<td>(µCi/m³)</td>
<td>(µCi/m³)</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td>2E+3</td>
<td>7E+3</td>
<td>4E-6</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td>2E-3</td>
<td>3E-3</td>
<td>2E-6</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td>3E+2</td>
<td>2E+2</td>
<td>3E-7</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td>3E+2</td>
<td>2E+2</td>
<td>3E-7</td>
</tr>
<tr>
<td>83</td>
<td>Bismuth-210</td>
<td>D, see</td>
<td>Oral</td>
<td>Inhalation</td>
<td>Air</td>
</tr>
<tr>
<td></td>
<td></td>
<td>209Bi</td>
<td>(µCi)</td>
<td>(µCi/m³)</td>
<td>(µCi/m³)</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td>2E+2</td>
<td>2E+2</td>
<td>1E-7</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td>2E+2</td>
<td>2E+2</td>
<td>1E-7</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td>2E+2</td>
<td>2E+2</td>
<td>1E-7</td>
</tr>
<tr>
<td>84</td>
<td>Polonium-203</td>
<td>D, see</td>
<td>Oral</td>
<td>Inhalation</td>
<td>Air</td>
</tr>
<tr>
<td></td>
<td></td>
<td>all compounds except W</td>
<td>(µCi)</td>
<td>(µCi/m³)</td>
<td>(µCi/m³)</td>
</tr>
<tr>
<td></td>
<td></td>
<td>W, oxides, hydroxides, and nitrates</td>
<td></td>
<td>9E+4</td>
<td>4E-5</td>
</tr>
<tr>
<td>84</td>
<td>Polonium-203</td>
<td>D, see</td>
<td>Oral</td>
<td>Inhalation</td>
<td>Air</td>
</tr>
<tr>
<td></td>
<td></td>
<td>209Po</td>
<td>(µCi)</td>
<td>(µCi/m³)</td>
<td>(µCi/m³)</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td>2E+4</td>
<td>4E-4</td>
<td>2E-5</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td>2E+4</td>
<td>4E-4</td>
<td>2E-5</td>
</tr>
<tr>
<td>84</td>
<td>Polonium-207</td>
<td>D, see</td>
<td>Oral</td>
<td>Inhalation</td>
<td>Air</td>
</tr>
<tr>
<td></td>
<td></td>
<td>210Po</td>
<td>(µCi)</td>
<td>(µCi/m³)</td>
<td>(µCi/m³)</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td>3E+4</td>
<td>3E+4</td>
<td>3E-5</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td>3E+4</td>
<td>3E+4</td>
<td>3E-5</td>
</tr>
<tr>
<td>84</td>
<td>Polonium-210</td>
<td>D, see</td>
<td>Oral</td>
<td>Inhalation</td>
<td>Air</td>
</tr>
<tr>
<td></td>
<td></td>
<td>210Po</td>
<td>(µCi)</td>
<td>(µCi/m³)</td>
<td>(µCi/m³)</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td>3E+1</td>
<td>6E-1</td>
<td>3E-10</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td>3E+1</td>
<td>6E-1</td>
<td>3E-10</td>
</tr>
<tr>
<td>85</td>
<td>Actinide-235</td>
<td>D, halides</td>
<td>Oral</td>
<td>Inhalation</td>
<td>Air</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td>3E+3</td>
<td>3E+3</td>
<td>3E-6</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td>3E+3</td>
<td>3E+3</td>
<td>3E-6</td>
</tr>
<tr>
<td>85</td>
<td>Actinide-233</td>
<td>D, halides</td>
<td>Oral</td>
<td>Inhalation</td>
<td>Air</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td>2E+2</td>
<td>5E+2</td>
<td>2E-6</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td>2E+2</td>
<td>5E+2</td>
<td>2E-6</td>
</tr>
<tr>
<td>86</td>
<td>Radon-220</td>
<td>With daughters present</td>
<td>Oral</td>
<td>Inhalation</td>
<td>Air</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td>2E+4</td>
<td>7E-6</td>
<td>2E-6</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td>2E+4</td>
<td>7E-6</td>
<td>2E-6</td>
</tr>
</tbody>
</table>

425
<table>
<thead>
<tr>
<th>Atomic</th>
<th>Radiouclide</th>
<th>Class</th>
<th>Oral Implantation (µCi)</th>
<th>Inhalation (µCi)</th>
<th>Air (µCi/L)</th>
<th>Water (µCi/L)</th>
<th>Monthly Average Concentration (µCi/L)</th>
</tr>
</thead>
<tbody>
<tr>
<td>86</td>
<td>Radium-222</td>
<td>With daughters removed</td>
<td>-</td>
<td>1E-4</td>
<td>1E-0</td>
<td>-</td>
<td>-</td>
</tr>
<tr>
<td></td>
<td></td>
<td>With daughters present</td>
<td>-</td>
<td>1E-2 (or 4 working level months)</td>
<td>1E-10</td>
<td>-</td>
<td>-</td>
</tr>
<tr>
<td>87</td>
<td>Francium-223</td>
<td>D, all compounds</td>
<td>2E+1</td>
<td>5E+2</td>
<td>2E-7</td>
<td>6E-10</td>
<td>5E-5</td>
</tr>
<tr>
<td>88</td>
<td>Radon-223</td>
<td>W, all compounds</td>
<td>5E+0</td>
<td>7E-1</td>
<td>3E-10</td>
<td>9E-13</td>
<td>-</td>
</tr>
<tr>
<td></td>
<td></td>
<td>Bone surf (9%0)</td>
<td>-</td>
<td>-</td>
<td>-</td>
<td>1E-7</td>
<td>1E-6</td>
</tr>
<tr>
<td>89</td>
<td>Radon-224</td>
<td>W, all compounds</td>
<td>8E+0</td>
<td>2E+0</td>
<td>7E-10</td>
<td>2E-12</td>
<td>-</td>
</tr>
<tr>
<td></td>
<td></td>
<td>Bone surf (2E+1)</td>
<td>-</td>
<td>-</td>
<td>-</td>
<td>2E-7</td>
<td>2E-6</td>
</tr>
<tr>
<td>90</td>
<td>Radon-225</td>
<td>W, all compounds</td>
<td>6E+0</td>
<td>7E-1</td>
<td>3E-10</td>
<td>9E-13</td>
<td>-</td>
</tr>
<tr>
<td></td>
<td></td>
<td>Bone surf (2E+1)</td>
<td>-</td>
<td>-</td>
<td>-</td>
<td>2E-7</td>
<td>2E-6</td>
</tr>
<tr>
<td>91</td>
<td>Radon-226</td>
<td>W, all compounds</td>
<td>2E+0</td>
<td>5E-1</td>
<td>3E-10</td>
<td>9E-13</td>
<td>-</td>
</tr>
<tr>
<td></td>
<td></td>
<td>Bone surf (5E+0)</td>
<td>-</td>
<td>-</td>
<td>-</td>
<td>6E-8</td>
<td>6E-7</td>
</tr>
<tr>
<td>92</td>
<td>Radon-227</td>
<td>W, all compounds</td>
<td>2E+4</td>
<td>1E+4</td>
<td>5E-6</td>
<td>-</td>
<td>-</td>
</tr>
<tr>
<td></td>
<td></td>
<td>Bone surf (2E+4)</td>
<td>-</td>
<td>-</td>
<td>-</td>
<td>3E-8</td>
<td>3E-4</td>
</tr>
<tr>
<td></td>
<td></td>
<td>Bone surf (2E+4)</td>
<td>-</td>
<td>-</td>
<td>-</td>
<td>3E-8</td>
<td>3E-4</td>
</tr>
<tr>
<td>93</td>
<td>Radon-228</td>
<td>W, all compounds</td>
<td>2E+0</td>
<td>1E+0</td>
<td>5E-10</td>
<td>2E-12</td>
<td>-</td>
</tr>
<tr>
<td></td>
<td></td>
<td>Bone surf (4E+0)</td>
<td>-</td>
<td>-</td>
<td>-</td>
<td>6E-8</td>
<td>6E-7</td>
</tr>
<tr>
<td>94</td>
<td>Actinium-226</td>
<td>D, all compounds except those given for W and Y</td>
<td>5E+3</td>
<td>3E+1</td>
<td>1E-8</td>
<td>-</td>
<td>-</td>
</tr>
<tr>
<td></td>
<td></td>
<td>(LI well) (2E+3)</td>
<td>-</td>
<td>5E-11</td>
<td>3E-5</td>
<td>3E-4</td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td>W, nitrides and nitrates</td>
<td>-</td>
<td>6E-1</td>
<td>2E-8</td>
<td>7E-11</td>
<td>-</td>
</tr>
<tr>
<td></td>
<td></td>
<td>Y, oxides and hydrides</td>
<td>-</td>
<td>6E-1</td>
<td>2E-8</td>
<td>6E-11</td>
<td>-</td>
</tr>
<tr>
<td>95</td>
<td>Actinium-227</td>
<td>D, see 22Ac Ac</td>
<td>5E+1</td>
<td>3E+1</td>
<td>1E-10</td>
<td>-</td>
<td>-</td>
</tr>
<tr>
<td></td>
<td></td>
<td>(LI well) (2E+1)</td>
<td>-</td>
<td>5E-11</td>
<td>7E-13</td>
<td>7E-6</td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td>W, see 22Ac Ac</td>
<td>-</td>
<td>6E-1</td>
<td>3E-10</td>
<td>9E-13</td>
<td>-</td>
</tr>
<tr>
<td></td>
<td></td>
<td>Y, see 22Ac Ac</td>
<td>-</td>
<td>6E-1</td>
<td>3E-10</td>
<td>9E-13</td>
<td>-</td>
</tr>
<tr>
<td>96</td>
<td>Actinium-228</td>
<td>D, see 22Ac Ac</td>
<td>3E+2</td>
<td>3E+0</td>
<td>1E-9</td>
<td>-</td>
<td>-</td>
</tr>
<tr>
<td></td>
<td></td>
<td>(LI well) (2E+2)</td>
<td>-</td>
<td>5E-12</td>
<td>7E-12</td>
<td>2E-6</td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td>W, see 22Ac Ac</td>
<td>-</td>
<td>5E+0</td>
<td>1E-9</td>
<td>7E-12</td>
<td>-</td>
</tr>
<tr>
<td></td>
<td></td>
<td>Y, see 22Ac Ac</td>
<td>-</td>
<td>5E+0</td>
<td>1E-9</td>
<td>6E-12</td>
<td>-</td>
</tr>
<tr>
<td>97</td>
<td>Actinium-229</td>
<td>D, see 22Ac Ac</td>
<td>2E+1</td>
<td>2E+0</td>
<td>2E+13</td>
<td>-</td>
<td>-</td>
</tr>
<tr>
<td></td>
<td></td>
<td>(LI well) (2E+1)</td>
<td>-</td>
<td>5E-13</td>
<td>7E-13</td>
<td>3E-0</td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td>W, see 22Ac Ac</td>
<td>-</td>
<td>2E+0</td>
<td>2E+13</td>
<td>-</td>
<td>-</td>
</tr>
<tr>
<td></td>
<td></td>
<td>Y, see 22Ac Ac</td>
<td>-</td>
<td>3E-3</td>
<td>4E-15</td>
<td>-</td>
<td>-</td>
</tr>
<tr>
<td>Atomic No.</td>
<td>Radioisotope</td>
<td>Class</td>
<td>Col. 1 (Occupational Values)</td>
<td>Col. 2 (Effluent Concentrations)</td>
<td>Col. 3 (Releases to Severe)</td>
<td></td>
<td></td>
</tr>
<tr>
<td>------------</td>
<td>-------------</td>
<td>-------</td>
<td>------------------------------</td>
<td>----------------------------------</td>
<td>-----------------------------</td>
<td></td>
<td></td>
</tr>
<tr>
<td>89</td>
<td>Actinium-229</td>
<td>D, see 229Ac</td>
<td>$2\times 10^{-3}$</td>
<td>$9\times 10^{-6}$</td>
<td>$4\times 10^{-9}$</td>
<td>$3\times 10^{-5}$</td>
<td>$3\times 10^{-4}$</td>
</tr>
<tr>
<td></td>
<td></td>
<td>W, see 229Ac</td>
<td>-</td>
<td>-</td>
<td>-</td>
<td>-</td>
<td>-</td>
</tr>
<tr>
<td></td>
<td></td>
<td>Y, see 229Ac</td>
<td>-</td>
<td>-</td>
<td>-</td>
<td>-</td>
<td>-</td>
</tr>
<tr>
<td>90</td>
<td>Thorium-229</td>
<td>Y, all compounds except those given for $Y$</td>
<td>$5\times 10^{-3}$</td>
<td>$2\times 10^{-2}$</td>
<td>$6\times 10^{-6}$</td>
<td>$2\times 10^{-10}$</td>
<td>$2\times 10^{-3}$</td>
</tr>
<tr>
<td>90</td>
<td>Thorium-228</td>
<td>W, see 228h</td>
<td>$1\times 10^{-2}$</td>
<td>$3\times 10^{-1}$</td>
<td>$1\times 10^{-10}$</td>
<td>$5\times 10^{-3}$</td>
<td>$2\times 10^{-5}$</td>
</tr>
<tr>
<td></td>
<td></td>
<td>Y, see 228h</td>
<td>-</td>
<td>$3\times 10^{-1}$</td>
<td>$1\times 10^{-10}$</td>
<td>$5\times 10^{-3}$</td>
<td>-</td>
</tr>
<tr>
<td>90</td>
<td>Thorium-227</td>
<td>W, see 227h</td>
<td>$6\times 10^{-3}$</td>
<td>$1\times 10^{-2}$</td>
<td>$4\times 10^{-8}$</td>
<td>$1\times 10^{-12}$</td>
<td>-</td>
</tr>
<tr>
<td></td>
<td></td>
<td>Y, see 227h</td>
<td>-</td>
<td>-</td>
<td>-</td>
<td>-</td>
<td>-</td>
</tr>
<tr>
<td>90</td>
<td>Thorium-226</td>
<td>W, see 226h</td>
<td>$6\times 10^{-3}$</td>
<td>$1\times 10^{-2}$</td>
<td>$4\times 10^{-8}$</td>
<td>$1\times 10^{-12}$</td>
<td>-</td>
</tr>
<tr>
<td></td>
<td></td>
<td>Y, see 226h</td>
<td>-</td>
<td>-</td>
<td>-</td>
<td>-</td>
<td>-</td>
</tr>
<tr>
<td>90</td>
<td>Thorium-225</td>
<td>W, see 225h</td>
<td>$4\times 10^{-3}$</td>
<td>$6\times 10^{-3}$</td>
<td>$1\times 10^{-12}$</td>
<td>-</td>
<td>-</td>
</tr>
<tr>
<td></td>
<td></td>
<td>Y, see 225h</td>
<td>-</td>
<td>$2\times 10^{-2}$</td>
<td>$6\times 10^{-12}$</td>
<td>-</td>
<td>-</td>
</tr>
<tr>
<td>90</td>
<td>Thorium-224</td>
<td>W, see 224h</td>
<td>$4\times 10^{-3}$</td>
<td>$6\times 10^{-3}$</td>
<td>$1\times 10^{-12}$</td>
<td>-</td>
<td>-</td>
</tr>
<tr>
<td></td>
<td></td>
<td>Y, see 224h</td>
<td>-</td>
<td>$2\times 10^{-2}$</td>
<td>$6\times 10^{-12}$</td>
<td>-</td>
<td>-</td>
</tr>
<tr>
<td>90</td>
<td>Protactinium 231</td>
<td>W, all compounds except those given for $Y$</td>
<td>$4\times 10^{-3}$</td>
<td>$6\times 10^{-3}$</td>
<td>$1\times 10^{-12}$</td>
<td>-</td>
<td>-</td>
</tr>
<tr>
<td></td>
<td></td>
<td>Y, oxides and hydroxides</td>
<td>-</td>
<td>$2\times 10^{-2}$</td>
<td>$6\times 10^{-12}$</td>
<td>-</td>
<td>-</td>
</tr>
<tr>
<td>90</td>
<td>Protactinium 232</td>
<td>W, see 232h</td>
<td>$3\times 10^{-3}$</td>
<td>$1\times 10^{-12}$</td>
<td>-</td>
<td>-</td>
<td>-</td>
</tr>
<tr>
<td></td>
<td></td>
<td>Y, see 232h</td>
<td>-</td>
<td>$3\times 10^{-1}$</td>
<td>$1\times 10^{-12}$</td>
<td>-</td>
<td>-</td>
</tr>
<tr>
<td>90</td>
<td>Protactinium 234</td>
<td>W, see 234h</td>
<td>$3\times 10^{-2}$</td>
<td>$4\times 10^{-2}$</td>
<td>$1\times 10^{-12}$</td>
<td>-</td>
<td>-</td>
</tr>
<tr>
<td></td>
<td></td>
<td>Y, see 234h</td>
<td>-</td>
<td>$3\times 10^{-1}$</td>
<td>$1\times 10^{-12}$</td>
<td>-</td>
<td>-</td>
</tr>
<tr>
<td>Atomic Number</td>
<td>Radionuclide</td>
<td>Occ. Class</td>
<td>Table 1 Occupational Values</td>
<td>Table 2 Effluent Concentrations</td>
<td>Table 3 Releases to Sewers</td>
<td></td>
<td></td>
</tr>
<tr>
<td>---------------</td>
<td>--------------</td>
<td>------------</td>
<td>-----------------------------</td>
<td>---------------------------------</td>
<td>-----------------------------</td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td>Col. 1 Oral Radiation Dose (µCi)</td>
<td>Col. 2 Inh. Radiation Dose (µCi)</td>
<td>Col. 3 Air Concentration (µCi/ml)</td>
<td>Monthly Average Concentration (µCi/ml)</td>
<td></td>
</tr>
<tr>
<td>91</td>
<td>Protactinium-234</td>
<td>W, see 234Pa</td>
<td>6x10 + 2</td>
<td>5x10 + 0</td>
<td>2x10 - 9</td>
<td>7x10 - 12</td>
<td>-</td>
</tr>
<tr>
<td>Y, see 234Pa</td>
<td></td>
<td></td>
<td>6x10 - 0</td>
<td>3x10 - 9</td>
<td>5x10 - 12</td>
<td>7x10 - 12</td>
<td>-</td>
</tr>
<tr>
<td>91</td>
<td>Protactinium-231</td>
<td>W, see 231Pa</td>
<td>2x10 - 2</td>
<td>2x10 - 0</td>
<td>6x10 - 3</td>
<td>6x10 - 9</td>
<td>6x10 - 5</td>
</tr>
<tr>
<td>Y, see 231Pa</td>
<td></td>
<td></td>
<td>3x10 - 3</td>
<td>3x10 - 5</td>
<td>6x10 - 7</td>
<td>6x10 - 11</td>
<td>6x10 - 7</td>
</tr>
<tr>
<td>91</td>
<td>Protactinium-233</td>
<td>W, see 233Pa</td>
<td>1x10 - 3</td>
<td>1x10 - 0</td>
<td>2x10 - 9</td>
<td>5x10 - 9</td>
<td>5x10 - 5</td>
</tr>
<tr>
<td>Y, see 233Pa</td>
<td></td>
<td></td>
<td>6x10 - 3</td>
<td>3x10 - 6</td>
<td>4x10 - 7</td>
<td>3x10 - 6</td>
<td>4x10 - 7</td>
</tr>
<tr>
<td>92</td>
<td>Uranium-234</td>
<td>D, U, UO2, UO2F, UO2(NH4)2</td>
<td>0x10 - 0</td>
<td>0x10 - 0</td>
<td>0x10 - 0</td>
<td>0x10 - 0</td>
<td>0x10 - 0</td>
</tr>
<tr>
<td>W, UO2,</td>
<td></td>
<td></td>
<td>0x10 - 0</td>
<td>0x10 - 0</td>
<td>0x10 - 0</td>
<td>0x10 - 0</td>
<td>0x10 - 0</td>
</tr>
<tr>
<td>Y, UO2,</td>
<td></td>
<td></td>
<td>0x10 - 0</td>
<td>0x10 - 0</td>
<td>0x10 - 0</td>
<td>0x10 - 0</td>
<td>0x10 - 0</td>
</tr>
<tr>
<td>92</td>
<td>Uranium-231</td>
<td>D, see 231U</td>
<td>0x10 - 0</td>
<td>0x10 - 0</td>
<td>0x10 - 0</td>
<td>0x10 - 0</td>
<td>0x10 - 0</td>
</tr>
<tr>
<td>Y, see 231U</td>
<td></td>
<td></td>
<td>0x10 - 0</td>
<td>0x10 - 0</td>
<td>0x10 - 0</td>
<td>0x10 - 0</td>
<td>0x10 - 0</td>
</tr>
<tr>
<td>92</td>
<td>Uranium-232</td>
<td>D, see 232U</td>
<td>0x10 - 0</td>
<td>0x10 - 0</td>
<td>0x10 - 0</td>
<td>0x10 - 0</td>
<td>0x10 - 0</td>
</tr>
<tr>
<td>Y, see 232U</td>
<td></td>
<td></td>
<td>0x10 - 0</td>
<td>0x10 - 0</td>
<td>0x10 - 0</td>
<td>0x10 - 0</td>
<td>0x10 - 0</td>
</tr>
<tr>
<td>92</td>
<td>Uranium-233</td>
<td>D, see 233U</td>
<td>0x10 - 0</td>
<td>0x10 - 0</td>
<td>0x10 - 0</td>
<td>0x10 - 0</td>
<td>0x10 - 0</td>
</tr>
<tr>
<td>Y, see 233U</td>
<td></td>
<td></td>
<td>0x10 - 0</td>
<td>0x10 - 0</td>
<td>0x10 - 0</td>
<td>0x10 - 0</td>
<td>0x10 - 0</td>
</tr>
</tbody>
</table>

428
### Table 1: Occupational Values

<table>
<thead>
<tr>
<th>Atomic Radionuclide</th>
<th>Class</th>
<th>Oral</th>
<th>Inhalation</th>
<th>Air</th>
<th>Water</th>
<th>Monthly Average Concentration (µCi/ml)</th>
</tr>
</thead>
<tbody>
<tr>
<td>No.</td>
<td></td>
<td>Oral</td>
<td>Exposure</td>
<td>Inhalation</td>
<td>Air</td>
<td>Water</td>
</tr>
<tr>
<td>92</td>
<td></td>
<td>Oral</td>
<td>Exposure</td>
<td>Inhalation</td>
<td>Air</td>
<td>Water</td>
</tr>
</tbody>
</table>

#### Dose conversion factors

- **Uranium-235**: 1E+3 to 1E+4<br>  
- **Uranium-236**: 1E+3 to 1E+4<br>  
- **Uranium-237**: 1E+3 to 1E+4<br>  
- **Uranium-238**: 1E+3 to 1E+4<br>  
- **Neptunium-237**: 1E+5 to 1E+6<br>  
- **Neptunium-238**: 1E+5 to 1E+6<br>  
- **Neptunium-239**: 1E+5 to 1E+6<br>  
- **Neptunium-240**: 1E+5 to 1E+6<br>  
- **Neptunium-natural**: 1E+5 to 1E+6<br>  

---

429
<table>
<thead>
<tr>
<th>Atomic No.</th>
<th>Radionuclide</th>
<th>Class</th>
<th>Coll. 1 Oral Ingestion (Bq/l)</th>
<th>Coll. 2 Inhalation (Bq/l)</th>
<th>Coll. 3 Dose (Bq/m²)</th>
<th>Table 2</th>
<th>Table 3 Monthly Average Concentration (Bq/m³)</th>
</tr>
</thead>
<tbody>
<tr>
<td>93</td>
<td>Neptunium-239</td>
<td>W, all compounds</td>
<td>1E+3</td>
<td>6E+1</td>
<td>3E-8</td>
<td>2E-5</td>
<td>2E-4</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>93</td>
<td>Neptunium-239</td>
<td>W, all compounds</td>
<td>1E+3</td>
<td>6E+1</td>
<td>3E-8</td>
<td>2E-5</td>
<td>2E-4</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>93</td>
<td>Neptunium-240²</td>
<td>W, all compounds</td>
<td>1E+4</td>
<td>6E+4</td>
<td>3E-5</td>
<td>1E-7</td>
<td>3E-4</td>
</tr>
<tr>
<td>94</td>
<td>Plutonium-234</td>
<td>W, all compounds except Pu²³⁴</td>
<td>5E-10</td>
<td>8E-10</td>
<td>3E-10</td>
<td>1E-3</td>
<td></td>
</tr>
<tr>
<td>94</td>
<td>Plutonium-235²</td>
<td>W, see 234Pu</td>
<td>Y, see 234Pu</td>
<td>9E-15</td>
<td>3E-15</td>
<td>1E-3</td>
<td></td>
</tr>
<tr>
<td>94</td>
<td>Plutonium-236</td>
<td>W, see 234Pu</td>
<td></td>
<td>5E-2</td>
<td>8E-12</td>
<td>5E-10</td>
<td>6E-7</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>94</td>
<td>Plutonium-237</td>
<td>W, see 234Pu</td>
<td>Y, see 234Pu</td>
<td>1E+4</td>
<td>3E+4</td>
<td>5E-9</td>
<td>2E-4</td>
</tr>
<tr>
<td>94</td>
<td>Plutonium-238</td>
<td>W, see 234Pu</td>
<td></td>
<td>9E-1</td>
<td>3E-1</td>
<td>2E-4</td>
<td>2E-3</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>94</td>
<td>Plutonium-239</td>
<td>W, see 234Pu</td>
<td></td>
<td>6E-3</td>
<td>3E-12</td>
<td>5E-14</td>
<td>2E-8</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>94</td>
<td>Plutonium-240</td>
<td>W, see 234Pu</td>
<td></td>
<td>8E-3</td>
<td>3E-12</td>
<td>5E-14</td>
<td>2E-8</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>94</td>
<td>Plutonium-241</td>
<td>W, see 234Pu</td>
<td></td>
<td>8E-4</td>
<td>3E-10</td>
<td>8E-13</td>
<td>1E-5</td>
</tr>
</tbody>
</table>

---

430
<table>
<thead>
<tr>
<th>Atomic No.</th>
<th>Radionuclide</th>
<th>Class</th>
<th>Table 1: Occupational Values</th>
<th>Table 2: Effluent Concentrations</th>
<th>Table 3: Releases to Sewers</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td></td>
<td></td>
<td>Col. 1 Oral Dose (µCi)</td>
<td>Col. 2 Inhalation Dose (µCi/ml)</td>
<td>Col. 3 Intake Dose (µCi/ml)</td>
</tr>
<tr>
<td>94</td>
<td>Plutonium-242</td>
<td>W, see 239Pu</td>
<td>6E-1 Bone surf (34-0) 7E-3 Bone surf (34-2) 7E-8 Bone surf (34-2)</td>
<td>2E-7 2E-8 2E-7</td>
<td>- - -</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td>7E-3 Bone surf (34-2)</td>
<td>7E-12 Bone surf (34-2)</td>
<td>- - -</td>
</tr>
<tr>
<td>94</td>
<td>Plutonium-243</td>
<td>W, see 239Pu</td>
<td>2E-4 4E-4 4E-5</td>
<td>5E-8 5E-8 5E-8</td>
<td>2E-3 2E-3 2E-3</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td>4E-4 4E-5 Bone surf (34-2)</td>
<td>Bone surf (34-2)</td>
<td>- - -</td>
</tr>
<tr>
<td>94</td>
<td>Plutonium-244</td>
<td>W, see 239Pu</td>
<td>8E-1 Bone surf (34-2) 7E-3 Bone surf (34-2)</td>
<td>7E-12 Bone surf (34-2)</td>
<td>2E-7 2E-7 2E-7</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td>7E-3 Bone surf (34-2)</td>
<td>7E-12 Bone surf (34-2)</td>
<td>- - -</td>
</tr>
<tr>
<td>94</td>
<td>Plutonium-245</td>
<td>W, see 239Pu</td>
<td>2E-5 2E-6 6E-8</td>
<td>3E-5 3E-4 3E-4</td>
<td>2E-5 2E-4 2E-4</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td>2E-6 2E-7 6E-8</td>
<td>3E-4 3E-3 3E-3</td>
<td>2E-5 2E-4 2E-4</td>
</tr>
<tr>
<td>95</td>
<td>Americium-233</td>
<td>W, all compounds</td>
<td>6E-4 6E-5</td>
<td>1E-4 1E-5</td>
<td>2E-4 2E-5</td>
</tr>
<tr>
<td>95</td>
<td>Americium-234</td>
<td>W, all compounds</td>
<td>6E-4 6E-5</td>
<td>1E-4 1E-5</td>
<td>2E-4 2E-5</td>
</tr>
<tr>
<td>95</td>
<td>Americium-235</td>
<td>W, all compounds</td>
<td>6E-4 6E-5</td>
<td>1E-4 1E-5</td>
<td>2E-4 2E-5</td>
</tr>
<tr>
<td>95</td>
<td>Americium-239</td>
<td>W, all compounds</td>
<td>6E-4 6E-5</td>
<td>1E-4 1E-5</td>
<td>2E-4 2E-5</td>
</tr>
<tr>
<td>95</td>
<td>Americium-240</td>
<td>W, all compounds</td>
<td>6E-4 6E-5</td>
<td>1E-4 1E-5</td>
<td>2E-4 2E-5</td>
</tr>
<tr>
<td>95</td>
<td>Americium-241</td>
<td>W, all compounds</td>
<td>6E-4 6E-5</td>
<td>1E-4 1E-5</td>
<td>2E-4 2E-5</td>
</tr>
<tr>
<td>95</td>
<td>Americium-242</td>
<td>W, all compounds</td>
<td>6E-4 6E-5</td>
<td>1E-4 1E-5</td>
<td>2E-4 2E-5</td>
</tr>
<tr>
<td>95</td>
<td>Americium-244</td>
<td>W, all compounds</td>
<td>6E-4 6E-5</td>
<td>1E-4 1E-5</td>
<td>2E-4 2E-5</td>
</tr>
<tr>
<td>95</td>
<td>Americium-245</td>
<td>W, all compounds</td>
<td>6E-4 6E-5</td>
<td>1E-4 1E-5</td>
<td>2E-4 2E-5</td>
</tr>
</tbody>
</table>

431
<table>
<thead>
<tr>
<th>Atomic No.</th>
<th>Radionuclide</th>
<th>Class</th>
<th>Table 1 Occupational Values</th>
<th>Table 2 Effluent Concentrations</th>
<th>Table 3 Releases to Sewers</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td></td>
<td></td>
<td>Col. 1 Oral Ingestion (μCi)</td>
<td>Col. 1 Inhalation (μCi/m^3)</td>
<td>Col. 1 Air (μCi/m^3)</td>
</tr>
<tr>
<td>95</td>
<td>Americium-241m²</td>
<td>V, all compounds</td>
<td>5E+4</td>
<td>2E+5</td>
<td>8E-5</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td>(6E+4)</td>
<td>(6E+3)</td>
<td>(6E-5)</td>
</tr>
<tr>
<td>95</td>
<td>Americium-246²</td>
<td>V, all compounds</td>
<td>3E+4</td>
<td>1E+5</td>
<td>4E-5</td>
</tr>
<tr>
<td>96</td>
<td>Curium-238</td>
<td>V, all compounds</td>
<td>2E+4</td>
<td>1E+3</td>
<td>5E-7</td>
</tr>
<tr>
<td>96</td>
<td>Curium-240</td>
<td>V, all compounds</td>
<td>6E+1</td>
<td>6E-1</td>
<td>2E-10</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td>Bone surf (6E+1)</td>
<td>Bone surf (6E-1)</td>
<td></td>
</tr>
<tr>
<td>96</td>
<td>Curium-241</td>
<td>V, all compounds</td>
<td>1E+3</td>
<td>3E+1</td>
<td>3E-8</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td></td>
<td>Bone surf (4E+3)</td>
<td></td>
</tr>
<tr>
<td>96</td>
<td>Curium-242</td>
<td>V, all compounds</td>
<td>3E+1</td>
<td>3E-1</td>
<td>3E-10</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td>Bone surf (6E+1)</td>
<td>Bone surf (3E-1)</td>
<td></td>
</tr>
<tr>
<td>96</td>
<td>Curium-243</td>
<td>V, all compounds</td>
<td>1E+0</td>
<td>9E-3</td>
<td>4E-12</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td>Bone surf (2E+0)</td>
<td>Bone surf (2E-2)</td>
<td></td>
</tr>
<tr>
<td>96</td>
<td>Curium-244</td>
<td>V, all compounds</td>
<td>1E+0</td>
<td>3E-2</td>
<td>5E-12</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td>Bone surf (3E+0)</td>
<td>Bone surf (3E-2)</td>
<td></td>
</tr>
<tr>
<td>96</td>
<td>Curium-245</td>
<td>V, all compounds</td>
<td>7E-1</td>
<td>6E-3</td>
<td>3E-12</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td>Bone surf (3E+0)</td>
<td>Bone surf (3E-2)</td>
<td></td>
</tr>
<tr>
<td>96</td>
<td>Curium-246</td>
<td>V, all compounds</td>
<td>7E-1</td>
<td>6E-3</td>
<td>3E-12</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td>Bone surf (3E+0)</td>
<td>Bone surf (3E-2)</td>
<td></td>
</tr>
<tr>
<td>96</td>
<td>Curium-247</td>
<td>V, all compounds</td>
<td>8E-1</td>
<td>6E-3</td>
<td>3E-12</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td>Bone surf (3E+0)</td>
<td>Bone surf (3E-2)</td>
<td></td>
</tr>
<tr>
<td>96</td>
<td>Curium-248</td>
<td>V, all compounds</td>
<td>2E-1</td>
<td>2E-3</td>
<td>7E-13</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td>Bone surf (3E-2)</td>
<td>Bone surf (3E-2)</td>
<td></td>
</tr>
<tr>
<td>96</td>
<td>Curium-249²</td>
<td>V, all compounds</td>
<td>5E+4</td>
<td>2E+4</td>
<td>7E-6</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td></td>
<td>Bone surf (4E+4)</td>
<td></td>
</tr>
<tr>
<td>96</td>
<td>Curium-250</td>
<td>V, all compounds</td>
<td>4E-2</td>
<td>3E-4</td>
<td>1E-13</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td>Bone surf (6E-2)</td>
<td>Bone surf (5E-4)</td>
<td></td>
</tr>
<tr>
<td>97</td>
<td>Berkelium-245</td>
<td>V, all compounds</td>
<td>2E+3</td>
<td>2E+3</td>
<td>5E-7</td>
</tr>
<tr>
<td>97</td>
<td>Berkelium-246</td>
<td>V, all compounds</td>
<td>3E+3</td>
<td>3E+3</td>
<td>1E-6</td>
</tr>
<tr>
<td>97</td>
<td>Berkelium-247</td>
<td>V, all compounds</td>
<td>5E-1</td>
<td>4E-3</td>
<td>2E-12</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td>Bone surf (1E+0)</td>
<td>Bone surf (9E-3)</td>
<td></td>
</tr>
<tr>
<td>97</td>
<td>Berkelium-249</td>
<td>V, all compounds</td>
<td>2E+2</td>
<td>2E+0</td>
<td>7E-10</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td>Bone surf (5E+2)</td>
<td>Bone surf (4E+0)</td>
<td></td>
</tr>
<tr>
<td>Atomic Number</td>
<td>Radioisotope</td>
<td>Class</td>
<td>Table 1: Occupational Values</td>
<td>Table 2: Effluent Concentrations</td>
<td>Table 3: Releases to Streams</td>
</tr>
<tr>
<td>--------------</td>
<td>-------------</td>
<td>-------------</td>
<td>-------------------------------</td>
<td>----------------------------------</td>
<td>-------------------------------</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td>Col. 1</td>
<td>Col. 2</td>
<td>Col. 3</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td>Oral</td>
<td>Inhalation</td>
<td>Inhalation</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td>intake</td>
<td>(pCi/l)</td>
<td>(pCi/l)</td>
</tr>
<tr>
<td>97</td>
<td>Americium-241</td>
<td>V, all compounds</td>
<td>9E-3</td>
<td>3E-2</td>
<td>1E-7</td>
</tr>
<tr>
<td>98</td>
<td>Californium-244</td>
<td>W, all compounds except those given for Y</td>
<td>3E+4</td>
<td>6E-2</td>
<td>2E-7</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td>Y, oxides and hydrates</td>
<td>-</td>
<td>6E-2</td>
</tr>
<tr>
<td>98</td>
<td>Californium-246</td>
<td>W, see 246Cf</td>
<td>4E+2</td>
<td>9E+0</td>
<td>4E-9</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td>Y, see 246Cf</td>
<td>-</td>
<td>9E+0</td>
</tr>
<tr>
<td>98</td>
<td>Californium-248</td>
<td>W, see 248Cf</td>
<td>8E+0</td>
<td>6E-2</td>
<td>3E-11</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td>Y, see 248Cf</td>
<td>-</td>
<td>6E-2</td>
</tr>
<tr>
<td>98</td>
<td>Californium-249</td>
<td>W, see 249Cf</td>
<td>5E-1</td>
<td>4E-3</td>
<td>2E-12</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td>Y, see 249Cf</td>
<td>-</td>
<td>4E-3</td>
</tr>
<tr>
<td>98</td>
<td>Californium-250</td>
<td>W, see 250Cf</td>
<td>4E+0</td>
<td>9E-3</td>
<td>4E-12</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td>Y, see 250Cf</td>
<td>-</td>
<td>9E-3</td>
</tr>
<tr>
<td>98</td>
<td>Californium-251</td>
<td>W, see 251Cf</td>
<td>5E-1</td>
<td>4E-3</td>
<td>2E-12</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td>Y, see 251Cf</td>
<td>-</td>
<td>4E-3</td>
</tr>
<tr>
<td>98</td>
<td>Californium-252</td>
<td>W, see 252Cf</td>
<td>2E+1</td>
<td>2E-2</td>
<td>8E-12</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td>Y, see 252Cf</td>
<td>-</td>
<td>2E-2</td>
</tr>
<tr>
<td>98</td>
<td>Californium-253</td>
<td>W, see 253Cf</td>
<td>2E+2</td>
<td>2E+2</td>
<td>8E+10</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td>Y, see 253Cf</td>
<td>-</td>
<td>2E+2</td>
</tr>
<tr>
<td>98</td>
<td>Californium-254</td>
<td>W, see 254Cf</td>
<td>2E+0</td>
<td>2E-2</td>
<td>9E-12</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td>Y, see 254Cf</td>
<td>-</td>
<td>2E-2</td>
</tr>
<tr>
<td>99</td>
<td>Einsteinium-250</td>
<td>W, all compounds</td>
<td>4E+4</td>
<td>5E+2</td>
<td>2E-7</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td>Y, see 250Cf</td>
<td>-</td>
<td>5E+2</td>
</tr>
<tr>
<td>99</td>
<td>Einsteinium-251</td>
<td>W, all compounds</td>
<td>7E+3</td>
<td>9E-2</td>
<td>4E-7</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td>Y, see 251Cf</td>
<td>-</td>
<td>9E-2</td>
</tr>
<tr>
<td>99</td>
<td>Einsteinium-252</td>
<td>W, all compounds</td>
<td>2E+2</td>
<td>1E+0</td>
<td>6E-10</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td>Y, see 252Cf</td>
<td>-</td>
<td>1E+0</td>
</tr>
<tr>
<td>Atomic No.</td>
<td>Radioisotope</td>
<td>Class</td>
<td>Occupational Values</td>
<td>Effluent Concentrations</td>
<td>Releases to Sewers</td>
</tr>
<tr>
<td>-----------</td>
<td>--------------</td>
<td>-------</td>
<td>---------------------</td>
<td>-------------------------</td>
<td>--------------------</td>
</tr>
<tr>
<td>99</td>
<td>Einsteinium-254a</td>
<td>W, all compounds</td>
<td>Col. 1 (A)</td>
<td>Col. 2 (A)</td>
<td>Col. 3 (A)</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td>Oral Ingestion</td>
<td>Inhalation</td>
<td>Air</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td>(µCi)</td>
<td>(µCi/m³)</td>
<td>(µCi/m³)</td>
</tr>
<tr>
<td>99</td>
<td>Einsteinium-254</td>
<td>W, all compounds</td>
<td>3(1-2)</td>
<td>1(1-1)</td>
<td>4(1-9)</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td>(1-2)</td>
<td>-</td>
<td>-</td>
</tr>
<tr>
<td>99</td>
<td>Einsteinium-254</td>
<td>W, all compounds</td>
<td>8(1-0)</td>
<td>7(1-2)</td>
<td>3(1-11)</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td>Bone surf</td>
<td>Bone surf</td>
<td>(1-1)</td>
</tr>
<tr>
<td>100</td>
<td>Fermium-252</td>
<td>W, all compounds</td>
<td>5(1-2)</td>
<td>1(1-1)</td>
<td>4(1-9)</td>
</tr>
<tr>
<td>100</td>
<td>Fermium-253</td>
<td>W, all compounds</td>
<td>1(1-3)</td>
<td>1(1-1)</td>
<td>4(1-9)</td>
</tr>
<tr>
<td>100</td>
<td>Fermium-254</td>
<td>W, all compounds</td>
<td>1(1-3)</td>
<td>9(1-1)</td>
<td>4(1-8)</td>
</tr>
<tr>
<td>100</td>
<td>Fermium-255</td>
<td>W, all compounds</td>
<td>5(1-2)</td>
<td>2(1-1)</td>
<td>9(1-9)</td>
</tr>
<tr>
<td>100</td>
<td>Fermium-257</td>
<td>W, all compounds</td>
<td>2(1-1)</td>
<td>2(1-1)</td>
<td>7(1-11)</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td>Bone surf</td>
<td>Bone surf</td>
<td>(4-1)</td>
</tr>
<tr>
<td>101</td>
<td>Mendelevium-257</td>
<td>W, all compounds</td>
<td>5(1-3)</td>
<td>8(1-1)</td>
<td>4(1-8)</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td>Bone surf</td>
<td>Bone surf</td>
<td>(2-1)</td>
</tr>
<tr>
<td>101</td>
<td>Mendelevium-258</td>
<td>W, all compounds</td>
<td>3(1-1)</td>
<td>2(1-1)</td>
<td>1(1-10)</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td>Bone surf</td>
<td>Bone surf</td>
<td>(2-1)</td>
</tr>
</tbody>
</table>

- Any single radionuclide not listed above with decay mode other than alpha emission or spontaneous fission and with radioactive half-life less than 2 hours
  - Subversion

- Any single radionuclide not listed above with decay mode other than alpha emission or spontaneous fission and with radioactive half-life greater than 2 hours

- Any single radionuclide not listed above that decays by alpha emission or spontaneous fission, or any mixture for which either the identity or the concentration of any radionuclide in the mixture is not known

<table>
<thead>
<tr>
<th>Atomic No.</th>
<th>Radioisotope</th>
<th>Class</th>
<th>Occupational Values</th>
<th>Effluent Concentrations</th>
<th>Releases to Sewers</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td></td>
<td></td>
<td>Oral Ingestion</td>
<td>Inhalation</td>
<td>Air</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td>(µCi)</td>
<td>(µCi/m³)</td>
<td>(µCi/m³)</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td>(1-2)</td>
<td>1(1-1)</td>
<td>4(1-9)</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td>(1-2)</td>
<td>-</td>
<td>-</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td>8(1-0)</td>
<td>7(1-2)</td>
<td>3(1-11)</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td>Bone surf</td>
<td>Bone surf</td>
<td>(1-1)</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td>5(1-2)</td>
<td>1(1-1)</td>
<td>4(1-9)</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td>1(1-3)</td>
<td>1(1-1)</td>
<td>4(1-9)</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td>1(1-3)</td>
<td>9(1-1)</td>
<td>4(1-8)</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td>5(1-2)</td>
<td>2(1-1)</td>
<td>9(1-9)</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td>2(1-1)</td>
<td>2(1-1)</td>
<td>7(1-11)</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td>Bone surf</td>
<td>Bone surf</td>
<td>(4-1)</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td>5(1-3)</td>
<td>8(1-1)</td>
<td>4(1-8)</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td>Bone surf</td>
<td>Bone surf</td>
<td>(2-1)</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td>3(1-1)</td>
<td>2(1-1)</td>
<td>1(1-10)</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td>Bone surf</td>
<td>Bone surf</td>
<td>(2-1)</td>
</tr>
</tbody>
</table>

434
FOOTNOTES:

1. "Submersion" means that values given are for submersion in a hemispherical semi-infinite cloud of airborne material.

2. These radionuclides have radiological half-lives of less than 2 hours. The total effective dose equivalent received during operations with these radionuclides might include a significant contribution from external exposure. The DAC values for all radionuclides, other than those designated Class "Submersion," are based upon the committed effective dose equivalent due to the intake of the radionuclide into the body and do NOT include potentially significant contributions to dose equivalent from external exposures. The licensee may substitute 1E-7 µCi/l for the listed DAC to account for the submersion dose prospectively, but should use individual monitoring devices or other radiation measuring instruments that measure external exposure to demonstrate compliance with the limits. (See 10 CFR 20.103.)

3. For soluble mixtures of U-238, U-234, and U-235 in air, chemical toxicity may be the limiting factor (see 10 CFR 20.111(a)). If the percent by weight of enrichment of U-235 is not greater than 5, the concentration value for a 40-hour workweek is 0.2 milligrams of uranium per cubic meter of air average. For any enrichment, the product of the average concentration and time of exposure during a 40-hour workweek shall not exceed 8E-3 (SA µCi/m³), where SA is the specific activity of the uranium inhaled. The specific activity for natural uranium is 6.7E-7 curies per gram U. The specific activity for other mixtures of U-238, U-235, and U-234, if not known, shall be:

\[
SA = \frac{0.4 + 0.3E \times (enrichment) + 0.0034 \times (enrichment)^2}{1 - 6E + enrichment \geq 0.72}
\]

where enrichment is the percentage by weight of U-235, expressed as percent.

NOTE:

1. If the identity of each radionuclide in a mixture is known but the concentration of one or more of the radionuclides in the mixture is not known, the DAC for the mixture shall be the most restrictive DAC of any radionuclide in the mixture.

2. If the identity of each radionuclide in the mixture is not known, but it is known that certain radionuclides specified in this appendix are not present in the mixture, the inhalation ALI, DAC, and effluent and sewage concentrations for the mixture are the lowest values specified in this appendix for any radionuclide that is not known to be absent from the mixture; or

<table>
<thead>
<tr>
<th>Radionuclide</th>
<th>Table 1 Occupational Values</th>
<th>Table 2 Effluent Concentrations</th>
<th>Table 3 Releases to Sewers</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>Oral Ingestion (ALI) (µCi)</td>
<td>Inhalation (DAC) (µCi/l)</td>
<td>Air (µCi/l)</td>
</tr>
<tr>
<td>As-227-D, Cm-250-W</td>
<td>7E-4</td>
<td>3E-13</td>
<td>-</td>
</tr>
<tr>
<td>As-227-D, Cm-250-W</td>
<td>7E-3</td>
<td>3E-12</td>
<td>-</td>
</tr>
<tr>
<td>As-227-D, Cm-250-W</td>
<td>7E-2</td>
<td>3E-11</td>
<td>-</td>
</tr>
<tr>
<td>As-227-D, Cm-250-W</td>
<td>7E-1</td>
<td>3E-10</td>
<td>-</td>
</tr>
</tbody>
</table>
### Table 3

<table>
<thead>
<tr>
<th>Radiouclide</th>
<th>Col. 1</th>
<th>Col. 2</th>
<th>Col. 3</th>
</tr>
</thead>
<tbody>
<tr>
<td>Oral Ingestion</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>UCl</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>An</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>DAC</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>DAC</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>DAC</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>DAC</td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

### Table 2

<table>
<thead>
<tr>
<th>Monthly Average Concentration (DAC/L)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Col. 1</td>
</tr>
<tr>
<td>--------</td>
</tr>
<tr>
<td></td>
</tr>
</tbody>
</table>

### Table 3

<table>
<thead>
<tr>
<th>Radiouclide</th>
<th>Col. 1</th>
<th>Col. 2</th>
<th>Col. 3</th>
</tr>
</thead>
<tbody>
<tr>
<td>Oral Ingestion</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>UCl</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>An</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>DAC</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>DAC</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>DAC</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>DAC</td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

### Table 2

<table>
<thead>
<tr>
<th>Monthly Average Concentration (DAC/L)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Col. 1</td>
</tr>
<tr>
<td>--------</td>
</tr>
<tr>
<td></td>
</tr>
</tbody>
</table>

### Example

If radionuclides "A," "B," and "C" are present in concentrations $c_A$, $c_B$, and $c_C$, and if the applicable DACs are $DAC_A$, $DAC_B$, and $DAC_C$, respectively, then the concentrations shall be limited so that the following relationship exists:

$$
\frac{c_A}{DAC_A} + \frac{c_B}{DAC_B} + \frac{c_C}{DAC_C} < 1
$$

organizations reporting any such transactions under subsection (a)(3) of this section.


(f) Rates

Nothing in this section shall be construed to confer upon the Secretary any authority to approve or disapprove the rates charged by any health maintenance organization.

(g) Annual financial statement

Any health maintenance organization failing to file with the Secretary the annual financial statement required in subsection (a) of this section shall be ineligible for any Federal assistance under this subchapter until such time as such statement is received by the Secretary and shall not be a qualified health maintenance organization for purposes of section 300e–9 of this title.

(h) Penalties

Whoever knowingly and willfully makes or causes to be made any false statement or representation of a material fact in any statement filed pursuant to this section shall be guilty of a felony and upon conviction thereof shall be fined not more than $25,000 or imprisoned for not more than five years, or both.


AMENDMENTS


1986—Subsec. (e). Pub. L. 99–660 struck out subsec. (e) which read as follows: “The Secretary shall file an annual report with the Congress on the operation of this section. Such report shall include—

1(1) an enumeration of standards and norms utilized to make the evaluations required under subsection (d) of this section;

4(2) an assessment of the degree of conformity or nonconformity of each health maintenance organization evaluated by the Secretary under subsection (d) of this section with such standards and norms;

4(3) what action, if any, the Secretary considers necessary under section 300e–11 of this title with respect to health maintenance organizations evaluated under subsection (d) of this section.”

1981—Subsec. (a). Pub. L. 97–35, §948(a), (b), in par. (2) inserted reference to copy of the report, if any, filed with the Health Care Financing Administration, and in par. (3)(B) reorganized excluding provisions and, among revisions, inserted salaries paid to employees for services.

Subsec. (b)(1). Pub. L. 97–35, §948(c), inserted “responsible for management or administration’’ after “employee’’.

Subsec. (b)(4). Pub. L. 97–35, §948(d), substituted “spouse, child, or parent’’ for “member of the immediate family’’.

EFFECTIVE DATE OF 1986 AMENDMENT


SUBCHAPTER XII—SAFETY OF PUBLIC WATER SYSTEMS

PART A—DEFINITIONS

§ 300f. Definitions

For purposes of this subchapter:

1(1) The term “primary drinking water regulation’’ means a regulation which—

(A) applies to public water systems;

(B) specifies contaminants which, in the judgment of the Administrator, may have any adverse effect on the health of persons;

(C) specifies for each such contaminant either—

(i) a maximum contaminant level, if, in the judgment of the Administrator, it is economically and technologically feasible to ascertain the level of such contaminant in water in public water systems, or

(ii) if, in the judgment of the Administrator, it is not economically or technologically feasible to so ascertain the level of such contaminant, each treatment technique known to the Administrator which leads to a reduction in the level of such contaminant sufficient to satisfy the requirements of section 300g–1 of this title; and

(D) contains criteria and procedures to assure a supply of drinking water which dependably complies with such maximum contaminant levels; including accepted methods for quality control and testing procedures to insure compliance with such levels and to insure proper operation and maintenance of the system, and requirements as to (i) the minimum quality of water which may be taken into the system and (ii) siting for new facilities for public water systems.

At any time after promulgation of a regulation referred to in this paragraph, the Administrator may add equally effective quality control and testing procedures by guidance published in the Federal Register. Such procedures shall be treated as an alternative for public water systems to the quality control and testing procedures listed in the regulation.

2(2) The term “secondary drinking water regulation’’ means a regulation which applies to public water systems and which specifies the maximum contaminant levels which, in the judgment of the Administrator, are requisite to protect the public welfare. Such regulations may apply to any contaminant in drinking water (A) which may adversely affect the odor or appearance of such water and consequently may cause a substantial number of the persons served by the public water system providing such water to discontinue its use, or (B) which may otherwise adversely affect the public welfare. Such regulations may vary according to geographic and other circumstances.

3(3) The term “maximum contaminant level’’ means the maximum permissible level of a contaminant in water which is delivered to any user of a public water system.

4(4) PUBLIC WATER SYSTEM.—

(A) IN GENERAL.—The term “public water system’’ means a system for the provision to
the public of water for human consumption through pipes or other constructed conveyances, if such system has at least fifteen service connections or regularly serves at least twenty-five individuals. Such term includes (i) any collection, treatment, storage, and distribution facilities under control of the operator of such system and used primarily in connection with such system, and (ii) any collection or pretreatment storage facilities not under such control which are used primarily in connection with such system.

(B) CONNECTIONS.—

(i) IN GENERAL.—For purposes of subparagraph (A), a connection to a system that delivers water by a constructed conveyance other than a pipe shall not be considered a connection, if—

(I) the water is used exclusively for purposes other than residential uses (consisting of drinking, bathing, and cooking, or other similar uses);

(II) the Administrator or the State (in the case of a State exercising primary enforcement responsibility for public water systems) determines that alternative water to achieve the equivalent level of public health protection provided by the applicable national primary drinking water regulation is provided for residential or similar uses for drinking and cooking; or

(III) the Administrator or the State (in the case of a State exercising primary enforcement responsibility for public water systems) determines that the water provided for residential or similar uses for drinking, cooking, and bathing is centrally treated or treated at the point of entry by the provider, a pass-through entity, or the user to achieve the equivalent level of protection provided by the applicable national primary drinking water regulations.

(ii) IRRIGATION DISTRICTS.—An irrigation district in existence prior to May 18, 1994, that provides primarily agricultural service through a piped water system with only incidental residential or similar use shall not be considered to be a public water system if the system or the residential or similar users of the system comply with subclause (II) or (III) of clause (i).

(C) TRANSITION PERIOD.—A water supplier that would be a public water system only as a result of modifications made to this paragraph by the Safe Drinking Water Act Amendments of 1996 shall not be considered a public water system for purposes of the Act until the date that is two years after August 6, 1996. If a water supplier does not serve 15 service connections (as defined in subparagraphs (A) and (B)) or 25 people at any time after the conclusion of the 2-year period, the water supplier shall not be considered a public water system.

The term “supplier of water” means any person who owns or operates a public water system.

(6) The term “contaminant” means any physical, chemical, biological, or radiological substance or matter in water.

(7) The term “Administrator” means the Administrator of the Environmental Protection Agency.

(8) The term “Agency” means the Environmental Protection Agency.

(9) The term “Council” means the National Drinking Water Advisory Council established under section 300j–5 of this title.

(10) The term “municipality” means a city, town, or other public body created by or pursuant to State law, or an Indian Tribe.

(11) The term “Federal agency” means any department, agency, or instrumentality of the United States.

(12) The term “person” means an individual, corporation, company, association, partnership, State, municipality, or Federal agency (and includes officers, employees, and agents of any corporation, company, association, State, municipality, or Federal agency).

(13) (A) Except as provided in subparagraph (B), the term “State” includes, in addition to the several States, only the District of Columbia, Guam, the Commonwealth of Puerto Rico, the Northern Mariana Islands, the Virgin Islands, American Samoa, and the Trust Territory of the Pacific Islands.

(B) For purposes of section 300j–12 of this title, the term “State” means each of the 50 States, the District of Columbia, and the Commonwealth of Puerto Rico.

(14) The term “Indian Tribe” means any Indian tribe having a Federally recognized governing body carrying out substantial governmental duties and powers over any area. For purposes of section 300j–12 of this title, the term includes any Native village (as defined in section 1602(c) of title 43).

(15) COMMUNITY WATER SYSTEM.—The term “community water system” means a public water system that—

(A) serves at least 15 service connections used by year-round residents of the area served by the system; or

(B) regularly serves at least 25 year-round residents.

(16) NONCOMMUNITY WATER SYSTEM.—The term “noncommunity water system” means a public water system that is not a community water system.


REFERENCES IN TEXT

referred to in this paragraph, the Administrator may add equally effective quality control and testing procedures by guidance published in the Federal Register. Such procedures shall be treated as an alternative for public water systems to the quality control and testing procedures listed in the regulation.


Par. (4). Pub. L. 104-182, §101(b)(1), designated existing provisions as subpar. (A), inserted par. and subpar. headings, redesignated former subpars. (A) and (B) as cl. (i) and (ii), respectively, substituted “water for human consumption through pipes or other constructed conveyances” for “piped water for human consumption in first sentence, and added subpars. (B) and (C).

Par. (13). Pub. L. 104-182, §101(a)(2), substituted “Indian Tribe” for “Indian tribal organization authorized by law”.


Par. (15). Pub. L. 104-182, §101(a)(3), inserted at end “For purposes of section 300j-12 of this title, the term includes any Native village (as defined in section 102(c) of title 43).”.


1986—Par. (10). Pub. L. 99-339, §302(b)(2), substituted “(10) consumers served by public water systems, especially many small public water systems, the Federal Government needs to provide assistance to communities to help the communities meet Federal drinking water requirements;” for “(10) consumers served by public water systems, especially many small public water systems, the Federal Government needs to provide assistance to communities to help the communities meet Federal drinking water requirements;”.


1977—Par. (12). Pub. L. 95-190 expanded definition of “person to include Federal agency, and officers, employees, and agents of any corporation, company, etc.”.

1976—Par. (13). Pub. L. 94-184 defined “State” to include Northern Mariana Islands.

Pub. L. 94-517 added par. (13).

**EFFECTIVE DATE OF 1996 AMENDMENT**

Section 2(b) of Pub. L. 104-182 provided that: “Except as otherwise specified in this Act [enacting sections 300g-7 to 300g-9, 300h-8, 300i-3c, and 300j-12 to 300j-18 of this title and section 1263a of Title 33, Navigation and Navigable Waters, amending this section, sections 300g-1 to 300g-6, 300h-5 to 300h-7, 300i-1, 300j to 300j-2, 300j-4 to 300j-8, 300j-11, and 300j-21 to 300j-25 of this title, sections 4701 and 4721 of Title 16, Conservation, and section 349 of Title 21, Food and Drugs, repealing section 13516 of this title, enacting provisions set out as notes under this section, sections 201, 300g-1, 300j-1, and 300j-12 of this title, section 1281 of Title 33, and section 45 of former Title 40, Public Buildings, Property, and Works, and amending provisions set out as a note under section 201 of this title] or in the amendments made by this Act, this Act and the amendments made by this Act shall take effect on the date of enactment of this Act [Aug. 6, 1996].”

**SHORT TITLE**

This subchapter is known as the “Safe Drinking Water Act”, see note set out under section 201 of this title.

**TERMINATION OF TRUST TERRITORY OF THE PACIFIC ISLANDS**

For termination of Trust Territory of the Pacific Islands, see note set out preceding section 1681 of Title 48, Territories and Insular Possessions.

**EFFECT OF PUBLIC LAW 104-182 ON FEDERAL WATER POLLUTION CONTROL ACT**

Section 2(c) of Pub. L. 104-182 provided that: “Except for the provisions of section 302 [42 U.S.C. 300-12 note] (relating to transfers of funds), nothing in this Act [see Effective Date of 1996 Amendment above] or in any amendments made by this Act to title XIV of the Public Health Service Act [this subchapter] (commonly known as the ‘Safe Drinking Water Act’) or any other law shall be construed by the Administrator of the Environmental Protection Agency or the courts as affecting, modifying, expanding, changing, or altering—“(1) the provisions of the Federal Water Pollution Control Act [33 U.S.C. 1251 et seq.]; “(2) the duties and responsibilities of the Administrator under that Act; “(3) the regulation or control of point or nonpoint sources of pollution discharged into waters covered by that Act. The Administrator shall identify in the agency’s annual budget all funding and full-time equivalents administering such title XIV separately from funding and staffing for the Federal Water Pollution Control Act.”

**CONGRESSIONAL FINDINGS**

Section 3 of Pub. L. 104-182 provided that: “The Congress finds that—“(1) safe drinking water is essential to the protection of public health; “(2) because the requirements of the Safe Drinking Water Act [42 U.S.C. 300f et seq.] now exceed the financial and technical capacity of some public water systems, especially many small public water systems, the Federal Government needs to provide assistance to communities to help the communities meet Federal drinking water requirements; “(3) the Federal Government commits to maintaining and improving its partnership with the States in the administration and implementation of the Safe Drinking Water Act; “(4) States play a central role in the implementation of safe drinking water programs, and States need increased financial resources and appropriate flexibility to ensure the prompt and effective development and implementation of drinking water programs; “(5) the existing process for the assessment and selection of additional drinking water contaminants needs to be revised and improved to ensure that there is a sound scientific basis for setting priorities in establishing drinking water regulations; “(6) procedures for assessing the health effects of contaminants establishing drinking water standards should be revised to provide greater opportunity for public education and participation; “(7) in considering the appropriate level of regulation for contaminants in drinking water, risk assessment, based on sound and objective science, and benefit-cost analysis are important analytical tools for improving the efficiency and effectiveness of drinking water regulations to protect public health; “(8) more effective protection of public health requires— “(A) a Federal commitment to set priorities that will allow scarce Federal, State, and local resources to be targeted toward the drinking water problems of greatest public health concern; “(B) maximizing the value of the different and complementary strengths and responsibilities of the Federal and State governments in those States that have primary enforcement responsibility for the Safe Drinking Water Act; and “(C) prevention of drinking water contamination through well-trained system operators, water systems with adequate managerial, technical, and financial capacity, and enhanced protection of source waters of public water systems; “(9) compliance with the requirements of the Safe Drinking Water Act continues to be a concern at public water systems experiencing technical and financial limitations, and Federal, State, and local governments need more resources and more effective authority to attain the objectives of the Safe Drinking Water Act; and “(10) consumers served by public water systems should be provided with information on the source of the water they are drinking and its quality and safety, as well as prompt notification of any violation of drinking water regulations.”

**GAO STUDY**

“(A) ascertain the numbers and locations of individuals and households relying for their residential water needs, including drinking, bathing, and cooking (or other similar uses) on irrigation water systems, mining water systems, industrial water systems, or other water systems covered by section 1401(4)(B) of the Safe Drinking Water Act (par. (4)(B) of this section) that are not public water systems subject to the Safe Drinking Water Act (this subchapter);

“(B) determine the sources and costs and affordability (to users and systems) of water used by such populations for their residential needs; and

“(C) review State and water system compliance with the exclusion provisions of section 1401(4)(B) of such Act.

The Comptroller General shall submit a report to the Congress within 3 years after the date of enactment of this Act [Aug. 6, 1996] containing the results of such study.”

SAFE DRINKING WATER AMENDMENTS OF 1977

Restrictions on Appropriations for Research

Pub. L. 95–190, §2(e), Nov. 16, 1977, 91 Stat. 1393, provided that: “Nothing in this Act [see Short Title of 1977 Amendment note set out under section 201 of this title] shall be construed to authorize the appropriation of any amount for research under title XIV of the Public Health Service Act (this subchapter) (relating to safe drinking water).”

SAFE DRINKING WATER AMENDMENTS OF 1977 AS NOT AFFECTING AUTHORITY OF ADMINISTRATOR WITH RESPECT TO CONTAMINANTS

Pub. L. 95–190, §3(e)(2), Nov. 16, 1977, 91 Stat. 1394, provided that: “Nothing in this Act [see Short Title of 1977 Amendment note set out under section 201 of this title] shall be construed to alter or affect the Administrator's authority or duty under title 14 of the Public Health Service Act (this subchapter) to promulgate regulations or take other action with respect to any contaminant.”

RURAL WATER SURVEY; REPORT TO PRESIDENT AND CONGRESS; AUTHORIZATION OF APPROPRIATIONS

Section 3 of Pub. L. 93–523, as amended by Pub. L. 95–190, §§2(d), 3(d), Nov. 16, 1977, 91 Stat. 1393, 1394, directed Administrator of Environmental Protection Agency, after consultation with Secretary of Agriculture and the several States, to enter into arrangements with public or private entities to conduct a survey of quantity, quality, and availability of rural drinking water supplies, which survey was to include, but not be limited to, consideration of number of residents in each rural area who presently are being inadequately served by a public or private drinking water supply system, or by an individual home drinking water supply system, or who presently have limited or otherwise inadequate access to drinking water, or who, due to absence or inadequacy of a drinking water supply system, are exposed to an increased health hazard, and who have experienced incidents of chronic or acute illness, which may be attributed to inadequacy of a drinking water supply system. Survey to be completed within eighteen months of Dec. 16, 1974, and a final report thereon submitted, not later than six months after completion of survey, to President and to Congress.

FEDERAL COMPLIANCE WITH POLLUTION CONTROL STANDARDS

For provisions relating to the responsibility of the head of each Executive agency for compliance with applicable pollution control standards, see Ex. Ord. No. 12088, Oct. 13, 1978, 43 F.R. 47707, set out as a note under section 4321 of this title.

TERMINATION OF ADVISORY COMMITTEES

Pub. L. 93–641, §6, Jan. 4, 1975, 88 Stat. 2275, set out as a note under section 217a of this title, provided that an advisory committee established pursuant to the Public Health Service Act shall terminate at such time as may be specifically prescribed by an Act of Congress enacted after Jan. 4, 1975.

PART B—PUBLIC WATER SYSTEMS

§300g. Coverage

Subject to sections 300g–4 and 300g–5 of this title, national primary drinking water regulations under this part shall apply to each public water system in each State; except that such regulations shall not apply to a public water system—

(1) which consists only of distribution and storage facilities (and does not have any collection and treatment facilities);

(2) which obtains all of its water from, but is not owned or operated by, a public water system to which such regulations apply;

(3) which does not sell water to any person; and

(4) which is not a carrier which conveys passengers in interstate commerce.

(July 1, 1944, ch. 373, title XIV, §1411, as added Pub. L. 93–523, §2(a), Dec. 16, 1974, 88 Stat. 1662.)

§300g–1. National drinking water regulations

(a) National primary drinking water regulations; maximum contaminant level goals; simultaneous publication of regulations and goals

(1) Effective on June 19, 1986, each national interim or revised primary drinking water regulation promulgated under this section before June 19, 1986, shall be deemed to be a national primary drinking water regulation under subsection (b) of this section. No such regulation shall be required to comply with the standards set forth in subsection (b)(4) of this section unless such regulation is amended to establish a different maximum contaminant level after June 19, 1986.

(2) After June 19, 1986, each recommended maximum contaminant level published before June 19, 1986, shall be treated as a maximum contaminant level goal.

(3) Whenever a national primary drinking water regulation is proposed under subsection (b) of this section for any contaminant, the maximum contaminant level goal for such contaminant shall be proposed simultaneously. Whenever a national primary drinking water regulation is promulgated under subsection (b) of this section for any contaminant, the maximum contaminant level goal for such contaminant shall be published simultaneously.

(4) Paragraph (3) shall not apply to any recommended maximum contaminant level published before June 19, 1986.

(b) Standards

(1) IDENTIFICATION OF CONTAMINANTS FOR LISTING—

(A) General Authority.—The Administrator shall, in accordance with the procedures established by this subsection, publish a maximum contaminant level goal and promulgate a national primary drinking water regulation for a contaminant (other than a contaminant referred to in paragraph (2) for which a national primary drinking water regulation has been
§ 300g–1

promulgated as of August 6, 1996) if the Administrator determines that—

(i) the contaminant may have an adverse effect on the health of persons;

(ii) the contaminant is known to occur or there is a substantial likelihood that the contaminant will occur in public water systems with a frequency and at levels of public health concern; and

(iii) in the sole judgment of the Administrator, regulation of such contaminant presents a meaningful opportunity for health risk reduction for persons served by public water systems.

(B) REGULATION OF UNREGULATED CONTAMINANTS.—

(i) LISTING OF CONTAMINANTS FOR CONSIDERATION.—(I) Not later than 18 months after August 6, 1996, and every 5 years thereafter, the Administrator, after consultation with the scientific community, including the Science Advisory Board, after notice and opportunity for public comment, and after considering the occurrence data base established under section 300j–4(g) of this title, shall publish a list of contaminants which, at the time of publication, are not subject to any proposed or promulgated national primary drinking water regulation, which are known or anticipated to occur in public water systems, and which may require regulation under this subchapter.

(II) The unregulated contaminants considered under subclause (I) shall include, but not be limited to, substances referred to in section 9601(14) of this title, and substances registered as pesticides under the Federal Insecticide, Fungicide, and Rodenticide Act (7 U.S.C. 136 et seq.).

(III) The Administrator’s decision whether or not to select an unregulated contaminant for a list under this clause shall not be subject to judicial review.

(ii) DETERMINATION TO REGULATE.—(I) Not later than 5 years after August 6, 1996, and every 5 years thereafter, the Administrator shall, after notice of the preliminary determination and opportunity for public comment, for not fewer than 5 contaminants included on the list published under clause (i), make determinations of whether or not to regulate such contaminants.

(II) A determination to regulate a contaminant shall be based on findings that the criteria of clauses (i), (ii), and (iii) of subclause (A) are satisfied. Such findings shall be based on the best available public health information, including the occurrence data base established under section 300j–4(g) of this title.

(III) The Administrator may make a determination to regulate a contaminant that does not appear on a list under clause (i) if the determination to regulate is made pursuant to subclause (II).

(IV) A determination under this clause not to regulate a contaminant shall be considered final agency action and subject to judicial review.

(iii) REVIEW.—Each document setting forth the determination for a contaminant under clause (ii) shall be available for public comment at such time as the determination is published.

(C) PRIORITIES.—In selecting unregulated contaminants for consideration under subparagraph (B), the Administrator shall select contaminants that present the greatest public health concern. The Administrator, in making such selection, shall take into consideration, among other factors of public health concern, the effect of such contaminants upon subgroups that comprise a meaningful portion of the general population (such as infants, children, pregnant women, the elderly, individuals with a history of serious illness, or other subpopulations) that are identifiable as being at greater risk of adverse health effects due to exposure to contaminants in drinking water than the general population.

(D) URGENT THREATS TO PUBLIC HEALTH.—The Administrator may promulgate an interim national primary drinking water regulation for a contaminant without making a determination for the contaminant under paragraph (3)(C), or completing the analysis under paragraph (3)(C), to address an urgent threat to public health as determined by the Administrator after consultation with and written response to any comments provided by the Secretary of Health and Human Services, acting through the director of the Centers for Disease Control and Prevention or the director of the National Institutes of Health. A determination for any contaminant in accordance with paragraph (3)(C) subject to an interim regulation under this subparagraph shall be issued, and a completed analysis meeting the requirements of paragraph (3)(C) shall be published, not later than 3 years after the date on which the regulation is promulgated and the regulation shall be repromulgated, or revised if appropriate, not later than 5 years after that date.

(E) REGULATION.—For each contaminant that the Administrator determines to regulate under subparagraph (B), the Administrator shall publish a maximum contaminant level goal and promulgate, by rule, a national primary drinking water regulation for a contaminant not later than 24 months after the determination to regulate under subparagraph (B), and may publish such proposed regulation concurrent with the determination to regulate. The Administrator shall propose the maximum contaminant level goal and national primary drinking water regulation for a contaminant not later than 24 months after the determination to regulate under subparagraph (B), and may publish such proposed regulation concurrent with the determination to regulate. The Administrator shall publish a maximum contaminant level goal and promulgate a national primary drinking water regulation within 18 months after the proposal thereof. The Administrator, by notice in the Federal Register, may extend the deadline for such promulgation for up to 9 months.

(F) HEALTH ADVISORIES AND OTHER ACTIONS.—The Administrator may publish health advisories (which are not regulations) or take other appropriate actions for contaminants not subject to any national primary drinking water regulation.

(2) SCHEDULES AND DEADLINES.—

(A) IN GENERAL.—In the case of the contaminants listed in the Advance Notice of Proposed
Rulemaking published in volume 47, Federal Register, page 9352, and in volume 48, Federal Register, page 45502, the Administrator shall publish maximum contaminant level goals and promulgate national primary drinking water regulations:

(i) not later than 1 year after June 19, 1986, for not fewer than 9 of the listed contaminants;

(ii) not later than 2 years after June 19, 1986, for not fewer than 40 of the listed contaminants; and

(iii) not later than 3 years after June 19, 1986, for the remainder of the listed contaminants.

(B) SUBSTITUTION OF CONTAMINANTS.—If the Administrator identifies a drinking water contaminant the regulation of which, in the judgment of the Administrator, is more likely to be protective of public health (taking into account the schedule for regulation under subparagraph (A)) than a contaminant referred to in subparagraph (A), the Administrator may publish a maximum contaminant level goal and promulgate a national primary drinking water regulation for the identified contaminant in lieu of regulating the contaminant referred to in subparagraph (A). Substitutions may be made for not more than 7 contaminants referred to in subparagraph (A). Regulation of a contaminant identified under this subparagraph shall be in accordance with the schedule applicable to the contaminant for which the substitution is made.

(C) DISINFECTANTS AND DISINFECTION BYPRODUCTS.—The Administrator shall promulgate an Interim Enhanced Surface Water Treatment Rule, a Stage I Disinfectants and Disinfection Byproducts Rule, and a Stage II Disinfectants and Disinfection Byproducts Rule in accordance with the schedule published in volume 59, Federal Register, page 6361 (February 10, 1994), in table III.13 of the proposed Information Collection Rule. If a delay occurs with respect to the promulgation of any rule in the schedule referred to in this subparagraph, all subsequent rules shall be completed as expeditiously as practicable but no later than a revised date that reflects the interval in resolving the uncertainty; and use for the purposes of paragraphs (4), (5), and (6) an analysis of each of the following:

(I) Quantifiable and nonquantifiable health risk reduction benefits for which there is a factual basis in the rulemaking record to conclude that such benefits are likely to occur as the result of treatment to comply with each level.

(II) Quantifiable and nonquantifiable health risk reduction benefits for which there is a factual basis in the rulemaking record to conclude that such benefits are likely to occur from reductions in co-occurring contaminants that may be attributed solely to compliance with the maximum contaminant level, excluding benefits resulting from compliance with other proposed or promulgated regulations.

(III) Quantifiable and nonquantifiable costs for which there is a factual basis in the rulemaking record to conclude that such costs are likely to occur solely as a result of compliance with the maximum contaminant level, including monitoring, treatment, and other costs and excluding costs resulting from compliance with other proposed or promulgated regulations.

(IV) The incremental costs and benefits associated with each alternative maximum contaminant level considered.

(V) The effects of the contaminant on the general population and on groups within the general population such as infants, children, pregnant women, the elderly, individuals with a history of serious illness, or other subpopulations that are identified as likely to be at greater risk of adverse health effects due to exposure to contami-
§ 300g–1

(4) GOALS AND STANDARDS.—

(A) MAXIMUM CONTAMINANT LEVEL GOALS.—Each maximum contaminant level goal established under this subsection shall be set at the level at which no known or anticipated adverse effects on the health of persons occur and which allows an adequate margin of safety.

(B) MAXIMUM CONTAMINANT LEVELS.—Except as provided in paragraphs (5) and (6), each national primary drinking water regulation for a contaminant for which a maximum contaminant level goal is established under this subsection shall specify a maximum contaminant level for such contaminant which is as close to the maximum contaminant level goal as is feasible.

(C) DETERMINATION.—At the time the Administrator proposes a national primary drinking water regulation under this paragraph, the Administrator shall publish and seek public comment on an analysis of the health risk reduction benefits and costs likely to be experienced as the result of compliance with the treatment technique and alternative treatment techniques that are being considered, taking into account, as appropriate, the factors described in clause (i).

(ii) TREATMENT TECHNIQUES.—When proposing a national primary drinking water regulation which establishes a maximum contaminant level shall list the technology, treatment technique, or other means which the Administrator finds to be feasible for purposes of meeting such maximum contaminant level, but a regulation under this subsection shall not require that any specified technology, treatment technique, or other means be used for purposes of meeting such maximum contaminant level.

(iii) LIST OF TECHNOLOGIES.—The Administrator shall publish and seek public comment on an analysis of the health risk reduction benefits and costs likely to be experienced as the result of compliance with the treatment technique and alternative treatment techniques that are being considered, taking into account, as appropriate, the factors described in clause (i).
(v), not later than 2 years after August 6, 1996, and after consultation with the States, the Administrator shall issue a list of technologies that achieve compliance with the maximum contaminant level or treatment technique for each category of public water systems described in subclauses (I), (II), and (III) of clause (i) for each national primary drinking water regulation promulgated prior to June 19, 1986.

(iv) ADDITIONAL TECHNOLOGIES.—The Administrator may, at any time after a national primary drinking water regulation has been promulgated, supplement the list of technologies describing additional or new or innovative treatment technologies that meet the requirements of this paragraph for categories of small public water systems described in subclauses (I), (II), and (III) of clause (i) that are subject to the regulation.

(v) TECHNOLOGIES THAT MEET SURFACE WATER TREATMENT RULE.—Within one year after August 6, 1996, the Administrator shall list technologies that meet the Surface Water Treatment Rule for each category of public water systems described in subclauses (I), (II), and (III) of clause (i).

(5) ADDITIONAL HEALTH RISK CONSIDERATIONS.—

(A) IN GENERAL.—Notwithstanding paragraph (4), the Administrator may establish a maximum contaminant level for a contaminant at a level other than the feasible level, if the technology, treatment techniques, and other means used to determine the feasible level would result in an increase in the health risk from drinking water by—

(i) increasing the concentration of other contaminants in drinking water; or

(ii) interfering with the efficacy of drinking water treatment techniques or processes that are used to comply with other national primary drinking water regulations.

(B) ESTABLISHMENT OF LEVEL.—If the Administrator establishes a maximum contaminant level or levels or requires the use of treatment techniques for any contaminant or contaminants pursuant to the authority of this paragraph—

(i) the level or levels or treatment techniques shall minimize the overall risk of adverse health effects by balancing the risk from the contaminant and the risk from other contaminants the concentrations of which may be affected by the use of a treatment technique or process that would be employed to attain the maximum contaminant level or levels; and

(ii) the combination of technology, treatment techniques, or other means required to meet the level or levels shall not be more stringent than is feasible (as defined in paragraph (4)(D)).

(6) ADDITIONAL HEALTH RISK REDUCTION AND COST CONSIDERATIONS.—

(A) IN GENERAL.—Notwithstanding paragraph (4), if the Administrator determines based on an analysis conducted under paragraph (3)(C) that the benefits of a maximum contaminant level promulgated in accordance with paragraph (4) would not justify the costs of complying with the level, the Administrator may, after notice and opportunity for public comment, promulgate a maximum contaminant level for the contaminant that maximizes health risk reduction benefits at a cost that is justified by the benefits.

(B) EXCEPTION.—The Administrator shall not use the authority of this paragraph to promulgate a maximum contaminant level for a contaminant, if the benefits of compliance with a national primary drinking water regulation for the contaminant that would be promulgated in accordance with paragraph (4) experienced by—

(i) persons served by large public water systems; and

(ii) persons served by such other systems as are unlikely, based on information provided by the States, to receive a variance under section 300g–4(e) of this title (relating to small system variances);

would justify the costs to the systems of complying with the regulation. This subparagraph shall not apply if the contaminant is found almost exclusively in small systems eligible under section 300g–4(e) of this title for a small system variance.

(C) DISINFECTANTS AND DISINFECTION BYPRODUCTS.—The Administrator may not use the authority of this paragraph to establish a maximum contaminant level in a Stage I or Stage II national primary drinking water regulation (as described in paragraph (2)(C)) for contaminants that are disinfectants or disinfection byproducts, or to establish a maximum contaminant level or treatment technique requirement for the control of cryptosporidium. The authority of this paragraph may be used to establish regulations for the use of disinfection by systems relying on ground water sources as required by paragraph (8).

(D) JUDICIAL REVIEW.—A determination by the Administrator that the benefits of a maximum contaminant level or treatment requirement justify or do not justify the costs of complying with the level shall be reviewed by the court pursuant to section 300j–7 of this title only as part of a review of a final national primary drinking water regulation that has been promulgated based on the determination and shall not be set aside by the court under that section unless the court finds that the determination is arbitrary and capricious.

(7)(A) The Administrator is authorized to promulgate a national primary drinking water regulation that requires the use of a treatment technique in lieu of establishing a maximum contaminant level, if the Administrator makes a finding that it is not economically or technologically feasible to ascertain the level of the contaminant. In such case, the Administrator shall identify those treatment techniques which, in the Administrator's judgment, would prevent known or anticipated adverse effects on the health of persons to the extent feasible. Such regulations shall specify each treatment technique known to the Administrator which meets the requirements of this paragraph, but the Administrator may grant a variance from any specified treatment technique in accordance with section 300g–4(a)(3) of this title.
(B) Any schedule referred to in this subsection for the promulgation of a national primary drinking water regulation for any contaminant shall apply in the same manner if the regulation requires a treatment technique in lieu of establishing a maximum contaminant level.

(C)(i) Not later than 18 months after June 19, 1986, the Administrator shall propose and promulgate national primary drinking water regulations specifying criteria under which filtration (including coagulation and sedimentation, as appropriate) is required as a treatment technique for public water systems supplied by surface water sources. In promulgating such rules, the Administrator shall consider the quality of source waters, protection afforded by watershed management, treatment practices (such as disinfection and length of water storage) and other factors relevant to protection of health.

(ii) In lieu of the provisions of section 300g–4 of this title the Administrator shall specify procedures by which the State determines which public water systems within its jurisdiction shall add filtration under the criteria of clause (i). The State may require the public water system to provide studies or other information to assist in this determination. The procedures shall provide notice and opportunity for public hearing on this determination. If the State determines that filtration is required, the State shall prepare a schedule for compliance by the public water system with the filtration requirement. A schedule shall require compliance within 18 months of a determination made under clause (iii).

(iii) Within 18 months from the time that the Administrator establishes the criteria and procedures under this subparagraph, a State with primary enforcement responsibility shall adopt any necessary regulations to implement this subparagraph. Within 12 months of adoption of such regulations the State shall make determinations regarding filtration for all the public water systems within its jurisdiction supplied by surface waters.

(iv) If a State does not have primary enforcement responsibility for public water systems, the Administrator shall have the authority to make the determination in clause (ii) in such State as the State would have under that clause. Any filtration requirement or schedule under this subparagraph shall be treated as if it were a requirement of a national primary drinking water regulation.

(v) As an additional alternative to the regulations promulgated pursuant to clauses (i) and (iii), including the criteria for avoiding filtration contained in 40 CFR 141.71, a State exercising primary enforcement responsibility for public water systems may, on a case-by-case basis, and after notice and opportunity for public comment, establish treatment requirements as an alternative to filtration in the case of systems having uninhabited, undeveloped watersheds in consolidated ownership, and having control over access to, and activities in, those watersheds, if the State determines (and the Administrator concurs) that the quality of the source water and the alternative treatment requirements established by the State ensure greater removal or inactivation efficiencies of pathogenic organisms for which national primary drinking water regulations have been promulgated or that are of public health concern than would be achieved by the combination of filtration and chlorination disinfection (in compliance with this section).

(8) DISINFECTION.—At any time after the end of the 3-year period that begins on August 6, 1996, but not later than the date on which the Administrator promulgates a Stage II rulemaking for disinfectants and disinfection byproducts (as described in paragraph (2)(C)), the Administrator shall also promulgate national primary drinking water regulations requiring disinfection as a treatment technique for all public water systems, including surface water systems and, as necessary, ground water systems. After consultation with the States, the Administrator shall (as part of the regulations) promulgate criteria that the Administrator, or a State that has primary enforcement responsibility under section 300g–2 of this title, shall apply to determine whether disinfection shall be required as a treatment technique for any public water system served by ground water. The Administrator shall simultaneously promulgate a rule specifying criteria that will be used by the Administrator (or delegated State authorities) to grant variances from this requirement according to the provisions of sections 300g–4(a)(1)(B) and 300g–4(a)(3) of this title. In implementing section 300j–1(e) of this title the Administrator or the delegated State authority shall, where appropriate, give special consideration to providing technical assistance to small public water systems in complying with the regulations promulgated under this paragraph.

(9) REVIEW AND REVISION.—The Administrator shall, not less often than every 6 years, review and revise, as appropriate, each national primary drinking water regulation promulgated under this subchapter. Any revision of a national primary drinking water regulation shall be promulgated in accordance with this section, except that each revision shall maintain, or provide for greater, protection of the health of persons.

(10) EFFECTIVE DATE.—A national primary drinking water regulation promulgated under this section (and any amendment thereto) shall take effect on the date that is 3 years after the date on which the regulation is promulgated unless the Administrator determines that an earlier date is practicable, except that the Administrator, or a State (in the case of an individual system), may allow up to 2 additional years to comply with a maximum contaminant level or treatment technique if the Administrator or State (in the case of an individual system) determines that additional time is necessary for capital improvements.

(11) No national primary drinking water regulation may require the addition of any substance for preventive health care purposes unrelated to contamination of drinking water.

(12) CERTAIN CONTAMINANTS.—

(A) ARSENIC.—

(i) SCHEDULE AND STANDARD.—Notwithstanding the deadlines set forth in paragraph (1), the Administrator shall promulgate a national primary drinking water regulation
for arsenic pursuant to this subsection, in accordance with the schedule established by this paragraph.

(ii) Study Plan.—Not later than 180 days after August 6, 1996, the Administrator shall develop a comprehensive plan for study in support of drinking water rulemaking to reduce the uncertainty in assessing health risks associated with exposure to low levels of arsenic. In conducting such study, the Administrator shall consult with the National Academy of Sciences, other Federal agencies, and interested public and private entities.

(iii) Cooperative Agreements.—In carrying out the study plan, the Administrator may enter into cooperative agreements with other Federal agencies, State and local governments, and other interested public and private entities.

(iv) Proposed Regulations.—The Administrator shall propose a national primary drinking water regulation for arsenic not later than January 1, 2000.

(v) Final Regulations.—Not later than January 1, 2001, after notice and opportunity for public comment, the Administrator shall promulgate a national primary drinking water regulation for arsenic.

(vi) Authorization.—There are authorized to be appropriated $2,500,000 for each of fiscal years 1997 through 2000 for the studies required by this paragraph.

(B) Sulfate.—

(i) Additional Study.—Prior to promulgating a national primary drinking water regulation for sulfate, the Administrator and the Director of the Centers for Disease Control and Prevention shall jointly conduct an additional study to establish a reliable dose-response relationship for the adverse human health effects that may result from exposure to sulfate in drinking water, including the health effects that may be experienced by groups within the general population (including infants and travelers) that are potentially at greater risk of adverse health effects as the result of such exposure. The study shall be conducted in consultation with interested States, shall be based on the best available, peer-reviewed science and supporting studies conducted in accordance with sound and objective scientific practices, and shall be completed not later than 30 months after August 6, 1996.

(ii) Determination.—The Administrator shall include sulfate among the 5 or more contaminants for which a determination is made pursuant to paragraph (3)(B) not later than 5 years after August 6, 1996.

(iii) Proposed and Final Rule.—Notwithstanding the deadlines set forth in paragraph (2), the Administrator may, pursuant to the authorities of this subsection and after notice and opportunity for public comment, promulgate a final national primary drinking water regulation for sulfate. Any such regulation shall include requirements for public notification and options for the provision of alternative water supplies to populations at risk as a means of complying with the regulation in lieu of a best available treatment technology or other means.

(13) Radon in Drinking Water.—

(A) National Primary Drinking Water Regulation.—Notwithstanding paragraph (2), the Administrator shall withdraw any national primary drinking water regulation for radon proposed prior to August 6, 1996, and shall propose and promulgate a regulation for radon under this section, as amended by the Safe Drinking Water Act Amendments of 1996.

(B) Risk Assessment and Studies.—

(i) Assessment by NAS.—Prior to proposing a national primary drinking water regulation for radon, the Administrator shall arrange for the National Academy of Sciences to prepare a risk assessment for radon in drinking water using the best available science in accordance with the requirements of paragraph (3). The risk assessment shall consider each of the risks associated with exposure to radon from drinking water and consider studies on the health effects of radon at levels and under conditions likely to be experienced through residential exposure. The risk assessment shall be peer-reviewed.

(ii) Study of Other Measures.—The Administrator shall arrange for the National Academy of Sciences to prepare an assessment of the health risk reduction benefits associated with various mitigation measures to reduce radon levels in indoor air. The assessment may be conducted as part of the risk assessment authorized by clause (i) and shall be used by the Administrator to prepare the guidance and approve State programs under subparagraph (G).

(iii) Other Organization.—If the National Academy of Sciences declines to prepare the risk assessment or studies required by this subparagraph, the Administrator shall enter into a contract or cooperative agreement with another independent, scientific organization to prepare such assessments or studies.

(C) Health Risk Reduction and Cost Analysis.—Not later than 30 months after August 6, 1996, the Administrator shall publish, and seek public comment on, a health risk reduction and cost analysis meeting the requirements of paragraph (3)(C) for potential maximum contaminant levels that are being considered for radon in drinking water. The Administrator shall include a response to all significant public comments received on the analysis with the preamble for the proposed rule published under subparagraph (D).

(D) Proposed Regulation.—Not later than 36 months after August 6, 1996, the Administrator shall propose a maximum contaminant level goal and a national primary drinking water regulation for radon pursuant to this section.

(E) Final Regulation.—Not later than 12 months after the date of the proposal under subparagraph (D), the Administrator shall publish a maximum contaminant level goal and promulgate a national primary drinking water regulation for radon pursuant to this
section based on the risk assessment prepared pursuant to subparagraph (B) and the health risk reduction and cost analysis published pursuant to subparagraph (C). In considering the risk assessment and the health risk reduction and cost analysis in connection with the promulgation of such a standard, the Administrator shall take into account the costs and benefits of control programs for radon from other sources.

(F) ALTERNATIVE MAXIMUM CONTAMINANT LEVEL.—If the maximum contaminant level for radon in drinking water promulgated pursuant to subparagraph (E) is more stringent than necessary to reduce the contribution to radon in indoor air from drinking water to a concentration that is equivalent to the national average concentration of radon in outdoor air, the Administrator shall, simultaneously with the promulgation of such level, promulgate an alternative maximum contaminant level for radon that would result in a contribution of radon from drinking water to radon levels in indoor air equivalent to the national average concentration of radon in outdoor air. If the Administrator promulgates an alternative maximum contaminant level under this subparagraph, the Administrator shall, after notice and opportunity for public comment and in consultation with the States, publish guidelines for State programs, including criteria for multimedia measures to mitigate radon levels in indoor air, to be used by the States in preparing programs under subparagraph (G). The guidelines shall take into account data from existing radon mitigation programs and the assessment of mitigation measures prepared under subparagraph (B).

(G) MULTIMEDIA RADON MITIGATION PROGRAMS.—

(i) IN GENERAL.—A State may develop and submit a multimedia program to mitigate radon levels in indoor air for approval by the Administrator under this subparagraph. If, after notice and the opportunity for public comment, such program is approved by the Administrator, public water systems in the State may comply with the alternative maximum contaminant level promulgated under subparagraph (F) in lieu of the maximum contaminant level in the national primary drinking water regulation promulgated under subparagraph (E).

(ii) ELEMENTS OF PROGRAMS.—State programs may rely on a variety of mitigation measures including public education, testing, training, technical assistance, remediation grant and loan or incentive programs, or other regulatory or nonregulatory measures. The effectiveness of elements in State programs shall be evaluated by the Administrator based on the assessment prepared by the National Academy of Sciences under subparagraph (B) and the guidelines published by the Administrator under subparagraph (F).

(iii) APPROVAL.—The Administrator shall approve a State program submitted under this paragraph if the health risk reduction benefits that would be achieved if each public water system in the State complied with the maximum contaminant level promulgated under subparagraph (E). The Administrator shall approve or disapprove a program submitted under this paragraph within 180 days of receipt. A program that is not disapproved during such period shall be deemed approved. A program that is disapproved may be modified to address the objections of the Administrator and be resubmitted for approval.

(iv) REVIEW.—The Administrator shall periodically, but not less often than every 5 years, review each multimedia mitigation program approved under this subparagraph to determine whether it continues to meet the requirements of clause (iii) and shall, after written notice to the State and an opportunity for the State to correct any deficiency in the program, withdraw approval of programs that no longer comply with such requirements.

(v) EXTENSION.—If, within 90 days after the promulgation of an alternative maximum contaminant level under subparagraph (F), the Governor of a State submits a letter to the Administrator committing to develop a multimedia mitigation program under this subparagraph, the effective date of the national primary drinking water regulation for radon in the State that would be applicable under paragraph (10) shall be extended for a period of 18 months.

(vi) LOCAL PROGRAMS.—In the event that a State chooses not to submit a multimedia mitigation program for approval under this subparagraph or has submitted a program that has been disapproved, any public water system in the State may submit a program for approval by the Administrator according to the same criteria, conditions, and approval process that would apply to a State program. The Administrator shall approve a multimedia mitigation program if the health risk reduction benefits expected to be achieved by the program are equal to or greater than the health risk reduction benefits that would result from compliance by the public water system with the maximum contaminant level for radon promulgated under subparagraph (E).

(14) RECYCLING OF FILTER BACKWASH.—The Administrator shall promulgate a regulation to govern the recycling of filter backwash water within the treatment process of a public water system. The Administrator shall promulgate such regulation not later than 4 years after August 6, 1996, unless such recycling has been addressed by the Administrator’s Enhanced Surface Water Treatment Rule prior to such date.

(15) VARIANCE TECHNOLOGIES.—

(A) IN GENERAL.—At the same time as the Administrator promulgates a national primary drinking water regulation for a contaminant pursuant to this section, the Administrator shall issue guidance or regulations describing the best treatment technologies, treatment techniques, or other means (referred to in this paragraph as “variance technology”) for the contaminant that the Admini-
istrator finds, after examination for efficacy under field conditions and not solely under laboratory conditions, are available and affordable, as determined by the Administrator in consultation with the States, for public water systems of varying size, considering the quality of the source water to be treated. The Administrator shall identify such variance technologies for public water systems serving—

(i) a population of 10,000 or fewer but more than 3,300;
(ii) a population of 3,300 or fewer but more than 500; and
(iii) a population of 500 or fewer but more than 25,

if, considering the quality of the source water to be treated, no treatment technology is listed for public water systems of that size under paragraph (4)(E). Variance technologies identified by the Administrator pursuant to this paragraph may not achieve compliance with the maximum contaminant level or treatment technique requirement of such regulation, but shall achieve the maximum reduction or inactivation efficiency that is affordable considering the size of the system and the quality of the source water. The guidance or regulations shall not require the use of a technology from a specific manufacturer or brand.

(B) LIMITATION.—The Administrator shall not identify any variance technology under this paragraph, unless the Administrator has determined, considering the quality of the source water to be treated and the expected useful life of the technology, that the variance technology is protective of public health.

(C) ADDITIONAL INFORMATION.—The Administrator shall include in the guidance or regulations identifying variance technologies under this paragraph any assumptions supporting the public health determination referred to in subparagraph (B), where such assumptions concern the public water system to which the technology may be applied, or its source waters. The Administrator shall provide any assumptions used in determining affordability, taken into consideration the number of persons served by such systems. The Administrator shall provide as much reliable information as practicable on performance, effectiveness, limitations, costs, and other relevant factors including the applicability of variance technology to waters from surface and underground sources.

(D) REGULATIONS AND GUIDANCE.—Not later than 2 years after August 6, 1996, and after consultation with the States, the Administrator shall issue guidance or regulations under subparagraph (A) for each national primary drinking water regulation promulgated prior to August 6, 1996, for which a variance may be granted under section 300g–4(e) of this title. The Administrator may, at any time after a national primary drinking water regulation has been promulgated, issue guidance or regulations describing additional variance technologies. The Administrator shall, not less often than every 7 years, or upon receipt of a petition supported by substantial information, review variance technologies identified under this paragraph. The Administrator shall issue revised guidance or regulations if new or innovative variance technologies become available that meet the requirements of this paragraph and achieve an equal or greater reduction or inactivation efficiency than the variance technologies previously identified under this subparagraph. No public water system shall be required to replace a variance technology during the useful life of the technology for the sole reason that a more efficient variance technology has been listed under this subparagraph.

(c) Secondary regulations; publication of proposed regulations; promulgation; amendments

The Administrator shall publish proposed national secondary drinking water regulations within 270 days after December 16, 1974. Within 90 days after publication of any such regulation, he shall promulgate such regulation with such modifications as he deems appropriate. Regulations under this subsection may be amended from time to time.

(d) Regulations; public hearings; administrative consultations

Regulations under this section shall be prescribed in accordance with section 553 of title 5 (relating to rulemaking), except that the Administrator shall provide opportunity for public hearing prior to promulgation of such regulations. In proposing and promulgating regulations under this section, the Administrator shall consult with the Secretary and the National Drinking Water Advisory Council.

(e) Science Advisory Board comments

The Administrator shall request comments from the Science Advisory Board (established under the Environmental Research, Development, and Demonstration Act of 1978) prior to proposal of a maximum contaminant level goal and national primary drinking water regulation. The Board shall respond, as it deems appropriate, within the time period applicable for promulgation of the national primary drinking water standard concerned. This subsection shall, under no circumstances, be used to delay final promulgation of any national primary drinking water standard.


REFERENCES IN TEXT


The Safe Drinking Water Act Amendments of 1996, referred to in subsec. (b)(13)(A), is Pub. L. 104–182, Aug. 6,

**AMENDMENTS**


Subsec. (b). Pub. L. 104–182, § 102(a), inserted heading.

Subsec. (b)(1), (2). Pub. L. 104–182, § 102(a), added paras. (1) and (2) and struck out former paras. (1) and (2), which related to publication of maximum contaminant level goals and promulgation of national primary drinking water regulations for certain listed contaminants or subclasses of contaminants.


Pub. L. 104–182, § 102(a), struck out par. (3) which related to publication of maximum contaminant level goals and promulgation of national primary drinking water regulations for contaminants, other than those referred to in pars. (1) or (2), which may have an adverse effect on human health and are known to occur in public water systems.

Subsec. (b)(4). Pub. L. 104–182, § 104(a)(1), designated first sentence as subpar. (A), inserted par. and subparagraph (A) headings, designated second sentence as subpar. (B), inserted subpar. (B) heading, substituted “Except as provided in paragraphs (5) and (6), each national” for “Each national” and “specify a maximum contaminant level” for “specify a maximum level”, and added subpar. (C).

Subsec. (b)(4)(D). Pub. L. 104–182, § 104(a)(2), redesignated par. (5) as subpar. (D) of par. (4), inserted subpar. heading, and substituted “this paragraph” for “paragraph (4)”.

Subsec. (b)(4)(E). Pub. L. 104–182, § 104(a)(5), (10), redesignated subpar. (6) as subpar. (E)(1) of par. (4), inserted subpar. and cl. headings, substituted “this subsection” for “this paragraph”, and added cl. (i) to (v).

Subsec. (b)(5). Pub. L. 104–182, § 104(a)(6), added subpar. (6). Promoted pars. (5) and (6) redesignated subpars. (D) and (E)(1), respectively, of par. (4).


Subsec. (b)(8). Pub. L. 104–182, § 109(a)(2), substituted “section 300g–1(c)” for “section 300g–1(c)”.


Prior to amendment, par. (10) read as follows: “(1) The Administrator shall publish proposed national interim primary drinking water regulations within 90 days after December 16, 1974. Within 180 days after December 16, 1974, he shall promulgate such regulations with such modifications as he deems appropriate. Regulations under this paragraph may be amended from time to time.

(2) National interim primary drinking water regulations promulgated under paragraph (1) shall protect health to the extent feasible, using technology, treatment techniques, and other means, which the Administrator determines are generally available (taking costs into consideration) on December 16, 1974.

(3) The interim primary regulations first promulgated under paragraph (1) shall take effect eighteen months after the date of their promulgation.”

Subsec. (b)(11). Pub. L. 104–182, § 111(a), amended par. (11) generally. Prior to amendment, subsec. (a) read as follows:

“(1) The Administrator shall publish proposed national interim primary drinking water regulations within 90 days after December 16, 1974. Within 180 days after December 16, 1974, he shall promulgate such regulations with such modifications as he deems appropriate. Regulations under this paragraph may be amended from time to time.

(2) National interim primary drinking water regulations promulgated under paragraph (1) shall protect health to the extent feasible, using technology, treatment techniques, and other means, which the Administrator determines are generally available (taking costs into consideration) on December 16, 1974.

(3) The interim primary regulations first promulgated under paragraph (1) shall take effect eighteen months after the date of their promulgation.”


1986—Subsec. (a). Pub. L. 99–339, § 101(a), amended subsec. (a) generally. Prior to amendment, subsec. (a) read as follows:

“(1) The Administrator shall publish proposed national interim primary drinking water regulations within 90 days after December 16, 1974. Within 180 days after December 16, 1974, he shall promulgate such regulations with such modifications as he deems appropriate. Regulations under this paragraph may be amended from time to time.

(2) National interim primary drinking water regulations promulgated under paragraph (1) shall protect health to the extent feasible, using technology, treatment techniques, and other means, which the Administrator determines are generally available (taking costs into consideration) on December 16, 1974.

(3) The interim primary regulations first promulgated under paragraph (1) shall take effect eighteen months after the date of their promulgation.”

Subsec. (b)(1). Pub. L. 99–339, § 101(b), substituted provisions establishing standard setting schedules and deadlines for provisions relating to establishment of maximum contaminant levels and a list of contaminants with adverse effect but of undetermined levels.

Subsec. (b)(2). Pub. L. 99–339, § 101(b), substituted provisions authorizing the Administrator to substitute contaminants for those referred to in par. (1) and to supply a list of the contaminants proposed for substitution, with the decision of the Administrator to regulate such contaminant not subject to judicial review, for provisions which authorized the Administrator to publish in the Federal Register proposed revised national interim primary drinking water regulations and 180 days after the date of such proposed regulations to promulgate such revised regulations with modification as deemed appropriate.

Subsec. (b)(3). Pub. L. 99–339, § 101(b), substituted provisions directing the Administrator to publish maximum contaminant level goals and promulgate national primary drinking water regulations for contaminants, other than specified in par. (1) or (2), which may have an adverse effect on health and are known or anticipated to occur in public water systems, to establish an advisory working group to aid in establishing a list of such contaminants, and to publish, within a specified time, both proposed and final goals and regulations for provisions which required that revised national primary drinking water regulations specify a maximum contaminant level or require the use of treatment techniques for each contaminant, which level or technique
was to be as close to the recommended level or technique as feasible, and defined the term "feasible".

Subsec. (b)(4) to (11), Pub. L. 99-338, § 104(a), (d), added subsec. (d) to (11), redesignated former pars. (4) to (10), respectively, in par. (9) substituted "National" for "Revised National" and inserted provisions which relate to the request by the Administrator of comments by the Science Advisory Board prior to proposal of a maximum contaminant level and national primary drinking water regulation on disinfection byproducts which related to the development of the July 29, 1994, proposed national primary drinking water regulation for arsenic not later than June 22, 2001.

Applicability of Prior Requirements

Section 102(b) of Pub. L. 104-182 provided that: "The requirements of subparagraphs (C) and (D) of section 1412(b)(3) of the Safe Drinking Water Act [subsec. (b)(3)(C), (D) of this section] as in effect before the date of enactment of this Act [Aug. 6, 1996], and any obligation to promulgate regulations pursuant to such subparagraphs (C) and (D) of section 1412(b)(3) of the Safe Drinking Water Act, as amended [subsec. (b)(3)(C), (D) of this section], the Administrator shall promulgate a national primary drinking water regulation for arsenic not later than June 22, 2001."

Section 102(b) of Pub. L. 104-182 provided that: "The Administrator of the Environmental Protection Agency may use the authority of section 1412(b)(5) of the Safe Drinking Water Act [subsec. (b)(5) of this section] (as amended by this Act) to promulgate the Stage I and Stage II Disinfectants and Disinfection Byproducts Rules as proposed in volume 59, Federal Register, page 38668 (July 29, 1994)." The considerations used in the development of the July 29, 1994, proposed national primary drinking water regulation on disinfectants and disinfection byproducts shall be treated as consistent with such section 1412(b)(5) for purposes of such Stage I and Stage II rules.

§ 300g-2. State primary enforcement responsibility

(a) In general

For purposes of this subchapter, a State has primary enforcement responsibility for public water systems during any period for which the Administrator determines (pursuant to regulations prescribed under subsection (b) of this section) that such State—

(1) has adopted drinking water regulations that are no less stringent than the national primary drinking water regulations promulgated by the Administrator under subsections (a) and (b) of section 300g-1 of this title not later than 2 years after the date on which the regulations are promulgated by the Administrator, except that the Administrator may provide for an extension of not more than 2 years if, after submission and review of appropriate, adequate documentation from the State, the Administrator determines that the extension is necessary and justified;

(2) has adopted and is implementing adequate procedures for the enforcement of such State regulations, including conducting such monitoring and making such inspections as the Administrator may require by regulation;

(3) will keep such records and make such reports with respect to its activities under paragraphs (1) and (2) as the Administrator may require by regulation;

(4) if it permits variances or exemptions, or both, from the requirements of its drinking water regulations which meet the requirements of paragraph (1), permits such variances and exemptions under conditions and in a manner which is not less stringent than the conditions under, and in the manner in which variances and exemptions may be granted under sections 300g-4 and 300g-5 of this title;

(5) has adopted and can implement an adequate plan for the provision of safe drinking water under emergency circumstances including earthquakes, floods, hurricanes, and other natural disasters, as appropriate; and

(6) has adopted authority for administrative penalties (unless the constitution of the State prohibits the adoption of the authority) in a maximum amount—

(A) in the case of a system serving a population of more than 10,000, that is not less than $1,000 per day per violation; and

(B) in the case of any other system, that is adequate to ensure compliance (as determined by the State); except that a State may establish a maximum limitation on the total amount of administrative penalties that may be imposed on a public water system per violation.

(b) Regulations

(1) The Administrator shall, by regulation (proposed within 180 days of December 16, 1974), prescribe the manner in which a State may apply to the Administrator for a determination that the requirements of paragraphs (1), (2), (3), and (4) of subsection (a) of this section are satisfied with respect to the State, the manner in which the determination is made, the period for which the determination will be effective, and the manner in which the Administrator may determine that such requirements are no longer met. Such regulations shall require that before a determination of the Administrator that such requirements are met or are no longer met with respect to a State may become effective, the Administrator shall notify such State of the determination and the reasons therefor and shall provide an opportunity for public hearing on the determination. Such regulations shall be promulgated (with such modifications as the Administrator deems appropriate) within 90 days of the publication of the proposed regulations in the Federal Register. The Administrator shall promptly notify in writing the chief executive officer of each State of the promulgation of regulations under this paragraph. Such notice shall contain a copy of the regulations and shall...
specify a State's authority under this subchapter when it is determined to have primary enforcement responsibility for public water systems.

(2) When an application is submitted in accordance with the Administrator's regulations under paragraph (1), the Administrator shall within 90 days of the date on which such application is submitted (A) make the determination applied for, or (B) deny the application and notify the applicant in writing of the reasons for his denial.

(c) Interim primary enforcement authority

A State that has primary enforcement authority under this section with respect to each existing national primary drinking water regulation shall be considered to have primary enforcement authority with respect to each new or revised national primary drinking water regulation during the period beginning on the effective date of a regulation adopted and submitted by the State with respect to the new or revised national primary drinking water regulation in accordance with subsection (b)(1) of this section and ending at such time as the Administrator makes a determination under subsection (b)(2)(B) of this section with respect to the regulation.


AMENDMENTS

1996—Subsec. (a)(1). Pub. L. 104–182, §112(a)(1), amended par. (1) generally. Prior to amendment, par. (1) read as follows: "has adopted drinking water regulations which are no less stringent than the national primary drinking water regulations in effect under sections 300g–1(a) and 300g–1(b) of this title".

Subsec. (a)(5). Pub. L. 104–182, §112(b), inserted "including earthquakes, floods, hurricanes, and other natural disasters, as appropriate" after "emergency circumstances".


1986—Subsec. (a)(1). Pub. L. 99–339 substituted "are no less stringent than the national primary drinking water regulations in effect under sections 300g–1(a) and 300g–1(b) of this title" for subpars. (A) and (B) which related to stringency of State drinking water regulations between period of promulgation and effective date of national primary drinking water regulations and during the period after such effective date.

§ 300g–3. Enforcement of drinking water regulations

(a) Notice to State and public water system; issuance of administrative order; civil action

(1)(A) Whenever the Administrator finds during a period during which a State has primary enforcement responsibility for public water systems (within the meaning of section 300g–2(a) of this title) that any public water system—

(i) for which a variance under section 300g–4 or an exemption under section 300g–5 of this title is not in effect, does not comply with any applicable requirement, or

(ii) for which a variance under section 300g–4 or an exemption under section 300g–5 of this title is in effect, does not comply with any schedule or other requirement imposed pursuant thereto,

he shall so notify the State and such public water system and provide such advice and technical assistance to such State and public water system as may be appropriate to bring the system into compliance with the requirement by the earliest feasible time.

(B) If, beyond the thirtieth day after the Administrator's notification under subparagraph (A), the State has not commenced appropriate enforcement action, the Administrator shall issue an order under subsection (g) of this section requiring the public water system to comply with such applicable requirement or the Administrator shall commence a civil action under subsection (b) of this section.

(2) ENFORCEMENT IN NONPRIMACY STATES.—

(A) IN GENERAL.—If, on the basis of information available to the Administrator, the Administrator finds, with respect to a period in which a State does not have primary enforcement responsibility for public water systems, that a public water system in the State—

(i) for which a variance under section 300g–4 of this title or an exemption under section 300g–5 of this title is not in effect, does not comply with any applicable requirement; or

(ii) for which a variance under section 300g–4 of this title or an exemption under section 300g–5 of this title is in effect, does not comply with any schedule or other requirement imposed pursuant to the variance or exemption;

the Administrator shall issue an order under subsection (g) of this section requiring the public water system to comply with the requirement, or commence a civil action under subsection (b) of this section.

(B) NOTICE.—If the Administrator takes any action pursuant to this paragraph, the Administrator shall notify an appropriate local elected official, if any, with jurisdiction over the public water system of the action prior to the time that the action is taken.

(b) Judicial determinations in appropriate Federal district courts; civil penalties, separate violations

The Administrator may bring a civil action in the appropriate United States district court to require compliance with any applicable requirement, with an order issued under subsection (g) of this section, or with any schedule or other requirement imposed pursuant to a variance or exemption granted under section 300g–4 or 300g–5 of this title if—

(1) authorized under paragraph (1) or (2) of subsection (a) of this section, or

(2) if requested by (A) the chief executive officer of the State in which is located the public water system which is not in compliance with such regulation or requirement, or (B) the agency of such State which has jurisdiction over compliance by public water systems in the State with national primary drinking water regulations or State drinking water regulations.

The court may enter, in an action brought under this subsection, such judgement as protection of
The alternative requirements shall provide the same type and amount of information as required pursuant to this subsection and regulations issued under subparagraph (A).

(iii) Relationship to section 300g–2

Nothing in this subparagraph shall be construed or applied to modify the requirements of section 300g–2 of this title.

(C) Violations with potential to have serious adverse effects on human health

Regulations issued under subparagraph (A) shall specify notification procedures for each violation by a public water system that has the potential to have serious adverse effects on human health as a result of short-term exposure. Each notice of violation provided under this subparagraph shall—

(i) provide a clear and readily understandable explanation of—

(I) the violation;

(II) the potential adverse effects on human health;

(III) the steps that the public water system is taking to correct the violation; and

(IV) the necessity of seeking alternative water supplies until the violation is corrected;

(ii) be provided to the Administrator or the head of the State agency that has primary enforcement responsibility under section 300g–2 of this title as soon as practicable, but not later than 24 hours after the occurrence of the violation; and

(iii) be provided by the State agency in general regulations of the State agency, or on a case-by-case basis after the consultation referred to in clause (iii), considering the health risks involved—

(I) be provided to appropriate broadcast media;

(II) be prominently published in a newspaper of general circulation serving the area not later than 1 day after distribution of a notice pursuant to clause (i) or the date of publication of the next issue of the newspaper; or

(III) be provided by posting or door-to-door notification in lieu of notification by means of broadcast media or newspaper.

(D) Written notice

(i) In general

Regulations issued under subparagraph (A) shall specify notification procedures for violations other than the violations covered by subparagraph (C). The procedures shall specify that a public water system shall provide written notice to each person served by the system by notice (I) in the first bill (if any) prepared after the date of occurrence of the violation, (II) in
§ 300g–3  TITLE 42—THE PUBLIC HEALTH AND WELFARE  Page 980

an annual report issued not later than 1 year after the date of occurrence of the violation, or (III) by mail or direct delivery as soon as practicable, but not later than 1 year after the date of occurrence of the violation.

(ii) Form and manner of notice

The Administrator shall prescribe the form and manner of the notice to provide a clear and readily understandable explanation of the violation, any potential adverse health effects, and the steps that the system is taking to seek alternative water supplies, if any, until the violation is corrected.

(E) Unregulated contaminants

The Administrator may require the owner or operator of a public water system to give notice to the persons served by the system of the concentration levels of an unregulated contaminant required to be monitored under section 300j–4(a) of this title.

(3) Reports

(A) Annual report by State

(i) In general

Not later than January 1, 1998, and annually thereafter, each State that has primary enforcement responsibility under section 300g–2 of this title shall prepare, make readily available to the public, and submit to the Administrator an annual report on violations of national primary drinking water regulations by public water systems in the State, including violations with respect to (I) maximum contaminant levels, (II) treatment requirements, (III) variances and exemptions, and (IV) monitoring requirements determined to be significant by the Administrator after consultation with the States.

(ii) Distribution

The State shall publish and distribute summaries of the report and indicate where the full report is available for review.

(B) Annual report by Administrator

Not later than July 1, 1998, and annually thereafter, the Administrator shall prepare and make available to the public an annual report summarizing and evaluating reports submitted by States pursuant to subparagraph (A) and notices submitted by public water systems serving Indian Tribes provided to the Administrator pursuant to subparagraph (C) or (D) of paragraph (2) and making recommendations concerning the resources needed to improve compliance with this subchapter. The report shall include information about public water system compliance on Indian reservations and about enforcement activities undertaken and financial assistance provided by the Administrator on Indian reservations, and shall make specific recommendations concerning the resources needed to improve compliance with this subchapter on Indian reservations.

(4) Consumer confidence reports by community water systems

(A) Annual reports to consumers

The Administrator, in consultation with public water systems, environmental groups, public interest groups, risk communication experts, and the States, and other interested parties, shall issue regulations within 24 months after August 6, 1996, to require each community water system to mail to each customer of the system at least once annually a report on the level of contaminants in the drinking water purveyed by that system (referred to in this paragraph as a “consumer confidence report”). Such regulations shall provide a brief and plainly worded definition of the terms “maximum contaminant level goal”, “maximum contaminant level”, “variances”, and “exemptions” and brief statements in plain language regarding the health concerns that resulted in regulation of each regulated contaminant. The regulations shall also include a brief and plainly worded explanation regarding contaminants that may reasonably be expected to be present in drinking water, including bottled water. The regulations shall also provide for an Environmental Protection Agency toll-free hotline that consumers can call for more information and explanation.

(B) Contents of report

The consumer confidence reports under this paragraph shall include, but not be limited to, each of the following:

(i) Information on the source of the water purveyed.

(ii) A brief and plainly worded definition of the terms “maximum contaminant level goal”, “maximum contaminant level”, “variances”, and “exemptions” as provided in the regulations of the Administrator.

(iii) If any regulated contaminant is detected in the water purveyed by the public water system, a statement setting forth (I) the maximum contaminant level goal, (II) the maximum contaminant level, (III) the level of such contaminant in such water system, and (IV) for any regulated contaminant for which there has been a violation of the maximum contaminant level during the year concerned, the brief statement in plain language regarding the health concerns that resulted in regulation of such contaminant, as provided by the Administrator in regulations under subparagraph (A).

(iv) Information on compliance with national primary drinking water regulations, as required by the Administrator, and notice if the system is operating under a variance or exemption and the basis on which the variance or exemption was granted.

(v) Information on the levels of unregulated contaminants for which monitoring is required under section 300j–4(a)(2) of this title (including levels of cryptosporidium and radon where States determine they may be found).
(vi) A statement that the presence of contaminants in drinking water does not necessarily indicate that the drinking water poses a health risk and that more information about contaminants and potential health effects can be obtained by calling the Environmental Protection Agency hotline.

A public water system may include such additional information as it deems appropriate for public education. The Administrator may, for not more than 3 regulated contaminants other than those referred to in subclause (IV) of clause (iii), require a consumer confidence report under this paragraph to include the brief statement in plain language regarding the health concerns that resulted in regulation of the contaminant or contaminants concerned, as provided by the Administrator in regulations under subparagraph (A).

(C) Coverage

The Governor of a State may determine not to apply the mailing requirement of subparagraph (A) to a community water system serving fewer than 10,000 persons. Any such system shall—

(i) inform, in the newspaper notice required by clause (iii) or by other means, its customers that the system will not be mailing the report as required by subparagraph (A);

(ii) make the consumer confidence report available upon request to the public; and

(iii) publish the report referred to in subparagraph (A) annually in one or more local newspapers serving the area in which customers of the system are located.

(D) Alternative to publication

For any community water system which, pursuant to subparagraph (C), is not required to meet the mailing requirement of subparagraph (A) and which serves 500 persons or fewer, the community water system may elect not to comply with clause (i) or (iii) of subparagraph (C). If the community water system so elects, the system shall, at a minimum—

(i) prepare an annual consumer confidence report pursuant to subparagraph (B); and

(ii) provide notice at least once per year to each of its customers by mail, by door-to-door delivery, by posting or by other means authorized by the regulations of the Administrator that the consumer confidence report is available upon request.

(E) Alternative form and content

A State exercising primary enforcement responsibility may establish, by rule, after notice and public comment, alternative requirements with respect to the form and content of consumer confidence reports under this paragraph.

(d) Notice of noncompliance with secondary drinking water regulations

Whenever, on the basis of information available to him, the Administrator finds that within a reasonable time after national secondary drinking water regulations have been promulgated, one or more public water systems in a State do not comply with such secondary regulations, and that such noncompliance appears to result from a failure of such State to take reasonable action to assure that public water systems throughout such State meet such secondary regulations, he shall so notify the State.

(e) State authority to adopt or enforce laws or regulations respecting drinking water regulations or public water systems unaffected

Nothing in this subchapter shall diminish any authority of a State or political subdivision to adopt or enforce any law or regulation respecting drinking water regulations or public water systems, but no such law or regulation shall relieve any person of any requirement otherwise applicable under this subchapter.

(f) Notice and public hearing; availability of recommendations transmitted to State and public water system

If the Administrator makes a finding of noncompliance (described in subparagraph (A) or (B) of subsection (a)(1) of this section) with respect to a public water system in a State which has primary enforcement responsibility, the Administrator may, for the purpose of assisting that State in carrying out such responsibility and upon the petition of such State or public water system or persons served by such system, hold, after appropriate notice, public hearings for the purpose of gathering information from technical or other experts, Federal, State, or other public officials, representatives of such public water system, persons served by such system, and other interested persons on—

(1) the ways in which such system can within the earliest feasible time be brought into compliance with the regulation or requirement with respect to which such finding was made, and

(2) the means for the maximum feasible protection of the public health during any period in which such system is not in compliance with a national primary drinking water regulation or requirement applicable to a variance or exemption.

On the basis of such hearings the Administrator shall issue recommendations which shall be sent to such State and public water system and shall be made available to the public and communications media.

(g) Administrative order requiring compliance; notice and hearing; civil penalty; civil actions

(1) In any case in which the Administrator is authorized to bring a civil action under this section or under section 300j–4 of this title with respect to any applicable requirement, the Administrator also may issue an order to require compliance with such applicable requirement.

(2) An order issued under this subsection shall not take effect, in the case of a State having primary enforcement responsibility for public water systems in that State, until after the Administrator has provided the State with an opportunity to confer with the Administrator regarding the order. A copy of any order issued
under this subsection shall be sent to the appropriate State agency of the State involved if the State has primary enforcement responsibility for public water systems in that State. Any order issued under this subsection shall state with reasonable specificity the nature of the violation. In any case in which an order under this subsection is issued to a corporation, a copy of such order shall be issued to appropriate corporate officers.

(3)(A) Any person who violates, or fails or refuses to comply with, an order under this subsection shall be liable to the United States for a civil penalty of not more than $25,000 per day of violation.

(B) In a case in which a civil penalty sought by the Administrator under this paragraph does not exceed $5,000, the penalty shall be assessed by the Administrator under this paragraph and not in accordance with section 554 of title 5. In a case in which a civil penalty sought by the Administrator under this paragraph exceeds $5,000, but does not exceed $25,000, the penalty shall be assessed by the Administrator after notice and opportunity for a hearing on the record in accordance with section 554 of title 5.

(C) Whenever any civil penalty sought by the Administrator under this subsection for a violation of an applicable requirement exceeds $25,000, the penalty shall be assessed by a civil action brought by the Administrator in the appropriate United States district court (as determined under the provisions of title 28).

(D) If any person fails to pay an assessment of a civil penalty after it has become a final and unappealable order, or after the appropriate court of appeals has entered final judgment in favor of the Administrator, the Attorney General shall recover the amount for which such person is liable in any appropriate district court of the United States. In any such action, the validity and appropriateness of the final order imposing the civil penalty shall not be subject to review.

(h) Consolidation incentive

(1) In general

An owner or operator of a public water system may submit to the State in which the system is located (if the State has primary enforcement responsibility under section 300g–2 of this title) or to the Administrator (if the State does not have primary enforcement responsibility) a plan (including specific measures and schedules) for—

(A) the physical consolidation of the system with 1 or more other systems;

(B) the consolidation of significant management and administrative functions of the system with 1 or more other systems; or

(C) the transfer of ownership of the system that may reasonably be expected to improve drinking water quality.

(2) Consequences of approval

If the State or the Administrator approves a plan pursuant to paragraph (1), no enforcement action shall be taken pursuant to this part with respect to a specific violation identified in the approved plan prior to the date that is the earlier of the date on which consolidation is completed according to the plan or the date that is 2 years after the plan is approved.

(i) "Applicable requirement" defined

In this section, the term "applicable requirement" means—

(1) a requirement of section 300g–1, 300g–3, 300g–4, 300g–5, 300g–6, 300i–2, 300j, or 300j–4 of this title;

(2) a regulation promulgated pursuant to a section referred to in paragraph (1);

(3) a schedule or requirement imposed pursuant to a section referred to in paragraph (1); and

(4) a requirement of, or permit issued under, an applicable State program for which the Administrator has made a determination that the requirements of section 300g–2 of this title have been satisfied, or an applicable State program approved pursuant to this part.

(AMENDMENTS)


Subsec. (a)(1)(B), Pub. L. 104–182, §113(a)(1)(A)(ii), substituted "applicable requirement" for "national primary drinking water regulation in effect under section 300g–1 of this title".

Subsec. (a)(2)(B), Pub. L. 104–182, §113(a)(1)(A)(ii), substituted "applicable requirement" for "such regulation or requirement".

Subsec. (b)(2). Pub. L. 104–182, §113(a)(1)(B), added par. (2) and struck out former par. (2) which read as follows: "Whenever, on the basis of information available to him, the Administrator finds during a period during which a State does not have primary enforcement responsibility for public water systems that a public water system in such State—"

"(A) for which a variance under section 300g–4(a)(2) or an exemption under section 300g–5(f) of this title is not in effect, does not comply with any national primary drinking water regulation in effect under section 300g–1 of this title, or

"(B) for which a variance under section 300g–4(a)(2) or an exemption under section 300g–5(f) of this title is in effect, does not comply with any schedule or other requirement imposed pursuant thereto, the Administrator shall issue an order under subsection (g) of this section requiring the public water system to comply with such regulation or requirement or the Administrator shall commence a civil action under subsection (b) of this section.

Subsec. (b). Pub. L. 104–182, §113(a)(2), substituted "any applicable requirement" for "a national primary drinking water regulation" in introductory provisions.

Subsec. (c), Pub. L. 104–182, §114(a), amended subsec. (c) generally. Prior to amendment, subsec. (c) related to notice of owner or operator of public water system to persons served, regulations for form, manner, and

1 So in original. There probably should be a comma.
frequency of notice, amendment of regulations to provide different types and frequencies of notice, and penalties.

Subsec. (g)(1). Pub. L. 104–182, §113(a)(3)(A), substituted “applicable requirement” for “regulation, schedule, or other requirement” in two places.

Subsec. (g)(2). Pub. L. 104–182, §113(a)(3)(B), substituted “effect, in the case” for “effect until after notice and opportunity for public hearing and, in the case” and “regarding the order” for “regarding the proposed order” and struck out “proposed to be” after “A copy of the order”.

Subsec. (g)(3)(B). Pub. L. 104–182, §113(a)(3)(C)(i), added subpar. (B) and struck out former subpar. (B), which read as follows: “Whenever any civil penalty sought by the Administrator under this paragraph does not exceed a total of $5,000, the penalty shall be assessed by the Administrator after notice and opportunity for a hearing on the record in accordance with section 554 of title 5.”

Subsec. (g)(3)(C). Pub. L. 104–182, §113(a)(3)(C)(ii), substituted “subsection for a violation of an applicable requirement exceeds $25,000” for “paragraph exceeds $5,000”.

Subsecs. (h), (i), Pub. L. 104–182, §113(a)(4), added subsecs. (h) and (i).


Subsec. (a)(1)(A). Pub. L. 99–339, §102(a), inserted “and such public water system” after “notify the State” in provisions following cl. (i).

Subsec. (a)(1)(B). Pub. L. 99–339, §102(b)(1), amended subpar. (B) generally, substituting provisions which relate to issuance of an order to public water system to comply with regulations, or commencement of civil action if the State has not commenced appropriate enforcement action for provisions which related to public notice of noncompliance and commencement of civil action by Administrator if State failed to take steps to obtain compliance by public water system.

Subsec. (a)(2). Pub. L. 99–339, §102(b)(2), substituted “the Administrator shall issue an order under subsection (g) of this section requiring the public water system to comply with such regulation or requirement, or the Administrator shall commence a civil action under subsection (b) of this section” for “he may commence a civil action under subsection (b) of this section”.

Subsec. (b), Pub. L. 99–339, §102(c), inserted “, with an order issued under subsection (g) of this section,” before “or with any schedule” and substituted “there has been a violation” for “there has been a willful violation” and “$25,000” for “$5,000”.

Subsec. (c). Pub. L. 99–339, §103, substituted provisions relating to amendment of regulations within fifteen months after June 19, 1986, to provide different types and frequencies of notice based on the differences in pollution regulations which are intermittent or continuous, manner and content of notices, notice required to public served by owner or operator of public water system, and civil penalty of $25,000, for provisions relating to form, manner, and frequency of notice based on three month billing period for water bills, notice required to public served by owner or operator of public water system, and civil penalty of $5,000.

Subsec. (g). Pub. L. 99–339, §102(d), added subsec. (g).

1977—Subsec. (c). Pub. L. 95–190 inserted provisions relating to frequency of required notice, and notice respecting contaminant levels, and substituted “issued under this subsection” for “thereunder”.

§300g–4. Variances

(a) Characteristics of raw water sources; specific treatment technique; notice to Administrator, reasons for variance; compliance, enforcement; approval or revision of schedules and revocation of variances; review of variances and schedules; publication in Federal Register, notice and results of review; notice to State; considerations respecting abuse of discretion in granting variances or failing to prescribe schedules; State corrective action; authority of Administrator in a State without primary enforcement responsibility; alternative treatment techniques

Notwithstanding any other provision of this part, variances from national primary drinking water regulations may be granted as follows:

(1)(A) A State which has primary enforcement responsibility for public water systems may grant one or more variances from an applicable national primary drinking water regulation to one or more public water systems within its jurisdiction which, because of characteristics of the raw water sources which are reasonably available to the systems, cannot meet the requirements respecting the maximum contaminant levels of such drinking water regulation. A variance may be issued to a system on condition that the system install the best technology, treatment techniques, or other means, which the Administrator finds are available (taking costs into consideration), and based upon an evaluation satisfactory to the State that indicates that alternative sources of water are not reasonably available to the system. The Administrator shall propose and promulgate his finding of the best available technology, treatment techniques or other means available for each contaminant for purposes of this subsection at the time he proposes and promulgates a maximum contaminant level for each such contaminant. The Administrator’s finding of best available technology, treatment techniques or other means for purposes of this subsection may vary depending on the number of persons served by the system or for other physical conditions related to engineering feasibility and costs of compliance with maximum contaminant levels as considered appropriate by the Administrator. Before a State may grant a variance under this subparagraph, the State must find that the variance will not result in an unreasonable risk to health. If a State grants a public water system a variance under this subparagraph, the State shall prescribe at the time the variance is granted, a schedule for—

(i) compliance (including increments of progress) by the public water system with each containment level requirement with respect to which the variance was granted, and

(ii) implementation by the public water system of such additional control measures as the State may require for each contaminant, subject to such contaminant level requirement, during the period ending on the date compliance with such requirement is required.

1So in original.
Before a schedule prescribed by a State pursuant to this subparagraph may take effect, the State shall provide notice and opportunity for a public hearing on the schedule. A notice given pursuant to the preceding sentence may cover the prescribing of more than one such schedule and a hearing held pursuant to such notice shall include each of the schedules covered by the notice. A schedule prescribed pursuant to this subparagraph for a public water system granted a variance shall require compliance by the system with each contaminant or level requirement with respect to which the variance was granted as expeditiously as practicable (as the State may reasonably determine).

(B) A State which has primary enforcement responsibility for public water systems may grant to one or more public water systems within its jurisdiction one or more variances from any provision of the national primary drinking water regulation which requires the use of a specified treatment technique with respect to a contaminant if the public water system applying for the variance demonstrates to the satisfaction of the State that such treatment technique is not necessary to protect the health of persons because of the nature of the raw water source of such system. A variance granted under this subparagraph shall be conditioned on such monitoring and other requirements as the Administrator may prescribe.

(C) Before a variance proposed to be granted by a State under subparagraph (A) or (B) may take effect, such State shall provide notice and opportunity for public hearing on the proposed variance. A notice given pursuant to the preceding sentence may cover the granting of more than one variance and a hearing held pursuant to such notice shall include each of the variances covered by the notice. The State shall promptly notify the Administrator of all variances granted by it. Such notification shall contain the reason for the variance (and in the case of a variance under subparagraph (A), the basis for the finding required by that subparagraph before the granting of the variance) and documentation of the need for the variance.

(D) Each public water system's variance granted by a State under subparagraph (A) shall be conditioned by the State upon compliance by the public water system with the schedule prescribed by the State pursuant to that subparagraph. The requirements of each schedule prescribed by a State pursuant to that subparagraph shall be enforceable by the State under its laws. Any requirement of a schedule on which a variance granted under that subparagraph is conditioned may be enforced under section 300g-3 of this title as if such requirement was part of a national primary drinking water regulation.

(E) Each schedule prescribed by a State pursuant to subparagraph (A) shall be deemed approved by the Administrator unless the variance for which it was prescribed is revoked by the Administrator under subparagraph (G) or the schedule is revised by the Administrator under such subparagraph.

(F) Not later than 18 months after the effective date of the interim national primary drinking water regulations the Administrator shall complete a comprehensive review of the variances granted under subparagraph (A) and schedules prescribed pursuant thereto and under subparagraph (B) by the States during the one-year period beginning on such effective date. The Administrator shall conduct such subsequent reviews of variances and schedules as he deems necessary to carry out the purposes of this subchapter, but each subsequent review shall be completed within each 3-year period following the completion of the first review under this subparagraph. Before conducting any review under this subparagraph, the Administrator shall publish notice of the proposed review in the Federal Register. Such notice shall (i) provide information respecting the location of data and other information respecting the variances to be reviewed (including data and other information concerning new scientific matters bearing on such variances), and (ii) advise of the opportunity to submit comments on the variances reviewed and on the need for continuing them. Upon completion of any such review, the Administrator shall publish in the Federal Register the results of his review together with findings responsive to comments submitted in connection with such review.

(G)(i) If the Administrator finds that a State has, in a substantial number of instances, abused its discretion in granting variances under subparagraph (A) or (B) or that in a substantial number of cases the State has failed to prescribe schedules in accordance with subparagraph (A), the Administrator shall notify the State of his findings. In determining if a State has abused its discretion in granting variances in a substantial number of instances, the Administrator shall consider the number of persons who are affected by the variances and if the requirements applicable to the granting of the variances were complied with. A notice under this clause shall—

(I) identify each public water system with respect to which the finding was made,

(II) specify the reasons for the finding, and

(III) as appropriate, propose revocations of specific variances or propose revised schedules or other requirements for specific public water systems granted variances, or both.

(ii) The Administrator shall provide reasonable notice and public hearing on the provisions of each notice given pursuant to clause (i) of this subparagraph. After a hearing on a notice pursuant to such clause, the Administrator shall (I) rescind the finding for which the notice was given and promptly notify the State of such rescission, or (II) promulgate (with such modifications as he deems appropriate) such variance revocations and revised schedules or other requirements proposed in such notice as he deems appropriate. Not later than 180 days after the date a notice is given pursuant to clause (i) of this subparagraph, the Administrator shall complete the hearing on the notice and take the action required by the preceding sentence.

(iii) If a State is notified under clause (i) of this subparagraph of a finding of the Administer-
trator made with respect to a variance granted a public water system within that State or to a schedule or other requirement for a variance and if, before a revocation of such variance or a revision of such schedule or other requirement promulgated by the Administrator takes effect, the State takes corrective action with respect to such variance or schedule or other requirement which the Administrator determines makes his finding inapplicable to such variance or schedule or other requirement, the Administrator shall rescind the application of his finding to that variance on schedule or other requirement. No variance revocation or revised schedule or other requirement may take effect before the expiration of 90 days following the date of the notice in which the revocation or revised schedule or other requirement was proposed.

(2) If a State does not have primary enforcement responsibility for public water systems, the Administrator shall have the same authority to grant variances in such State as the State would have under paragraph (1) if it had primary enforcement responsibility.

(3) The Administrator may grant a variance from any treatment technique requirement of a national primary drinking water regulation upon a showing by any person that an alternative treatment technique not included in such requirement is at least as efficient in lowering the level of the contaminant with respect to which such requirement was prescribed. A variance under this paragraph shall be conditioned on the use of the alternative treatment technique which is the basis of the variance.

(b) Enforcement of schedule or other requirement

Any schedule or other requirement on which a variance granted under paragraph (1)(B) or (2) of subsection (a) of this section is conditioned may be enforced under section 300g–3 of this title as subsection (a) of this section is made, the State responsibility for public water systems under section 300g–2 of this title (or the Administrator in nonprimacy States) may grant a variance under this subsection for compliance with a requirement specifying a maximum contaminant level or treatment technique contained in a national primary drinking water regulation to—

(A) public water systems serving 3,300 or fewer persons; and

(B) with the approval of the Administrator pursuant to paragraph (9), public water systems serving more than 3,300 persons but fewer than 10,000 persons, if the variance meets each requirement of this subsection.

(2) Availability of variances

A public water system may receive a variance pursuant to paragraph (1), if—

(A) the Administrator has identified a variance technology under section 300g–1(b)(15) of this title that is applicable to the size and source water quality conditions of the public water system;

(B) the public water system installs, operates, and maintains, in accordance with guidance or regulations issued by the Administrator, such treatment technology, treatment technique, or other means; and

(C) the State in which the system is located determines that the conditions of paragraph (3) are met.

(3) Conditions for granting variances

A variance under this subsection shall be available only to a system—

(A) that cannot afford to comply, in accordance with affordability criteria established by the Administrator (or the State in the case of a State that has primary enforcement responsibility under section 300g–2 of this title), with a national primary drinking water regulation, including compliance through—

(i) treatment;

(ii) alternative source of water supply; or

(iii) restructuring or consolidation (unless the Administrator (or the State in the case of a State that has primary enforcement responsibility under section 300g–2 of this title) makes a written determination that restructuring or consolidation is not practicable); and

(B) for which the Administrator (or the State in the case of a State that has primary enforcement responsibility under section 300g–2 of this title) determines that the terms of the variance ensure adequate protection of human health, considering the quality of the source water for the system and the removal efficiencies and expected useful life of the treatment technology required by the variance.

(4) Compliance schedules

A variance granted under this subsection shall require compliance with the conditions of the variance not later than 3 years after the date on which the variance is granted, except that the Administrator (or the State in the case of a State that has primary enforcement
responsibility under section 300g–2 of this title) may allow up to 2 additional years to comply with a variance technology, secure an alternative source of water, restructure or consolidate if the Administrator (or the State) determines that additional time is necessary for capital improvements, or to allow for financial assistance provided pursuant to section 300j–12 of this title or any other Federal or State program.

(5) Duration of variances

The Administrator (or the State in the case of a State that has primary enforcement responsibility under section 300g–2 of this title) shall review each variance granted under this subsection not less often than every 5 years after the compliance date established in the variance to determine whether the system remains eligible for the variance and is conforming to each condition of the variance.

(6) Ineligibility for variances

A variance shall not be available under this subsection for—

(A) any maximum contaminant level or treatment technique for a contaminant with respect to which a national primary drinking water regulation was promulgated prior to January 1, 1986; or

(B) a national primary drinking water regulation for a microbial contaminant (including a bacterium, virus, or other organism) or an indicator or treatment technique for a microbial contaminant.

(7) Regulations and guidance

(A) In general

Not later than 2 years after August 6, 1996, and in consultation with the States, the Administrator shall promulgate regulations for variances to be granted under this subsection. The regulations shall, at a minimum, specify—

(i) procedures to be used by the Administrator or a State to grant or deny variances, including requirements for notifying the Administrator and consumers of the public water system that a variance is proposed to be granted (including information regarding the contaminant and variance) and requirements for a public hearing on the variance before the variance is granted;

(ii) requirements for the installation and proper operation of variance technology that is identified (pursuant to section 300g–1(b)(15) of this title) for small systems and the financial and technical capability to operate the treatment system, including operator training and certification;

(iii) eligibility criteria for a variance for each national primary drinking water regulation, including requirements for the quality of the source water (pursuant to section 300g–1(b)(15)(A) of this title); and

(iv) information requirements for variance applications.

(B) Affordability criteria

Not later than 18 months after August 6, 1996, the Administrator, in consultation with the States and the Rural Utilities Service of the Department of Agriculture, shall publish information to assist the States in developing affordability criteria. The affordability criteria shall be reviewed by the States not less often than every 5 years to determine if changes are needed to the criteria.

(8) Review by the Administrator

(A) In general

The Administrator shall periodically review the program of each State that has primary enforcement responsibility for public water systems under section 300g–2 of this title with respect to variances to determine whether the variances granted by the State comply with the requirements of this subsection. With respect to affordability, the determination of the Administrator shall be limited to whether the variances granted by the State comply with the affordability criteria developed by the State.

(B) Notice and publication

If the Administrator determines that variances granted by a State are not in compliance with affordability criteria developed by the State and the requirements of this subsection, the Administrator shall notify the State in writing of the deficiencies and make public the determination.

(9) Approval of variances

A State proposing to grant a variance under this subsection to a public water system serving more than 3,300 and fewer than 10,000 persons shall submit the variance to the Administrator for review and approval prior to the issuance of the variance. The Administrator shall approve the variance if it meets each of the requirements of this subsection. The Administrator shall approve or disapprove the variance within 90 days. If the Administrator disapproves a variance under this paragraph, the variance may be resubmitted with modifications to address the objections stated by the Administrator.

(10) Objections to variances

(A) By the Administrator

The Administrator may review and object to any variance proposed to be granted by a State, if the objection is communicated to the State not later than 90 days after the State proposes to grant the variance. If the Administrator objects to the granting of a variance, the Administrator shall notify the State in writing of each basis for the objection and propose a modification to the variance to resolve the concerns of the Administrator. The State shall make the recommended modification or respond in writing to each objection. If the State issues the variance without resolving the concerns of the Administrator, the Administrator may overturn the State decision to grant the variance if the Administrator determines that the State decision does not comply with this subsection.
(B) Petition by consumers

Not later than 30 days after a State exercising primary enforcement responsibility for public water systems under section 300g–2 of this title proposes to grant a variance for a public water system, any person served by the system may petition the Administrator to object to the granting of a variance. The Administrator shall respond to the petition and determine whether to object to the variance under subparagraph (A) not later than 60 days after the receipt of the petition.

(C) Timing

No variance shall be granted by a State until the later of the following:

(i) 90 days after the State proposes to grant a variance.

(ii) If the Administrator objects to the variance, the date on which the State makes the recommended modifications or responds in writing to each objection.

(AMENDMENTS)


1986—Subsec. (d). Pub. L. 104–182, §102(c)(1), substituted “such drinking water regulation. A variance shall require compliance by the system with each contaminant level and treatment technique requirement, subject to compliance within the State’s jurisdiction from any requirement respecting a maximum contaminant level or any treatment technique requirement, or, from both, of an applicable national primary drinking water regulation upon a finding that—

(1) due to compelling factors (which may include economic factors, including qualification of the public water system as a system serving a disadvantaged community pursuant to section 300j–12(d) of this title), the public water system is unable to comply with such contaminant level or treatment technique requirement, or to implement measures to develop an alternative source of water supply and (2) the public water system was in operation on the effective date of such contaminant level or treatment technique requirement, or, for a system that was not in operation by that date, only if no reasonable alternative source of drinking water is available to such new system,

(3) the granting of the exemption will not result in an unreasonable risk to health;1 and

(4) management or restructuring changes (or both) cannot reasonably be made that will result in compliance with this subchapter or, if compliance cannot be achieved, improve the quality of the drinking water.

(b) Compliance schedule and implementation of control measures; notice and hearing; dates for compliance with schedule; compliance, enforcement; approval or revision of schedules and revocation of exemptions

(1) If a State grants a public water system an exemption under subsection (a) of this section, the State shall prescribe, at the time the exemption is granted, a schedule for:

(A) compliance (including increments of progress or measures to develop an alternative source of water supply) by the public water system with each contaminant level requirement or treatment technique requirement with respect to which the exemption was granted, and

(B) implementation by the public water system of such control measures as the State may require for each contaminant, subject to such contaminant level requirement or treatment technique requirement, during the period ending on the date compliance with such requirement is required.

Before a schedule prescribed by a State pursuant to this subsection may take effect, the State shall provide notice and opportunity for a public hearing on the schedule. A notice given pursuant to the preceding sentence may cover the prescribing of more than one such schedule and a hearing held pursuant to such notice shall include each of the schedules covered by the notice.

(2)(A) A schedule prescribed pursuant to this subsection for a public water system granted an exemption under subsection (a) of this section shall require compliance by the system with each contaminant level and treatment technique requirement with respect to which the exemption was granted as expeditiously as practicable (as the State may reasonably determine) but not later than 3 years after the otherwise applicable compliance date established in section 300g–1(b)(10) of this title.

(B) No exemption shall be granted unless the public water system establishes that—

(i) the system cannot meet the standard without capital improvements which cannot be completed prior to the date established pursuant to section 300g–1(b)(10) of this title;
(ii) in the case of a system which needs financial assistance for the necessary improvements, the system has entered into an agreement to obtain such financial assistance or assistance pursuant to section 300j–12 of this title, or any other Federal or State program is reasonably likely to be available within the period of the exemption; or
(iii) the system has entered into an enforceable agreement to become a part of a regional public water system; and
the system is taking all practicable steps to meet the standard.
(C) In the case of a system which does not serve more than a population of 3,300 and which needs financial assistance for the necessary improvements, an exemption granted under clause (i) or (ii) of subparagraph (B) may be renewed for one or more additional 2-year periods, but not to exceed a total of 6 years, if the system establishes that it is taking all practicable steps to meet the requirements of subparagraph (B).
(D) LIMITATION.—A public water system may not receive an exemption under this section if the system was granted a variance under section 300g–4(e) of this title.
(3) Each public water system's exemption granted by a State under subsection (a) of this section shall be conditioned by the State upon compliance by the public water system with the schedule prescribed by the State pursuant to this subsection. The requirements of each schedule prescribed by a State pursuant to this subsection shall be enforceable by the State under its laws. Any requirement of a schedule on which an exemption granted under this section is conditioned may be enforced under section 300g–3 of this title as if such requirement was conditioned may be enforced under section 300g–3 of this title.
(4) Each schedule prescribed by a State pursuant to this subsection shall be deemed approved by the Administrator unless the exemption for which it was prescribed is revoked by the Administrator under such subsection.
(c) Notice to Administrator; reasons for exemption
Each State which grants an exemption under subsection (a) of this section shall promptly notify the Administrator of the granting of such exemption. Such notification shall contain the reasons for the exemption (including the basis for the finding required by subsection (a)(3) of this section before the exemption may be granted) and document the need for the exemption.
(d) Review of exemptions and schedules; publication in Federal Register, notice and results of review; notice to State; considerations respecting abuse of discretion in granting exemptions or failing to prescribe schedules; State corrective action
(1) Not later than 18 months after the effective date of the interim national primary drinking water regulations the Administrator shall complete a comprehensive review of the exemptions granted (and schedules prescribed pursuant thereto) by the States during the one-year period beginning on such effective date. The Administrator shall conduct such subsequent reviews of exemptions and schedules as he deems necessary to carry out the purposes of this subchapter, but each subsequent review shall be completed within each 3-year period following the completion of the first review under this subparagraph. Before conducting any review under this subparagraph, the Administrator shall publish notice of the proposed review in the Federal Register. Such notice shall (A) provide information respecting the location of data and other information respecting the exemptions to be reviewed (including data and other information concerning new scientific matters bearing on such exemptions), and (B) advise of the opportunity to submit comments on the exemptions reviewed and on the findings responsive to comments submitted in connection with such review.
(2)(A) If the Administrator finds that a State has, in a substantial number of instances, abused its discretion in granting exemptions under subsection (a) of this section or failed to prescribe schedules in accordance with subsection (b) of this section, the Administrator shall notify the State of his findings. In determining if a State has abused its discretion in granting exemptions in a substantial number of instances, the Administrator shall consider the number of persons who are affected by the exemptions and the requirements applicable to the granting of the exemptions were complied with. A notice under this subparagraph shall—
(i) identify each exempt public water system with respect to which the finding was made,
(ii) specify the reasons for the finding, and
(iii) as appropriate, propose revocations of specific exemptions or propose revised schedules for specific exempt public water systems, or both.
(B) The Administrator shall provide reasonable notice and public hearing on the provisions of each notice given pursuant to subparagraph (A). After a hearing on notice pursuant to paragraph (A), the Administrator shall (i) rescind the finding for which the notice was given and promptly notify the State of such rescission, or (ii) promulgate (with such modifications as he deems appropriate) such exemption revocations and revised schedules proposed in such notice as he deems appropriate. Not later than 180 days after the date a notice is given pursuant to subparagraph (A), the Administrator shall complete the hearing on the notice and take the action required by the preceding sentence.
(C) If a State is notified under subparagraph (A) of a finding of the Administrator made with respect to an exemption granted a public water system within that State or to a schedule prescribed pursuant to such an exemption and if before a revocation of such exemption or a revision of such schedule promulgated by the Administrator takes effect the State takes corrective action with respect to such exemption or schedule which the Administrator determines makes his finding inapplicable to such exemption or schedule, the Administrator shall re-
scind the application of his finding to that exemption or schedule. No exemption revocation or revised schedule may take effect before the expiration of 90 days following the date of the notice in which the revocation or revised schedule was proposed.

(e) "Treatment technique requirement" defined

For purposes of this section, the term "treatment technique requirement" means a requirement in a national primary drinking water regulation which specifies for a contaminant (in accordance with section 300f(1)(C)(ii) of this title) each treatment technique known to the Administrator which leads to a reduction in the level of such contaminant sufficient to satisfy the requirements of section 300g–1(b) of this title.

(f) Authority of Administrator in a State without primary enforcement responsibility

If a State does not have primary enforcement responsibility for public water systems, the Administrator shall have the same authority to exempt public water systems in such State from maximum contaminant level requirements and treatment technique requirements under the same conditions and in the same manner as the State would be authorized to grant exemptions under this section if it had primary enforcement responsibility.

(g) Applications for exemptions; regulations; reasonable time for acting

If an application for an exemption under this section is made, the State receiving the application or the Administrator, as the case may be, shall act upon such application within a reasonable period (as determined under regulations prescribed by the Administrator) after the date of its submission.
§ 300g–6. Prohibition on use of lead pipes, solder, and flux

(a) In general

(1) Prohibitions

(A) In general

No person may use any pipe, any pipe or plumbing fitting or fixture, any solder, or any flux, after June 19, 1986, in the installation or repair of—

(i) any public water system; or

(ii) any plumbing in a residential or nonresidential facility providing water for human consumption,

that is not lead free (within the meaning of subsection (d) of this section).

(B) Leaded joints

Subparagraph (A) shall not apply to leaded joints necessary for the repair of cast iron pipes.

(2) Public notice requirements

(A) In general

Each owner or operator of a public water system shall identify and provide notice to persons that may be affected by lead contamination of their drinking water where such contamination results from either or both of the following:

(i) The lead content in the construction materials of the public water distribution system.

(ii) Corrosivity of the water supply sufficient to cause leaching of lead.

The notice shall be provided in such manner and form as may be reasonably required by the Administrator. Notice under this paragraph shall be provided notwithstanding the absence of a violation of any national drinking water standard.

(B) Contents of notice

Notice under this paragraph shall provide a clear and readily understandable explanation of—

(i) The potential sources of lead in the drinking water;

(ii) potential adverse health effects;

(iii) reasonably available methods of mitigating known or potential lead content in drinking water;

(iv) any steps the system is taking to mitigate lead content in drinking water, and

(v) the necessity for seeking alternative water supplies, if any.

(3) Unlawful acts

Effective 2 years after August 6, 1996, it shall be unlawful—

(A) for any person to introduce into commerce any pipe, or any pipe or plumbing fitting or fixture, that is not lead free, except for a pipe that is used in manufacturing or industrial processing;

(B) for any person engaged in the business of selling plumbing supplies, except manufacturers, to sell solder or flux that is not lead free; or

(C) for any person to introduce into commerce any solder or flux that is not lead free unless the solder or flux bears a prominent label stating that it is illegal to use the solder or flux in the installation or repair of any plumbing providing water for human consumption.

(b) State enforcement

(1) Enforcement of prohibition

The requirements of subsection (a)(1) of this section shall be enforced in all States effective 24 months after June 19, 1986. States shall enforce such requirements through State or local plumbing codes, or such other means of enforcement as the State may determine to be appropriate.

(2) Enforcement of public notice requirements

The requirements of subsection (a)(2) of this section shall apply in all States effective 24 months after June 19, 1986.

(c) Penalties

If the Administrator determines that a State is not enforcing the requirements of subsection (a) of this section as required pursuant to subsection (b) of this section, the Administrator may withhold up to 5 percent of Federal funds available to that State for State program grants under section 300j–3(a) of this title.

(d) “Lead free” defined

For purposes of this section, the term “lead free”—

(1) when used with respect to solders and flux refers to solders and flux containing not more than 0.2 percent lead;

(2) when used with respect to pipes and pipe fittings refers to pipes and pipe fittings containing not more than 8.0 percent lead; and

(3) when used with respect to plumbing fittings and fixtures, refers to plumbing fittings and fixtures in compliance with standards established in accordance with subsection (e) of this section.

(e) Plumbing fittings and fixtures

(1) In general

The Administrator shall provide accurate and timely technical information and assistance to qualified third-party certifiers in the development of voluntary standards and testing protocols for the leaching of lead from new plumbing fittings and fixtures that are intended by the manufacturer to dispense water for human ingestion.

(2) Standards

(A) In general

If a voluntary standard for the leaching of lead is not established by the date that is 1 year after August 6, 1996, the Administrator shall, not later than 2 years after August 6, 1996, promulgate regulations setting a health-effects-based performance standard establishing maximum leaching levels from new plumbing fittings and fixtures that are intended by the manufacturer to dispense water for human ingestion. The standard
shall become effective on the date that is 5 years after the date of promulgation of the standard.

(B) Alternative requirement

If regulations are required to be promulgated under subparagraph (A) and have not been promulgated by the date that is 5 years after August 6, 1996, no person may import, manufacture, process, or distribute in commerce a new plumbing fitting or fixture, intended by the manufacturer to dispense water for human ingestion, that contains more than 4 percent lead by dry weight.

(71) Definition of lead free


AMENDMENT OF SUBSECTIONS (a) AND (d)

Pub. L. 111–380, § 2, Jan. 4, 2011, 124 Stat. 4313, provided that, applicable beginning on the day that is 36 months after Jan. 4, 2011, this section is amended as follows:

(1) by adding at the end of subsection (a) the following:

“(4) Exemptions

“The prohibitions in paragraphs (1) and (3) shall not apply to—

“(A) pipes, pipe fittings, plumbing fittings, or fixtures, including backflow preventers, that are used exclusively for nonpotable services such as manufacturing, industrial processing, irrigation, outdoor watering, or any other uses where the water is not anticipated to be used for human consumption; or

“(B) toilets, bidets, urinals, fill valves, flushometer valves, tub fillers, shower valves, service saddles, or water distribution main gate valves that are 2 inches in diameter or larger.”; and

(2) by amending subsection (d) to read as follows:

(d) Definition of lead free

(1) In general

For the purposes of this section, the term “lead free” means—

(A) not containing more than 0.2 percent lead when used with respect to solder and flux; and

(B) not more than a weighted average of 0.25 percent lead when used with respect to the wetted surfaces of pipes, pipe fittings, plumbing fittings, and fixtures.

(2) Calculation

The weighted average lead content of a pipe, pipe fitting, plumbing fitting, or fixture shall be calculated by using the following formula: For each wetted component, the percentage of lead in the component shall be multiplied by the ratio of the wetted surface area of that component to the total wetted surface area of the entire product to arrive at the weighted percentage of lead of the component. The weighted percentage of lead of each wetted component shall be added together, and the sum of these weighted percentages shall constitute the weighted average lead content of the product. The lead content of the material used to produce wetted components shall be used to determine compliance with paragraph (1)(B). For lead content of materials that are provided as a range, the maximum content of the range shall be used.

AMENDMENTS


Subsec. (a)(1). Pub. L. 104–182, § 118(1), substituted “Prohibitions” for “Prohibition” in heading and amended text generally. Prior to amendment, text read as follows: “Any pipe, solder, or flux, which is used after June 19, 1986, in the installation or repair of—

“(A) any public water system, or

“(B) any plumbing in a residential or nonresidential facility providing water for human consumption which is connected to a public water system, shall be lead free (within the meaning of subsection (d) of this section). This paragraph shall not apply to leaded joints necessary for the repair of cast iron pipes.”


EFFECTIVE DATE OF 2011 AMENDMENT

Pub. L. 111–380, § 2(b), Jan. 4, 2011, 124 Stat. 4322, provided that: “The provisions of subsections (a)(4) and (d) of section 1417 of the Safe Drinking Water Act [42 U.S.C. 300g–6(a)(4), (d)], as added by this section, apply beginning on the day that is 36 months after the date of the enactment of this Act [Jan. 4, 2011].”

NOTIFICATION TO STATES

Section 109(b) of Pub. L. 99–339 provided that: “The Administrator of the Environmental Protection Agency shall notify all States with respect to the requirements of section 1417 of the Public Health Service Act [this section] within 90 days after the enactment of this Act [June 19, 1986].”

BAN ON LEAD WATER PIPES, SOLDER, AND FLUX IN VA AND HUD INSURED OR ASSISTED PROPERTY


“(1) PROHIBITION.—The Secretary of Housing and Urban Development and the Secretary of Veterans Affairs may not insure or guarantee a mortgage or furnish assistance with respect to newly constructed residential property which contains a potable water system unless such system uses only lead free pipe, solder, and flux.

“(2) DEFINITION OF LEAD FREE.—For purposes of paragraph (1) the term ‘lead free’—

“(A) when used with respect to solders and flux refers to solders and flux containing not more than 0.2 percent lead, and

“(B) when used with respect to pipes and pipe fittings refers to pipes and pipe fittings containing not more than 8.0 percent lead.

“(3) EFFECTIVE DATE.—Paragraph (1) shall become effective 24 months after the enactment of this Act [June 19, 1986].”

§ 300g–7. Monitoring of contaminants

(a) Interim monitoring relief authority

(1) In general

A State exercising primary enforcement responsibility for public water systems may modify the monitoring requirements for any regulated or unregulated contaminants for which monitoring is required other than mi-
crobiial contaminants (or indicators thereof), disinfectants and disinfection byproducts or corrosion byproducts for an interim period to provide that any public water system serving 10,000 persons or fewer shall not be required to conduct additional quarterly monitoring during an interim relief period for such contaminants if—

(A) monitoring, conducted at the beginning of the period for the contaminant concerned and certified to the State by the public water system, fails to detect the presence of the contaminant in the ground or surface water supplying the public water system; and

(B) the State, considering the hydrogeology of the area and other relevant factors, determines in writing that the contaminant is unlikely to be detected by further monitoring during such period.

(2) Termination; timing of monitoring

The interim relief period referred to in paragraph (1) shall terminate when permanent monitoring relief is adopted and approved for such State, or at the end of 36 months after August 6, 1996, whichever comes first. In order to serve as a basis for interim relief, the monitoring conducted at the beginning of the period must occur at the time determined by the State to be the time of the public water system’s greatest vulnerability to the contaminant concerned in the relevant ground or surface water, taking into account in the case of pesticides the time of application of the pesticide for the source water area and the travel time for the pesticide to reach such waters and taking into account, in the case of other contaminants, seasonality of precipitation and contaminant travel time.

(b) Permanent monitoring relief authority

(1) In general

Each State exercising primary enforcement responsibility for public water systems under this subchapter and having an approved source water assessment program may adopt, in accordance with guidance published by the Administrator, tailored alternative monitoring requirements for public water systems in such State (as an alternative to the monitoring requirements for chemical contaminants set forth in the applicable national primary drinking water regulations) where the State concludes that (based on data available at the time of adoption concerning susceptibility, use, occurrence, or wellhead protection, or from the State’s drinking water source water assessment program) such alternative monitoring would provide assurance that it complies with the Administrator’s guidelines. The State program must be adequate to assure compliance with, and enforcement of, applicable national primary drinking water regulations. Alternative monitoring shall not apply to regulated microbiological contaminants (or indicators thereof), disinfectants and disinfection byproducts, or corrosion byproducts. The preceding sentence is not intended to limit other authority of the Administrator under other provisions of this subchapter to grant monitoring flexibility.

(2) Guidelines

(A) In general

The Administrator shall issue, after notice and comment and at the same time as guidelines are issued for source water assessment under section 300j–13 of this title, guidelines for States to follow in proposing alternative monitoring requirements under paragraph (1) for chemical contaminants. The Administrator shall publish such guidelines in the Federal Register. The guidelines shall assure that the public health will be protected from drinking water contamination. The guidelines shall require that a State alternative monitoring program apply on a contaminant-by-contaminant basis and to be eligible for such alternative monitoring program, a public water system must show the State that the contaminant is not present in the drinking water supply or, if present, it is reliably and consistently below the maximum contaminant level.

(B) Definition

For purposes of subparagraph (A), the phrase “reliably and consistently below the maximum contaminant level” means that, although contaminants have been detected in a water supply, the State has sufficient knowledge of the contamination source and extent of contamination to predict that the maximum contaminant level will not be exceeded. In determining that a contaminant is reliably and consistently below the maximum contaminant level, States shall consider the quality and completeness of data, the length of time covered and the volatility or stability of monitoring results during that time, and the proximity of such results to the maximum contaminant level. Wide variations in the analytical results, or analytical results close to the maximum contaminant level, shall not be considered to be reliably and consistently below the maximum contaminant level.

(3) Effect of detection of contaminants

The guidelines issued by the Administrator under paragraph (2) shall require that if, after the monitoring program is in effect and operating, a contaminant covered by the alternative monitoring program is detected at levels at or above the maximum contaminant level or is no longer reliably or consistently below the maximum contaminant level, the public water system must either—

(A) demonstrate that the contamination source has been removed or that other action has been taken to eliminate the contamination problem; or

(B) test for the detected contaminant pursuant to the applicable national primary drinking water regulation.

(4) States not exercising primary enforcement responsibility

The Governor of any State not exercising primary enforcement responsibility under section 300g–2 of this title on August 6, 1996, may submit to the Administrator a request that the Administrator modify the monitoring re-
requirements established by the Administrator and applicable to public water systems in that State. After consultation with the Governor, the Administrator shall modify the requirements for public water systems in that State if the request of the Governor is in accordance with each of the requirements of this subsection that apply to alternative monitoring requirements established by States that have primary enforcement responsibility. A decision by the Administrator to approve a request under this clause shall be for a period of 3 years and may subsequently be extended for periods of 5 years.

(c) Treatment as NPDWR

All monitoring relief granted by a State to a public water system for a regulated contaminant under subsection (a) or (b) of this section shall be treated as part of the national primary drinking water regulation for that contaminant.

(d) Other monitoring relief

Nothing in this section shall be construed to affect the authority of the States under applicable national primary drinking water regulations to adopt monitoring requirements through waivers or other existing authorities. The Administrator shall periodically review and, as appropriate, revise such authorities.

(July 1, 1944, ch. 373, title XIV, §1418, as added Pub. L. 104–182, title I, §125(b), Aug. 6, 1996, 110 Stat. 1654.)

§ 300g–8. Operator certification

(a) Guidelines

Not later than 30 months after August 6, 1996, and in cooperation with the States, the Administrator shall publish guidelines in the Federal Register, after notice and opportunity for comment from interested persons, including States and public water systems, specifying minimum standards for certification (and recertification) of the operators of community and nontransient noncommunity public water systems. Such guidelines shall take into account existing State programs, the complexity of the system, and other factors aimed at providing an effective program at reasonable cost to States and public water systems, taking into account the size of the system.

(b) State programs

Beginning 2 years after the date on which the Administrator publishes guidelines under subsection (a) of this section, the Administrator shall withhold 20 percent of the funds a State is otherwise entitled to receive under section 300j–12 of this title unless the State has adopted and is implementing a program for the certification of operators of community and nontransient noncommunity public water systems that meets the requirements of the guidelines published pursuant to subsection (a) of this section or that has been submitted in compliance with subsection (c) of this section and that has not been disapproved.

(c) Existing programs

For any State exercising primary enforcement responsibility for public water systems or any other State which has an operator certification program, the guidelines under subsection (a) of this section shall allow the State to enforce such program in lieu of the guidelines under subsection (a) of this section if the State submits the program to the Administrator within 18 months after the publication of the guidelines unless the Administrator determines (within 9 months after the State submits the program to the Administrator) that such program is not substantially equivalent to such guidelines. In making this determination, an existing State program shall be presumed to be substantially equivalent to the guidelines, notwithstanding program differences, based on the size of systems or the quality of source water, providing the State program meets the overall public health objectives of the guidelines. If disapproved, the program may be resubmitted within 6 months after receipt of notice of disapproval.

(d) Expense reimbursement

(1) In general

The Administrator shall provide reimbursement for the costs of training, including an appropriate per diem for unsalaried operators, and certification for persons operating systems serving 3,300 persons or fewer that are required to undergo training pursuant to this section.

(2) State grants

The reimbursement shall be provided through grants to States with each State receiving an amount sufficient to cover the reasonable costs for training all such operators in the State, as determined by the Administrator, to the extent required by this section. Grants received by a State pursuant to this paragraph shall first be used to provide reimbursement for training and certification costs of persons operating systems serving 3,300 persons or fewer. If a State has reimbursed all such costs, the State may, after notice to the Administrator, use any remaining funds from the grant for any of the other purposes authorized for grants under section 300j–12 of this title.

(3) Authorization

There are authorized to be appropriated to the Administrator to provide grants for reimbursement under this section $30,000,000 for each of fiscal years 1997 through 2003.

(4) Reservation

If the appropriation made pursuant to paragraph (3) for any fiscal year is not sufficient to satisfy the requirements of paragraph (1), the Administrator shall, prior to any other allocation or reservation, reserve such sums as necessary from the funds appropriated pursuant to section 300j–12(m) of this title to provide reimbursement for the training and certification costs mandated by this subsection.

(July 1, 1944, ch. 373, title XIV, §1419, as added Pub. L. 104–182, title I, §123, Aug. 6, 1996, 110 Stat. 1652.)
§ 300g–9. Capacity development

(a) State authority for new systems

A State shall receive only 80 percent of the allotment that the State is otherwise entitled to receive under section 300j–12 of this title (relating to State loan funds) unless the State has obtained the legal authority or other means to ensure that all new community water systems and new nontransient, noncommunity water systems commencing operation after October 1, 1999, demonstrate technical, managerial, and financial capacity with respect to each national primary drinking water regulation in effect, or likely to be in effect, on the date of commencement of operations.

(b) Systems in significant noncompliance

(1) List

Beginning not later than 1 year after August 6, 1996, each State shall report to the Administrator a list of community water systems and nontransient, noncommunity water systems that have a history of significant noncompliance with this subchapter (as defined in guidelines issued prior to August 6, 1996, or any revisions of the guidelines that have been made in consultation with the States) and, to the extent practicable, the reasons for noncompliance.

(2) Report

Not later than 5 years after August 6, 1996, and as part of the capacity development strategy of the State, each State shall report to the Administrator on the success of enforcement mechanisms and initial capacity development efforts in assisting the public water systems listed under paragraph (1) to improve technical, managerial, and financial capacity.

(c) Capacity development strategy

(1) In general

Beginning 4 years after August 6, 1996, a State shall receive only—

(A) 90 percent in fiscal year 2001;
(B) 85 percent in fiscal year 2002; and
(C) 80 percent in each subsequent fiscal year,

of the allotment that the State is otherwise entitled to receive under section 300j–12 of this title (relating to State loan funds), unless the State is developing and implementing a strategy to assist public water systems in acquiring and maintaining technical, managerial, and financial capacity.

(2) Content

In preparing the capacity development strategy, the State shall consider, solicit public comment on, and include as appropriate—

(A) the methods or criteria that the State will use to identify and prioritize the public water systems most in need of improving technical, managerial, and financial capacity;
(B) a description of the institutional, regulatory, financial, tax, or legal factors at the Federal, State, or local level that encourage or impair capacity development;
(C) a description of how the State will use the authorities and resources of this subchapter or other means to—

(i) assist public water systems in complying with national primary drinking water regulations;
(ii) encourage the development of partnerships between public water systems to enhance the technical, managerial, and financial capacity of the systems; and
(iii) assist public water systems in the training and certification of operators;
(D) a description of how the State will establish a baseline and measure improvements in capacity with respect to national primary drinking water regulations and State drinking water law; and
(E) an identification of the persons that have an interest in and are involved in the development and implementation of the capacity development strategy (including all appropriate agencies of Federal, State, and local governments, private and nonprofit public water systems, and public water system customers).

(3) Report

Not later than 2 years after the date on which a State first adopts a capacity development strategy under this subsection, and every 3 years thereafter, the head of the State agency that has primary responsibility to carry out this subchapter in the State shall submit to the Governor a report that shall also be available to the public on the efficacy of the strategy and progress made toward improving the technical, managerial, and financial capacity of public water systems in the State.

(4) Review

The decisions of the State under this section regarding any particular public water system are not subject to review by the Administrator and may not serve as the basis for withholding funds under section 300j–12 of this title.

(d) Federal assistance

(1) In general

The Administrator shall support the States in developing capacity development strategies.

(2) Informational assistance

(A) In general

Not later than 180 days after August 6, 1996, the Administrator shall—

(i) conduct a review of State capacity development efforts in existence on August 6, 1996, and publish information to assist States and public water systems in capacity development efforts; and
(ii) initiate a partnership with States, public water systems, and the public to-
develop information for States on recommended operator certification requirements.

(B) Publication of information
The Administrator shall publish the information developed through the partnership under subparagraph (A)(ii) not later than 18 months after August 6, 1996.

(3) Promulgation of drinking water regulations
In promulgating a national primary drinking water regulation, the Administrator shall include an analysis of the likely effect of compliance with the regulation on the technical, financial, and managerial capacity of public water systems.

(4) Guidance for new systems
Not later than 2 years after August 6, 1996, the Administrator shall publish guidance developed in consultation with the States describing legal authorities and other means to ensure that all new community water systems and new nontransient, noncommunity water systems demonstrate technical, managerial, and financial capacity with respect to national primary drinking water regulations.

(e) Variances and exemptions
Based on information obtained under subsection (c)(3) of this section, the Administrator shall, as appropriate, modify regulations concerning variances and exemptions for small public water systems to ensure flexibility in the use of the variances and exemptions. Nothing in this subsection shall be interpreted, construed, or applied to affect or alter the requirements of section 300g–4 or 300g–5 of this title.

(f) Small public water systems technology assistance centers

(1) Grant program
The Administrator is authorized to make grants to institutions of higher learning to establish and operate small public water system technology assistance centers in the United States.

(2) Responsibilities of the centers
The responsibilities of the small public water system technology assistance centers established under this subsection shall include the conduct of training and technical assistance relating to the information, performance, and technical needs of small public water systems or public water systems that serve Indian Tribes.

(3) Applications
Any institution of higher learning interested in receiving a grant under this subsection shall submit to the Administrator an application in such form and containing such information as the Administrator may require by regulation.

(4) Selection criteria
The Administrator shall select recipients of grants under this subsection on the basis of the following criteria:

(A) The small public water system technology assistance center shall be located in a State that is representative of the needs of the region in which the State is located for addressing the drinking water needs of small and rural communities or Indian Tribes.

(B) The grant recipient shall be located in a region that has experienced problems, or may reasonably be foreseen to experience problems, with small and rural public water systems.

(C) The grant recipient shall have access to expertise in small public water system technology management.

(D) The grant recipient shall have the capability to disseminate the results of small public water system technology and training programs.

(E) The projects that the grant recipient proposes to carry out under the grant are necessary and appropriate.

(F) The grant recipient has regional support beyond the host institution.

(5) Consortia of States
At least 2 of the grants under this subsection shall be made to consortia of States with low population densities.

(6) Authorization of appropriations
There are authorized to be appropriated to make grants under this subsection $2,000,000 for each of the fiscal years 1997 through 1999, and $5,000,000 for each of the fiscal years 2000 through 2003.

(g) Environmental finance centers

(1) In general
The Administrator shall provide initial funding for one or more university-based environmental finance centers for activities that provide technical assistance to State and local officials in developing the capacity of public water systems. Any such funds shall be used only for activities that are directly related to this subchapter.

(2) National capacity development clearinghouse
The Administrator shall establish a national public water system capacity development clearinghouse to receive and disseminate information with respect to developing, improving, and maintaining financial and managerial capacity at public water systems. The Administrator shall ensure that the clearinghouse does not duplicate other federally supported clearinghouse activities.

(3) Capacity development techniques
The Administrator may request an environmental finance center funded under paragraph (1) to develop and test managerial, financial, and institutional techniques for capacity development. The techniques may include capacity assessment methodologies, manual and computer based public water system rate models and capital planning models, public water system consolidation procedures, and regionalization models.

(4) Authorization of appropriations
There are authorized to be appropriated to carry out this subsection $1,500,000 for each of the fiscal years 1997 through 2003.
(5) Limitation

No portion of any funds made available under this subsection may be used for lobbying expenses.

(July 1, 1944, ch. 373, title XIV, §1420, as added Pub. L. 104–182, title I, §119, Aug. 6, 1996, 110 Stat. 1647.)

PART C—PROTECTION OF UNDERGROUND SOURCES OF DRINKING WATER

§ 300h. Regulations for State programs

(a) Publication of proposed regulations; promulgation; amendments; public hearings; administrative consultations

(1) The Administrator shall publish proposed regulations for State underground injection control programs within 180 days after December 16, 1974. Within 180 days after publication of such proposed regulations, he shall promulgate such regulations with such modifications as he deems appropriate. Any regulation under this subsection may be amended from time to time.

(2) Any regulation under this section shall be proposed and promulgated in accordance with section 553 of title 5 (relating to rulemaking), except that the Administrator shall provide opportunity for public hearing prior to promulgation of such regulations. In proposing and promulgating regulations under this section the Administrator shall consult with the Secretary, the National Drinking Water Advisory Council, and other appropriate Federal entities and with interested State entities.

(b) Minimum requirements; restrictions

(1) Regulations under subsection (a) of this section for State underground injection control programs shall contain minimum requirements for effective programs to prevent underground injection which endangers drinking water sources within the meaning of subsection (d)(2) of this section. Such regulations shall require that a State program, in order to be approved under section 300h–1 of this title—

(A) shall prohibit, effective on the date on which the applicable underground injection control program takes effect, any underground injection in such State which is not authorized by a permit issued by the State (except that the regulations may permit a State to authorize underground injection by rule);

(B) shall require (i) in the case of a program which provides for authorization of underground injection by permit, that the applicant for the permit to inject must satisfy the State that the underground injection will not endanger drinking water sources, and (ii) in the case of a program which provides for such an authorization by rule, that no rule may be promulgated which authorizes any underground injection which endangers drinking water sources;

(C) shall include inspection, monitoring, recordkeeping, and reporting requirements; and

(D) shall apply (i) as prescribed by section 300j–6(b) of this title, to underground injections by Federal agencies, and (ii) to underground injections by any other person whether or not occurring on property owned or leased by the United States.

(2) Regulations of the Administrator under this section for State underground injection control programs may not prescribe requirements which interfere with or impede the establishment or operation of underground injection programs which provide for the injection of brine or other fluids which are brought to the surface in connection with oil or natural gas production or natural gas storage operations, or

(A) the underground injection of brine or other fluids which are brought to the surface in connection with oil or natural gas production or natural gas storage operations, or

(B) any underground injection for the secondary or tertiary recovery of oil or natural gas, unless such requirements are essential to assure that underground sources of drinking water will not be endangered by such injection.

(3)(A) The regulations of the Administrator under this section shall permit or provide for consideration of varying geologic, hydrological, or historical conditions in different States and in different areas within a State.

(B)(i) In prescribing regulations under this section the Administrator shall, to the extent feasible, avoid promulgation of requirements which would unnecessarily disrupt State underground injection control programs which are in effect and being enforced in a substantial number of States.

(ii) For the purpose of this subparagraph, a regulation prescribed by the Administrator under this section shall be deemed to disrupt a State underground injection control program only if it would be infeasible to comply with such regulation and the State underground injection control program.

(C) Nothing in this section shall be construed to alter or affect the duty to assure that underground sources of drinking water will not be endangered by an underground injection.

(c) Temporary permits; notice and hearing

(1) The Administrator may, upon application of the Governor of a State which authorizes underground injection by means of permits, authorize such State to issue (without regard to subsection (b)(1)(B)(i) of this section) temporary permits for underground injection which may be effective until the expiration of four years after December 16, 1974, if—

(A) the Administrator finds that the State has demonstrated that it is unable and could not reasonably have been able to process all permit applications within the time available;

(B) the Administrator determines the adverse effect on the environment of such temporary permits is not unwarranted;

(C) such temporary permits will be issued only with respect to injection wells in operation on the date on which such State's permit program approved under this part first takes effect and for which there was inadequate time to process its permit application; and

(D) the Administrator determines the temporary permits require the use of adequate
safeguards established by rules adopted by him.

(2) The Administrator may, upon application of the Governor of a State which authorizes underground injection by means of permits, authorize such State to (without regard to subsection (b)(1)(B)(i) of this section), but after reasonable notice and hearing, one or more temporary permits each of which is applicable to a particular injection well and to the underground injection of a particular fluid and which may be effective until the expiration of four years after December 16, 1974, if the State finds, on the record of such hearing—

(A) that the technology (or other means) to permit safe injection of the fluid in accordance with the applicable underground injection control program is not generally available (taking costs into consideration);

(B) that injection of the fluid would be less harmful to health than the use of other available means of disposing of waste or producing the desired product; and

(C) that available technology or other means have been employed (and will be employed) to reduce the volume and toxicity of the fluid and to minimize the potentially adverse effect of the injection on the public health.

(3) “Underground injection” defined; underground injection endangerment of drinking water sources

For purposes of this part:

(1) UNDERGROUND INJECTION.—The term “underground injection”—

(A) means the subsurface emplacement of fluids by well injection; and

(B) excludes—

(i) the underground injection of natural gas for purposes of storage; and

(ii) the underground injection of fluids or propping agents (other than diesel fuels) pursuant to hydraulic fracturing operations related to oil, gas, or geothermal production activities.

(2) Underground injection endangers drinking water sources if such injection may result in the presence in underground water which supplies or can reasonably be expected to supply any public water system of any contaminant, and if the presence of such contaminant may result in such system(s) not complying with any national primary drinking water regulations or may otherwise adversely affect the health of persons.

(7) List of States in need of a control program; amendment of list

Within 180 days after December 16, 1974, the Administrator shall list in the Federal Register each State for which in his judgment a State underground injection control program may be necessary to assure that underground injection will not endanger drinking water sources. Such list may be amended from time to time.

(b) State applications; notice to Administrator of compliance with revised or added requirements; approval or disapproval by Administrator; duration of State primary enforcement responsibility; public hearing

(1) List of States in need of a control program; amendment of list

(A) Each State listed under subsection (a) of this section shall within 270 days after the date of promulgation of any regulation under section 300h of this title (or, if later, within 270 days after such State is first listed under subsection (a) of this section) submit to the Administrator an application which contains a showing satisfactory to the Administrator that the State—

(i) has adopted after reasonable notice and public hearings, and will implement, an underground injection control program which meets the requirements of regulations in effect under section 300h of this title; and

(ii) will keep such records and make such reports with respect to its activities under its underground injection control program as the Administrator may require by regulation.

The Administrator may, for good cause, extend the date for submission of an application by any State under this subparagraph for a period not to exceed an additional 270 days.

(B) Within 270 days of any amendment of a regulation under section 300h of this title revising or adding any requirement respecting State underground injection control programs, each State listed under subsection (a) of this section shall submit (in such form and manner as the Administrator may require) a notice to the Administrator containing a showing satisfactory to him that the State underground injection control program meets the revised or added requirement.

(2) List of States in need of a control program; amendment of list.

(A) Each State listed under subsection (a) of this section shall within 270 days after the date of promulgation of any regulation under section 300h of this title (or, if later, within 270 days after such State is first listed under subsection (a) of this section) submit to the Administrator an application which contains a showing satisfactory to the Administrator that the State—

(i) has adopted after reasonable notice and public hearings, and will implement, an underground injection control program which meets the requirements of regulations in effect under section 300h of this title; and

(ii) will keep such records and make such reports with respect to its activities under its underground injection control program as the Administrator may require by regulation.

The Administrator may, for good cause, extend the date for submission of an application by any State under this subparagraph for a period not to exceed an additional 270 days.

(B) Within 270 days of any amendment of a regulation under section 300h of this title revising or adding any requirement respecting State underground injection control programs, each State listed under subsection (a) of this section shall submit (in such form and manner as the Administrator may require) a notice to the Administrator containing a showing satisfactory to him that the State underground injection control program meets the revised or added requirement.

(2) Within ninety days after the State’s application under paragraph (1)(A) or notice under

RE礼貌

REFERENCES IN TEXT

Section 300j–6(b) of this title, referred to in subsec. (b)(1)(D), was repealed, and a new section 300j–6(b) relating to administrative penalty orders was added, by Pub. L. 104–182, title I, §129(a), Aug. 6, 1996, 110 Stat. 1660.
paragraph (1)(B) and after reasonable opportunity for presentation of views, the Administrator shall by rule either approve, disapprove, or approve in part and disapprove in part, the State's underground injection control program. If the Administrator approves the State's program under paragraph (2), the State shall have primary enforcement responsibility for underground water sources until such time as the Administrator determines, by rule, that such State no longer meets the requirements of clause (i) or (ii) of paragraph (1)(A) of this section.

(4) Before promulgating any rule under paragraph (2) or (3) of this subsection, the Administrator shall provide opportunity for public hearing respecting such rule.

(c) Program by Administrator for State without primary enforcement responsibility; restrictions

If the Administrator disapproves a State's program (or part thereof) under subsection (b)(2) of this section, if the Administrator determines under subsection (b)(3) of this section that a State no longer meets the requirements of clause (i) or (ii) of subsection (b)(1)(A) of this section or if a State fails to submit an application or notice before the date of expiration of the period specified in subsection (b)(1) of this section, the Administrator shall by regulation revise a program applicable underground injection control program to such State meeting the requirements of section 300h(b) of this title. Such program may not include requirements which interfere with or impede—

(1) the underground injection of brine or other fluids which are brought to the surface in connection with oil or natural gas production or natural gas storage operations, or

(2) any underground injection for the secondary or tertiary recovery of oil or natural gas, unless such requirements are essential to assure that underground sources of drinking water will not be endangered by such injection. Such program shall apply in such State to the extent that a program adopted by such State which the Administrator determines meets such requirements is not in effect. Before promulgating any regulation under this section, the Administrator shall provide opportunity for public hearing respecting such regulation.

(d) "Applicable underground injection control program" defined

For purposes of this subchapter, the term "applicable underground injection control program" with respect to a State means the program (or most recent amendment thereof) (1) which has been adopted by the State and which has been approved under subsection (b) of this section, or (2) which has been prescribed by the Administrator under subsection (c) of this section.

(e) Primary enforcement responsibility by Indian Tribe

An Indian Tribe may assume primary enforcement responsibility for underground injection control under this section consistent with such regulations as the Administrator has prescribed pursuant to this part and section 300j–11 of this title. The area over which such Indian Tribe exercises governmental jurisdiction need not have been listed under subsection (a) of this section, and such Tribe need not submit an application to assume primary enforcement responsibility within the 270-day deadline noted in subsection (b)(1)(A) of this section. Until an Indian Tribe assumes primary enforcement responsibility, the currently applicable underground injection control program shall continue to apply. If an applicable underground injection control program does not exist for an Indian Tribe, the Administrator shall prescribe such a program pursuant to subsection (c) of this section, and consistent with section 300h(b) of this title, within 270 days after June 19, 1986, unless an Indian Tribe first obtains approval to assume primary enforcement responsibility for underground injection control.

(1) Whenever the Administrator finds during a period during which a State has primary enforcement responsibility for underground water sources (within the meaning of section 300h–1(b)(3) of this title or section 300h–4(c) of this title) that any person who is subject to a requirement of an applicable underground injection control program in such State is violating such requirement, he shall notify the State and the person violating such requirement. If beyond the thirtieth day after the Administrator's notification the State has not commenced appropriate enforcement action, the Administrator shall issue an order under subsection (c) of this section requiring the person to comply with such requirement or the Administrator shall commence a civil action under subsection (b) of this section.

(2) Whenever the Administrator finds during a period during which a State does not have primary enforcement responsibility for underground water sources that any person subject to any requirement of any applicable underground injection control program in such State is violating such requirement, the Administrator shall issue an order under subsection (c) of this section requiring the person to comply with such requirement or the Administrator shall commence a civil action under subsection (b) of this section.
(b) Civil and criminal actions

Civil actions referred to in paragraphs (1) and (2) of subsection (a) of this section shall be brought in the appropriate United States district court. Such court shall have jurisdiction to require compliance with any requirement of an applicable underground injection program or with an order issued under subsection (c) of this section. The court may enter such judgment as protection of public health may require. Any person who violates any requirement of an applicable underground injection control program or an order requiring compliance under subsection (c) of this section—

(1) shall be subject to a civil penalty of not more than $25,000 for each day of such violation, and

(2) if such violation is willful, such person may, in addition to or in lieu of the civil penalty authorized by paragraph (1), be imprisoned for not more than 3 years, or fined in accordance with title 18, or both.

c) Administrative orders

(1) In any case in which the Administrator is authorized to bring a civil action under this section with respect to any regulation or other requirement of this part other than those relating to—

(A) the underground injection of brine or other fluids which are brought to the surface in connection with oil or natural gas production, or

(B) any underground injection for the secondary or tertiary recovery of oil or natural gas,

the Administrator may also issue an order under this subsection either assessing a civil penalty of not more than $10,000 for each day of violation for any past or current violation, up to a maximum administrative penalty of $125,000, or requiring compliance with such regulation or other requirement, or both.

(2) In any case in which the Administrator is authorized to bring a civil action under this section with respect to any regulation, or other requirement of this part relating to—

(A) the underground injection of brine or other fluids which are brought to the surface in connection with oil or natural gas production, or

(B) any underground injection for the secondary or tertiary recovery of oil or natural gas,

the Administrator may also issue an order under this subsection either assessing a civil penalty of not more than $5,000 for each day of violation for any past or current violation, up to a maximum administrative penalty of $125,000, or requiring compliance with such regulation or other requirement, or both.

(3)(A) An order under this subsection shall be issued by the Administrator after opportunity (provided in accordance with this subparagraph) for a hearing. Before issuing the order, the Administrator shall give to the person to whom it is directed written notice of the Administrator’s proposal to issue such order and the opportunity to request, within 30 days of the date the notice is received by such person, a hearing on the order. Such hearing shall not be subject to section 554 or 556 of title 5, but shall provide a reasonable opportunity to be heard and to present evidence.

(B) The Administrator shall provide public notice of, and reasonable opportunity to comment on, any proposed order.

(C) Any citizen who comments on any proposed order under subparagraph (B) shall be given notice of any hearing under this subsection and of any order. In any hearing held under subparagraph (A), such citizen shall have a reasonable opportunity to be heard and to present evidence.

(D) Any order issued under this subsection shall become effective 30 days following its issuance unless an appeal is taken pursuant to paragraph (6).

(4)(A) Any order issued under this subsection shall state with reasonable specificity the nature of the violation and may specify a reasonable time for compliance.

(B) In assessing any civil penalty under this subsection, the Administrator shall take into account appropriate factors, including (i) the seriousness of the violation; (ii) the economic benefit (if any) resulting from the violation; (iii) any history of such violations; (iv) any good-faith efforts to comply with the applicable requirements; (v) the economic impact of the penalty on the violator; and (vi) such other matters as justice may require.

(5) Any violation with respect to which the Administrator has commenced and is diligently prosecuting an action, or has issued an order under this subsection assessing a penalty, shall not be subject to an action under subsection (b) of this section or section 300h–3(c) or 300j–8 of this title, except that the foregoing limitation on civil actions under section 300j–8 of this title shall not apply with respect to any violation for which—

(A) a civil action under section 300j–8(a)(1) of this title has been filed prior to commencement of an action under this subsection, or

(B) a notice of violation under section 300j–8(b)(1) of this title has been given before commencement of an action under this subsection and an action under section 300j–8(a)(1) of this title is filed before 120 days after such notice is given.

(6) Any person against whom an order is issued or who commented on a proposed order pursuant to paragraph (3) may file an appeal of such order with the United States District Court for the District of Columbia or the district in which the violation is alleged to have occurred. Such an appeal may only be filed within the 30-day period beginning on the date the order is issued. Appellant shall simultaneously send a copy of the appeal by certified mail to the Administrator and to the Attorney General. The Administrator shall promptly file in such court a certified copy of the record on which such order was imposed. The district court shall not set aside or remand such order unless there is not substantial evidence on the record, taken as a whole, to support the finding of a violation or, unless the Administrator’s assessment of penalty or requirement for compliance constitutes an abuse of discretion. The district court shall
not impose additional civil penalties for the same violation unless the Administrator’s assessment of a penalty constitutes an abuse of discretion. Notwithstanding section 300–7(a)(2) of this title, any order issued under paragraph (3) shall be subject to judicial review exclusively under this paragraph.

(7) If any person fails to pay an assessment of a civil penalty—

(A) after the order becomes effective under paragraph (3), or

(B) after a court, in an action brought under paragraph (6), has entered a final judgment in favor of the Administrator,

the Administrator may request the Attorney General to bring a civil action in an appropriate district court to recover the amount assessed (plus costs, attorneys’ fees, and interest at currently prevailing rates from the date the order is effective or the date of such final judgment, as the case may be). In such an action, the validity, amount, and appropriateness of such penalty shall not be subject to review.

(8) The Administrator may, in connection with administrative proceedings under this subsection, issue subpoenas compelling the attendance and testimony of witnesses and subpoenas duces tecum, and may request the Attorney General to bring an action to enforce any subpoena under this section. The district courts shall have jurisdiction to enforce such subpoenas and impose sanction.

(d) State authority to adopt or enforce laws or regulations respecting underground injection unaffected

Nothing in this subchapter shall diminish any authority of a State or political subdivision to adopt or enforce any law or regulation respecting underground injection but no such law or regulation shall relieve any person of any requirement otherwise applicable under this subchapter.


AMENDMENTS


Subsec. (a)(1). Pub. L. 99–339, § 202(a)(1), substituted provisions which related to issuance of an order of compliance or commencement of a civil action by the Administrator if the State has not commenced enforcement against the violator for provisions directing the Administrator to give public notice and request that the State report within 15 days thereafter as to steps taken to enforce compliance and authorizing the Administrator to commence a civil action upon failure by the State to comply timely.

Subsec. (a)(2). Pub. L. 99–339, § 202(a)(2), substituted provision that the Administrator issue an order under subsection (c) of this section or commence a civil action under subsection (b) of this section for provision that he commence a civil action under subsection (b)(1) of this section.

Subsec. (b). Pub. L. 99–339, § 202(b), amended subsection (b) generally, substituting provisions relating to jurisdiction of the appropriate Federal district court, entry of judgment, civil penalty of $25,000 per day, criminal liability and fine for willful violation for provisions which related to judicial determinations in appropriate Federal district courts, civil penalties of $5,000 per day, and fines of $10,000 per day for willful violations.

Subsecs. (c), (d). Pub. L. 99–339, § 202(c), added subsection (c) and redesignated former subsection (c) as (d).
well in an area designated under subsection (a) of this section only, if he finds that the operation of such well will not cause contamination of the aquifer of such area so as to create a significant hazard to public health. The Administrator may condition the issuance of such a permit upon the use of such control measures in connection with the operation of such well, for which the permit is to be issued, as he deems necessary to assure that the operation of the well will not contaminate the aquifer of the designated area in which the well is located so as to create a significant hazard to public health.

(c) Civil penalties; separate violations; penalties for willful violations; temporary restraining order or injunction

Any person who operates a new underground injection well in violation of subsection (b) of this section, (1) shall be subject to a civil penalty of not more than $5,000 for each day in which such violation occurs, and (2) if such violation is willful, such person may, in lieu of the civil penalty authorized by clause (1), be fined not more than $10,000 for each day in which such violation occurs. If the Administrator has reason to believe that any person is violating or will violate subsection (b) of this section, he may petition the United States district court to issue a temporary restraining order or injunction (including a mandatory injunction) to enforce such subsection.

(d) "New underground injection well" defined

For purposes of this section, the term "new underground injection well" means an underground injection well whose operation was not approved by appropriate State and Federal agencies before December 16, 1974.

(e) Areas with one aquifer; publication in Federal Register; commitments for Federal financial assistance

If the Administrator determines, on his own initiative or upon petition, that an area has an aquifer which is the sole or principal drinking water source for the area and which, if contaminated, would create a significant hazard to public health, he shall publish notice of that determination in the Federal Register. After the publication of any such notice, no commitment for Federal financial assistance (including a mandatory injunction) to enforce such subsection.

§ 300h–1(b) of this section, in the case of that portion of a State underground injection control program for which the demonstration referred to in subsection (a) of this section has been made, in lieu of the showing required under section 300h–1(b)(1)(B) of this title the State may demonstrate that such portion of the State program meets the requirements of subparagraphs (A) through (D) of section 300h(b)(1) of this title and represents an effective program (including adequate recordkeeping and reporting) to prevent underground injection which endangers drinking water sources.

(b) Revision or amendment of requirements of regulation; showing of effectiveness of program by State

If the Administrator revises or amends any requirement of a regulation under section 300h of this title relating to any aspect of the underground injection referred to in subsection (a) of this section, in the case of that portion of a State underground injection control program for which the demonstration referred to in subsection (a) of this section has been made, in lieu of the showing required under section 300h–1(b)(1)(B) of this title the State may demonstrate that, with respect to that aspect of such underground injection, the State program meets the requirements of subparagraphs (A) through (D) of section 300h(b)(1) of this title and represents an effective program (including adequate recordkeeping and reporting) to prevent underground injection which endangers drinking water sources.

(c) Primary enforcement responsibility of State; voiding by Administrator under duly promulgated rule

(1) Section 300h–1(b)(3) of this title shall not apply to that portion of any State underground injection control program approved by the Administrator pursuant to a demonstration under subsection (a) of this section (and under subsection (b) of this section where applicable).

(2) If pursuant to such a demonstration, the Administrator approves such portion of the State program, the State shall have primary enforcement responsibility with respect to that portion until such time as the Administrator determines, by rule, that such demonstration is no longer valid. Following such a determination, the Administrator may exercise the authority of subsection (c) of section 300h–1 of this title in the same manner as provided in such subsection with respect to a determination described in such subsection.

(3) Before promulgating any rule under paragraph (2), the Administrator shall provide opportunity for public hearing respecting such rule.

§ 300h–4. Optional demonstration by States relating to oil or natural gas

(a) Approval of State underground injection control program; alternative showing of effectiveness of program by State

For purposes of the Administrator’s approval or disapproval under section 300h–1 of this title of that portion of any State underground injection control program which relates to—

1. the underground injection of brine or other fluids which are brought to the surface in connection with oil or natural gas production or natural gas storage operations;

2. any underground injection for the secondary or tertiary recovery of oil or natural gas, in lieu of the showing required under subparagraph (A) of section 300h–1(b)(1) of this title the State may demonstrate that such portion of the State program meets the requirements of subparagraphs (A) through (D) of section 300h(b)(1) of this title and represents an effective program (including adequate recordkeeping and reporting) to prevent underground injection which endangers drinking water sources.

MENDMENTS

1986—Subsec. (a)(1). Pub. L. 99–339 inserted "or natural gas storage operations, or" after "production".
§ 300h-5. Regulation of State programs

Not later than 18 months after June 19, 1986, the Administrator may modify regulations issued under this chapter for Class I injection wells to identify monitoring methods, in addition to those in effect on November 1, 1985, including groundwater monitoring. In accordance with such regulations, the Administrator, or delegated State authority, shall determine the applicability of such monitoring methods, wherever appropriate, at locations and in such a manner as to provide the earliest possible detection of fluid migration into, or in the direction of, underground sources of drinking water from such wells, based on its assessment of the potential for fluid migration from the injection zone that may be harmful to human health or the environment. For purposes of this subsection, a class I injection well is defined in accordance with 40 CFR 146.05 as in effect on November 1, 1985.


AMENDMENTS

1996—Pub. L. 104–182 directed technical amendment of section catchline and subsec. (a) designation. The provision directing amendment of subsec. (a) designation could not be executed because section does not contain a subsec. (a).

1995—Pub. L. 104–66 struck out subsec. (a) designation and heading before “Not later than’ and struck out heading and text of subsec. (b). Text read as follows: “(1) The Administrator shall submit a report to Congress, no later than September 1987, summarizing the results of State surveys required by the Administrator under this section. The report shall include each of the following items of information:

“(1) The numbers and categories of class V wells which discharge nonhazardous waste into or above an underground source of drinking water.

“(2) The primary contamination problems associated with different categories of these disposal wells.

“(3) Recommendations for minimum design, construction, installation, and siting requirements that should be applied to protect underground sources of drinking water from such contamination wherever necessary.”

§ 300h-6. Sole source aquifer demonstration program

(a) Purpose

The purpose of this section is to establish procedures for development, implementation, and assessment of demonstration programs designed to protect critical aquifer protection areas located within areas designated as sole or principal source aquifers under section 300h–3(e) of this title.

(b) “Critical aquifer protection area” defined

For purposes of this section, the term “critical aquifer protection area” means either of the following:

(1) All or part of an area located within an area for which an application or designation as a sole or principal source aquifer pursuant to section 300h–3(e) of this title, has been submitted and approved by the Administrator and which satisfies the criteria established by the Administrator under subsection (d) of this section.

(2) All or part of an area which is within an aquifer designated as a sole source aquifer as of June 19, 1986, and for which an area wide ground water quality protection plan has been approved under section 208 of the Clean Water Act [33 U.S.C. 1288] prior to June 19, 1986.

(c) Application

Any State, municipal or local government or political subdivision thereof or any planning entity (including any interstate regional planning entity) that identifies a critical aquifer protection area over which it has authority or jurisdiction may apply to the Administrator for the selection of such area for a demonstration program under this section. Any applicant shall consult with other government or planning entities with authority or jurisdiction in such area prior to application. Applicants, other than the Governor, shall submit the application for a demonstration program jointly with the Governor.

(d) Criteria

Not later than 1 year after June 19, 1986, the Administrator shall, by rule, establish criteria for identifying critical aquifer protection areas under this section. In establishing such criteria, the Administrator shall consider each of the following:

(1) The vulnerability of the aquifer to contamination due to hydrogeologic characteristics.

(2) The number of persons or the proportion of population using the ground water as a drinking water source.

(3) The economic, social and environmental benefits that would result to the area from maintenance of ground water of high quality.

(4) The economic, social and environmental costs that would result from degradation of the quality of the ground water.

(e) Contents of application

An application submitted to the Administrator by any applicant for a demonstration program under this section shall meet each of the following requirements:

(1) The application shall propose boundaries for the critical aquifer protection area within its jurisdiction.

(2) The application shall designate or, if necessary, establish a planning entity (which shall be a public agency and which shall include representation of elected local and State governmental officials) to develop a comprehensive management plan (hereinafter in this section referred to as the “plan”) for the critical protection area. Where a local government planning agency exists with adequate authority to carry out this section with respect to any proposed critical protection area, such agency shall be designated as the planning entity.

(3) The application shall establish procedures for public participation in the development of the plan, for review, approval, and adoption of the plan, and for assistance to mu-
ment plan submitted by an applicant under this section shall be to maintain the quality of the ground water in the critical protection area in a manner reasonably expected to protect human health, the environment and ground water resources. In order to achieve such objective, the plan may be designed to maintain, to the maximum extent possible, the natural vegetative and hydrogeological conditions. Each of the following elements shall be included in such a protection plan:

(A) A map showing the detailed boundary of the critical protection area.
(B) An identification of existing and potential point and nonpoint sources of ground water degradation.
(C) An assessment of the relationship between activities on the land surface and ground water quality.
(D) Specific actions and management practices to be implemented in the critical protection area to prevent adverse impacts on ground water quality.
(E) Identification of authority adequate to implement the plan, estimates of program costs, and sources of State matching funds.

(2) Such plan may also include the following:

(A) A determination of the quality of the existing ground water recharged through the special protection area and the natural recharge capabilities of the special protection area watershed.
(B) Requirements designed to maintain existing underground drinking water quality or improve underground drinking water quality if prevailing conditions fail to meet drinking water standards, pursuant to this chapter and State law.
(C) Limits on Federal, State, and local government, financially assisted activities and projects which may contribute to degradation of such ground water or any loss of natural surface and subsurface infiltration of purification capability of the special protection watershed.
(D) A comprehensive statement of land use management including emergency contingency planning as it pertains to the maintenance of the quality of underground sources of drinking water or to the improvement of such sources if necessary to meet drinking water standards pursuant to this chapter and State law.
(E) Actions in the special protection area which would avoid adverse impacts on water quality, recharge capabilities, or both.

(F) Consideration of specific techniques, which may include clustering, transfer of development rights, and other innovative measures sufficient to achieve the objectives of this section.

(G) Consideration of the establishment of a State institution to facilitate and assist funding a development transfer credit system.

(H) A program for State and local implementation of the plan described in this subsection in a manner that will insure the continued, uniform, consistent protection of the critical protection area in accord with the purposes of this section.

(I) Pollution abatement measures, if appropriate.

(g) Plans under section 208 of Clean Water Act

A plan approved before June 19, 1986, under section 208 of the Clean Water Act [33 U.S.C. 1288] to protect a sole source aquifer designated under section 300h-3(e) of this title shall be considered a comprehensive management plan for the purposes of this section.

(h) Consultation and hearings

During the development of a comprehensive management plan under this section, the planning entity shall consult with, and consider the comments of, appropriate officials of any municipality and State or Federal agency which has jurisdiction over lands and waters within the special protection area, other concerned organizations and technical and citizen advisory committees. The planning entity shall conduct public hearings at places within the special protection area for the purpose of providing the opportunity to comment on any aspect of the plan.

(i) Approval or disapproval

Within 120 days after receipt of an application under this section, the Administrator shall approve or disapprove the application. The approval or disapproval shall be based on a determination that the critical protection area satisfies the criteria established under subsection (d) of this section and that a demonstration program for the area would provide protection for ground water quality consistent with the objectives stated in subsection (f) of this section. The Administrator shall provide to the Governor a written explanation of the reasons for the disapproval of any such application. Any petitioner may modify and resubmit any application which is not approved. Upon approval of an application, the Administrator may enter into a cooperative agreement with the applicant to establish a demonstration program under this section.

(j) Grants and reimbursement

Upon entering a cooperative agreement under subsection (i) of this section, the Administrator may provide to the applicant, on a matching basis, a grant of 50 per centum of the costs of implementing the plan established under this section. The Administrator may also reimburse the applicant of an approved plan up to 50 per centum of the costs of developing such plan, except for plans approved under section 208 of the Clean Water Act [33 U.S.C. 1288]. The total amount of grants under this section for any one
aqueifer, designated under section 300h-3(e) of this title, shall not exceed $4,000,000 in any one fiscal year.

(k) Activities funded under other law

No funds authorized under this section may be used to fund activities funded under other sections of this chapter or the Clean Water Act [33 U.S.C. 1251 et seq.], the Solid Waste Disposal Act [42 U.S.C. 6901 et seq.], the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 [42 U.S.C. 9601 et seq.] or other environmental laws.

(l) Savings provision

Nothing under this section shall be construed to amend, supersede or abrogate rights to quantities of water which have been established by interstate water compacts, Supreme Court decrees, or State water laws; or any requirement imposed or right provided under any Federal or State environmental or public health statute.

(m) Authorization of appropriations

There are authorized to be appropriated to carry out this section not more than the following amounts:

<table>
<thead>
<tr>
<th>Fiscal year</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>1987</td>
<td>$10,000,000</td>
</tr>
<tr>
<td>1988</td>
<td>15,000,000</td>
</tr>
<tr>
<td>1989</td>
<td>17,500,000</td>
</tr>
<tr>
<td>1990</td>
<td>17,500,000</td>
</tr>
<tr>
<td>1991</td>
<td>17,500,000</td>
</tr>
<tr>
<td>1992-2003</td>
<td>15,000,000</td>
</tr>
</tbody>
</table>

Matching grants under this section may also be used to implement or update any water quality management plan for a sole or principal source aquifer approved (before June 19, 1986) by the Administrator under section 208 of the Federal Water Pollution Control Act [33 U.S.C. 1288].

(1) Fiscal year.

(2) Amount.

(a) State programs

The Governor or Governor's designee of each State shall, within 3 years of June 19, 1986, adopt and submit to the Administrator a State program to protect wellhead areas within their jurisdiction from contaminants which may have any adverse effect on the health of persons. Each State program under this section shall, at a minimum—

1. specify the duties of State agencies, local governmental entities, and public water supply systems with respect to the development and implementation of programs required by this section;
2. for each wellhead, determine the wellhead protection area as defined in subsection (e) of this section based on all reasonably available hydrogeologic information on ground water flow, recharge and discharge and other information the State deems necessary to adequately determine the wellhead protection area;
3. identify within each wellhead protection area all potential anthropogenic sources of contaminants which may have any adverse effect on the health of persons;
4. describe a program that contains, as appropriate, technical assistance, financial assistance, implementation of control measures, education, training, and demonstration projects to protect the water supply within wellhead protection areas from such contaminants;
5. include contingency plans for the location and provision of alternate drinking water supplies for each public water system in the event of well or wellfield contamination by such contaminants; and
6. include a requirement that consideration be given to all potential sources of such contaminants within the expected wellhead area of a new water well which serves a public water supply system.

(b) Public participation

To the maximum extent possible, each State shall establish procedures, including but not
limited to the establishment of technical and citizens' advisory committees, to encourage the public to participate in developing the protection program for wellhead areas and source water assessment programs under section 300j–13 of this title. Such procedures shall include notice and opportunity for public hearing on the State program before it is submitted to the Administrator.

(c) Disapproval

(1) In general

If, in the judgment of the Administrator, a State program or portion thereof under subsection (a) of this section is not adequate to protect public water systems as required by subsection (a) of this section or a State program under section 300j–13 of this title or section 300g–7(b) of this title does not meet the applicable requirements of section 300j–13 of this title or section 300g–7(b) of this title, the Administrator shall disapprove such program or portion thereof. A State program developed pursuant to subsection (a) of this section shall be deemed to be adequate unless the Administrator determines, within 9 months of the receipt of a State program, that such program (or portion thereof) is inadequate for the purpose of protecting public water systems as required by this section from contaminants that may have any adverse effect on the health of persons. A State program developed pursuant to section 300j–13 of this title or section 300g–7(b) of this title shall be deemed to be adequate unless the Administrator determines within 9 months of the receipt of the program that such program (or portion thereof) does not meet such requirements. If the Administrator determines that a proposed State program (or any portion thereof) is disapproved, the Administrator shall submit a written statement of the reasons for such determination to the Governor of the State.

(2) Modification and resubmission

Within 6 months after receipt of the Administrator's written notice under paragraph (1) that any proposed State program (or portion thereof) is disapproved, the Governor or Governor's designee, shall modify the program based upon the recommendations of the Administrator and resubmit the modified program to the Administrator.

(d) Federal assistance

After the date 3 years after June 19, 1986, no State shall receive funds authorized to be appropriated under this section except for the purpose of implementing the program and requirements of paragraphs (4) and (6) of subsection (a) of this section.

(e) "Wellhead protection area" defined

As used in this section, the term "wellhead protection area" means the surface and subsurface area surrounding a water well or wellfield, supplying a public water system, through which contaminants are reasonably likely to move toward and reach such water well or wellfield. The extent of a wellhead protection area, within a State, necessary to provide protection from contaminants which may have any adverse effect on the health of persons is to be determined by the State in the program submitted under subsection (a) of this section. Not later than one year after June 19, 1986, the Administrator shall issue technical guidance which States may use in making such determinations. Such guidance may reflect such factors as the radius of influence around a well or wellfield, the depth of drawdown of the water table by such well or wellfield at any given point, the time or rate of travel of various contaminants in various hydrologic conditions, distance from the well or wellfield, or other factors affecting the likelihood of contaminants reaching the well or wellfield, taking into account available engineering pump tests or comparable data, field reconnaissance, topographic information, and the geology of the formation in which the well or wellfield is located.

(f) Prohibitions

(1) Activities under other laws

No funds authorized to be appropriated under this section may be used to support activities authorized by the Federal Water Pollution Control Act [33 U.S.C. 1251 et seq.], the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 [42 U.S.C. 9601 et seq.], or other sections of this chapter.

(2) Individual sources

No funds authorized to be appropriated under this section may be used to bring individual sources of contamination into compliance.

(g) Implementation

Each State shall make every reasonable effort to implement the State wellhead area protection program under this section within 2 years of submitting the program to the Administrator. Each State shall submit to the Administrator a biennial status report describing the State's progress in implementing the program. Such report shall include amendments to the State program for water wells sited during the biennial period.

(h) Federal agencies

Each department, agency, and instrumentality of the executive, legislative, and judicial branches of the Federal Government having jurisdiction over any potential source of contaminants identified by a State program pursuant to the provisions of subsection (a)(4) of this section shall be subject to and comply with all requirements of the State program developed according to subsection (a)(4) of this section applicable to such potential source of contaminants, both substantive and procedural, in the same manner, and to the same extent, as any other person is subject to such requirements, including payment of reasonable charges and fees. The President may exempt any potential source under the jurisdiction of any department, agency, or instrumentality in the executive branch if the President determines it to be in the paramount interest of the United States to do so.
exemption shall be granted due to the lack of an appropriation unless the President shall have specifically requested such appropriation as part of the budgetary process and the Congress shall have failed to make available such requested appropriations.

(i) Additional requirement

(1) In general

In addition to the provisions of subsection (a) of this section, States in which there are more than 2,500 active wells at which annular injection is used as of January 1, 1986, shall include in their State program a certification that a State program exists and is being adequately enforced that provides protection from contaminants which may have any adverse effect on the health of persons and which are associated with the annular injection or surface disposal of brines associated with oil and gas production.

(2) “Annular injection” defined

For purposes of this subsection, the term “annular injection” means the reinjection of brines associated with the production of oil or gas between the production and surface casings of a conventional oil or gas producing well.

(3) Review

The Administrator shall conduct a review of each program certified under this subsection.

(4) Disapproval

If a State fails to include the certification required by this subsection or if in the judgment of the Administrator the State program certified under this subsection is not being adequately enforced, the Administrator shall disapprove the State program submitted under subsection (a) of this section.

(j) Coordination with other laws

Nothing in this section shall authorize or require any department, agency, or other instrumentality of the Federal Government or State or local government to apportion, allocate or otherwise regulate the withdrawal or beneficial use of ground or surface waters, so as to abrogate or modify any existing rights to water established pursuant to State or Federal law, including interstate compacts.

(k) Authorization of appropriations

Unless the State program is disapproved under this section, the Administrator shall make grants to the State for not less than 50 or more than 90 percent of the costs incurred by a State (as determined by the Administrator) in developing and implementing each State program under this section. For purposes of making such grants there is authorized to be appropriated not more than the following amounts:

<table>
<thead>
<tr>
<th>Fiscal year</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>1987</td>
<td>$20,000,000</td>
</tr>
<tr>
<td>1988</td>
<td>20,000,000</td>
</tr>
<tr>
<td>1989</td>
<td>35,000,000</td>
</tr>
<tr>
<td>1990</td>
<td>35,000,000</td>
</tr>
<tr>
<td>1991</td>
<td>35,000,000</td>
</tr>
<tr>
<td>1992-2003</td>
<td>30,000,000.</td>
</tr>
</tbody>
</table>


REFERENCES IN TEXT

The Federal Water Pollution Control Act, referred to in subsec. (f)(1), is act June 30, 1948, ch. 758, as amended generally by Pub. L. 92-500, § 2, Oct. 18, 1972, 86 Stat. 816, which is classified generally to chapter 26 (§ 1261 et seq.) of Title 33, Navigation and Navigable Waters. For complete classification of this Act to the Code, see Short Title note set out under section 1251 of Title 33 and Tables.


AMENDMENTS


Subsec. (b), Pub. L. 104-182, § 132(b)(4), inserted before period at end of first sentence “and source water assessment programs under section 300j–13 of this title”.

Subsec. (c)(1), Pub. L. 104-182, § 132(b)(3), which directed substitution of “is disapproved” for “is inadequate” in third sentence, was executed by making the substitution in fourth sentence to reflect the probable intent of Congress and the amendment by Pub. L. 104-182, § 132(b)(2). See below.

Pub. L. 104-182, § 132(b)(2), inserted after second sentence “A State program developed pursuant to section 300j–13 of this title or section 300q–7(b) of this title shall be deemed to meet the applicable requirements of section 300j–13 of this title or section 300q–7(b) of this title unless the Administrator determines within 9 months of the receipt of the program that such program (or portion thereof) does not meet such requirements.”

Pub. L. 104-182, § 132(b)(1), amended first sentence generally. Prior to amendment, first sentence read as follows: “If, in the judgment of the Administrator, a State program (or portion thereof), including the definition of a wellhead protection area, is not adequate to protect public water systems as required by this section, the Administrator shall disapprove such program (or portion thereof).”

Subsec. (c)(2), Pub. L. 104-182, § 132(b)(3), substituted “is disapproved” for “is inadequate”.

Subsec. (k), Pub. L. 104-182, § 120(b), inserted table item relating to fiscal years 1992 through 2003.


§ 300b-8. State ground water protection grants

(a) In general

The Administrator may make a grant to a State for the development and implementation of a State program to ensure the coordinated and comprehensive protection of ground water resources within the State.

(b) Guidance

Not later than 1 year after August 6, 1996, and annually thereafter, the Administrator shall publish guidance that establishes procedures for application for State ground water protection...
program assistance and that identifies key elements of State ground water protection programs.

(c) Conditions of grants

(1) In general

The Administrator shall award grants to States that submit an application that is approved by the Administrator. The Administrator shall determine the amount of a grant awarded pursuant to this paragraph on the basis of an assessment of the extent of ground water resources in the State and the likelihood that awarding the grant will result in sustained and reliable protection of ground water quality.

(2) Innovative program grants

The Administrator may also award a grant pursuant to this subsection for innovative programs proposed by a State for the prevention of ground water contamination.

(3) Allocation of funds

The Administrator shall, at a minimum, ensure that, for each fiscal year, not less than 1 percent of funds made available to the Administrator by appropriations to carry out this section are allocated to each State that submits an application that is approved by the Administrator pursuant to this section.

(4) Limitation on grants

No grant awarded by the Administrator may be used for a project to remediate ground water contamination.

(d) Amount of grants

The amount of a grant awarded pursuant to paragraph (1) shall not exceed 50 percent of the eligible costs of carrying out the ground water protection program that is the subject of the grant (as determined by the Administrator) for the 1-year period beginning on the date that the grant is awarded. The State shall pay a State share to cover the costs of the ground water protection program from State funds in an amount that is not less than 50 percent of the cost of conducting the program.

(e) Evaluations and reports

Not later than 3 years after August 6, 1996, and every 3 years thereafter, the Administrator shall evaluate the State ground water protection programs that are the subject of grants awarded pursuant to this section and report to the Congress on the status of ground water quality in the United States and the effectiveness of State programs for ground water protection.

(f) Authorization of appropriations

There are authorized to be appropriated to carry out this section $15,000,000 for each of fiscal years 1997 through 2003.

PART D—EMERGENCY POWERS

§ 300i. Emergency powers

(a) Actions authorized against imminent and substantial endangerment to health

Notwithstanding any other provision of this subchapter the Administrator, upon receipt of information that a contaminant which is present in or is likely to enter a public water system or an underground source of drinking water, or that there is a threatened or potential terrorist attack (or other intentional act designed to disrupt the provision of safe drinking water or to impact adversely the safety of drinking water supplied to communities and individuals), which may present an imminent and substantial endangerment to the health of persons, and that appropriate State and local authorities have not acted to protect the health of such persons, may take such actions as he may deem necessary in order to protect the health of such persons. To the extent he determines it to be practicable in light of such imminent endangerment, he shall consult with the State and local authorities in order to confirm the correctness of the information on which action proposed to be taken under this subsection is based and to ascertain the action which such authorities are or will be taking. The action which the Administrator may take may include (but shall not be limited to) (1) issuing such orders as may be necessary to protect the health of persons who are or may be users of such system (including travelers), including orders requiring the provision of alternative water supplies by persons who caused or contributed to the endangerment, and (2) commencing a civil action for appropriate relief, including a restraining order or permanent or temporary injunction.

(b) Penalties for violations; separate offenses

Any person who violates or fails or refuses to comply with any order issued by the Administrator under subsection (a)(1) of this section may, in an action brought in the appropriate United States district court to enforce such order, be subject to a civil penalty of not to exceed $15,000 for each day in which such violation occurs or failure to comply continues.

AMENDMENTS

2002—Subsec. (a). Pub. L. 107–188, in first sentence, inserted “, or that there is a threatened or potential terrorist attack (or other intentional act designed to disrupt the provision of safe drinking water or to impact adversely the safety of drinking water supplied to communities and individuals),” after “drinking water”.

1996—Subsec. (b). Pub. L. 104–182 substituted “$15,000” for “$5,000”.

1986—Subsec. (a). Pub. L. 99–339, § 204(1), (2), inserted “or an underground source of drinking water” after “to enter a public water system” and “including orders requiring the provision of alternative water supplies by persons who caused or contributed to the endangerment,” after “including travelers).”.

1980—Pub. L. 96–517 substituted “the extent he determines it to be practicable in light of such imminent endangerment, he shall consult with the State and local authorities in order to confirm the correctness of the information on which action proposed to be taken under this subsection is based and to ascertain the action which such authorities are or will be taking.” for “he shall consult with the State and local authorities in order to confirm the correctness of the information on which action proposed to be taken under this subsection is based and to ascertain the action which such authorities are or will be taking.”.

§ 300i–1. Tampering with public water systems

(a) Tampering

Any person who tampers with a public water system shall be imprisoned for not more than 20
years, or fined in accordance with title 18, or both.

(b) Attempt or threat

Any person who attempts to tamper, or makes a threat to tamper, with a public drinking water system be imprisoned for not more than 10 years, or fined in accordance with title 18, or both.

(c) Civil penalty

The Administrator may bring a civil action in the appropriate United States district court (as determined under the provisions of title 28) against any person who tampers, attempts to tamper, or makes a threat to tamper with a public water system. The court may impose on such person a civil penalty of not more than $1,000,000 for such tampering or not more than $100,000 for such attempt or threat.

(d) "Tamper" defined

For purposes of this section, the term "tamper" means—

(1) to introduce a contaminant into a public water system with the intention of harming persons; or

(2) to otherwise interfere with the operation of a public water system with the intention of harming persons.

(§ 300i–2. Terrorist and other intentional acts

(a) Vulnerability assessments

(1) Each community water system serving a population of greater than 3,300 persons shall conduct an assessment of the vulnerability of its system to a terrorist attack or other intentional acts intended to substantially disrupt the ability of the system to provide a safe and reliable supply of drinking water. The vulnerability assessment shall include, but not be limited to, a review of pipes and constructed conveyances, physical barriers, water collection, pretreatment, treatment, storage and distribution facilities, electronic, computer or other automated systems which are utilized by the public water system, the use, storage, or handling of various chemicals, and the operation and maintenance of such system. The Administrator, not later than August 1, 2002, after consultation with appropriate departments and agencies of the Federal Government and with State and local governments, shall provide baseline information to community water systems required to conduct vulnerability assessments regarding which kinds of terrorist attacks or other intentional acts are the probable threats to—

(A) substantially disrupt the ability of the system to provide a safe and reliable supply of drinking water; or

(B) otherwise present significant public health concerns.

(2) Each community water system referred to in paragraph (1) shall certify to the Administrator that the system has conducted an assessment complying with paragraph (1) and shall submit to the Administrator a written copy of the assessment.

(b) Attempt or threat

(1) to introduce a contaminant into a public water system with the intention of harming persons.

(2) to otherwise interfere with the operation of a public water system with the intention of harming persons.

(3) Except for information contained in a certification under this subsection identifying the system submitting the certification and the date of the certification, all information provided to the Administrator under this subsection and all information derived therefrom shall be exempt from disclosure under section 552 of title 5.

(c) Civil penalty

(1) to introduce a contaminant into a public water system with the intention of harming persons.

(2) to otherwise interfere with the operation of a public water system with the intention of harming persons.

(3) Except for information contained in a certification under this subsection identifying the system submitting the certification and the date of the certification, all information provided to the Administrator under this subsection and all information derived therefrom shall be exempt from disclosure under section 552 of title 5.

(4) No community water system shall be required under State or local law to provide an assessment described in this section to any State, regional, or local governmental entity solely by reason of the requirement set forth in paragraph (2) that the system submit such assessment to the Administrator.

(d) "Tamper" defined

(1) to introduce a contaminant into a public water system with the intention of harming persons.

(2) to otherwise interfere with the operation of a public water system with the intention of harming persons.

(e) Civil penalty

(1) to introduce a contaminant into a public water system with the intention of harming persons.

(2) to otherwise interfere with the operation of a public water system with the intention of harming persons.

(3) Except for information contained in a certification under this subsection identifying the system submitting the certification and the date of the certification, all information provided to the Administrator under this subsection and all information derived therefrom shall be exempt from disclosure under section 552 of title 5.

(4) No community water system shall be required under State or local law to provide an assessment described in this section to any State, regional, or local governmental entity solely by reason of the requirement set forth in paragraph (2) that the system submit such assessment to the Administrator.

(5) Not later than November 30, 2002, the Administrator, in consultation with appropriate Federal law enforcement and intelligence officials, shall develop such protocols as may be necessary to protect the copies of the assessments required to be submitted under this subsection (and the information contained therein) from unauthorized disclosure. Such protocols shall ensure that—

(A) each copy of such assessment, and all information contained in or derived from the assessment, is kept in a secure location;

(B) only individuals designated by the Administrator may have access to the copies of the assessments; and

(C) no copy of an assessment, or part of an assessment, or information contained in or derived from an assessment shall be available to anyone other than an individual designated by the Administrator.

At the earliest possible time prior to November 30, 2002, the Administrator shall complete the development of such protocols for the purpose of having them in place prior to receiving any vulnerability assessments from community water systems under this subsection.

(6) (A) Except as provided in subparagraph (B), any individual referred to in paragraph (5)(B) who acquires the assessment submitted under paragraph (2), or any reproduction of such assessment, or any information derived from such assessment, and who knowingly or recklessly reveals such assessment, reproduction, or information other than—

(i) to an individual designated by the Administrator under paragraph (5),

(j) to a Federal law enforcement and intelligence official;

(k) to a State or local government official;
(ii) for purposes of section 300j-4 of this title or for actions under section 300i of this title, or
(iii) for use in any administrative or judicial proceeding to impose a penalty for failure to comply with this section,

shall upon conviction be imprisoned for not more than one year or fined in accordance with the provisions of chapter 227 of title 18 applicable to class A misdemeanors, or both, and shall be removed from Federal office or employment.

(B) Notwithstanding subparagraph (A), an individual referred to in paragraph (5)(B) who is an officer or employee of the United States may discuss the contents of a vulnerability assessment submitted under this section with a State or local official.

(7) Nothing in this section authorizes any person to withhold any information from Congress or from any committee or subcommittee of Congress.

(b) Emergency response plan

Each community water system serving a population greater than 3,300 shall prepare or revise, where necessary, an emergency response plan that incorporates the results of vulnerability assessments that have been completed. Each such community water system shall certify to the Administrator, as soon as reasonably possible after the enactment of this section, but not later than 6 months after the completion of the vulnerability assessment under subsection (a) of this section, that the system has completed such plan. The emergency response plan shall include, but not be limited to, plans, procedures, and identification of equipment that can be implemented or utilized in the event of a terrorist or other intentional attack on the public water system. The emergency response plan shall also include actions, procedures, and identification of equipment which can obviate or significantly lessen the impact of terrorist attacks or other intentional actions on the public health and the safety and supply of drinking water provided to communities and individuals. Community water systems shall, to the extent possible, coordinate with existing Local Emergency Planning Committees established under the Emergency Planning and Community Right-to-Know Act (42 U.S.C. 11001 et seq.) when preparing or revising an emergency response plan under this subsection.

(c) Record maintenance

Each community water system shall maintain a copy of the emergency response plan completed pursuant to subsection (b) of this section for 5 years after such plan has been certified to the Administrator under this section.

(d) Guidance to small public water systems

The Administrator shall provide guidance to community water systems serving a population of less than 3,300 persons on how to conduct vulnerability assessments, prepare emergency response plans, and address threats from terrorist attacks or other intentional actions designed to disrupt the provision of safe drinking water or significantly affect the public health or significantly affect the safety or supply of drinking water provided to communities and individuals.

(e) Funding

(1) There are authorized to be appropriated to carry out this section not more than $160,000,000 for the fiscal year 2002 and such sums as may be necessary for the fiscal years 2003 through 2005.

(2) The Administrator, in coordination with State and local governments, may use funds made available under paragraph (1) to provide financial assistance to community water systems for purposes of compliance with the requirements of subsections (a) and (b) of this section and to community water systems for expenses and contracts designed to address basic security enhancements of critical importance and significant threats to public health and the supply of drinking water as determined by a vulnerability assessment conducted under subsection (a) of this section. Such basic security enhancements may include, but shall not be limited to the following:

(A) the purchase and installation of equipment for detection of intruders;
(B) the purchase and installation of fencing, gating, lighting, or security cameras;
(C) the tamper-proofing of manhole covers, fire hydrants, and valve boxes;
(D) the rekeying of doors and locks;
(E) improvements to electronic, computer, or other automated systems and remote security systems;
(F) participation in training programs, and the purchase of training manuals and guidance materials, relating to security against terrorist attacks;
(G) improvements in the use, storage, or handling of various chemicals; and
(H) security screening of employees or contractor support services.

Funding under this subsection for basic security enhancements shall not include expenditures for personnel costs, or monitoring, operation, or maintenance of facilities, equipment, or systems.

(3) The Administrator may use not more than $5,000,000 from the funds made available under paragraph (1) to make grants to community water systems to assist in responding to and alleviating any vulnerability to a terrorist attack or other intentional acts intended to substantially disrupt the ability of the system to provide a safe and reliable supply of drinking water (including sources of water for such systems) which the Administrator determines to present an immediate and urgent security need.

(4) The Administrator may use not more than $5,000,000 from the funds made available under paragraph (1) to make grants to community water systems serving a population of less than 3,300 persons for activities and projects undertaken in accordance with the guidance provided to such systems under subsection (d) of this section.

REFERENCES IN TEXT

The Emergency Planning and Community Right-to-Know Act, referred to in subsec. (b), probably means the Emergency Planning and Community Right-to-
§ 300i-3. Contaminant prevention, detection and response

(a) In general

The Administrator, in consultation with the Centers for Disease Control and Prevention, shall review (or enter into contracts or cooperative agreements to provide for a review of) the current and future methods to prevent, detect and respond to the intentional introduction of chemical, biological or radiological contaminants into community water systems and source water for community water systems, including each of the following:

(1) Methods, means and equipment, including real time monitoring systems, designed to monitor and detect various levels of chemical, biological, and radiological contaminants or indicators of contaminants and reduce the likelihood that such contaminants can be successfully introduced into public water systems and source water intended to be used for drinking water.

(2) Methods and means to provide sufficient notice to operators of public water systems, and individuals served by such systems, of the introduction of chemical, biological or radiological contaminants and the possible effect of such introduction on public health and the safety and supply of drinking water.

(3) Methods and means for developing educational and awareness programs for community water systems.

(4) Procedures and equipment necessary to prevent the flow of contaminated drinking water to individuals served by public water systems.

(5) Methods, means, and equipment which could negate or mitigate deleterious effects on public health and the safety and supply caused by the introduction of contaminants into water intended to be used for drinking water, including an examination of the effectiveness of various drinking water technologies in removing, inactivating, or neutralizing biological, chemical, and radiological contaminants.

(6) Biomedical research into the short-term and long-term impact on public health of various chemical, biological and radiological contaminants that may be introduced into public water systems through terrorist or other intentional acts.

(b) Funding

For the authorization of appropriations to carry out this section, see section 300i-4(e) of this title.


CHANGE OF NAME


§ 300i-4. Supply disruption prevention, detection and response

(a) Disruption of supply or safety

The Administrator, in coordination with the appropriate departments and agencies of the Federal Government, shall review (or enter into contracts or cooperative agreements to provide for a review of) methods and means by which terrorists or other individuals or groups could disrupt the supply of safe drinking water or take other actions against water collection, pretreatment, treatment, storage and distribution facilities which could render such water significantly less safe for human consumption, including each of the following:

(1) Methods and means by which pipes and other constructed conveyances utilized in public water systems could be destroyed or otherwise prevented from providing adequate supplies of drinking water meeting applicable public health standards.

(2) Methods and means by which collection, pretreatment, treatment, storage and distribution systems that are utilized in connection with public water systems and collection and pretreatment storage facilities used in connection with public water systems could be destroyed or otherwise prevented from providing adequate supplies of drinking water meeting applicable public health standards.

(3) Methods and means by which pipes, constructed conveyances, collection, pretreatment, treatment, storage and distribution systems that are utilized in connection with public water systems could be altered or affected so as to be subject to cross-contamination of drinking water supplies.

(4) Methods and means by which pipes, constructed conveyances, collection, pretreatment, treatment, storage and distribution systems that are utilized in connection with public water systems could be reasonably protected from terrorist attacks or other acts intended to disrupt the supply or affect the safety of drinking water.

(5) Methods and means by which information systems, including process controls and supervisory control and data acquisition and cyber systems at community water systems could be disrupted by terrorists or other groups.

(b) Alternative sources

The review under this section shall also include a review of the methods and means by which alternative supplies of drinking water could be provided in the event of the destruction, impairment or contamination of public water systems.

(c) Requirements and considerations

In carrying out this section and section 300i–3 of this title—

(1) the Administrator shall ensure that reviews carried out under this section reflect the needs of community water systems of various sizes and various geographic areas of the United States; and

(2) the Administrator may consider the vulnerability of, or potential for forced interruption of service for, a region or service area, including community water systems that provide service to the National Capital area.
(d) Information sharing
As soon as practicable after reviews carried out under this section or section 300i–3 of this title have been evaluated, the Administrator shall disseminate, as appropriate as determined by the Administrator, to community water systems information on the results of the project through the Information Sharing and Analysis Center, or other appropriate means.

(e) Funding
There are authorized to be appropriated to carry out this section and section 300i–3 of this title not more than $15,000,000 for the fiscal year 2002 and such sums as may be necessary for the fiscal years 2003 through 2005.

(§ 300j. Assurances of availability of adequate supplies of chemicals necessary for treatment of water

(a) Certification of need application
If any person who uses chlorine, activated carbon, lime, ammonia, soda ash, potassium permanganate, caustic soda, or other chemical or substance for the purpose of treating water in any public water system or in any public treatment works determines that the amount of such chemical or substance necessary to effectively treat water is not reasonably available to him or will not be so available to him when required for the effective treatment of such water, the person may apply to the Administrator for a certification (hereinafter in this section referred to as a “certification of need”) that the amount of such chemical or substance which such person requires to effectively treat such water is not reasonably available to him or will not be so available when required for the effective treatment of such water.

(b) Application requirements; publication in Federal Register; waiver; certification, issuance or denial
(1) An application for a certification of need shall be in such form and submitted in such manner as the Administrator may require and shall (A) specify the persons the applicant determines are able to provide the chemical or substance with respect to which the application is submitted, (B) specify the persons from whom the applicant has sought such chemical or substance, and (C) contain such other information as the Administrator may require.

(2) Upon receipt of an application under this section, the Administrator shall (A) publish in the Federal Register a notice of the receipt of the application and a brief summary of it, (B) notify in writing each person whom the President or his delegate (after consultation with the Administrator) determines could be made subject to an order required to be issued upon the issuance of the certification of need applied for in such application, and (C) provide an opportunity for the submission of written comments on such application. The requirements of the preceding sentence of this paragraph shall not apply when the Administrator for good cause finds (and incorporates the finding with a brief statement of reasons therefor in the order issued) that waiver of such requirements is necessary in order to protect the public health.

(3) Within 30 days after—
(A) the date a notice is published under paragraph (2) in the Federal Register with respect to an application submitted under this section for the issuance of a certification of need, or
(B) the date on which such application is received if as authorized by the second sentence of such paragraph no notice is published with respect to such application, the Administrator shall take action either to issue or deny the issuance of a certification of need.

(c) Certification of need; issuance; executive orders; implementation of orders; equitable apportionment of orders; factors considered
(1) If the Administrator finds that the amount of a chemical or substance necessary for an applicant under an application submitted under this section to effectively treat water in a public water system or in a public treatment works is not reasonably available to the applicant or will not be so available to him when required for the effective treatment of such water, the Administrator shall issue a certification of need. Not later than seven days following the issuance of such certification, the President or his delegate shall issue an order requiring the provision to such person of such amounts of such chemical or substance as the Administrator deems necessary in the certification of need issued for such person. Such order shall apply to such manufacturers, producers, processors, distributors, and repackagers of such chemical or substance as the President or his delegate deems necessary and appropriate, except that such order may not apply to any manufacturer, producer, or processor of such chemical or substance who manufactures, produces, or processes (as the case may be) such chemical or substance solely for its own use. Persons subject to an order issued under this section shall be given a reasonable opportunity to consult with the President or his delegate with respect to the implementation of the order.

(2) Orders which are to be issued under paragraph (1) to manufacturers, producers, and processors of a chemical or substance shall be equitably apportioned, as far as practicable, among all manufacturers, producers, and processors of such chemical or substance; and orders which are to be issued under paragraph (1) to distributors and repackagers of a chemical or substance shall be equitably apportioned, as far as practicable, among all distributors and repackagers of such chemical or substance. In apportioning orders issued under paragraph (1) to manufacturers, producers, processors, distributors, and repackagers of chlorine, the President or his delegate shall, in carrying out the requirements of the preceding sentence, consider—
(A) the geographical relationships and established commercial relationships between such manufacturers, producers, processors, dis-
tributors, and repackagers and the persons for whom the orders are issued;
(B) in the case of orders to be issued to producers of chlorine, the (i) amount of chlorine historically supplied by each such producer to treat water in public water systems and public treatment works, and (ii) share of each such producer of the total annual production of chlorine in the United States; and
(C) such other factors as the President or his delegate may determine are relevant to the apportionment of orders in accordance with the requirements of the preceding sentence.
(3) Subject to subsection (f) of this section, any person for whom a certification of need has been issued under this subsection may upon the expiration of the order issued under paragraph (1) upon such certification apply under this section for additional certifications.
(d) Breach of contracts; defense
There shall be available as a defense to any action brought for breach of contract in a Federal or State court arising out of delay or failure to provide, sell, or offer for sale or exchange a chemical or substance subject to an order issued pursuant to subsection (c)(1) of this section, that such delay or failure was caused solely by compliance with such order.
(e) Penalties for noncompliance with orders; temporary restraining orders and preliminary or permanent injunctions
(1) Whoever knowingly fails to comply with any order issued pursuant to subsection (c)(1) of this section shall be fined not more than $5,000 for each such failure to comply.
(2) Whoever fails to comply with any order issued pursuant to subsection (c)(1) of this section shall be subject to a civil penalty of not more than $5,000 for each such failure to comply.
(3) Whenever the Administrator or the President or his delegate has reason to believe that any person is violating or will violate any order issued pursuant to subsection (c)(1) of this section, he may petition a United States district court to issue a temporary restraining order or preliminary or permanent injunction (including a mandatory injunction) to enforce the provision of such order.
(f) Termination date
No certification of need or order issued under this section may remain in effect for more than one year.


EX. ORD. NO. 11879. DELEGATION OF FUNCTIONS TO SECRETARY OF COMMERCE RELATING TO ORDERS FOR PROVISION OF CHEMICALS OR SUBSTANCES NECESSARY FOR TREATMENT OF WATER
Ex. Ord. No. 11879, Sept. 17, 1975, 40 F.R. 43197, provided: By virtue of the authority vested in me by Section 1441 of the Public Health Service Act, as amended by the Safe Drinking Water Act (now Safe Drinking Water Act of 1974) (42 Stat. 1680, 42 U.S.C. 300j), and as President of the United States, the Secretary of Commerce is hereby delegated, with power to redelegate to agencies, officers and employees of the Government, the functions of the President contained in said section 1441 [this section]. Those functions shall be administered under regulations or agreements which are identical or compatible with other regulations and agreements, including those provided pursuant to Executive Order No. 10480, as amended [formerly set out as a note under section 2153 of Title 50, Appendix, War and National Defense], for the allocation of similar chemicals or substances.

GERALD R. FORD.

§ 300j–1. Research, technical assistance, information, training of personnel

(a) Specific powers and duties of Administrator
(1) The Administrator may conduct research, studies, and demonstrations relating to the causes, diagnosis, treatment, control, and prevention of physical and mental diseases and other impairments of man resulting directly or indirectly from contaminants in water, or to the provision of a dependably safe supply of drinking water, including—
(A) improved methods (i) to identify and measure the existence of contaminants in drinking water (including methods which may be used by State and local health and water officials), and (ii) to identify the source of such contaminants;
(B) improved methods to identify and measure the health effects of contaminants in drinking water;
(C) new methods of treating raw water to prepare it for drinking, so as to improve the efficiency of water treatment and to remove contaminants from water;
(D) improved methods for providing a dependably safe supply of drinking water, including improvements in water purification and distribution, and methods of assessing the health related hazards of drinking water; and
(E) improved methods of protecting underground water sources of public water systems from contamination.
(2) INFORMATION AND RESEARCH FACILITIES.—In carrying out this subchapter, the Administrator is authorized to—
(A) collect and make available information pertaining to research, investigations, and demonstrations with respect to providing a dependably safe supply of drinking water, together with appropriate recommendations in connection with the information; and
(B) make available research facilities of the Agency to appropriate public authorities, institutions, and individuals engaged in studies and research relating to this subchapter.

AMENDMENTS
1986—Subsec. (f). Pub. L. 99–339 substituted “in effect for more than one year” for “in effect— (1) for more than one year, or (2) September 30, 1982, whichever occurs first.”
§ 300j-1

(3) The Administrator shall carry out a study of polychlorinated biphenyl contamination of actual or potential sources of drinking water, contamination of such sources by other substances known or suspected to be harmful to public health, the effects of such contamination, and means of removing, treating, or otherwise controlling such contamination. To assist in carrying out this paragraph, the Administrator is authorized to make grants to public agencies and private nonprofit institutions.

(4) The Administrator shall conduct a survey and study of—

(A) disposal of waste (including residential waste) which may endanger underground water which supplies, or can reasonably be expected to supply, any public water systems, and

(B) means of control of such waste disposal.

Not later than one year after December 16, 1974, he shall transmit to the Congress the results of such survey and study, together with such recommendations as he deems appropriate.

(5) The Administrator shall carry out a study of methods of underground injection which do not result in the degradation of underground drinking water sources.

(6) The Administrator shall carry out a study of methods of preventing, detecting, and dealing with surface spills of contaminants which may degrade underground water sources for public water systems.

(7) The Administrator shall carry out a study of virus contamination of drinking water sources and means of control of such contamination.

(8) The Administrator shall carry out a study of the nature and extent of the impact on underground water which supplies, or can reasonably be expected to supply, public water systems of (A) abandoned injection or extraction wells; (B) intensive application of pesticides and fertilizers in underground water recharge areas; and (C) ponds, pools, lagoons, pits, or other surface disposal of contaminants in underground water recharge areas.

(9) The Administrator shall conduct a comprehensive study of public water supplies and drinking water sources to determine the nature, extent, sources of and means of control of contamination by chemicals or other substances suspected of being carcinogenic. Not later than six months after December 16, 1974, he shall transmit to the Congress the initial results of such study, together with such recommendations for further review and corrective action as he deems appropriate.

(10) The Administrator shall carry out a study of the reaction of chlorine and humic acids and the effects of the contaminants which result from such reaction on public health and on the safety of drinking water, including any carcinogenic effect.

(b) Emergency situations

The Administrator is authorized to provide technical assistance and to make grants to States, or publicly owned water systems to assist in responding to and alleviating any emergency situation affecting public water systems (including sources of water for such systems) which the Administrator determines to present substantial danger to the public health. Grants provided under this subsection shall be used only to support those actions which (i) are necessary for preventing, limiting or mitigating danger to the public health in such emergency situation and (ii) would not, in the judgment of the Administrator, be taken without such emergency assistance. The Administrator may carry out the program authorized under this subsection as part of, and in accordance with the terms and conditions of, any other program of assistance for environmental emergencies which the Administrator is authorized to carry out under any other provision of law. No limitation on appropriations for any such other program shall apply to amounts appropriated under this subsection.

(c) Establishment of training programs and grants for training ; training fees

The Administrator shall—

(1) provide training for, and make grants for training (including postgraduate training) of (A) personnel of State agencies which have primary enforcement responsibility and of agencies or units of local government to which enforcement responsibilities have been delegated by the State, and (B) personnel who manage or operate public water systems, and

(2) make grants for postgraduate training of individuals (including grants to educational institutions for traineeships) for purposes of qualifying such individuals to work as personnel referred to in paragraph (1).

(3) make grants to, and enter into contracts with, any public agency, educational institution, and any other organization, in accordance with procedures prescribed by the Administrator, under which he may pay all or part of the costs (as may be determined by the Administrator) of any project or activity which is designed—

(A) to develop, expand, or carry out a program (which may combine training education and employment) for training persons for occupations involving the public health aspects of providing safe drinking water;

(B) to train inspectors and supervisory personnel to train or supervise persons in occupations involving the public health aspects of providing safe drinking water; or

(C) to develop and expand the capability of programs of States and municipalities to carry out the purposes of this subchapter (other than by carrying out State programs of public water system supervision or underground water source protection (as defined in section 300j-2(c) of this title)).

Reasonable fees may be charged for training provided under paragraph (1)(B) to persons other than personnel of State or local agencies but such training shall be provided to personnel of State or local agencies without charge.

(d) Authorization of appropriations

There are authorized to be appropriated to carry out subsection (b) of this section not more than $35,000,000 for the fiscal year 2002 and such sums as may be necessary for each fiscal year thereafter.
§ 300j-1  TITLED—THE PUBLIC HEALTH AND WELFARE  Page 1014

(e) Technical assistance

The Administrator may provide technical assistance to small public water systems to enable such systems to achieve and maintain compliance with applicable national primary drinking water regulations. Such assistance may include circuit-rider and multi-State regional technical assistance programs, training, and preliminary engineering evaluations. The Administrator shall ensure that technical assistance pursuant to this subsection is available in each State. Each nonprofit organization receiving assistance under this subsection shall consult with the State in which the assistance is to be expended or otherwise made available before using assistance to undertake activities to carry out this subsection. There are authorized to be appropriated to the Administrator to be used for such technical assistance $15,000,000 for each of fiscal years 1997 through 2003.

§ 300j–12 of this title (relating to State loan funds) and no portion of any funds made available under this subsection may be used for lobbying expenses. Of the total amount appropriated under this subsection, 3 percent shall be used for technical assistance to public water systems owned or operated by Indian Tribes.


AMENDMENTS

2002—Subsec. (b). Pub. L. 107–188, § 403(4)(A), which directed substitution of “this subsection” for “this subparagraph” was executed by making the substitution in three places to reflect the probable intent of Congress.

Subsec. (d). Pub. L. 107–188, § 403(4)(B), amended subsec. (d) generally, substituting provisions relating to authorization of appropriations to carry out subsec. (b) in fiscal years 2002 and subsequent fiscal years for provisions relating to authorization of appropriations to carry out this section in fiscal year 1991 and earlier.

1996—Subsec. (a)(2). Pub. L. 104–182, § 121(4)(A), added heading and text of par. (2) and struck out former par. (2) which read as follows: “(2)(A) The Administrator shall, to the maximum extent feasible, provide technical assistance to the States and municipalities in the establishment and administration of public water system supervision programs (as defined in section 300j–2(c)(1) of this title).”

Subsec. (a)(2)(B). Pub. L. 104–182, § 121(3), redesignated subpar. (B) as subsec. (b) and transferred that subsec. to appear after subsec. (a).

Subsec. (a)(3). Pub. L. 104–182, § 121(4)(B), redesignated par. (11) as (3), transferred that par. to appear before par. (4), and struck out former par. (3) which provided that the Administrator was to conduct studies, and make periodic reports to Congress, on the costs of carrying out regulations prescribed under section 300j–1 of this title.

Subsec. (b). Pub. L. 104–182, § 121(2), redesignated subsec. (a)(2)(B) as subsec. (b), transferred that subsec. to appear after subsec. (a), and struck out subsec. (b) which read as follows: “In carrying out this subchapter, the Administrator is authorized to—

(1) collect and make available information pertaining to research, investigations, and demonstrations with respect to providing a dependably safe supply of drinking water together with appropriate recommendations in connection therewith;

(2) make available research facilities of the Agency to appropriate public authorities, institutions, and individuals engaged in studies and research relating to the purposes of this subchapter;”.

Subsecs. (b)(3), (c)(9). Pub. L. 104–182, § 121(1), which directed redesignation of subsec. (b)(3) as par. (3) of subsec. (d) and transfer of that par. to follow par. (2) of subsec. (d), was executed by redesignating subsec. (b)(3) as par. (3) of subsec. (c) and transferring that par. to follow par. (2) of subsec. (c) to reflect the probable intent of Congress and the redesignation of subsec. (d) as (c) by Pub. L. 104–66. See 1995 Amendment note below. Moreover, subsec. (d) does not have any pars.

Subsec. (e). Pub. L. 104–182, § 1122, amended subsec. (e) generally. Prior to amendment, subsec. (e) read as follows: “The Administrator is authorized to provide technical assistance to public water systems owned or operated by Indian tribes—

(1) 3 percent of the amounts appropriated under this subsection, or

(2) $250,000 shall be utilized for technical assistance to public water systems owned or operated by Indian tribes.”

1995—Subsecs. (c) to (g). Pub. L. 104–66 redesignated subsecs. (d), (f), and (g) as (c), (d), and (e), respectively, and struck out former subsec. (c) which read as follows: “Not later than eighteen months after November 16, 1977, the Administrator shall submit a report to Congress on the present and projected future availability of an adequate and dependable supply of safe drinking water to meet present and projected future need. Such report shall include an analysis of the future demand for drinking water and other competing uses of water, the availability and use of methods to conserve water or reduce demand, the adequacy of present measures to assure adequate and dependable supplies of safe drinking water, and the problems (financial, legal, or other) which need to be resolved in order to assure the availability of such supplies for the future. Existing information and data compiled by the National Water Commission and others shall be utilized to the extent possible.”

1986—Subsec. (e). Pub. L. 99–339, § 304(a), struck out subsec. (e) which authorized the Administrator to make grants to public water systems which are required, under State or local law, to meet standards relating to drinking turbidity which are more stringent than the standards in effect under this subchapter.

Subsec. (f). Pub. L. 99–339, § 301(a), authorized appropriations to carry out subsec. (a)(2)(B) of this section for fiscal years 1987 to 1991 and to carry out provisions of this section other than subsecs. (a)(2)(B) and (g) and provisions relating to research for fiscal years 1987 to 1991.

Subsec. (g). Pub. L. 99–339, § 301(g), authorized appropriations to carry out this subsection of $10,000,000 for each of fiscal years 1987 through 1991 and specified amount to be utilized for public water systems owned or operated by Indian tribes.


1980—Subsecs. (e), (f). Pub. L. 96–502 added subsec. (e) and redesignated former subsec. (e) as (f).

1979—Subsec. (e). Pub. L. 96–63 authorized appropriations of $21,405,000 for fiscal year ending Sept. 30, 1980, $38,000,000 for fiscal year ending Sept. 30, 1981, and $35,000,000 for fiscal year ending Sept. 30, 1982 for purposes other than those of subsec. (a)(2)(B) of this sec-
tion and for purposes of subsec. (a)(2)(B) of this section, $8,000,000 for fiscal years 1980 through 1982.

1977—Subsec. (a)(2). Pub. L. 95–190, §§ 9, 13, designated existing provisions as subpar. (A), added subpar. (B) and, in subpar. (B) as added, substituted provisions authorizing Administrator to make grants and provide technical assistance for any emergency situation affecting public water systems and criteria for such grants and assistance for provisions authorizing Administrator to make grants and provide technical assistance for any emergency situation respecting drinking water and criteria for determination of such situations.

Subsec. (a)(3). Pub. L. 95–190, § 3(a), designated existing provisions as subpar. (A) and added subpar. (B).

Subsec. (a)(10), (11). Pub. L. 95–190, § 3(e)(1), added pars. (10) and (11).

Subsec. (b)(3)(C). Pub. L. 95–190, § 10(b), substituted ‘‘300j–2(c)’’ for ‘‘300j–2(d)’’.

Subsecs. (c), (d), Pub. L. 95–190, §§ 3(b), 4, added subsecs. (c) and (d). Former subsec. (c) redesignated (e).

Subsec. (e). Pub. L. 95–190, §§ 2(a), 3(b), redesignated former subsec. (c) as (e) and inserted provisions authorizing appropriations for fiscal years 1978 and 1979, and provisions relating to appropriations for subsec. (a)(2)(B) of this section and for research.

§ 300j–2. Grants for State programs

(a) Public water systems supervision programs; applications for grants; allotment of sums; waiver of grant restrictions; notice of approval or disapproval of application; authorization of appropriations

(1) From allotments made pursuant to paragraph (4), the Administrator may make grants to States to carry out public water system supervision programs.

(2) No grant may be made under paragraph (1) unless an application therefor has been submitted to the Administrator in such form and manner as he may require. The Administrator may not approve an application of a State for its first grant under paragraph (1) unless he determines that the State—

(A) has established or will establish within one year from the date of such grant a public water system supervision program, and

(B) will, within that one year, assume primary enforcement responsibility for public water systems within the State.

No grant may be made to a State under paragraph (1) for any period beginning more than one year after the date of the State’s first grant unless the State has assumed and maintains primary enforcement responsibility for public water systems within the State. The prohibitions contained in the preceding two sentences shall not apply to such grants when made to Indian Tribes.

(3) A grant under paragraph (1) shall be made to cover not more than 75 per centum of the grant recipient’s costs (as determined under regulations of the Administrator) in carrying out, during the one-year period beginning on the date the grant is made, a public water system supervision program.

(4) In each fiscal year the Administrator shall, in accordance, with regulations, allot the sums appropriated for such year under paragraph (5) among the States on the basis of population, geographical area, number of public water systems, and other relevant factors. No State shall receive less than 1 per centum of the annual appropriation for grants under paragraph (1): Provided, That the Administrator may, by regulation, reduce such percentage in accordance with the criteria specified in this paragraph: And provided further. That such percentage shall not apply to grants allotted to Guam, American Samoa, or the Virgin Islands.

(5) The prohibition contained in the last sentence of paragraph (2) may be waived by the Administrator with respect to a grant to a State through fiscal year 1979 but such prohibition may only be waived if, in the judgment of the Administrator—

(A) the State is making a diligent effort to assume and maintain primary enforcement responsibility for public water systems within the State;

(B) the State has made significant progress toward assuming and maintaining such primary enforcement responsibility; and

(C) there is reason to believe the State will assume such primary enforcement responsibility by October 1, 1979.

The amount of any grant awarded for the fiscal years 1978 and 1979 pursuant to a waiver under
this paragraph may not exceed 75 per centum of the amount allotted to such State for such fiscal year. The remaining 25 per centum of the amount allotted to such State for such fiscal year shall be retained by the Administrator, and the Administrator may award such amount to such State at such time as the State assumes such responsibility before the beginning of fiscal year 1980. At the beginning of each fiscal years 1979 and 1980 the amounts retained by the Administrator for any preceding fiscal year and not awarded by the beginning of fiscal year 1979 or 1980 to the States to which such amounts were originally allotted may be removed from the original allotment and reallocated for fiscal year 1979 or 1980 (as the case may be) to States which have assumed primary enforcement responsibility by the beginning of such fiscal year.

(6) The Administrator shall notify the State of the approval or disapproval of any application for a grant under this section—

(A) within ninety days after receipt of such application, or

(B) not later than the first day of the fiscal year for which the grant application is made, whichever is later.

(7) AUTHORIZATION.—For the purpose of making grants under paragraph (1), there are authorized to be appropriated $100,000,000 for each of fiscal years 1997 through 2003.

(8) RESERVATION OF FUNDS BY THE ADMINISTRATOR.—If the Administrator assumes the primary enforcement responsibility of a State public water system supervision program, the Administrator may reserve from funds made available pursuant to this subsection an amount equal to the amount that would otherwise have been provided to the State pursuant to this subsection. The Administrator shall use the funds reserved pursuant to this paragraph to ensure the full and effective administration of a public water system supervision program in the State.

(9) STATE LOAN FUNDS.—

(A) RESERVATION OF FUNDS.—For any fiscal year for which the amount made available to the Administrator by appropriations to carry out this subsection is less than the amount that the Administrator determines is necessary to supplement funds made available pursuant to paragraph (8) to ensure the full and effective administration of a public water system supervision program in a State, the Administrator may reserve from the funds made available to the State under section 300j–12 of this title (relating to State loan funds) an amount that is equal to the amount of the shortfall. This paragraph shall not apply to any State not exercising primary enforcement responsibility for public water systems as of August 6, 1996.

(B) DUTY OF ADMINISTRATOR.—If the Administrator reserves funds from the allocation of a State under subparagraph (A), the Administrator shall carry out in the State each of the activities that would be required of the State if the State had primary enforcement authority under section 300j–2 of this title.

(b) Underground water source protection programs; applications for grants; allotment of sums; authorization of appropriations

(1) From allotments made pursuant to paragraph (4), the Administrator may make grants to States to carry out underground water source protection programs.

(2) No grant may be made under paragraph (1) unless an application therefor has been submitted to the Administrator in such form and manner as he may require. No grant may be made to any State under paragraph (1) unless the State has assumed primary enforcement responsibility within two years after the date the Administrator promulgates regulations for State underground injection control programs under section 300h of this title. The prohibition contained in the preceding sentence shall not apply to such grants when made to Indian Tribes.

(3) A grant under paragraph (1) shall be made to cover not more than 75 per centum of the grant recipient’s cost (as determined under regulations of the Administrator) in carrying out, during the one-year period beginning on the date the grant is made, and underground water source protection program.

(4) In each fiscal year the Administrator shall, in accordance with regulations, allot the sums appropriated for such year under paragraph (5) among the States on the basis of population, geographical area, and other relevant factors.

(5) For purposes of making grants under paragraph (1) there are authorized to be appropriated $5,000,000 for the fiscal year ending June 30, 1976, $7,500,000 for the fiscal year ending June 30, 1977, $10,000,000 for each of the fiscal years 1978 and 1979, $7,795,000 for the fiscal year ending December 30, 1980, $18,000,000 for the fiscal year ending September 30, 1981, and $21,000,000 for the fiscal year ending September 30, 1982. For the purpose of making grants under paragraph (1) there are authorized to be appropriated not more than the following amounts:

<table>
<thead>
<tr>
<th>Fiscal year</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>1987</td>
<td>$19,700,000</td>
</tr>
<tr>
<td>1988</td>
<td>19,700,000</td>
</tr>
<tr>
<td>1989</td>
<td>20,850,000</td>
</tr>
<tr>
<td>1990</td>
<td>20,850,000</td>
</tr>
<tr>
<td>1991</td>
<td>20,850,000</td>
</tr>
<tr>
<td>1992-2003</td>
<td>15,000,000.</td>
</tr>
</tbody>
</table>

(c) Definitions

For purposes of this section:

(1) The term “public water system supervision program” means a program for the adoption and enforcement of drinking water regulations (with such variances and exemptions from such regulations under conditions and in a manner which is not less stringent than the conditions under, and the manner in which variances and exemptions may be granted under sections 300g–4 and 300g–5 of this title) which are no less stringent than the national primary drinking water regulations under section 300g–1 of this title, and for keeping records and making reports required by section 300g–2(a)(3) of this title.

(2) The term “underground water source protection program” means a program for the adoption and enforcement of a program which meets the requirements of regulations under
section 300h of this title, and for keeping records and making reports required by section 300h–l(b)(1)(A)(i) of this title. Such term includes, where applicable, a program which meets the requirements of section 300h–4 of this title.

(d) New York City watershed protection program

(1) In general

The Administrator is authorized to provide financial assistance to the State of New York for demonstration projects implemented as part of the watershed program for the protection and enhancement of the quality of source waters of the New York City water supply system, including projects that demonstrate, assess, or provide for comprehensive monitoring and surveillance and projects necessary to comply with the criteria for avoiding filtration contained in 40 CFR 141.71. Demonstration projects which shall be eligible for financial assistance shall be certified to the Administrator by the State of New York as satisfying the purposes of this subsection. In certifying projects to the Administrator, the State of New York shall give priority to monitoring projects that have undergone peer review.

(2) Report

Not later than 5 years after the date on which the Administrator first provides assistance pursuant to this paragraph, the Governor of the State of New York shall submit a report to the Administrator on the results of projects assisted.

(3) Matching requirements

Federal assistance provided under this subsection shall not exceed 50 percent of the total cost of the protection program being carried out for any particular watershed or ground water recharge area.

(4) Authorization

There are authorized to be appropriated to the Administrator to carry out this subsection for each of fiscal years 2003 through 2010, $15,000,000 for the purpose of providing assistance to the State of New York to carry out paragraph (1).


AMENDMENTS


1996—Subsec. (a)(7). Pub. L. 104–182, §124(1), inserted heading and amended text generally. Prior to amendment, text read as follows: “For purposes of making grants under paragraph (1) there are authorized to be appropriated $15,000,000 for the fiscal year ending June 30, 1976, $25,000,000 for the fiscal year ending June 30, 1977, $35,000,000 for fiscal year 1978, $45,000,000 for fiscal year 1979, $29,450,000 for the fiscal year ending September 30, 1980, $32,000,000 for the fiscal year ending September 30, 1981, and $34,000,000 for the fiscal year ending September 30, 1982. For the purposes of making grants under paragraph (1) there are authorized to be appropriated not more than the following amounts:

<table>
<thead>
<tr>
<th>Fiscal Year</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>1987</td>
<td>$37,200,000</td>
</tr>
<tr>
<td>1988</td>
<td>$37,200,000</td>
</tr>
<tr>
<td>1989</td>
<td>40,150,000</td>
</tr>
<tr>
<td>1990</td>
<td>40,150,000</td>
</tr>
<tr>
<td>1991</td>
<td>40,150,000</td>
</tr>
</tbody>
</table>

Subsec. (a)(8), (9). Pub. L. 104–182, §124(2), added pars. (8) and (9).

Subsec. (b)(5). Pub. L. 104–182, §120(c), added parentheticals to prov. (9).


1986—Subsec. (a)(2). Pub. L. 99–339, §302(d)(1), inserted provision that prohibitions contained in preceding two sentences not apply to such grants when made to Indian Tribes.

Subsec. (a)(7). Pub. L. 99–339, §301(b), authorized appropriations for grants under par. (1) of not more than $37,200,000 for fiscal years 1987 and 1988 and of not more than $40,150,000 for fiscal years 1989 to 1991.

Subsec. (b)(2). Pub. L. 99–339, §302(d)(2), inserted provision that prohibition contained in preceding sentence not apply to such grants when made to Indian Tribes.

Subsec. (b)(5). Pub. L. 99–339, §301(c), authorized appropriations for grants under par. (1) of not more than $19,700,000 for fiscal years 1987 and 1988 and of not more than $20,850,000 for fiscal years 1989 to 1991.

1980—Subsec. (b)(2). Pub. L. 96–502, §4(d), substituted provisions that no grant may be made to any State under par. (1) unless the State has assumed primary enforcement responsibility within two years after the date the Administrator promulgates regulations for State underground injection control programs under section 300h of this title for provisions that the Administrator may not approve an application for a State for its first grant under par. (1) unless he determines that the State has established or will establish within two years from the date of such grant an underground water source protection, and will, within such two years, assume primary enforcement responsibility for underground water sources within the State and that no grant may be made to a State under par. (1) for any period beginning more than two years after the date of the State’s first grant unless the State has assumed and maintains primary enforcement responsibility for underground water sources within the State.

Subsec. (c)(2). Pub. L. 96–502, §2(c), inserted proviso that such term includes, where applicable, a program which meets requirements of section 300h–4 of this title.

1979—Subsec. (a)(7). Pub. L. 96–63, §2(a), authorized appropriation of $29,450,000, $32,000,000, and $34,000,000 for fiscal years ending Sept. 30, 1980, through 1982, respectively.

Subsec. (b)(5). Pub. L. 96–63, §2(b), authorized appropriation of $7,795,000, $18,000,000, and $21,000,000 for fiscal years ending Sept. 30, 1980, through 1982, respectively.


Subsec. (a)(7). Pub. L. 95–190, §§2(b), 5(a), redesignated former par. (6) as (7) and authorized appropriations for fiscal years 1978 and 1979.


§ 300j–3. Special project grants and guaranteed loans

(a) Special study and demonstration project grants

The Administrator may make grants to any person for the purposes of—

(1) assisting in the development and demonstration (including construction) of any
project which will demonstrate a new or improved method, approach, or technology, for providing a dependable supply of drinking water to the public; and

(2) assisting in the development and demonstration (including construction) of any project which will investigate and demonstrate health implications involved in the reclamation, recycling, and reuse of waste waters for drinking and the processes and methods for the preparation of safe and acceptable drinking water.

(b) Limitations
Grants made by the Administrator under this section shall be subject to the following limitations:

(1) Grants under this section shall not exceed 66$\text{}/_2$ per centum of the total cost of construction of any facility and 75 per centum of any other costs, as determined by the Administrator.

(2) Grants under this section shall not be made for any project involving the construction or modification of any facilities for any public water system in a State unless such project has been approved by the State agency charged with the responsibility for safety of drinking water (or if there is no such agency in a State, by the State health authority).

(3) Grants under this section shall not be made for any project unless the Administrator determines, after consulting the National Drinking Water Advisory Council, that such project will serve a useful purpose relating to the development and demonstration of new or improved techniques, methods, or technologies for the provision of safe water to the public for drinking.

(4) Priority for grants under this section shall be given where there are known or potential public health hazards which require advanced technology for the removal of particles which are too small to be removed by ordinary treatment technology.

(c) Authorization of appropriations
For the purposes of making grants under subsections (a) and (b) of this section there are authorized to be appropriated $7,500,000 for the fiscal year ending June 30, 1975; and $10,000,000 for the fiscal year ending June 30, 1976.

(d) Loan guarantees to public water systems; conditions; indebtedness limitation; regulations
The Administrator during the fiscal years ending June 30, 1975, and June 30, 1976, shall carry out a program of guaranteeing loans made by private lenders to small public water systems for the purpose of enabling such systems to meet national primary drinking water regulations prescribed under section 300g–1 of this title. No such guarantee may be made with respect to a system unless (1) such system cannot reasonably obtain financial assistance necessary to comply with such regulations from any other source, and (2) the Administrator determines that any facilities constructed with a loan guaranteed under this subsection is not likely to be made obsolete by subsequent changes in primary regulations. The aggregate amount of indebtedness guaranteed with respect to any system may not exceed $50,000. The aggregate amount of indebtedness guaranteed under this subsection may not exceed $50,000,000. The Administrator shall prescribe regulations to carry out this subsection.


AMENDMENTS

§ 300j–3a. Grants to public sector agencies
(a) Assistance for development and demonstration projects
The Administrator of the Environmental Protection Agency shall offer grants to public sector agencies for the purposes of—

(1) assisting in the development and demonstration (including construction) of any project which will demonstrate a new or improved method, approach, or technology for providing a dependable safe supply of drinking water to the public; and

(2) assisting in the development and demonstration (including construction) of any project which will investigate and demonstrate health and conservation implications involved in the reclamation, recycling, and reuse of wastewaters for drinking and agricultural use or the processes and methods for the preparation of safe and acceptable drinking water.

(b) Limitations
Grants made by the Administrator under this section shall be subject to the following limitations:

(1) Grants under this section shall not exceed 66$\text{}/_2$ per centum of the total cost of construction of any facility and 75 per centum of any other costs, as determined by the Administrator.

(2) Grants under this section shall not be made for any project involving the construction or modification of any facilities for any public water system in a State unless such project has been approved by the State agency charged with the responsibility for safety of drinking water (or if there is no such agency in a State, by the State health authority).

(3) Grants under this section shall not be made for any project unless the Administrator determines, after consulting the National Drinking Water Advisory Council, that such project will serve a useful purpose relating to the development and demonstration of new or improved techniques, methods, or technologies for the provision of safe water to the public for drinking.

(c) Authorization of appropriations
There are authorized to be appropriated for the purposes of this section $25,000,000 for fiscal year 1978.

§ 300j–3b. Contaminant standards or treatment technique guidelines

(1) Not later than nine months after October 18, 1978, the Administrator shall promulgate guidelines establishing supplemental standards or treatment technique requirements for microbiological, viral, radiological, organic, and inorganic contaminants, which guidelines shall be conditions, as provided in paragraph (2), of any grant for a demonstration project for water reclamation, recycling, and reuse funded under section 300j–3a of this title or under section 300j–3(a)(2) of this title, where such project involves direct human consumption of treated wastewater. Such guidelines shall provide for sufficient control of each such contaminant, such that in the Administrator’s judgement, no adverse effects on the health of persons may reasonably be anticipated to occur, allowing an adequate margin of safety.

(2) A grant referred to in paragraph (1) for a project which involves direct human consumption of treated wastewater may be awarded on or after the date of promulgation of guidelines under this section only if the applicant demonstrates to the satisfaction of the Administrator that the project—

(A) will comply with all national primary drinking water regulations under section 300g–1 of this title;

(B) will comply with all guidelines under this section; and

(C) will in other respects provide safe drinking water.

Any such grant awarded before the date of promulgation of such guidelines shall be conditioned on the applicant’s agreement to comply to the maximum feasible extent with such guidelines as expeditiously as practicable following the date of promulgation thereof.

(3) Guidelines under this section may, in the discretion of the Administrator—

(A) be nationally and uniformly applicable to all projects funded under section 300j–3a of this title or section 300j–1(a)(2) of this title;

(B) vary for different classes or categories of such projects (as determined by the Administrator);

(C) be established and applicable on a project-by-project basis; or

(D) any combination of the above.

(4) Nothing in this section shall be construed to prohibit or delay the award of any grant referred to in paragraph (1) prior to the date of promulgation of such guidelines.


References in Text

Section 300j–1(a)(2) of this title, referred to in par. (3)(A), was amended by Pub. L. 104–182, title I, §121(c), (4)(A), Aug. 6, 1996, 110 Stat. 1651, to redesignate par. (2)(B) as subsec. (b) of section 300j–1, strike par. (2)(A), and add a new par. (2) relating to information and research facilities.

§ 300j–3c. National assistance program for water infrastructure and watersheds

(a) Technical and financial assistance

The Administrator of the Environmental Protection Agency may provide technical and financial assistance in the form of grants to States (1) for the construction, rehabilitation, and improvement of water supply systems, and (2) consistent with nonpoint source management programs established under section 1329 of title 33, for source water quality protection programs to address pollutants in navigable waters for the purpose of making such waters usable by water supply systems.

(b) Limitation

Not more than 30 percent of the amounts appropriated to carry out this section in a fiscal year may be used for source water quality protection programs described in subsection (a)(2) of this section.

(c) Condition

As a condition to receiving assistance under this section, a State shall ensure that such assistance is carried out in the most cost-effective manner, as determined by the State.

(d) Authorization of appropriations

(1) Unconditional authorization

There are authorized to be appropriated to carry out this section $25,000,000 for each of fiscal years 1997 through 2003. Such sums shall remain available until expended.

(2) Conditional authorization

In addition to amounts authorized under paragraph (1), there are authorized to be appropriated to carry out this section $25,000,000 for each of fiscal years 1997 through 2003, provided that such authorization shall be in effect for a fiscal year only if at least 75 percent of the total amount of funds authorized to be appropriated for such fiscal year by section 300j–12(m) of this title are appropriated.

(e) Acquisition of lands

Assistance provided with funds made available under this section may be used for the acquisition of lands and other interests in lands; however, nothing in this section authorizes the acquisition of lands or other interests in lands from other than willing sellers.

(f) Federal share

The Federal share of the cost of activities for which grants are made under this section shall be 50 percent.
(g) Definitions

In this section, the following definitions apply:

(1) State

The term “State” means a State, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, Guam, American Samoa, and the Commonwealth of the Northern Mariana Islands.

(2) Water supply system

The term “water supply system” means a system for the provision to the public of piped water for human consumption if such system serves at least 25 individuals and a draw and fill system for the provision to the public of water for human consumption. Such term does not include a system owned by a Federal agency. Such term includes (A) any collection, treatment, storage, and distribution facilities under control of the operator of such system and used primarily in connection with such system, and (B) any collection or pretreatment facilities not under such control that are used primarily in connection with such system.


CODEFICATION

Section was enacted as part of the Safe Drinking Water Act Amendments of 1996, and not as part of the Public Health Service Act which comprises this chapter.

§ 300j–4. Records and inspections

(a) Provision of information to Administrator; monitoring program for unregulated contaminants

(1) (A) Every person who is subject to any requirement of this subchapter or who is a grantee, shall establish and maintain such records, make such reports, conduct such monitoring, and provide such information as the Administrator may reasonably require by regulation to assist the Administrator in establishing regulations under this subchapter, in determining whether such person has acted or is acting in compliance with this subchapter, in determining whether such person is located if such State has primary enforcement responsibility for public water systems or if such State, the District of Columbia, or the Commonwealth of Puerto Rico, the Virgin Islands, Guam, American Samoa, or the Commonwealth of the Northern Mariana Islands.

(B) Every person who is subject to a national primary drinking water regulation under section 300g–1 of this title shall provide such information as the Administrator may reasonably require to assist the Administrator in establishing regulations under section 300g–1 of this title, after consultation with States and suppliers of water. The Administrator may not require under this subparagraph the installation of treatment equipment or process changes, the testing of treatment technology, or the analysis or processing of monitoring samples, except where the Administrator provides the funding for such activities. Before exercising this authority, the Administrator shall first seek to obtain the information by voluntary submission.

(C) The Administrator shall not later than 2 years after August 6, 1996, after consultation with public health experts, representatives of the general public, and officials of State and local governments, review the monitoring requirements for not fewer than 12 contaminants identified by the Administrator, and promulgate any necessary modifications.

(2) Monitoring program for unregulated contaminants—

(A) Establishment.—The Administrator shall promulgate regulations establishing the criteria for a monitoring program for unregulated contaminants. The regulations shall require monitoring of drinking water supplied by public water systems and shall vary the frequency and schedule for monitoring requirements for systems based on the number of persons served by the system, the source of supply, and the contaminants likely to be found, ensuring that only a representative sample of systems serving 10,000 persons or fewer are required to monitor.

(B) Monitoring program for certain unregulated contaminants.—

(i) Initial list.—Not later than 3 years after August 6, 1996, and every 5 years thereafter, the Administrator shall issue a list pursuant to subparagraph (A) of not more than 30 unregulated contaminants to be monitored by public water systems and to be included in the national drinking water occurrence data base maintained pursuant to subsection (g) of this section.

(ii) Governors’ petition.—The Administrator shall include among the list of contaminants for which monitoring is required under this paragraph each contaminant recommended in a petition signed by the Governor of each of 7 or more States, unless the Administrator determines that the action would prevent the listing of other contaminants of a higher public health concern.

(C) Monitoring plan for small and medium systems.—

(i) In general.—Based on the regulations promulgated by the Administrator, each State may develop a representative monitoring plan to assess the occurrence of unregulated contaminants in public water systems that serve a population of 10,000 or fewer in that State. The plan shall require monitoring for systems representative of different sizes, types, and geographic locations in the State.

(ii) Grants for small system costs.—From funds reserved under section 300j–12(a)
of this title or appropriated under subparagraph (H), the Administrator shall pay the reasonable cost of such testing and laboratory analysis as are necessary to carry out monitoring under the plan.

(D) MONITORING RESULTS.—Each public water system that conducts monitoring of unregulated contaminants pursuant to this paragraph shall provide the results of the monitoring to the primary enforcement authority for the system.

(E) NOTIFICATION.—Notification of the availability of the results of monitoring programs required under paragraph (2) shall be given to the persons served by the system.

(F) WAIVER OF MONITORING REQUIREMENT.—The Administrator shall waive the requirement for monitoring for a contaminant under this paragraph in a State, if the State demonstrates that the criteria for listing the contaminant do not apply in that State.

(G) ANALYTICAL METHODS.—The State may use screening methods approved by the Administrator under subsection (i) of this section in lieu of monitoring for particular contaminants under this paragraph.

(H) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated to carry out this paragraph $10,000,000 for each of the fiscal years 1997 through 2003.

(b) Entry of establishments, facilities, or other property; inspections; conduct of certain tests; audit and examination of records; entry restrictions; prohibition against informing of a proposed entry

(1) Except as provided in paragraph (2), the Administrator, or representatives of the Administrator duly designated by him, upon presenting appropriate credentials and a written notice to any supplier of water or other person subject to or loan guarantee under this subchapter, and (2) any information required under this section.

(2) Any information required under this section (A) a national primary drinking water regulation prescribed under section 300g–1 of this title, (B) an applicable underground injection control program, or (C) any requirement to monitor an unregulated contaminant pursuant to subsection (a) of this section, or person in charge of any of the property of such supplier or other person referred to in clause (A), (B), or (C), is authorized to enter any establishment, facility, or other property of such supplier or other person in order to determine whether such supplier or other person has acted or is acting in compliance with this subchapter, including for this purpose, inspection, at reasonable times, of records, files, papers, processes, controls, and facilities, or in order to test any feature of a public water system, including its raw water source. The Administrator or the Comptroller General (or any representative designated by either) shall have access for the purpose of audit and examination to any records, reports, or information of a grantee which are required to be maintained under subsection (a) of this section or which are pertinent to any financial assistance under this subchapter.

(2) No entry may be made under the first sentence of paragraph (1) in an establishment, facility, or other property of a supplier of water or other person subject to a national primary drinking water regulation if the establishment, facility, or other property is located in a State which has primary enforcement responsibility for public water systems unless, before written notice of such entry is made, the Administrator (or his representative) notifies the State agency charged with responsibility for safe drinking water of the reasons for such entry. The Administrator shall, upon a showing by the State agency that such an entry will be detrimental to the administration of the State’s program of primary enforcement responsibility, take such showing into consideration in determining whether to make such entry. No State agency which receives notice under this paragraph of an entry proposed to be made under paragraph (1) may use the information contained in the notice to inform the person whose property is proposed to be entered of the proposed entry; and if a State agency so uses such information, notice to the agency under this paragraph is not required until such time as the Administrator determines the agency has provided him satisfactory assurances that it will no longer so use information contained in a notice under this paragraph.

(c) Penalty

Whoever fails or refuses to comply with any requirement of subsection (a) of this section or to allow the Administrator, the Comptroller General, or representatives of either, to enter and conduct any audit or inspection authorized by subsection (b) of this section shall be subject to a civil penalty of not to exceed $25,000.

(d) Confidential information; trade secrets and secret processes; information disclosure; “information required under this section” defined

(1) Subject to paragraph (2), upon a showing satisfactory to the Administrator by any person that any information required under this section from such person, if made public, would divulge trade secrets or secret processes of such person, the Administrator shall consider such information confidential in accordance with the purposes of section 1905 of title 18. If the applicant fails to make a showing satisfactory to the Administrator, the Administrator shall give such applicant thirty days’ notice before releasing the information to which the application relates (unless the public health or safety requires an earlier release of such information).

(2) Any information required under this section (A) may be disclosed to other officers, employees, or authorized representatives of the United States concerned with carrying out this subchapter or to committees of the Congress, or when relevant in any proceeding under this subchapter, and (B) shall be disclosed to the extent it deals with the level of contaminants in drinking water. For purposes of this subsection the term “information required under this section” means any papers, books, documents, or information, or any particular part thereof, reported to or otherwise obtained by the Administrator under this section.

(e) “Grantee” and “person” defined

For purposes of this section, (1) the term “grantee” means any person who applies for or receives financial assistance, by grant, contract, or loan guarantee under this subchapter, and (2) the term “person” includes a Federal agency.
(f) Information regarding drinking water coolers

The Administrator may utilize the authorities of this section for purposes of part F of this subchapter. Any person who manufactures, imports, sells, or distributes drinking water coolers in interstate commerce shall be treated as a supplier of water for purposes of applying the provisions of this section in the case of persons subject to part F of this subchapter.

(g) Occurrence data base

(1) In general

Not later than 3 years after August 6, 1996, the Administrator shall assemble and maintain a national drinking water contaminant occurrence data base, using information on the occurrence of both regulated and unregulated contaminants in public water systems obtained under subsection (a)(1)(A) of this section or subsection (a)(2) of this section and reliable information from other public and private sources.

(2) Public input

In establishing the occurrence data base, the Administrator shall solicit recommendations from the Science Advisory Board, the States, and other interested parties concerning the development and maintenance of a national drinking water contaminant occurrence data base, including such issues as the structure and design of the data base, data input parameters and requirements, and the use and interpretation of data.

(3) Use

The data shall be used by the Administrator in making determinations under section 300g–1(b)(1) of this title with respect to the occurrence of a contaminant in drinking water at a level of public health concern.

(4) Public recommendations

The Administrator shall periodically solicit recommendations from the appropriate officials of the National Academy of Sciences and the States, and any person may submit recommendations to the Administrator, with respect to contaminants that should be included in the national drinking water contaminant occurrence data base, including recommendations with respect to additional unregulated contaminants that should be listed under subsection (a)(2) of this section. Any recommendation submitted under this clause shall be accompanied by reasonable documentation that—

(A) the contaminant occurs or is likely to occur in drinking water; and

(B) the contaminant poses a risk to public health.

(5) Public availability

The information from the data base shall be available to the public in readily accessible form.

(6) Regulated contaminants

With respect to each contaminant for which a national primary drinking water regulation has been established, the data base shall include information on the detection of the contaminant at a quantifiable level in public water systems (including detection of the contaminant at levels not constituting a violation of the maximum contaminant level for the contaminant).

(7) Unregulated contaminants

With respect to contaminants for which a national primary drinking water regulation has not been established, the data base shall include—

(A) monitoring information collected by public water systems that serve a population of more than 10,000, as required by the Administrator under subsection (a) of this section;

(B) monitoring information collected from a representative sampling of public water systems that serve a population of 10,000 or fewer; and

(C) other reliable and appropriate monitoring information on the occurrence of the contaminants in public water systems that is available to the Administrator.

(h) Availability of information on small system technologies

For purposes of sections 300g–1(b)(4)(E) and 300g–4(e) of this title (relating to small system variance program), the Administrator may request information on the characteristics of commercially available treatment systems and technologies, including the effectiveness and performance of the systems and technologies under various operating conditions. The Administrator may specify the form, content, and submission date of information to be submitted by manufacturers, States, and other interested persons for the purpose of considering the systems and technologies in the development of regulations or guidance under sections 300g–1(b)(4)(E) and 300g–4(e) of this title.

(i) Screening methods

The Administrator shall review new analytical methods to screen for regulated contaminants and may approve such methods as are more accurate or cost-effective than established reference methods for use in compliance monitoring.

(A) New analytical methods.

(1) In general.

(2) Regulated contaminants.

(3) Unregulated contaminants.

lation to assist him in establishing regulations under this subchapter, in determining whether such person has acted or is acting in compliance with this subchapter and administering any program of financial assistance under this subchapter, in evaluating the health risks of unregulated contaminants, or in advising the public of such risks. In requiring a public water system to monitor under this subsection, the Administrator may take into consideration the system size and the contaminants likely to be found in the system's drinking water.\(^1\)

Subsec. (a)(2) to (8). Pub. L. 104–182, §125(c), added heading and text of par. (2) and struck out former pars. (2) to (8) which directed Administrator, not later than 18 months after June 19, 1986, to promulgate regulations requiring every public water system to conduct a monitoring program for unregulated contaminants, specified contents of regulations, provided for reporting and notification of availability of results of monitoring, waiver of monitoring requirements, and compliance by small systems, and authorized appropriations for fiscal year ending Sept. 30, 1987.

Subsec. (g). Pub. L. 104–182, §126, added subsec. (g).


Subsec. (i). Pub. L. 104–182, §125(d), added subsec. (i).


1986—Subsec. (a)(1). Pub. L. 99–339, §106(a), (b), designated existing provisions as par. (1) and inserted provisions permitting Administrator to consider size of system and contaminants likely to be found.

Subsec. (a)(2) to (7). Pub. L. 99–339, §106(b), added pars. (2) to (7).


Subsec. (c). Pub. L. 99–339, §106(c), substituted "shall be subject to a civil penalty of not to exceed $25,000" for "may be fined not more than $5,000".


Subsec. (b)(1). Pub. L. 95–190, §12(d), designated existing provisions as cls. (A) and (B) and added cls. (C) and reference to such cls. (A) to (C).

§ 300j–5. National Drinking Water Advisory Council

(a) Establishment; membership; representation of interests; term of office, vacancies; reappointment

There is established a National Drinking Water Advisory Council which shall consist of fifteen members appointed by the Administrator after consultation with the Secretary. Five members shall be appointed from the general public; five members shall be appointed from appropriate State and local agencies concerned with water hygiene and public water supply; and five members shall be appointed from representatives of private organizations or groups demonstrating an active interest in the field of water hygiene and public water supply, of which two such members shall be associated with small, rural public water systems. Each member of the Council shall hold office for a term of three years, except that—

(1) any member appointed to fill a vacancy occurring prior to the expiration of the term for which his predecessor was appointed shall be appointed for the remainder of such term; and

(2) the terms of the members first taking office shall expire as follows: Five shall expire three years after December 16, 1974, five shall expire two years after such date, and five shall expire one year after such date, as designated by the Administrator at the time of appointment.

The members of the Council shall be eligible for reappointment.

(b) Functions

The Council shall advise, consult with, and make recommendations to, the Administrator on matters relating to activities, functions, and policies of the Agency under this subchapter.

(c) Compensation and allowances; travel expenses

Members of the Council appointed under this section shall, while attending meetings or conferences of the Council or otherwise engaged in business of the Council, receive compensation and allowances at a rate to be fixed by the Administrator, but not exceeding the daily equivalent of the annual rate of basic pay in effect for grade GS–18 of the General Schedule for each day (including travel time in lieu of subsistence) in which they are engaged in the actual performance of duties vested in the Council. While away from their homes or regular places of business in the performance of services for the Council, members of the Council shall be allowed travel expenses, including per diem in lieu of subsistence, in the same manner as persons employed intermittently in the Government service are allowed expenses under section 5703(b)\(^1\) of title 5.

(d) Advisory committee termination provision inapplicable

Section 14(a) of the Federal Advisory Committee Act (relating to termination) shall not apply to the Council.


References in Text

Section 5703 of title 5, referred to in subsec. (c), was amended generally by Pub. L. 94–22, §4, May 19, 1975, 89 Stat. 85, and, as so amended, does not contain a subsec. (b).

Section 14(a) of the Federal Advisory Committee Act, referred to in subsec. (d), is section 14(a) of Pub. L. 92–463 which is set out in the Appendix to Title 5, Government Organization and Employees.

Amendments

1996—Subsec. (a). Pub. L. 104–182 inserted "of which two such members shall be associated with small, rural public water systems" before period at end of second sentence.

Termination of Advisory Committees

Pub. L. 93–641, §6, Jan. 4, 1975, 88 Stat. 2275, set out as a note under section 217a of this title, provided that an advisory committee established pursuant to the Public Health Service Act shall terminate at such time as may be specifically prescribed by an Act of Congress enacted after Jan. 4, 1975.

References in Other Laws to GS–16, 17, or 18 Pay Rates

References in laws to the rates of pay for GS–16, 17, or 18, or to maximum rates of pay under the General Schedule, to be considered references to rates payable under specified sections of Title 5, Government Organization and Employees, see section 529 (title 5, §1506(1)) of Pub. L. 101–509, set out in a note under section 5376 of Title 5.

\(^1\)See References in Text note below.
§ 300j-6. Federal agencies

(a) In general

Each department, agency, and instrumentality of the executive, legislative, and judicial branches of the Federal Government—

(1) owning or operating any facility in a wellhead protection area;

(2) engaged in any activity at such facility resulting, or which may result, in the contamination of water supplies in any such area;

(3) owning or operating any public water system; or

(4) engaged in any activity resulting, or which may result in, underground injection which endangers drinking water (within the meaning of section 300h(d)(2) of this title),

shall be subject to, and comply with, all Federal, State, interstate, and local substantive and procedural requirements, both substantive and procedural (including any requirement for permits or reporting or any provisions for injunctive relief and such sanctions as may be imposed by a court to enforce such relief), respecting the protection of such wellhead areas, respecting such public water systems, and respecting any underground injection in the same manner and to the same extent as any person is subject to such requirements, including the payment of reasonable service charges. The Federal, State, interstate, and local substantive and procedural requirements referred to in this subsection include, but are not limited to, all administrative orders and all civil and administrative penalties and fines, regardless of whether such penalties or fines are punitive or coercive in nature or are imposed for isolated, intermittent, or continuing violations. The United States hereby expressly waives any immunity otherwise applicable to the United States with respect to any such substantive or procedural requirement (including, but not limited to, any injunctive relief, administrative order or civil or administrative penalty or fine referred to in the preceding sentence, or reasonable service charge). The reasonable service charges referred to in this subsection include, but are not limited to, fees or charges assessed in connection with the processing and issuance of permits, renewal of permits, amendments to permits, review of plans, studies, and other documents, and inspection and monitoring of facilities, as well as any other nondiscriminatory charges that are assessed in connection with a Federal, State, interstate, or local regulatory program respecting the protection of wellhead areas or public water systems or respecting any underground injection. Neither the United States, nor any agent, employee, or officer thereof, shall be immune or exempt from any process or sanction of any court or Federal Court with respect to the enforcement of any such injunctive relief. No agent, employee, or officer of the United States shall be personally liable for any civil penalty under any Federal, State, interstate, or local law concerning the protection of wellhead areas or public water systems or concerning underground injection with respect to any act or omission within the scope of the official duties of the agent, employee, or officer. An agent, employee, or officer of the United States shall be subject to any criminal sanction (including, but not limited to, any fine or imprisonment) under any Federal or State requirement adopted pursuant to this subchapter, but no department, agency, or instrumentality of the executive, legislative, or judicial branch of the Federal Government shall be subject to any such sanction. The President may exempt any facility of any department, agency, or instrumentality in the executive branch from compliance with such a requirement if he determines it to be in the paramount interest of the United States to do so. No such exemption shall be granted due to lack of appropriation unless the President shall have specifically requested such appropriation as a part of the budgetary process and the Congress shall have failed to make available such requested appropriation. Any exemption shall be for a period not in excess of 1 year, but additional exemptions may be granted for periods not to exceed 1 year upon the President’s making a new determination. The President shall report each January to the Congress all exemptions from the requirements of this section granted during the preceding calendar year, together with his reason for granting each such exemption.

(b) Administrative penalty orders

(1) In general

If the Administrator finds that a Federal agency has violated an applicable requirement under this subchapter, the Administrator may issue a penalty order assessing a penalty against the Federal agency.

(2) Penalties

The Administrator may, after notice to the agency, assess a civil penalty against the agency in an amount not to exceed $25,000 per day per violation.

(3) Procedure

Before an administrative penalty order issued under this subsection becomes final, the Administrator shall provide the agency an opportunity to confer with the Administrator and shall provide the agency notice and an opportunity for a hearing on the record in accordance with chapters 5 and 7 of title 5.

(4) Public review

(A) In general

Any interested person may obtain review of an administrative penalty order issued under this subsection. The review may be obtained in the United States District Court for the District of Columbia or in the United States District Court for the district in which the violation is alleged to have occurred by the filing of a complaint with the court within the 30-day period beginning on the date the penalty order becomes final. The person filing the complaint shall simultaneously send a copy of the complaint by certified mail to the Administrator and the Attorney General.

(B) Record

The Administrator shall promptly file in the court a certified copy of the record on which the order was issued.

1So in original. Probably should not be capitalized.
(C) Standard of review

The court shall not set aside or remand the order unless the court finds that there is not substantial evidence in the record, taken as a whole, to support the finding of a violation or that the assessment of the penalty by the Administrator constitutes an abuse of discretion.

(D) Prohibition on additional penalties

The court may not impose an additional civil penalty for a violation that is subject to the order unless the court finds that the assessment constitutes an abuse of discretion by the Administrator.

(c) Limitation on State use of funds collected from Federal Government

Unless a State law in effect on August 6, 1996, or a State constitution requires the funds to be used in a different manner, all funds collected by a State from the Federal Government from penalties and fines imposed for violation of any substantive or procedural requirement referred to in subsection (a) of this section shall be used by the State only for projects designed to improve or protect the environment or to defray the costs of environmental protection or enforcement.

(d) Indian rights and sovereignty as unaffected; "Federal agency" defined

(1) Nothing in the Safe Drinking Water Amendments of 1977 shall be construed to alter or affect the status of American Indian lands or water rights nor to waive any sovereignty over Indian lands guaranteed by treaty or statute.

(2) For the purposes of this chapter, the term "Federal agency" shall not be construed to refer to or include any American Indian tribe, nor to the Secretary of the Interior in his capacity as trustee of Indian lands.

(e) Washington Aqueduct

The Secretary of the Army shall not pass the cost of any penalty assessed under this subchapter on to any customer, user, or other purchaser of drinking water from the Washington Aqueduct system, including finished water from the Dalecarlia or McMillan treatment plant.

§ 300j–7. Judicial review

(a) Courts of appeals; petition for review: actions respecting regulations; filing period; grounds arising after expiration of filing period; exclusiveness of remedy

A petition for review of—

(1) actions pertaining to the establishment of national primary drinking water regulations (including maximum contaminant level goals) may be filed only in the United States Court of Appeals for the District of Columbia circuit; and

(2) any other final action of the Administrator under this chapter may be filed in the circuit in which the petitioner resides or transacts business which is directly affected by the action.

Any such petition shall be filed within the 45-day period beginning on the date of the promulgation of the regulation or any other final Agency action with respect to which review is sought or on the date of the determination with respect to which review is sought, and may be filed after the expiration of such 45-day period if the petition is based solely on grounds arising after the expiration of such period. Action of the Administrator with respect to which review could have been obtained under this subsection shall not be subject to judicial review in any civil or criminal proceeding for enforcement or in any civil action to enjoin enforcement. In any petition concerning the assessment of a civil penalty pursuant to section 300g–3(g)(3)(B) of this title, the petitioner shall simultaneously send a copy of the complaint by certified mail to the Administrator and the Attorney General. The court shall set aside and remand the penalty order if the court finds that there is not substantial evidence in the record to support the finding of a violation or that the assessment of the penalty by the Administrator constitutes an abuse of discretion.

(b) District courts; petition for review: actions respecting variances or exemptions; filing period; grounds arising after expiration of filing period; exclusiveness of remedy

The United States district courts shall have jurisdiction of actions brought to review (1) the granting of, or the refusing to grant, a variance or exemption under section 300g–4 or 300g–5 of this title or (2) the requirements of any schedule prescribed for a variance or exemption under such section or the failure to prescribe such a schedule. Such an action may only be brought upon a petition for review filed with the court within the 45-day period beginning on the date the action sought to be reviewed is taken or, in the case of a petition to review the refusal to...
grant a variance or exemption or the failure to prescribe a schedule, within the 45-day period beginning on the date action is required to be taken on the variance, exemption, or schedule, as the case may be. A petition for such review may be filed after the expiration of such period if the petition is based solely on grounds arising after the expiration of such period. Action with respect to which review could have been obtained under this subsection shall not be subject to judicial review in any civil or criminal proceeding for enforcement or in any civil action to enjoin enforcement.

(c) Judicial order for additional evidence before Administrator; modified or new findings; recommendation for modification or setting aside of original determination

In any judicial proceeding in which review is sought of a determination under this subchapter required to be made on the record after notice and opportunity for hearing, if any party applies to the court for leave to adduce additional evidence and shows to the satisfaction of the court that such additional evidence is material and that there were reasonable grounds for the failure to adduce such evidence in the proceeding before the Administrator, the court may order such additional evidence (and evidence in rebuttal thereof) to be taken before the Administrator, in such manner and upon such term and conditions as the court may deem proper. The Administrator may modify his findings as to the facts, or make new findings, by reason of the additional evidence so taken, and he shall file such modified or new findings, and his recommendation, if any, for the modification or setting aside of his original determination, with the return of such additional evidence.


Amendments

1996—Subsec. (a). Pub. L. 104–182, §113(c)(2), (3), in concluding provisions, substituted “or any other final Agency action” for “or issuance of the order” and inserted at end “In any petition concerning the assessment of the penalty by the Administrator may modify his findings as to the facts, or make new findings, by reason of the additional evidence so taken, and he shall file such modified or new findings, and his recommendation, if any, for the modification or setting aside of his original determination, with the return of such additional evidence.”

(A) prior to sixty days after the plaintiff has given notice of such violation (i) to the Administrator; (ii) to any alleged violator of such requirement and (iii) to the State in which the violation occurs, or

(B) if the Administrator, the Attorney General, or the State has commenced and is diligently prosecuting a civil action in a court of the United States to require compliance with such requirement, but in any such action in a court of the United States any person may intervene as a matter of right; or

(2) under subsection (a)(2) of this section prior to sixty days after the plaintiff has given notice of such action to the Administrator; or

§300j–8. Citizen’s civil action

(a) Persons subject to civil action; jurisdiction of enforcement proceedings

Except as provided in subsection (b) of this section, any person may commence a civil action on his own behalf—

(1) against any person (including (A) the United States, and (B) any other governmental instrumentality or agency to the extent permitted by the eleventh amendment to the Constitution) who is alleged to be in violation of any requirement prescribed by or under this subchapter;

(2) against the Administrator where there is alleged a failure of the Administrator to perform any act or duty under this subchapter which is not discretionary with the Administrator; or

(3) for the collection of a penalty by the United States Government (and associated costs and interest) against any Federal agency that fails, by the date that is 18 months after the effective date of a final order to pay a penalty assessed by the Administrator under section 300h–8(b) 1 of this title, to pay the penalty.

No action may be brought under paragraph (1) against a public water system for a violation of a requirement prescribed by or under this subchapter which occurred within the 27-month period beginning on the first day of the month in which this subchapter is enacted. The United States district courts shall have jurisdiction, without regard to the amount in controversy or the citizenship of the parties, to enforce in an action brought under this subsection any requirement prescribed by or under this subchapter or to order the Administrator to perform an act or duty described in paragraph (2), as the case may be.

(b) Conditions for commencement of civil action; notice

No civil action may be commenced—

(1) under subsection (a)(1) of this section respecting violation of a requirement prescribed by or under this subchapter—

(A) prior to sixty days after the plaintiff has given notice of such violation (i) to the Administrator; (ii) to any alleged violator of such requirement and (iii) to the State in which the violation occurs, or

(B) if the Administrator, the Attorney General, or the State has commenced and is diligently prosecuting a civil action in a court of the United States to require compliance with such requirement, but in any such action in a court of the United States any person may intervene as a matter of right; or

1 So in original. Probably should be section “300j–6(b)."
(3) under subsection (a)(3) of this section prior to 60 days after the plaintiff has given notice of such action to the Attorney General and to the Federal agency.

Notice required by this subsection shall be given in such manner as the Administrator shall prescribe by regulation. No person may commence a civil action under subsection (a) of this section to require a State to prescribe a schedule under section 300g–4 or 300g–5 of this title for a variance or exemption, unless such person shows to the satisfaction of the court that the State has in a substantial number of cases failed to prescribe such schedules.

(c) Intervention of right

In any action under this section, the Administrator or the Attorney General, if not a party, may intervene as a matter of right.

(d) Costs; attorney fees; expert witness fees; filing of bond

The court, in issuing any final order in any action brought under subsection (a) of this section, may award costs of litigation (including reasonable attorney and expert witness fees) to any party whenever the court determines such an award is appropriate. The court may, if a temporary restraining order or preliminary injunction is sought, require the filing of a bond or equivalent security in accordance with the Federal Rules of Civil Procedure.

(e) Availability of other relief

Nothing in this section shall restrict any right which any person (or class of persons) may have under any statute or common law to seek enforcement of any requirement prescribed by or under this subchapter or to seek any other relief. Nothing in this section or in any other law of the United States shall be construed to prohibit, exclude, or restrict any State or local government from—

(1) bringing any action or obtaining any remedy or sanction in any State or local court; or

(2) bringing any administrative action or obtaining any administrative remedy or sanction, against any agency of the United States under State or local law to enforce any requirement respecting the provision of safe drinking water or respecting any underground injection control program. Nothing in this section shall be construed to authorize judicial review of regulations or orders of the Administrator under this subchapter, except as provided in section 300j–7 of this title. For provisions providing for application of certain requirements to such agencies in the same manner as to nongovernmental entities, see section 300j–6 of this title.


REFERENCES IN TEXT

The Federal Rules of Civil Procedure, referred to in subsec. (d), are set out in the Appendix to Title 28, Judiciary and Judicial Procedure.
the Administrator is a party. Unless, within a reasonable time, the Attorney General notifies the Administrator that he will appear in such action, attorneys appointed by the Administrator shall appear and represent him.

(g) Authority of Administrator under other provisions unaffected

The provisions of this subchapter shall not be construed as affecting any authority of the Administrator under part G of subchapter II of this chapter.

(h) Reports to Congressional committees; review by Office of Management and Budget; submission of comments to Congressional committees

Not later than April 1 of each year, the Administrator shall submit to the Committee on Commerce, Science, and Transportation of the Senate and the Committee on Energy and Commerce of the House of Representatives a report respecting the activities of the Agency under this subchapter and containing such recommendations for legislation as he considers necessary. The report of the Administrator under this subsection which is due not later than April 1, 1975, and each subsequent report of the Administrator under this subsection shall include a statement on the actual and anticipated cost to public water systems in each State of compliance with the requirements of this subchapter. The Office of Management and Budget may review any report required by this subsection before its submission to such committees of Congress, but the Office may not revise any such report, require any revision in any such report, or delay its submission beyond the day prescribed for its submission, and may submit to such committees of Congress its comments respecting any such report.

(i) Discrimination prohibition; filing of complaint; investigation; orders of Secretary; notice and hearing; settlements; attorneys' fees; judicial review; filing of petition; procedural requirements; stay of orders; exclusiveness of remedy; civil actions for enforcement of orders; appropriate relief; mandamus proceedings; prohibition inapplicable to undirected but deliberate violations

(1) No employer may discharge any employee or otherwise discriminate against any employee with respect to his compensation, terms, conditions, or privileges of employment because the employee (or any person acting pursuant to a request of the employee) has—

(A) commenced, caused to be commenced, or is about to commence or cause to be commenced a proceeding under this subchapter or a proceeding for the administration or enforcement of drinking water regulations or underground injection control programs of a State,

(B) testified or is about to testify in any such proceeding,

(C) assisted or participated in any manner in such a proceeding or in any other action to carry out the purposes of this subchapter.

(2)(A) Any employee who believes that he has been discharged or otherwise discriminated against by any person in violation of paragraph (1) may, within 30 days after such violation occurs, file (or have any person file on his behalf) a complaint with the Secretary of Labor (hereinafter in this subsection referred to as the "Secretary") alleging such discharge or discrimination. Upon receipt of such a complaint, the Secretary shall notify the person named in the complaint of the filing of the complaint.

(B)(i) Upon receipt of a complaint filed under subparagraph (A), the Secretary shall conduct an investigation of the violation alleged in the complaint. Within 30 days of the receipt of such complaint, the Secretary shall complete such investigation and shall notify in writing the complainant (and any person acting in his behalf) and the person alleged to have committed such violation of the results of the investigation conducted pursuant to this subparagraph. Within 90 days of the receipt of such complaint the Secretary shall, unless the proceeding on the complaint is terminated by the Secretary on the basis of a settlement entered into by the Secretary and the person alleged to have committed such violation, issue an order either providing the relief prescribed by clause (ii) or denying the complaint. An order of the Secretary shall be made on the record after notice and opportunity for agency hearing. The Secretary may not enter into a settlement terminating a proceeding on a complaint without the participation and consent of the complainant.

(ii) If in response to a complaint filed under subparagraph (A) the Secretary determines that a violation of paragraph (1) has occurred, the Secretary shall order (I) the person who committed such violation to take affirmative action to abate the violation, (II) such person to restate the complainant to his former position together with the compensation (including back pay), terms, conditions, and privileges of his employment, (III) compensatory damages, and (IV) where appropriate, exemplary damages. If such an order is issued, the Secretary, at the request of the complainant, shall assess against the person against whom the order is issued a sum equal to the aggregate amount of all costs and expenses (including attorneys' fees) reasonably incurred, as determined by the Secretary, by the complainant, the Secretary, and the person alleged to have committed such violation of the results of the investigation conducted pursuant to this subparagraph. Within 90 days of the receipt of such complaint the Secretary shall conduct an investigation of the violation alleged in the complaint and shall notify in writing the complainant (and any person acting in his behalf) and the person named in the complaint of the filing of the complaint.

(3)(A) Any person adversely affected or aggrieved by an order issued under paragraph (2) may obtain review of the order in the United States Court of Appeals for the circuit in which the violation, with respect to which the order was issued, allegedly occurred. The petition for review must be filed within sixty days from the issuance of the Secretary's order. Review shall conform to chapter 7 of title 5. The commencement of proceedings under this subparagraph shall not, unless ordered by the court, operate as a stay of the Secretary's order.

(B) An order of the Secretary with respect to which review could have been obtained under subparagraph (A) shall not be subject to judicial review in any criminal or other civil proceeding.

(4) Whenever a person has failed to comply with an order issued under paragraph (2)(B), the Secretary shall file a civil action in the United States District Court for the district in which the complainant resides or is employed, or has his principal place of business if such complainant is an agency, or in the District of Columbia.
§ 300j-9. Employment of personnel; determination of compensation

(5) Any nondiscretionary duty imposed by this section is enforceable in mandamus proceeding brought under section 1361 of title 28.

(6) Paragraph (1) shall not apply with respect to any employee who, acting without direction from his employer (or the employer’s agent), deliberately causes a violation of any requirement of this subchapter.

(7) Any section 1783(a) civil action brought under section 1361 of title 28 shall be heard and decided expeditiously.

§ 300j-10. Appointment of scientific, etc., personnel by Administrator of Environmental Protection Agency for implementation of responsibilities; compensation

To the extent that the Administrator of the Environmental Protection Agency deems such action necessary to the discharge of his functions under title XIV of the Public Health Service Act [42 U.S.C. 300f et seq.] (relating to safe drinking water) and under other provisions of law, he may appoint personnel to fill not more than thirty scientific, engineering, professional, legal, and administrative positions within the Environmental Protection Agency without regard to the civil service laws and may fix the compensation of such personnel not in excess of the maximum rate payable for GS–18 of the General Schedule under section 5302 of title 5.

REFERENCES IN TEXT

Reorganization Plan Numbered 14 of 1950 (15 F.R. 3176; 64 Stat. 1287), referred to in subsec. (e), is set out in the Appendix to Title 5, Government Organization and Employees.

Part G of subchapter II of this chapter, referred to in subsec. (g), is classified to section 264 of this title.

Codification


References in Laws to the Rates of Pay for GS–16, 17, or 18 Pay Rates

References in laws to the rates of pay for GS–16, 17, or 18, or to maximum rates of pay under the General Schedule, to be considered references to rates payable under specified sections of Title 5, Government Organization and Employees, see section 5309 (title 1, § 101(c)(1)) of Pub. L. 101–509, set out in a note under section 5316 of Title 5.

§ 300j-11. Indian Tribes

(a) In general

Subject to the provisions of subsection (b) of this section, the Administrator—

(1) is authorized to treat Indian Tribes as States under this subchapter;

(2) may delegate to such Tribes primary enforcement responsibility for public water systems and for underground injection control, and

(3) may provide such Tribes grant and contract assistance to carry out functions provided by this subchapter.

(b) EPA regulations

(1) Specific provisions

The Administrator shall, within 18 months after June 19, 1996, promulgate final regulations specifying those provisions of this subchapter for which it is appropriate to treat Indian Tribes as States. Such treatment shall be authorized only if:
(A) the Indian Tribe is recognized by the Secretary of the Interior and has a governing body carrying out substantial governmental duties and powers;

(B) the functions to be exercised by the Indian Tribe are within the area of the Tribal Government’s jurisdiction; and

(C) the Indian Tribe is reasonably expected to be capable, in the Administrator’s judgment, of carrying out the functions to be exercised in a manner consistent with the terms and purposes of this subchapter and of all applicable regulations.

(2) Provisions where treatment as State inappropriate

For any provision of this subchapter where treatment of Indian Tribes as identical to States is inappropriate, administratively infeasible or otherwise inconsistent with the purposes of this subchapter, the Administrator may include in the regulations promulgated under this section, other means for administering such provision in a manner that will achieve the purpose of the provision. Nothing in this section shall be construed to allow Indian Tribes to assume or maintain primary enforcement responsibility for public water systems or for underground injection control in a manner less protective of the health of persons than such responsibility may be assumed or maintained by a State. An Indian tribe shall not be required to exercise criminal enforcement jurisdiction for purposes of complying with the preceding sentence.

(AMENDMENTS

1996—Pub. L. 104–182 made technical amendment to section catchline and subsec. (a) designation.

§ 300j–12. State revolving loan funds

(a) General authority

(1) Grants to States to establish State loan funds

(A) In general

The Administrator shall offer to enter into agreements with eligible States to make capitalization grants, including letters of credit, to the States under this subsection to further the health protection objectives of this subchapter, promote the efficient use of fund resources, and for other purposes as are specified in this subchapter.

(B) Establishment of fund

To be eligible to receive a capitalization grant under this section, a State shall establish a drinking water treatment revolving loan fund (referred to in this section as a “State loan fund”) and comply with the other requirements of this section. Each grant to a State under this section shall be deposited in the State loan fund established by the State, except as otherwise provided in this section and in other provisions of this subchapter. No funds authorized by other provisions of this subchapter to be used for other purposes specified in this subchapter shall be deposited in any State loan fund.

(C) Extended period

The grant to a State shall be available to the State for obligation during the fiscal year for which the funds are authorized and during the following fiscal year, except that grants made available from funds provided prior to fiscal year 1997 shall be available for obligation during each of the fiscal years 1997 and 1998.

(D) Allotment formula

Except as otherwise provided in this section, funds made available to carry out this section shall be allotted to States that have entered into an agreement pursuant to this section (other than the District of Columbia) in accordance with—

(i) for each of fiscal years 1995 through 1997, a formula that is the same as the formula used to distribute public water system supervision grant funds under section 300j–2 of this title in fiscal year 1995, except that the minimum proportionate share established in the formula shall be 1 percent of available funds and the formula shall be adjusted to include a minimum proportionate share for the State of Wyoming and the District of Columbia; and

(ii) for fiscal year 1998 and each subsequent fiscal year, a formula that allocates to each State the proportional share of the State needs identified in the most recent survey conducted pursuant to subsection (b) of this section, except that the minimum proportionate share provided to each State shall be the same as the minimum proportionate share provided under clause (i).

(E) Reallocation

The grants not obligated by the last day of the period for which the grants are available shall be reallocated according to the appropriate criteria set forth in subparagraph (D), except that the Administrator may reserve and allocate 10 percent of the remaining amount for financial assistance to Indian Tribes in addition to the amount allotted under subsection (i) of this section and none of the funds reallocated by the Administrator shall be reallocated to any State that has not obligated all sums allotted to the State pursuant to this section during the period in which the sums were available for obligation.

(F) Nonprimacy States

The State allotment for a State not exercising primary enforcement responsibility for public water systems shall not be deposited in any such fund but shall be allotted by the Administrator under this subparagraph. Pursuant to section 300j–2(a)(9)(A) of this title such sums allotted under this subparagraph shall be reserved as needed by the Administrator to exercise primary enforcement
responsible for public water systems for deposit in such funds. Whenever the Administrator makes a final determination pursuant to section 300g–2(b) of this title that the requirements of section 300g–2(a) of this title are no longer being met by a State, additional grants for such State under this subchapter shall be immediately terminated by the Administrator. This subparagraph shall not apply to any State not exercising primary enforcement responsibility for public water systems as of August 6, 1996.

(G) Other programs

(i) New system capacity

Beginning in fiscal year 1999, the Administrator shall withhold 20 percent of each capitalization grant made pursuant to this section to a State unless the State has met the requirements of section 300g–9(a) of this title (relating to capacity development) and shall withhold 10 percent for fiscal year 2001, 15 percent for fiscal year 2002, and 20 percent for fiscal year 2003 if the State has not complied with the provisions of section 300g–9(c) of this title (relating to capacity development strategies). Not more than a total of 20 percent of the capitalization grants made to a State in any fiscal year may be withheld under the preceding provisions of this clause. All funds withheld by the Administrator pursuant to this clause shall be reallocated by the Administrator on the basis of the same ratio as is applicable to funds allotted under subparagraph (D). None of the funds reallocated by the Administrator pursuant to this paragraph shall be allotted to a State unless the State has met the requirements of section 300g–9 of this title (relating to capacity development).

(ii) Operator certification

The Administrator shall withhold 20 percent of each capitalization grant made pursuant to this section unless the State has met the requirements of section 300g–8 of this title (relating to operator certification). All funds withheld by the Administrator pursuant to this clause shall be reallocated by the Administrator on the basis of the same ratio as applicable to funds allotted under subparagraph (D). None of the funds reallocated by the Administrator pursuant to this paragraph shall be allotted to a State unless the State has met the requirements of section 300g–8 of this title (relating to operator certification).

(2) Use of funds

Except as otherwise authorized by this subchapter, amounts deposited in a State loan fund, including loan repayments and interest earned on such amounts, shall be used only for providing loans or loan guarantees, or as a source of reserve and security for leveraged loans, the proceeds of which are deposited in a State loan fund established under paragraph (1), or other financial assistance authorized under this section to community water systems and nonprofit noncommunity water systems, other than systems owned by Federal agencies. Financial assistance under this section may be used by a public water system only for expenditures (not including monitoring, operation, and maintenance expenditures) of a type or category which the Administrator has determined, through guidance, will facilitate compliance with national primary drinking water regulations applicable to the system under section 300g–1 of this title or otherwise significantly further the health protection objectives of this subchapter. The funds may also be used to provide loans to a system referred to in section 300f(4)(B) of this title for the purpose of providing the treatment described in section 300f(4)(B)(I)(III) of this title. The funds shall not be used for the acquisition of real property or interests therein, unless the acquisition is integral to a project authorized by this paragraph and the purchase is from a willing seller. Of the amount credited to any State loan fund established under this section in any fiscal year, 15 percent shall be available solely for providing loan assistance to public water systems which regularly serve fewer than 10,000 persons to the extent such funds can be obligated for eligible projects of public water systems.

(3) Limitation

(A) In general

Except as provided in subparagraph (B), no assistance under this section shall be provided to a public water system that—

(i) does not have the technical, managerial, and financial capability to ensure compliance with the requirements of this subchapter; or

(ii) is in significant noncompliance with any requirement of a national primary drinking water regulation or variance.

(B) Restructuring

A public water system described in subparagraph (A) may receive assistance under this section if—

(i) the use of the assistance will ensure compliance; and

(ii) if subparagraph (A)(i) applies to the system, the owner or operator of the system agrees to undertake feasible and appropriate changes in operations (including ownership, management, accounting, rates, maintenance, consolidation, alternative water supply, or other procedures) if the State determines that the measures are necessary to ensure that the system has the technical, managerial, and financial capability to comply with the requirements of this subchapter over the long term.

(C) Review

Prior to providing assistance under this section to a public water system that is in significant noncompliance with any requirement of a national primary drinking water regulation or variance, the State shall con-
duct a review to determine whether subparagraph (A)(1) applies to the system.

(b) Intended use plans

(1) In general

After providing for public review and comment, each State that has entered into a capitalization agreement pursuant to this section shall annually prepare a plan that identifies the intended uses of the amounts available to the State loan fund of the State.

(2) Contents

An intended use plan shall include—

(A) a list of the projects to be assisted in the first fiscal year that begins after the date of the plan, including a description of the project, the expected terms of financial assistance, and the size of the community served;

(B) the criteria and methods established for the distribution of funds; and

(C) a description of the financial status of the State loan fund and the short-term and long-term goals of the State loan fund.

(3) Use of funds

(A) In general

An intended use plan shall provide, to the maximum extent practicable, that priority for the use of funds be given to projects that—

(i) address the most serious risk to human health;

(ii) are necessary to ensure compliance with the requirements of this subchapter (including requirements for filtration); and

(iii) assist systems most in need on a per household basis according to State affordability criteria.

(B) List of projects

Each State shall, after notice and opportunity for public comment, publish and periodically update a list of projects in the State that are eligible for assistance under this section, including the priority assigned to each project and, to the extent known, the expected funding schedule for each project.

(c) Fund management

Each State loan fund under this section shall be established, maintained, and credited with re-obligation or expenditure, such amounts shall be invested in interest bearing obligations.

(d) Assistance for disadvantaged communities

(1) Loan subsidy

Notwithstanding any other provision of this section, in any case in which the State makes a loan pursuant to subsection (a)(2) of this section to a disadvantaged community or to a community that the State expects to become a disadvantaged community as the result of a proposed project, the State may provide additional subsidization (including forgiveness of principal).

(2) Total amount of subsidies

For each fiscal year, the total amount of loan subsidies made by a State pursuant to paragraph (1) may not exceed 30 percent of the amount of the capitalization grant received by the State for the year.

(3) “Disadvantaged community” defined

In this subsection, the term “disadvantaged community” means the service area of a public water system that meets affordability criteria established after public review and comment by the State in which the public water system is located. The Administrator may publish information to assist States in establishing affordability criteria.

(e) State contribution

Each agreement under subsection (a) of this section shall require that the State deposit in the State loan fund from State moneys an amount equal to at least 20 percent of the total amount of the grant to be made to the State on or before the date on which the grant payment is made to the State, except that a State shall not be required to deposit such amount into the fund prior to the date on which each grant payment is made for fiscal years 1994, 1995, 1996, and 1997 if the State deposits the State contribution amount into the State loan fund prior to September 30, 1999.

(f) Types of assistance

Except as otherwise limited by State law, the amounts deposited into a State loan fund under this section may be used only—

(1) to make loans, on the condition that—

(A) the interest rate for each loan is less than or equal to the market interest rate, including an interest free loan;

(B) principal and interest payments on each loan will commence not later than 1 year after completion of the project for which the loan was made, and each loan will be fully amortized not later than 20 years after the completion of the project, except that in the case of a disadvantaged community (as defined in subsection (d)(3) of this section), a State may provide an extended term for a loan, if the extended term—

(i) terminates not later than the date that is 30 years after the date of project completion; and

(ii) does not exceed the expected design life of the project;

(C) the recipient of each loan will establish a dedicated source of revenue (or, in the case of a privately owned system, demonstrate that there is adequate security) for the repayment of the loan; and

(D) the State loan fund will be credited with all payments of principal and interest on each loan;

(2) to buy or refinance the debt obligation of a municipality or an intermunicipal or interstate agency within the State at an interest rate that is less than or equal to the market interest rate in any case in which a debt obligation is incurred after July 1, 1993;

(3) to guarantee, or purchase insurance for, a local obligation (all of the proceeds of which finance a project eligible for assistance under this section) if the guarantee or purchase would improve credit market access or reduce the interest rate applicable to the obligation;
(4) as a source of revenue or security for the payment of principal and interest on revenue or general obligation bonds issued by the State if the proceeds of the sale of the bonds will be deposited into the State loan fund; and

(5) to earn interest on the amounts deposited into the State loan fund.

(g) Administration of State loan funds

(1) Combined financial administration

Notwithstanding subsection (c) of this section, a State may (as a convenience and to avoid unnecessary administrative costs) combine, in accordance with State law, the financial administration of a State loan fund established under this section with the financial administration of any other revolving fund established by the State if otherwise not prohibited by the law under which the State loan fund was established and if the Administrator determines that—

(A) the grants under this section, together with loan repayments and interest, will be separately accounted for and used solely for the purposes specified in subsection (a) of this section; and

(B) the authority to establish assistance priorities and carry out oversight and related activities (other than financial administration) with respect to assistance remains with the State agency having primary responsibility for financial assistance from the State loan fund.

(2) Cost of administering fund

Each State may annually use up to 4 percent of the funds allotted to the State under this section to cover the reasonable costs of administration of the programs under this section, including the recovery of reasonable costs expended to establish a State loan fund which are incurred after August 6, 1996, and to provide technical assistance to public water systems within the State. For fiscal year 1995 and each fiscal year thereafter, each State may use up to an additional 10 percent of the funds allotted to the State under this section—

(A) for public water system supervision programs under section 300j–2(a) of this title; 

(B) to administer or provide technical assistance through source water protection programs; 

(C) to develop and implement a capacity development strategy under section 300g–9(c) of this title; and

(D) for an operator certification program for purposes of meeting the requirements of section 300g–8 of this title.

if the State matches the expenditures with at least an equal amount of State funds. At least half of the match must be additional to the amount expended by the State for public water supervision in fiscal year 1993. An additional 2 percent of the funds annually allotted to each State under this section may be used by the State to provide technical assistance to public water systems serving 10,000 or fewer persons in the State. Funds utilized under subparagraph (B) shall not be used for enforcement actions.

(3) Guidance and regulations

The Administrator shall publish guidance and promulgate regulations as may be necessary to carry out the provisions of this section, including—

(A) provisions to ensure that each State commits and expends funds allotted to the State under this section as efficiently as possible in accordance with this subchapter and applicable State laws;

(B) guidance to prevent waste, fraud, and abuse; and

(C) guidance to avoid the use of funds made available under this section to finance the expansion of any public water system in anticipation of future population growth.

The guidance and regulations shall also ensure that the States, and public water systems receiving assistance under this section, use accounting, audit, and fiscal procedures that conform to generally accepted accounting standards.

(4) State report

Each State administering a loan fund and assistance program under this subsection shall publish and submit to the Administrator a report every 2 years on its activities under this section, including the findings of the most recent audit of the fund and the entire State allotment. The Administrator shall periodically audit all State loan funds established by, and all other amounts allotted to, the States pursuant to this section in accordance with procedures established by the Comptroller General.

(h) Needs survey

The Administrator shall conduct an assessment of water system capital improvement needs of all eligible public water systems in the United States and submit a report to the Congress containing the results of the assessment within 180 days after August 6, 1996, and every 4 years thereafter.

(i) Indian Tribes

(1) In general

1½ percent of the amounts appropriated annually to carry out this section may be used by the Administrator to make grants to Indian Tribes and Alaska Native villages that have not otherwise received either grants from the Administrator under this section or assistance from State loan funds established under this section. The grants may only be used for expenditures by tribes and villages for public water system expenditures referred to in subsection (a)(2) of this section.

(2) Use of funds

Funds reserved pursuant to paragraph (1) shall be used to address the most significant threats to public health associated with public water systems that serve Indian Tribes, as de-
(3) Alaska Native villages

In the case of a grant for a project under this subsection in an Alaska Native village, the Administrator is also authorized to make grants to the State of Alaska for the benefit of Alaska Native villages. An amount not to exceed 4 percent of the grant amount may be used by the State of Alaska for project management.

(4) Needs assessment

The Administrator, in consultation with the Director of the Indian Health Service and Indian Tribes, shall, in accordance with a schedule that is consistent with the needs surveys conducted pursuant to subsection (h) of this section, prepare surveys and assess the needs of drinking water treatment facilities to serve Indian Tribes, including an evaluation of the public water systems that pose the most significant threats to public health.

(j) Other areas

Of the funds annually available under this section for grants to States, the Administrator shall make allotments in accordance with section 300j–2(a)(4) of this title for the Virgin Islands, the Commonwealth of the Northern Mariana Islands, American Samoa, and Guam. The grants allotted as provided in this subsection may be provided by the Administrator to the governments of such areas, to public water systems in such areas, or to both, to be used for the public water system expenditures referred to in subsection (a)(2) of this section. The grants, and grants for the District of Columbia, shall not be deposited in State loan funds. The total allotment of grants under this section for all areas described in this subsection in any fiscal year shall not exceed 0.33 percent of the aggregate amount made available to carry out this section in that fiscal year.

(k) Other authorized activities

(1) In general

Notwithstanding subsection (a)(2) of this section, a State may take each of the following actions:

(A) Provide assistance, only in the form of a loan, to one or more of the following:

(i) Any public water system described in subsection (a)(2) of this section to acquire land or a conservation easement from a willing seller or grantor, if the purpose of the acquisition is to protect the source water of the system from contamination and to ensure compliance with national primary drinking water regulations.

(ii) Any community water system to implement local, voluntary source water protection measures to protect source water in areas delineated pursuant to section 300j–13 of this title, in order to facilitate compliance with national primary drinking water regulations.

(B) To provide funding to implement voluntary, incentive-based source water quality protection measures pursuant to clauses (ii) and (iii) of paragraph (1)(A).

(C) To provide assistance through a capacity development strategy pursuant to paragraph (1)(B).

(D) To make expenditures to delineate or assess source water protection areas pursuant to paragraph (1)(C).

(E) To make expenditures to establish and implement wellhead protection programs pursuant to paragraph (1)(D).

(3) Statutory construction

Nothing in this section creates or conveys any new authority to a State, political subdivision of a State, or community water system for any new regulatory measure, or limits any authority of a State, political subdivision of a State or community water system.

(l) Savings

The failure or inability of any public water system to receive funds under this section or any other loan or grant program, or any delay in obtaining the funds, shall not alter the obligation of the system to comply in a timely manner with all applicable drinking water standards and requirements of this subchapter.

(m) Authorization of appropriations

There are authorized to be appropriated to carry out the purposes of this section $599,000,000 for the fiscal year 1994 and $1,000,000,000 for each of the fiscal years 1995 through 2003. To the extent amounts authorized to be appropriated under this subsection in any fiscal year are not appropriated in that fiscal year, such amounts are authorized to be appropriated in a subse-
quent fiscal year (prior to the fiscal year 2004). Such sums shall remain available until expended.

(n) Health effects studies

From funds appropriated pursuant to this section for each fiscal year, the Administrator shall reserve $10,000,000 for health effects studies on drinking water contaminants authorized by the Safe Drinking Water Act Amendments of 1996. In allocating funds made available under this subsection, the Administrator shall give priority to studies concerning the health effects of cryptosporidium (as authorized by section 300j–18(c) of this title), disinfection byproducts (as authorized by section 300j–18(e) of this title), and arsenic (as authorized by section 300g–1(b)(12)(A) of this title), and the implementation of a plan for studies of subpopulations at greater risk of adverse effects (as authorized by section 300j–18(a) of this title).

(o) Monitoring for unregulated contaminants

From funds appropriated pursuant to this section for each fiscal year beginning with fiscal year 1996, the Administrator shall reserve $2,000,000 to pay the costs of monitoring for unregulated contaminants under section 300j–4(a)(2)(C) of this title.

(p) Demonstration project for State of Virginia

Notwithstanding the other provisions of this section limiting the use of funds deposited in a State loan fund from any State allotment, the State of Virginia may, as a single demonstration and with the approval of the Virginia General Assembly and the Administrator, conduct a program to demonstrate alternative approaches to intergovernmental coordination to assist in the financing of new drinking water facilities in the following rural communities in southwestern Virginia where none exists on August 6, 1996, and where such communities are experiencing economic hardship: Lee County, Wise County, Scott County, Dickenson County, Russell County, Buchanan County, Tazewell County, and the city of Norton, Virginia. The funds allotted to that State and deposited in the State loan fund may be loaned to a regional endowment fund for the purpose set forth in this subsection under a plan to be approved by the Administrator. The plan may include an advisory group that includes representatives of such counties.

(q) Small system technical assistance

The Administrator may reserve up to 2 percent of the total funds appropriated pursuant to subsection (m) of this section for each of the fiscal years 1997 through 2003 to carry out the provisions of section 300j–1(c) of this title (relating to technical assistance for small systems), except that the total amount of funds made available for such purpose in any fiscal year through appropriations (as authorized by section 300j–1(c) of this title) and reservations made pursuant to this subsection shall not exceed the amount authorized by section 300j–1(e) of this title.

(r) Evaluation

The Administrator shall conduct an evaluation of the effectiveness of the State loan funds through fiscal year 2001. The evaluation shall be submitted to the Congress at the same time as the President submits to the Congress, pursuant to section 1108 of title 31, an appropriations request for fiscal year 2003 relating to the budget of the Environmental Protection Agency.

(2) reserve in any year a dollar amount up to the dollar amount that may be reserved under paragraph

References in Text


Combining Fund Assets for Enhancement of Lending Capacity

Pub. L. 105–276, title III, Oct. 21, 1998, 112 Stat. 2498, provided in part: ‘‘That, consistent with section 1452(g) of the Safe Drinking Water Act (§42 U.S.C. 300j–20(g)), section 302 of the Safe Drinking Water Act Amendments of 1996 (Public Law 104–182) [set out as a note below] and the accompanying joint explanatory statement of the committee of conference (H. Rept. No. 104–741 to accompany S. 1316, the Safe Drinking Water Act Amendments of 1996), and notwithstanding any other provision of law, beginning in fiscal year 1999 and thereafter, States may combine the assets of State Revolving Funds (SRFs) established under section 1452 of the Safe Drinking Water Act, as amended, and title VI of the Federal Water Pollution Control Act (§33 U.S.C. 1381 et seq.), as amended, as security for bond issues to enhance the lending capacity of one or both SRFs, but not to acquire the state match for either program, provided that revenues from the bonds are allocated to the purposes of the Safe Drinking Water Act (this subchapter) and the Federal Water Pollution Control Act (§33 U.S.C. 1251 et seq.) in the same portion as the funds are used as security for the bonds’’.

Transfer of Funds

Pub. L. 112–74, div. E, title II, Dec. 23, 2011, 125 Stat. 1018, provided in part: ‘‘That for fiscal year 2012 and hereafter, the Administrator may transfer funds provided for tribal set-asides through funds appropriated for the Clean Water State Revolving Funds and for the Drinking Water State Revolving Funds between those accounts in such manner as the Administrator deems appropriate, but not to exceed the transfer limits given to States under section 302(a) of Public Law 104–182 [set out below] and the accompanying joint explanatory statement of the committee of conference (H. Rept. No. 104–741 to accompany S. 1316, the Safe Drinking Water Act Amendments of 1996), and notwithstanding any other provision of law, beginning in fiscal year 1999 and thereafter, States may combine the assets of State Revolving Funds (SRFs) established under section 1452 of the Safe Drinking Water Act, as amended, and title VI of the Federal Water Pollution Control Act (33 U.S.C. 1381 et seq.), as amended, as security for bond issues to enhance the lending capacity of one or both SRFs, but not to acquire the state match for either program, provided that revenues from the bonds are allocated to the purposes of the Safe Drinking Water Act (this subchapter) and the Federal Water Pollution Control Act (33 U.S.C. 1251 et seq.) in the same portion as the funds are used as security for the bonds’’.

Similar provisions were contained in the following prior appropriation acts:


References in Text

§ 300j–13

Source water quality assessment

(a) Source water assessment

(1) Guidance

Within 12 months after August 6, 1996, after notice and comment, the Administrator shall publish guidance for States exercising primary enforcement responsibility for public water systems to carry out directly or through delegation (for the protection and benefit of public water systems and for the support of monitoring flexibility) a source water assessment program within the State's boundaries. Each State adopting modifications to monitoring requirements pursuant to section 300g–7(b) of this title shall, prior to adopting such modifications, have an approved source water assessment program under this section and shall carry out the program either directly or through delegation.

(2) Program requirements

A source water assessment program under this subsection shall—

(A) delineate the boundaries of the assessment areas in such State from which one or more public water systems in the State receive supplies of drinking water, using all reasonably available hydrogeologic information on the sources of the supply of drinking water in the State and the water flow, recharge, and discharge and any other reliable information as the State deems necessary to adequately determine such areas; and

(B) identify for contaminants regulated under this subchapter for which monitoring is required under this subchapter (or any unregulated contaminants selected by the State, in its discretion, which the State, for the purposes of this subsection, has determined may present a threat to public health), to the extent practical, the origins within each delineated area of such contaminants to determine the susceptibility of the public water systems in the delineated area to such contaminants.

(3) Approval, implementation, and monitoring relief

A State source water assessment program under this subsection shall be submitted to the Administrator within 18 months after the Administrator's guidance is issued under this subsection and shall be deemed approved 9 months after the date of such submittal unless the Administrator disapproves the program as provided in section 300h–7(c) of this title. States shall begin implementation of the program immediately after its approval. The Administrator's approval of a State program under this subsection shall include a timetable, established in consultation with the State, allowing not more than 2 years for completion after approval of the program. Public water systems seeking monitoring relief in addition to the interim relief provided under section 300g–7(a) of this title shall be eligible for monitoring relief, consistent with section 300g–7(b) of this title, upon completion of the assessment in the delineated source water assessment area or areas concerned.

(4) Timetable

The timetable referred to in paragraph (3) shall take into consideration the availability to the State of funds under section 300j–12 of this title (relating to State loan funds) for assessments and other relevant factors. The Administrator may extend any timetable included in a State program approved under paragraph (3) to extend the period for completion by an additional 18 months.

(5) Demonstration project

The Administrator shall, as soon as practicable, conduct a demonstration project, in consultation with other Federal agencies, to demonstrate the most effective and protective means of assessing and protecting source waters serving large metropolitan areas and located on Federal lands.

(6) Use of other programs

To avoid duplication and to encourage efficiency, the program under this section may make use of any of the following:

(A) Vulnerability assessments, sanitary surveys, and monitoring programs.

(B) Delineations or assessments of ground water sources under a State wellhead protection program developed pursuant to this section.

(C) Delineations or assessments of surface or ground water sources under a State pesticide management plan developed pursuant to the Pesticide and Ground Water State Management Plan Regulation (subparts I and J of part 152 of title 40, Code of Federal Regulations), promulgated under section 136a(d) of title 7.

(D) Delineations or assessments of surface water sources under a State watershed initiative or to satisfy the watershed criterion for determining if filtration is required under the Surface Water Treatment Rule (section 141.70 of title 40, Code of Federal Regulations).

(E) Delineations or assessments of surface or ground water sources under programs or plans pursuant to the Federal Water Pollution Control Act [33 U.S.C. 1251 et seq.].

(7) Public availability

The State shall make the results of the source water assessments conducted under this subsection available to the public.

(b) Approval and disapproval

For provisions relating to program approval and disapproval, see section 300h–7(c) of this title.
§ 300j–14. Source water petition program

(a) Petition program

1. In general

(A) Establishment

A State may establish a program under which an owner or operator of a community water system in the State, or a municipal or local government or political subdivision of a State, may submit a source water quality protection partnership petition to the State requesting that the State assist in the local development of a voluntary, incentive-based partnership, among the owner, operator, or government and other persons likely to be affected by the recommendations of the partnership, to—

(i) reduce the presence in drinking water of contaminants that may be addressed by a petition by considering the origins of the contaminants, including to the maximum extent practicable the specific activities that affect the drinking water supply of a community;

(ii) obtain financial or technical assistance necessary to facilitate establishment of a partnership, or to develop and implement recommendations of a partnership for the protection of source water to assist in the provision of drinking water that complies with national primary drinking water regulations with respect to contaminants addressed by a petition; and

(iii) develop recommendations regarding voluntary and incentive-based strategies for the long-term protection of the source water of community water systems.

(B) Funding

Each State may—

(i) use funds set aside pursuant to section 300j–12(k)(1)(A)(i)(iii) of this title by the State to carry out a program described in subparagraph (A), including assistance to voluntary local partnerships for the development and implementation of partnership recommendations for the protection of source water such as source water quality assessment, contingency plans, and demonstration projects for partners within a source water area delineated under section 300j–13(a) of this title; and

(ii) provide assistance in response to a petition submitted under this subsection using funds referred to in subsection (b)(2)(B) of this section.

2. Objectives

The objectives of a petition submitted under this subsection shall be to—

(A) facilitate the local development of voluntary, incentive-based partnerships among owners and operators of community water systems, governments, and other persons in source water areas; and

(B) obtain assistance from the State in identifying resources which are available to implement the recommendations of the partnerships to address the origins of drinking water contaminants that may be addressed by a petition (including to the maximum extent practicable the specific activities contributing to the presence of the contaminants) that affect the drinking water supply of a community.

3. Contaminants addressed by a petition

A petition submitted to a State under this subsection shall address only those contaminants—

(A) that are pathogenic organisms for which a national primary drinking water regulation has been established or is required under section 300g–1 of this title; or

(B) for which a national primary drinking water regulation has been promulgated or proposed and that are detected by adequate monitoring methods in the source water at the intake structure or in any collection, treatment, storage, or distribution facilities by the community water systems at levels—

(i) above the maximum contaminant level; or

(ii) that are not reliably and consistently below the maximum contaminant level.

4. Contents

A petition submitted under this subsection shall, at a minimum—

(A) include a delineation of the source water area in the State that is the subject of the petition;

(B) identify, to the maximum extent practicable, the origins of the drinking water contaminants that may be addressed by a petition (including to the maximum extent practicable the specific activities contributing to the presence of the contaminants) in the source water area delineated under section 300j–13 of this title;

(C) identify any deficiencies in information that will impair the development of recommendations by the voluntary local partnership to address drinking water contaminants that may be addressed by a petition; and

(D) specify the efforts made to establish the voluntary local partnership and obtain the participation of—

(i) the municipal or local government or other political subdivision of the State with jurisdiction over the source water area delineated under section 300j–13 of this title; and

(ii) each person in the source water area delineated under section 300j–13 of this title—

(I) who is likely to be affected by recommendations of the voluntary local partnership; and

(II) whose participation is essential to the success of the partnership;

(E) outline how the voluntary local partnership has or will, during development and
implementation of recommendations of the voluntary local partnership, identify, recognize and take into account any voluntary or other activities already being undertaken by persons in the source water area delineated under section 300j–13 of this title under Federal or State law to reduce the likelihood that contaminants will occur in drinking water at levels of public health concern; and

(F) specify the technical, financial, or other assistance that the voluntary local partnership requests of the State to develop the partnership or to implement recommendations of the partnership.

(b) Approval or disapproval of petitions

(1) In general

After providing notice and an opportunity for public comment on a petition submitted under subsection (a) of this section, the State shall approve or disapprove the petition, in whole or in part, not later than 120 days after the date of submission of the petition.

(2) Approval

The State may approve a petition if the petition meets the requirements established under subsection (a) of this section. The notice of approval shall, at a minimum, include for informational purposes—

(A) an identification of technical, financial, or other assistance that the State will provide to assist in addressing the drinking water contaminants that may be addressed by a petition based on—

(i) the relative priority of the public health concern identified in the petition with respect to the other water quality needs identified by the State;

(ii) any necessary coordination that the State will perform of the program established under this section with programs implemented or planned by other States under this section; and

(iii) funds available (including funds available from a State revolving loan fund established under title VI of the Federal Water Pollution Control Act (33 U.S.C. 1381 et seq.)) or section 300j–12 of this title;

(B) a description of technical or financial assistance pursuant to Federal and State programs that is available to assist in implementing recommendations of the partnership in the petition, including—

(i) any program established under the Federal Water Pollution Control Act (33 U.S.C. 1251 et seq.);

(ii) the program established under section 1455b of title 16;

(iii) the agricultural water quality protection program established under chapter 2 of subtitle D of title XII of the Food Security Act of 1985 (16 U.S.C. 3838 et seq.);

(iv) the sole source aquifer protection program established under section 300h–6 of this title;

(v) the community wellhead protection program established under section 300h–7 of this title;

(vi) any pesticide or ground water management plan;

(vii) any voluntary agricultural resource management plan or voluntary whole farm or whole ranch management plan developed and implemented under a process established by the Secretary of Agriculture; and

(viii) any abandoned well closure program; and

(C) a description of activities that will be undertaken to coordinate Federal and State programs to respond to the petition.

(3) Disapproval

If the State disapproves a petition submitted under subsection (a) of this section, the State shall notify the entity submitting the petition in writing of the reasons for disapproval. A petition may be resubmitted at any time if—

(A) new information becomes available;

(B) conditions affecting the source water that is the subject of the petition change; or

(C) modifications are made in the type of assistance being requested.

(c) Grants to support State programs

(1) In general

The Administrator may make a grant to each State that establishes a program under this section that is approved under paragraph (2). The amount of each grant shall not exceed 50 percent of the cost of administering the program for the year in which the grant is available.

(2) Approval

In order to receive grant assistance under this subsection, a State shall submit to the Administrator for approval a plan for a source water quality protection partnership program that is consistent with the guidance published under subsection (d) of this section. The Administrator shall approve the plan if the plan is consistent with the guidance published under subsection (d) of this section.

(d) Guidance

(1) In general

Not later than 1 year after August 6, 1996, the Administrator, in consultation with the States, shall publish guidance to assist—

(A) States in the development of a source water quality protection partnership program; and

(B) municipal or local governments or political subdivisions of a State and community water systems in the development of source water quality protection partnerships and in the assessment of source water quality.

(2) Contents of the guidance

The guidance shall, at a minimum—

(A) recommend procedures for the approval or disapproval by a State of a petition submitted under subsection (a) of this section;

(B) recommend procedures for the submission of petitions developed under subsection (a) of this section;

(C) recommend criteria for the assessment of source water areas within a State; and

(D) describe technical or financial assistance pursuant to Federal and State pro-
grams that is available to address the contamination of sources of drinking water and to develop and respond to petitions submitted under subsection (a) of this section.

(e) Authorization of appropriations

There are authorized to be appropriated to carry out this section $5,000,000 for each of the fiscal years 1997 through 2003. Each State with a plan for a program approved under subsection (b) of this section shall receive an equitable portion of the funds available for any fiscal year.

(f) Statutory construction

Nothing in this section—

(1)(A) creates or conveys new authority to a State, political subdivision of a State, or community water system for any new regulatory measure; or

(B) limits any authority of a State, political subdivision, or community water system; or

(2) precludes a community water system, municipal or local government, or political subdivision of a government from locally developing and carrying out a voluntary, incentive-based, source water quality protection partnership to address the origins of drinking water contaminants of public health concern.


REFERENCES IN TEXT

The Federal Water Pollution Control Act, referred to in subsec. (b)(2)(A)(iii), (B)(i), is act June 30, 1948, ch. 758, as amended generally by Pub. L. 92–500, §2, Oct. 18, 1972, 86 Stat. 816, which is classified generally to chapter 26 (§1251 et seq.) of Title 33, Navigation and Navigable Waters. Title VI of the Act is classified generally to subchapter VI (§1381 et seq.) of chapter 26 of Title 33.

For complete classification of this Act to the Code, see Short Title note set out under section 1251 of Title 33 and Tables.

§300j–15. Water conservation plan

(a) Guidelines

Not later than 2 years after August 6, 1996, the Administrator shall publish in the Federal Register guidelines for water conservation plans for public water systems serving fewer than 3,300 persons, public water systems serving between 3,300 and 10,000 persons, and public water systems serving more than 10,000 persons, taking into consideration such factors as water availability and climate.

(b) Loans or grants

Within 1 year after publication of the guidelines under subsection (a) of this section, a State exercising primary enforcement responsibility for public water systems may require a public water system, as a condition of receiving a loan or grant from a State loan fund under section 300j–12 of this title, to submit with its application for such loan or grant a water conservation plan consistent with such guidelines.

(July 1, 1944, ch. 373, title XIV, §1454, as added Pub. L. 104–182, title I, §134, Aug. 6, 1996, 110 Stat. 1679.)

§300j–16. Assistance to colonias

(a) Definitions

As used in this section:

(1) Border State

The term “border State” means Arizona, California, New Mexico, and Texas.

(2) Eligible community

The term “eligible community” means a low-income community with economic hardship—

(A) is commonly referred to as a colonia;

(B) is located along the United States-Mexico border (generally in an unincorporated area); and

(C) lacks a safe drinking water supply or adequate facilities for the provision of safe drinking water for human consumption.

(b) Grants to alleviate health risks

The Administrator of the Environmental Protection Agency and the heads of other appropriate Federal agencies are authorized to award grants to a border State to provide assistance to eligible communities to facilitate compliance with national primary drinking water regulations or otherwise significantly further the health protection objectives of this subchapter.

(c) Use of funds

Each grant awarded pursuant to subsection (b) of this section shall be used to provide assistance to one or more eligible communities with respect to which the residents are subject to a significant health risk (as determined by the Administrator or the head of the Federal agency making the grant) attributable to the lack of access to an adequate and affordable drinking water supply system.

(d) Cost sharing

The amount of a grant awarded pursuant to this section shall not exceed 50 percent of the costs of carrying out the project that is the subject of the grant.

(e) Authorization of appropriations

There are authorized to be appropriated to carry out this section $25,000,000 for each of the fiscal years 1997 through 1999.

(July 1, 1944, ch. 373, title XIV, §1456, as added Pub. L. 104–182, title I, §135, Aug. 6, 1996, 110 Stat. 1679.)

§300j–17. Estrogenic substances screening program

In addition to the substances referred to in section 346a(p)(3)(B) of title 21, the Administrator may provide for testing under the screening program authorized by section 346a(p) of title 21, in accordance with the provisions of section 346a(p) of title 21, of any other substance that may be found in sources of drinking water
§ 300j–18. Drinking water studies

(a) Subpopulations at greater risk

(1) In general

The Administrator shall conduct a continuing program of studies to identify groups within the general population that may be at greater risk than the general population of adverse health effects from exposure to contaminants in drinking water. The study shall examine whether and to what degree infants, children, pregnant women, the elderly, individuals with a history of serious illness, or other subpopulations that can be identified and characterized are likely to experience elevated health risks, including risks of cancer, from contaminants in drinking water.

(2) Report

Not later than 4 years after August 6, 1996, and periodically thereafter as new and significant information becomes available, the Administrator shall report to the Congress on the results of the studies.

(b) Biological mechanisms

The Administrator shall conduct biomedical studies to—

(1) understand the mechanisms by which chemical contaminants are absorbed, distributed, metabolized, and eliminated from the human body, so as to develop more accurate physiologically based models of the phenomena;

(2) understand the effects of contaminants and the mechanisms by which the contaminants cause adverse effects (especially noncancer and infectious effects) and the variations in the effects among humans, especially subpopulations at greater risk of adverse effects, and between test animals and humans; and

(3) develop new approaches to the study of complex mixtures, such as mixtures found in drinking water, especially to determine the prospects for synergistic or antagonistic interactions that may affect the shape of the dose-response relationship of the individual chemicals and microbes, and to examine noncancer endpoints and infectious diseases, and susceptible individuals and subpopulations.

(c) Studies on harmful substances in drinking water

(1) Development of studies

The Administrator shall, not later than 180 days after August 6, 1996, and after consultation with the Secretary of Health and Human Services, the Secretary of Agriculture, and, as appropriate, the heads of other Federal agencies, conduct the studies described in paragraph (2) to support the development and implementation of the most current version of each of the following:

(A) Enhanced Surface Water Treatment Rule (59 Fed. Reg. 38832 (July 29, 1994)).

(B) Disinfectant and Disinfection Byproducts Rule (59 Fed. Reg. 38668 (July 29, 1994)).

(C) Ground Water Disinfection Rule (availability of draft summary announced at (57 Fed. Reg. 53966; July 31, 1992)).

(2) Contents of studies

The studies required by paragraph (1) shall include, at a minimum, each of the following:

(A) Toxicological studies and, if warranted, epidemiological studies to determine what levels of exposure from disinfectants and disinfection byproducts, if any, may be associated with developmental and birth defects and other potential toxic endpoints.

(B) Toxicological studies and, if warranted, epidemiological studies to quantify the carcinogenic potential from exposure to disinfection byproducts resulting from different disinfectants.

(C) The development of dose-response curves for pathogens, including cryptosporidium and the Norwalk virus.

(3) Authorization of appropriations

There are authorized to be appropriated to carry out this subsection $12,500,000 for each of fiscal years 1997 through 2003.

(d) Waterborne disease occurrence study

(1) System

The Director of the Centers for Disease Control and Prevention, and the Administrator shall jointly—

(A) within 2 years after August 6, 1996, conduct pilot waterborne disease occurrence studies for at least 5 major United States communities or public water systems; and

(B) within 5 years after August 6, 1996, prepare a report on the findings of the pilot studies, and a national estimate of waterborne disease occurrence.

(2) Training and education

The Director and Administrator shall jointly establish a national health care provider training and public education campaign to inform both the professional health care provider community and the general public about waterborne disease and the symptoms that may be caused by infectious agents, including microbial contaminants. In developing such a campaign, they shall seek comment from interested groups and individuals, including scientists, physicians, State and local governments, environmental groups, public water systems, and vulnerable populations.

(3) Funding

There are authorized to be appropriated for each of the fiscal years 1997 through 2001 $3,000,000 to carry out this subsection. To the extent funds under this subsection are not fully appropriated, the Administrator may use not more than $2,000,000 of the funds from amounts reserved under section 300j–12(n) of this title for health effects studies for purposes of this subsection. The Administrator may transfer a portion of such funds to the Centers for Disease Control and Prevention for such purposes.

(July 1, 1944, ch. 373, title XIV, §1458, as added Pub. L. 104–182, title I, §137, Aug. 6, 1996, 110 Stat. 1680.)
The term "drinking water cooler" means any mechanical device affixed to drinking water supply plumbing which actively cools water for human consumption.

(2) Lead free

The term "lead free" means, with respect to a drinking water cooler, that each part or component of the cooler which may come in contact with drinking water contains not more than 8 percent lead, except that no drinking water cooler which contains any solder, flux, or storage tank interior surface which may come in contact with drinking water shall be considered lead free if the solder, flux, or storage tank interior surface contains more than 0.2 percent lead. The Administrator may establish more stringent requirements for treating any part or component of a drinking water cooler as lead free for purposes of this part whenever he determines that any such part may constitute an important source of lead in drinking water.

(3) Local educational agency

The term "local educational agency" means—

(A) any local educational agency as defined in section 7801 of title 20,

(B) the owner of any private, nonprofit elementary or secondary school building, and

(C) the governing authority of any school operating under the defense dependent's education system provided for under the Defense Dependents' Education Act of 1978 (20 U.S.C. 921 and following).

(4) Repair

The term "repair", with respect to a drinking water cooler, to take such corrective action as is necessary to ensure that water cooler is lead free.

(5) Replacement

The term "replacement", when used with respect to a drinking water cooler, means the permanent removal of the water cooler and the installation of a lead free water cooler.

(6) School

The term "school" means any elementary school or secondary school as defined in section 7801 of title 20 and any kindergarten or day care facility.

(7) Lead-lined tank

The term "lead-lined tank" means a water reservoir container in a drinking water cooler which container is constructed of lead or which has an interior surface which is not lead free.

$300j-21. Definitions

As used in this part—

(1) Drinking water cooler

The term "drinking water cooler" means any mechanical device affixed to drinking water supply plumbing which actively cools water for human consumption.

(2) Lead free

The term "lead free" means, with respect to a drinking water cooler, that each part or component of the cooler which may come in contact with drinking water contains not more than 8 percent lead, except that no drinking water cooler which contains any solder, flux, or storage tank interior surface which may come in contact with drinking water shall be considered lead free if the solder, flux, or storage tank interior surface contains more than 0.2 percent lead. The Administrator may establish more stringent requirements for treating any part or component of a drinking water cooler as lead free for purposes of this part whenever he determines that any such part may constitute an important source of lead in drinking water.

(3) Local educational agency

The term "local educational agency" means—

(A) any local educational agency as defined in section 7801 of title 20,

(B) the owner of any private, nonprofit elementary or secondary school building, and

(C) the governing authority of any school operating under the defense dependent's education system provided for under the Defense Dependents' Education Act of 1978 (20 U.S.C. 921 and following).

(4) Repair

The term "repair", with respect to a drinking water cooler, to take such corrective action as is necessary to ensure that water cooler is lead free.

(5) Replacement

The term "replacement", when used with respect to a drinking water cooler, means the permanent removal of the water cooler and the installation of a lead free water cooler.

(6) School

The term "school" means any elementary school or secondary school as defined in section 7801 of title 20 and any kindergarten or day care facility.

(7) Lead-lined tank

The term "lead-lined tank" means a water reservoir container in a drinking water cooler which container is constructed of lead or which has an interior surface which is not lead free.

$300j-21. Definitions

As used in this part—

(1) Drinking water cooler

The term "drinking water cooler" means any mechanical device affixed to drinking water supply plumbing which actively cools water for human consumption.

(2) Lead free

The term "lead free" means, with respect to a drinking water cooler, that each part or component of the cooler which may come in contact with drinking water contains not more than 8 percent lead, except that no drinking water cooler which contains any solder, flux, or storage tank interior surface which may come in contact with drinking water shall be considered lead free if the solder, flux, or storage tank interior surface contains more than 0.2 percent lead. The Administrator may establish more stringent requirements for treating any part or component of a drinking water cooler as lead free for purposes of this part whenever he determines that any such part may constitute an important source of lead in drinking water.

(3) Local educational agency

The term "local educational agency" means—

(A) any local educational agency as defined in section 7801 of title 20,

(B) the owner of any private, nonprofit elementary or secondary school building, and

(C) the governing authority of any school operating under the defense dependent's education system provided for under the Defense Dependents' Education Act of 1978 (20 U.S.C. 921 and following).

(4) Repair

The term "repair", with respect to a drinking water cooler, to take such corrective action as is necessary to ensure that water cooler is lead free.

(5) Replacement

The term "replacement", when used with respect to a drinking water cooler, means the permanent removal of the water cooler and the installation of a lead free water cooler.

(6) School

The term "school" means any elementary school or secondary school as defined in section 7801 of title 20 and any kindergarten or day care facility.

(7) Lead-lined tank

The term "lead-lined tank" means a water reservoir container in a drinking water cooler which container is constructed of lead or which has an interior surface which is not lead free.
§ 300j–22. Recall of drinking water coolers with lead-lined tanks

For purposes of the Consumer Product Safety Act [15 U.S.C. 2051 et seq.], all drinking water coolers identified by the Administrator on the list under section 300j–23 of this title as having a lead-lined tank shall be considered to be imminently hazardous consumer products within the meaning of section 12 of such Act (15 U.S.C. 2061). After notice and opportunity for comment, including a public hearing, the Consumer Product Safety Commission shall issue an order requiring the manufacturers and importers of such coolers to repair, replace, or recall and provide a refund for such coolers within 1 year after October 31, 1988. For purposes of enforcement, such order shall be treated as an order under section 15(d) of such Act (15 U.S.C. 2064(d)).


AMENDMENTS
1996—Pub. L. 104–182 made technical amendment to section catchline and subsec. (a) designation.

§ 300j–23. Drinking water coolers containing lead

(a) Publication of lists

The Administrator shall, after notice and opportunity for public comment, identify each brand and model of drinking water cooler which is not lead free, including each brand and model of drinking water cooler which has a lead-lined tank. For purposes of identifying the brand and model of drinking water coolers under this subsection, the Administrator shall use the best information available to the Environmental Protection Agency. Within 100 days after October 31, 1988, the Administrator shall publish a list of each brand and model of drinking water cooler identified under this subsection. Such list shall separately identify each brand and model of cooler which has a lead-lined tank. The Administrator shall continue to gather information regarding lead in drinking water coolers and shall revise and republish the list from time to time as may be appropriate as new information or analysis becomes available regarding lead contamination in drinking water coolers.

(b) Prohibition

No person may sell in interstate commerce, or manufacture for sale in interstate commerce, any drinking water cooler listed under subsection (a) of this section or any other drinking water cooler which is not lead free, including a lead-lined drinking water cooler.

(c) Criminal penalty

Any person who knowingly violates the prohibition contained in subsection (b) of this section shall be imprisoned for not more than 5 years, or fined in accordance with title 18, or both.

(d) Civil penalty

The Administrator may bring a civil action in the appropriate United States District Court (as determined under the provisions of title 28) to impose a civil penalty on any person who violates subsection (b) of this section. In any such action the court may impose on such person a civil penalty of not more than $5,000 ($50,000 in the case of a second or subsequent violation).


AMENDMENTS
1996—Pub. L. 104–182 made technical amendment to section catchline and first word of text.
§ 300j–25. Federal assistance for State programs regarding lead contamination in drinking water

(a) School drinking water programs

The Administrator shall make grants to States to establish and carry out State programs under section 300j–24 of this title to assist local educational agencies in testing for, and remedying, lead contamination in drinking water from coolers and from other sources of lead contamination at schools under the jurisdiction of such agencies.

(b) Limits

Each grant under this section shall be used by the State for testing water coolers in accordance with section 300j–24 of this title, for testing for lead contamination in other drinking water supplies under section 300j–24 of this title, or for remedial action under State programs under section 300j–24 of this title. Not more than 5 percent of the grant may be used for program administration.

(c) Authorization of appropriations

There are authorized to be appropriated to carry out this section not more than $30,000,000 for fiscal year 1989, $30,000,000 for fiscal year 1990, and $30,000,000 for fiscal year 1991.


Subsec. (b). Pub. L. 104–182, § 501(d), substituted “by the State” for “as by the State”.

§ 300j–26. Certification of testing laboratories

The Administrator of the Environmental Protection Agency shall assure that programs for the certification of testing laboratories which test drinking water supplies for lead contamination certify only those laboratories which provide reliable accurate testing. The Administrator (or the State in the case of a State to which certification authority is delegated under this subsection) shall publish and make available to the public upon request the list of laboratories certified under this subsection.

(1) Testing and remedying lead contamination

Within 9 months after October 31, 1988, each State shall establish a program, consistent with this section, to assist local educational agencies in testing for, and remedying, lead contamination in drinking water from coolers and from other sources of lead contamination at schools under the jurisdiction of such agencies.

(2) Public availability

A copy of the results of any testing under paragraph (1) shall be available in the administrative offices of the local educational agency for inspection by the public, including teachers, other school personnel, and parents. The local educational agency shall notify parents, teacher, and employee organizations of the availability of such testing results.

(3) Coolers

In the case of drinking water coolers, such program shall include measures for the reduction or elimination of lead contamination from those water coolers which are not lead free and which are located in schools. Such measures shall be adequate to ensure that within 15 months after October 31, 1988, all such water coolers in schools under the jurisdiction of such agencies are repaired, replaced, permanently removed, or rendered inoperable unless the cooler is tested and found (within the limits of testing accuracy) not to contribute lead to drinking water.

(4) Remedial action program

Within 9 months after October 31, 1988, each State shall establish and carry out a program to assist local educational agencies in testing for, and remedying, lead contamination in drinking water from coolers and from other sources of lead contamination at schools under the jurisdiction of such agencies.

(5) Remedial action

Within 9 months after October 31, 1988, each State shall establish and carry out a program to assist local educational agencies in testing for, and remedying, lead contamination in drinking water from coolers and from other sources of lead contamination at schools under the jurisdiction of such agencies.

(6) Remedial action program

Within 9 months after October 31, 1988, each State shall establish and carry out a program to assist local educational agencies in testing for, and remedying, lead contamination in drinking water from coolers and from other sources of lead contamination at schools under the jurisdiction of such agencies.

AMENDMENTS


Subsec. (b). Pub. L. 104–182, § 501(d), substituted “by the State” for “as by the State”.

§ 300k. Establishment of program of grants to States

(a) In general

The Secretary, acting through the Director of the Centers for Disease Control and Prevention, may make grants to States on the basis of an established competitive review process for the purpose of carrying out programs—

(1) to screen women for breast and cervical cancer as a preventive health measure;

(2) to provide appropriate referrals for medical treatment of women screened pursuant to paragraph (1) and to ensure, to the extent practicable, the provision of appropriate follow-up services and support services such as case management;

(3) to develop and disseminate public information and education programs for the detection and control of breast and cervical cancer;

(4) to improve the education, training, and skills of health professionals (including allied health professionals) in the detection and control of breast and cervical cancer;

(5) to establish mechanisms through which the States can monitor the quality of screening procedures for breast and cervical cancer, including the interpretation of such procedures; and

1 So in original. Probably should be “section.”
CHAPTER 82—SOLID WASTE DISPOSAL

SUBCHAPTER I—GENERAL PROVISIONS

Sec.
6901. Congressional findings.
6901a. Congressional findings: used oil recycling.
6902. Objectives and national policy.
6903. Definitions.
6904. Governmental cooperation.
6905. Application of chapter and integration with other Acts.
6906. Financial disclosure.
6907. Solid waste management information and guidelines.
6908. Small town environmental planning.
6908a. Agreements with Indian tribes.

SUBCHAPTER II—OFFICE OF SOLID WASTE; AUTHORITIES OF THE ADMINISTRATOR

6911. Office of Solid Waste and Interagency Coordinating Committee.
6911a. Assistant Administrator of Environmental Protection Agency; appointment, etc.
6912. Authorities of Administrator.
6914. Grants for discarded tire disposal.
6914a. Labeling of lubricating oil.
6914b. Degradable plastic ring carriers; definitions.
6914b–1. Regulation of plastic ring carriers.
6915. Annual report.
6916. General authorization.

SUBCHAPTER III—HAZARDOUS WASTE MANAGEMENT

6921. Identification and listing of hazardous waste.
6922. Standards applicable to generators of hazardous waste.
6923. Standards applicable to transporters of hazardous waste.
6924. Standards applicable to owners and operators of hazardous waste treatment, storage, and disposal facilities.
6925. Permits for treatment, storage, or disposal of hazardous waste.
6926. Authorized State hazardous waste programs.
6927. Inspections.
6928. Federal enforcement.
6929. Retention of State authority.
6930. Effective date.
6931. Authorization of assistance to States.
6932. Transferred.
6933. Hazardous waste site inventory.
6934. Monitoring, analysis, and testing.
6935. Restrictions on recycled oil.
6936. Expansion during interim status.
6937. Inventory of Federal agency hazardous waste facilities.
6938. Export of hazardous wastes.
6939. Domestic sewage.
6939a. Exposure information and health assessments.
6939b. Interim control of hazardous waste injection.
6939c. Mixed waste inventory reports and plan.
6939d. Public vessels.
6939e. Federally owned treatment works.
6939f. Long-term storage.
6939g. Hazardous waste electronic manifest system.

SUBCHAPTER IV—STATE OR REGIONAL SOLID WASTE PLANS

6941. Objectives of subchapter.
6941a. Energy and materials conservation and recovery; Congressional findings.
6942. Federal guidelines for plans.
6943. Requirements for approval of plans.
6944. Criteria for sanitary landfills; sanitary landfills required for all disposal.
6945. Upgrading of open dumps.
6946. Procedure for development and implementation of State plan.
6947. Approval of State plan; Federal assistance.
6948. Federal assistance.
6949. Rural communities assistance.
6949a. Adequacy of certain guidelines and criteria.

SUBCHAPTER V—DUTIES OF SECRETARY OF COMMERCE IN RESOURCE AND RECOVERY

6951. Functions.
6954. Technology promotion.
6955. Marketing policies, establishment; nondiscrimination requirement.
6956. Authorization of appropriations.

SUBCHAPTER VI—FEDERAL RESPONSIBILITIES

6961. Application of Federal, State, and local law to Federal facilities.
6962. Federal procurement.
6963. Cooperation with Environmental Protection Agency.
6964. Applicability of solid waste disposal guidelines to Executive agencies.
6965. Chief Financial Officer report.
6966. Increased use of recovered mineral component in federally funded projects involving procurement
of cement or concrete.
6966a. Increased use of recovered mineral component in federally funded projects involving procurement
of cement or concrete.
6966b. Use of granular mine tailings.
6966c. Best practices for battery recycling and labeling guidelines.
6966d. Consumer recycling education and outreach grant program; Federal procurement.

SUBCHAPTER VII—MISCELLANEOUS PROVISIONS

6971. Employee protection.
6972. Citizen suits.
6973. Imminent hazard.
6974. Petition for regulations; public participation.
6975. Separability.
6976. Judicial review.
6977. Grants or contracts for training projects.
6978. Payments.
6979. Labor standards.
6979a. Transferred.
6979b. Law enforcement authority.

SUBCHAPTER VIII—RESEARCH, DEVELOPMENT, DEMONSTRATION, AND INFORMATION

6981. Research, demonstration, training, and other activities.
6982. Special studies; plans for research, development, and demonstrations.
6983. Coordination, collection, and dissemination of information.
6984. Full-scale demonstration facilities.
6985. Special study and demonstration projects on recovery of useful energy and materials.
6986. Grants for resource recovery systems and improved solid waste disposal facilities.
6987. Authorization of appropriations.

SUBCHAPTER IX—REGULATION OF UNDERGROUND STORAGE TANKS

6991. Definitions and exemptions.
6991a. Notification.
6991b. Release detection, prevention, and correction regulations.
6991c. Approval of State programs.
6991d. Inspections, monitoring, testing, and corrective action.
6991e. Federal enforcement.
6991f. Federal facilities.
6991g. State authority.
6991h. Study of underground storage tanks.
6991i. Operator training.
6991j. Use of funds for release prevention and compliance.
6991k. Delivery prohibition.
6991l. Tanks on tribal lands.
6991m. Authorization of appropriations.

SUBCHAPTER X—DEMONSTRATION MEDICAL WASTE TRACKING PROGRAM

6992. Scope of demonstration program for medical waste.
6992a. Listing of medical wastes.
6992b. Tracking of medical waste.
§6901. Congressional findings

(a) Solid waste
The Congress finds with respect to solid waste—

(1) that the continuing technological progress and improvement in methods of manufacture, packaging, and marketing of consumer products has resulted in an ever-mounting increase, and in a change in the characteristics, of the mass material discarded by the purchaser of such products;

(2) that the economic and population growth of our Nation, and the improvements in the standard of living enjoyed by our population, have required increased industrial production to meet our needs, and have made necessary the demolition of old buildings, the construction of new buildings, and the provision of highways and other avenues of transportation, which, together with related industrial, commercial, and agricultural operations, have resulted in a rising tide of scrap, discarded, and waste materials;

(3) that the continuing concentration of our population in expanding metropolitan and other urban areas has presented these communities with serious financial, management, intergovernmental, and technical problems in the disposal of solid wastes resulting from the industrial, commercial, domestic, and other activities carried on in such areas;

(4) that while the collection and disposal of solid wastes should continue to be primarily the function of State, regional, and local agencies, the problems of waste disposal as set forth above have become a matter national in scope and in concern and necessitate Federal action through financial and technical assistance and leadership in the development, demonstration, and application of new and improved methods and processes to reduce the amount of waste and unsalvageable materials and to provide for proper and economical solid waste disposal practices.

(b) Environment and health
The Congress finds with respect to the environment and health, that—

(1) although land is too valuable a national resource to be needlessly polluted by discarded materials, most solid waste is disposed of on land in open dumps and sanitary landfills;

(2) disposal of solid waste and hazardous waste in or on the land without careful planning and management can present a danger to human health and the environment;

(3) as a result of the Clean Air Act [42 U.S.C. 7401 et seq.], the Water Pollution Control Act [33 U.S.C. 1251 et seq.], and other Federal and State laws respecting public health and the environment, greater amounts of solid waste (in the form of sludge and other pollution treatment residues) have been created. Similarly, inadequate and environmentally unsound practices for the disposal or use of solid waste have created greater amounts of air and water pollution and other problems for the environment and for health;

(4) open dumping is particularly harmful to health, contaminates drinking water from underground and surface supplies, and pollutes the air and the land;

(5) the placement of inadequate controls on hazardous waste management will result in substantial risks to human health and the environment;

(6) if hazardous waste management is improperly performed in the first instance, corrective action is likely to be expensive, complex, and time consuming;

(7) certain classes of land disposal facilities are not capable of assuring long-term containment of certain hazardous wastes, and to avoid substantial risk to human health and the environment, reliance on land disposal should be minimized or eliminated, and land disposal, particularly landfill and surface impoundment, should be the least favored method for managing hazardous wastes; and

(8) alternatives to existing methods of land disposal must be developed since many of the cities in the United States will be running out of suitable solid waste disposal sites within five years unless immediate action is taken.

(c) Materials
The Congress finds with respect to materials, that—

(1) millions of tons of recoverable material which could be used are needlessly buried each year;

(2) methods are available to separate usable materials from solid waste; and

(3) the recovery and conservation of such materials can reduce the dependence of the United States on foreign resources and reduce the deficit in its balance of payments.

(d) Energy
The Congress finds with respect to energy, that—

(1) solid waste represents a potential source of solid fuel, oil, or gas that can be converted into energy;
(2) the need exists to develop alternative energy sources for public and private consumption in order to reduce our dependence on such sources as petroleum products, natural gas, nuclear and hydroelectric generation; and
(3) technology exists to produce usable energy from solid waste.


EDITORIAL NOTES

REFERENCES IN TEXT

The Clean Air Act, referred to in subsec. (b)(3), is act July 14, 1955, ch. 360, 69 Stat. 322, as amended, which is classified generally to chapter 85 (§7401 et seq.) of this title. For complete classification of this Act to the Code, see Short Title note set out under section 7401 of this title and Tables.

The Water Pollution Control Act, referred to in subsec. (b)(3), probably means act June 30, 1948, ch. 758, 62 Stat. 1155, as amended. The Water Pollution Control Act is classified generally to chapter 26 (§1251 et seq.) of Title 33, Navigation and Navigable Waters. For complete classification of this Act to the Code, see Short Title note set out under section 1251 of Title 33 and Tables.

CODIFICATION


The act, as set out in this chapter, carries a statutory credit showing the sections as having been added by Pub. L. 94–580, without reference to amendments to the act between its original enactment in 1965 and its complete revision in 1976. The act, as originally enacted in 1965, was classified to section 3251 et seq. of this title. For a recapitulation of the provisions of the act as originally enacted, see notes in chapter 39 (§3251 et seq.) of this title where the act was originally set out.

PRIOR PROVISIONS

Provisions similar to those in this section were contained in section 3251 of this title prior to the general amendment of the Solid Waste Disposal Act by Pub. L. 94–580.

AMENDMENTS

1984—Subsec. (b)(5) to (8). Pub. L. 98–616 added pars. (5) to (7), struck out former par. (5) providing that "hazardous waste presents, in addition to the problems associated with non-hazardous solid waste, special dangers to health and requires a greater degree of regulation than does non-hazardous solid waste; and", redesignated former par. (6) as (8), and substituted a period for the semicolon at end.


STATUTORY NOTES AND RELATED SUBSIDIARIES

SHORT TITLE OF 2012 AMENDMENT

Pub. L. 112–195, §1, Oct. 5, 2012, 126 Stat. 1452, provided that: "This Act [enacting section 6939g of this title] may be cited as the 'Hazardous Waste Electronic Manifest Establishment Act'."

SHORT TITLE OF 2005 AMENDMENT

Pub. L. 109–58, title XV, §1521, Aug. 8, 2005, 119 Stat. 1092, provided that: "This subtitle [subtitle B (§§1521–1533) of title XV of Pub. L. 109–58, enacting sections 6991 to 6991m of this title, amending sections 6991 to 6991f, 6991h, and 6991i of this title, and enacting provisions set out as notes under section 6991b of this title] may be cited as the 'Underground Storage Tank Compliance Act'."

SHORT TITLE OF 1996 AMENDMENT

Pub. L. 104–119, §1, Mar. 26, 1996, 110 Stat. 830, provided that: "This Act [amending sections 6921, 6924, 6925, 6947, and 6949a of this title and enacting provisions set out as a note under section 6949a of this title] may be cited as the 'Land Disposal Program Flexibility Act of 1996'."

SHORT TITLE OF 1992 AMENDMENT

Pub. L. 102–386, title I, §101, Oct. 6, 1992, 106 Stat. 1505, provided that: "This title [enacting sections 6908, 6939c to 6939e, and 6965 of this title, amending sections 6903, 6924, 6927, and 6961 of this title, and enacting provisions set out as notes under sections 6939c and 6961 of this title] may be cited as the 'Federal Facility Compliance Act of 1992'."
SHORT TITLE OF 1988 AMENDMENT

Pub. L. 100–582, §1, Nov. 1, 1988, 102 Stat. 2950, provided that: "This Act [enacting sections 6992 to 6992k of this title and section 3063 of Title 18, Crimes and Criminal Procedure, and amending section 6903 of this title] may be cited as the 'Medical Waste Tracking Act of 1988'."

SHORT TITLE OF 1984 AMENDMENT

Pub. L. 98–616, §1, Nov. 8, 1984, 98 Stat. 3221, provided that: "This Act [enacting sections 6917, 6936 to 6939a, 6949a, 6979a, 6979b, and 6991 to 69911 of this title, amending this section and sections 6902, 6905, 6912, 6915, 6916, 6921 to 6933, 6935, 6941 to 6945, 6948, 6956, 6962, 6972, 6973, 6976, 6982 and 6984 of this title and enacting provisions set out as notes under sections 6905, 6921 and 6926 of this title] may be cited as 'The Hazardous and Solid Waste Amendments of 1984'."

SHORT TITLE OF 1980 AMENDMENTS

Pub. L. 96–482, §1, Oct. 21, 1980, 94 Stat. 2334, provided: "This Act [enacting sections 6933, 6934, 6941a, 6955, and 6956 of this title, amending sections 6903, 6905, 6912, 6916, 6921, 6922, 6924, 6925, 6927 to 6931, 6941 to 6943, 6945, 6946, 6948, 6949, 6952, 6953, 6962, 6963, 6964, 6971, 6973, 6974, 6976, 6979, and 6982 of this title; and enacting and repealing provisions set out as a note under section 6981 of this title] may be cited as the 'Solid Waste Disposal Act Amendments of 1980'."

Pub. L. 96–463, §1, Oct. 15, 1980, 94 Stat. 2055, provided: "This Act [enacting sections 6901a, 6914a and 6932 of this title, amending sections 6903, 6943 and 6948 of this title, and enacting provisions set out as notes under sections 6363 and 6932 of this title] may be cited as the 'Used Oil Recycling Act of 1980'."

SHORT TITLE OF 1976 AMENDMENT

Pub. L. 94–580, §1, Oct. 21, 1976, 90 Stat. 2795, provided that: "This Act [enacting this chapter and provisions set out as notes under this section and section 6981 of this title] may be cited as the 'Resource Conservation and Recovery Act of 1976'."

SHORT TITLE

Pub. L. 89–272, title II, §1001, as added by Pub. L. 94–580, §2, Oct. 21, 1976, 90 Stat. 2795, provided that: "This title (hereinafter in this title referred to as 'this Act'), together with the following table of contents, may be cited as the 'Solid Waste Disposal Act' " [table of contents omitted].

NATIONAL COMMISSION ON MATERIALS POLICY

Pub. L. 91–512, title II, §§201–206, Oct. 26, 1970, 84 Stat. 1234, known as the "National Materials Policy Act of 1970", provided for the establishment of the National Commission on Materials Policy to make a full investigation and study for the purpose of developing a national materials policy to utilize present resources and technology more efficiently and to anticipate the future materials requirements of the Nation and the world, the Commission to submit to the President and Congress a report on its findings and recommendations no later than June 30, 1973, ninety days after the submission of which it should cease to exist.

EXECUTIVE DOCUMENTS

FEDERAL COMPLIANCE WITH POLLUTION CONTROL STANDARDS

For provisions relating to the responsibility of the head of each Executive agency for compliance with applicable pollution control standards, see Ex. Ord. No. 12088, Oct. 13, 1978, 43 F.R. 47707, set out as a note under section 4321 of this title.

§6901a. Congressional findings: used oil recycling

The Congress finds and declares that—

1. used oil is a valuable source of increasingly scarce energy and materials;
2. technology exists to re-refine, reprocess, reclaim, and otherwise recycle used oil;
3. used oil constitutes a threat to public health and the environment when reused or disposed of improperly; and

that, therefore, it is in the national interest to recycle used oil in a manner which does not constitute a threat to public health and the environment and which conserves energy and materials.


EDITORIAL NOTES
CODIFICATION

Section was enacted as part of the Used Oil Recycling Act of 1980, and not as part of the Solid Waste Disposal Act which comprises this chapter.

§6902. Objectives and national policy

(a) Objectives

The objectives of this chapter are to promote the protection of health and the environment and to conserve valuable material and energy resources by—

1. providing technical and financial assistance to State and local governments and interstate agencies for the development of solid waste management plans (including resource recovery and resource conservation systems) which will promote improved solid waste management techniques (including more effective organizational arrangements), new and improved methods of collection, separation, and recovery of solid waste, and the environmentally safe disposal of nonrecoverable residues;
2. providing training grants in occupations involving the design, operation, and maintenance of solid waste disposal systems;
3. prohibiting future open dumping on the land and requiring the conversion of existing open dumps to facilities which do not pose a danger to the environment or to health;
4. assuring that hazardous waste management practices are conducted in a manner which protects human health and the environment;
5. requiring that hazardous waste be properly managed in the first instance thereby reducing the need for corrective action at a future date;
6. minimizing the generation of hazardous waste and the land disposal of hazardous waste by encouraging process substitution, materials recovery, properly conducted recycling and reuse, and treatment;
7. establishing a viable Federal-State partnership to carry out the purposes of this chapter and insuring that the Administrator will, in carrying out the provisions of subchapter III of this chapter, give a high priority to assisting and cooperating with States in obtaining full authorization of State programs under subchapter III;
8. providing for the promulgation of guidelines for solid waste collection, transport, separation, recovery, and disposal practices and systems;
9. promoting a national research and development program for improved solid waste management and resource conservation techniques, more effective organizational arrangements, and new and improved methods of collection, separation, and recovery, and recycling of solid wastes and environmentally safe disposal of nonrecoverable residues;
10. promoting the demonstration, construction, and application of solid waste management, resource recovery, and resource conservation systems which preserve and enhance the quality of air, water, and land resources; and
11. establishing a cooperative effort among the Federal, State, and local governments and private enterprise in order to recover valuable materials and energy from solid waste.

(b) National policy

The Congress hereby declares it to be the national policy of the United States that, wherever feasible, the generation of hazardous waste is to be reduced or eliminated as expeditiously as possible. Waste that is nevertheless generated should be treated, stored, or disposed of so as to minimize the present and future threat to human health and the environment.


EDITORIAL NOTES

PRIOR PROVISIONS

Provisions similar to those in this section were contained in section 3251 of this title, prior to the general amendment of the Solid Waste Disposal Act by Pub. L. 94–580.

AMENDMENTS

Subsec. (a)(4) to (11). Pub. L. 98–616, §101(b)(2), struck out par. (4) which provided for regulating the treatment, storage, transportation, and disposal of hazardous wastes which have adverse effects on health and the environment, added pars. (4) to (7), and redesignated former pars. (5) to (8) as (8) to (11), respectively.

§6903. Definitions

As used in this chapter:
1. The term "Administrator" means the Administrator of the Environmental Protection Agency.
(2) The term "construction," with respect to any project of construction under this chapter, means (A) the erection or building of new structures and acquisition of lands or interests therein, or the acquisition, replacement, expansion, remodeling, alteration, modernization, or extension of existing structures, and (B) the acquisition and installation of initial equipment of, or required in connection with, new or newly acquired structures or the expanded, remodeled, altered, modernized or extended part of existing structures (including trucks and other motor vehicles, and tractors, cranes, and other machinery) necessary for the proper utilization and operation of the facility after completion of the project; and includes preliminary planning to determine the economic and engineering feasibility and the public health and safety aspects of the project, the engineering, architectural, legal, fiscal, and economic investigations and studies, and any surveys, designs, plans, working drawings, specifications, and other action necessary for the carrying out of the project, and (C) the inspection and supervision of the process of carrying out the project to completion.

(2A) The term "demonstration" means the initial exhibition of a new technology process or practice or a significantly new combination or use of technologies, processes or practices, subsequent to the development stage, for the purpose of proving technological feasibility and cost effectiveness.

(3) The term "disposal" means the discharge, deposit, injection, dumping, spilling, leaking, or placing of any solid waste or hazardous waste into or on any land or water so that such solid waste or hazardous waste or any constituent thereof may enter the environment or be emitted into the air or discharged into any waters, including ground waters.


(5) The term "hazardous waste" means a solid waste, or combination of solid wastes, which because of its quantity, concentration, or physical, chemical, or infectious characteristics may—
   (A) cause, or significantly contribute to an increase in mortality or an increase in serious irreversible, or incapacitating reversible, illness; or
   (B) pose a substantial present or potential hazard to human health or the environment when improperly treated, stored, transported, or disposed of, or otherwise managed.

(6) The term "hazardous waste generation" means the act or process of producing hazardous waste.

(7) The term "hazardous waste management" means the systematic control of the collection, source separation, storage, transportation, processing, treatment, recovery, and disposal of hazardous wastes.

(8) For purposes of Federal financial assistance (other than rural communities assistance), the term "implementation" does not include the acquisition, leasing, construction, or modification of facilities or equipment or the acquisition, leasing, or improvement of land.

(9) The term "intermunicipal agency" means an agency established by two or more municipalities with responsibility for planning or administration of solid waste.

(10) The term "interstate agency" means an agency of two or more municipalities in different States, or an agency established by two or more States, with authority to provide for the management of solid wastes and serving two or more municipalities located in different States.

(11) The term "long-term contract" means, when used in relation to solid waste supply, a contract of sufficient duration to assure the viability of a resource recovery facility (to the extent that such viability depends upon solid waste supply).

(12) The term "manifest" means the form used for identifying the quantity, composition, and the origin, routing, and destination of hazardous waste during its transportation from the point of generation to the point of disposal, treatment, or storage.

(13) The term "municipality" (A) means a city, town, borough, county, parish, district, or other public body created by or pursuant to State law, with responsibility for the planning or administration of solid waste management, or an Indian tribe or authorized tribal organization or Alaska Native village or organization, and (B) includes any rural community or unincorporated town or village or any other public entity for which an application for assistance is made by a State or political subdivision thereof.

(14) The term "open dump" means any facility or site where solid waste is disposed of which is not a sanitary landfill which meets the criteria promulgated under section 6944 of this title and which is not a facility for disposal of hazardous waste.

(15) The term "person" means an individual, trust, firm, joint stock company, corporation (including a government corporation), partnership, association, State, municipality, commission, political subdivision of a State, or any interstate body and shall include each department, agency, and instrumentality of the United States.

(16) The term "procurement item" means any device, good, substance, material, product, or other item whether real or personal property which is the subject of any purchase, barter, or other exchange made to procure such item.

(17) The term "procuring agency" means any Federal agency, or any State agency or agency of a political subdivision of a State which is using appropriated Federal funds for such procurement, or any person contracting with any such agency with respect to work performed under such contract.

(18) The term "recoverable" refers to the capability and likelihood of being recovered from solid waste for a commercial or industrial use.

(19) The term "recovered material" means waste material and byproducts which have been recovered or diverted from solid waste, but such term does not include those materials and byproducts generated from, and commonly reused within, an original manufacturing process.

(20) The term "recovered resources" means material or energy recovered from solid waste.

(21) The term "resource conservation" means reduction of the amounts of solid waste that are generated, reduction of overall resource consumption, and utilization of recovered resources.

(22) The term "resource recovery" means the recovery of material or energy from solid waste.
(23) The term "resource recovery system" means a solid waste management system which provides for collection, separation, recycling, and recovery of solid wastes, including disposal of nonrecoverable waste residues.

(24) The term "resource recovery facility" means any facility at which solid waste is processed for the purpose of extracting, converting to energy, or otherwise separating and preparing solid waste for reuse.

(25) The term "regional authority" means the authority established or designated under section 6946 of this title.

(26) The term "sanitary landfill" means a facility for the disposal of solid waste which meets the criteria published under section 6944 of this title.

(26A) The term "sludge" means any solid, semisolid or liquid waste generated from a municipal, commercial, or industrial wastewater treatment plant, water supply treatment plant, or air pollution control facility or any other such waste having similar characteristics and effects.

(27) The term "solid waste" means any garbage, refuse, sludge from a waste treatment plant, water supply treatment plant, or air pollution control facility and other discarded material, including solid, liquid, semisolid, or contained gaseous material resulting from industrial, commercial, mining, and agricultural operations, and from community activities, but does not include solid or dissolved material in domestic sewage, or solid or dissolved materials in irrigation return flows or industrial discharges which are point sources subject to permits under section 1342 of title 33, or source, special nuclear, or byproduct material as defined by the Atomic Energy Act of 1954, as amended (68 Stat. 923) [42 U.S.C. 2011 et seq.].

(28) The term "solid waste management" means the systematic administration of activities which provide for the collection, source separation, storage, transportation, transfer, processing, treatment, and disposal of solid waste.

(29) The term "solid waste management facility" includes—
(A) any resource recovery system or component thereof,
(B) any system, program, or facility for resource conservation, and
(C) any facility for the collection, source separation, storage, transportation, transfer, processing, treatment or disposal of solid wastes, including hazardous wastes, whether such facility is associated with facilities generating such wastes or otherwise.

(30) The terms "solid waste planning", "solid waste management", and "comprehensive planning" include planning or management respecting resource recovery and resource conservation.

(31) The term "State" means any of the several States, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, Guam, American Samoa, and the Commonwealth of the Northern Mariana Islands.

(32) The term "State authority" means the agency established or designated under section 6947 of this title.

(33) The term "storage", when used in connection with hazardous waste, means the containment of hazardous waste, either on a temporary basis or for a period of years, in such a manner as not to constitute disposal of such hazardous waste.

(34) The term "treatment", when used in connection with hazardous waste, means any method, technique, or process, including neutralization, designed to change the physical, chemical, or biological character or composition of any hazardous waste so as to neutralize such waste or so as to render such waste nonhazardous, safer for transport, amenable for recovery, amenable for storage, or reduced in volume. Such term includes any activity or processing designed to change the physical form or chemical composition of hazardous waste so as to render it nonhazardous.

(35) The term "vitrified material" means a raw material, including previously unused copper, aluminum, lead, zinc, iron, or other metal or metal ore, any undeveloped resource that is, or with new technology will become, a source of raw materials.

(36) The term "used oil" means any oil which has been—
(A) refined from crude oil,
(B) used, and
(C) as a result of such use, contaminated by physical or chemical impurities.

(37) The term "recycled oil" means any used oil which is reused, following its original use, for any purpose (including the purpose for which the oil was originally used). Such term includes oil which is re-refined, reclaimed, burned, or reprocessed.

(38) The term "lubricating oil" means the fraction of crude oil which is sold for purposes of reducing friction in any industrial or mechanical device. Such term includes re-refined oil.

(39) The term "re-refined oil" means used oil from which the physical and chemical contaminants acquired through previous use have been removed through a refining process.

(40) Except as otherwise provided in this paragraph, the term "medical waste" means any solid waste which is generated in the diagnosis, treatment, or immunization of human beings or animals, in research pertaining thereto, or in the production or testing of biologicals. Such term does not include any hazardous waste identified or listed under subchapter III or any household waste as defined in regulations under subchapter III.

(41) The term "mixed waste" means waste that contains both hazardous waste and source, special nuclear, or by-product material subject to the Atomic Energy Act of 1954 (42 U.S.C. 2011 et seq.).


EDITORIAL NOTES

REFERENCES IN TEXT

The Atomic Energy Act of 1954, referred to in pars. (27) and (41), is act Aug. 1, 1946, ch. 724, as added by act Aug. 30, 1954, ch. 1073, §1, 68 Stat. 919, which is classified principally to chapter 23 (§2011 et seq.) of this
title. For complete classification of this Act to the Code, see Short Title note set out under section 2011 of this title and Tables.

PRIOR PROVISIONS

Provisions similar to those in this section were contained in section 3252 of this title, prior to the general amendment of the Solid Waste Disposal Act by Pub. L. 94–580.

AMENDMENTS

1992—Par. (15). Pub. L. 102–386, §103, inserted before period at end "and shall include each department, agency, and instrumentality of the United States".


1980—Par. (14). Pub. L. 96–482, §2(a), defined "open dump" to include a facility, substituted requirement that disposal facility or site not be a sanitary landfill meeting section 6944 of this title criteria for prior requirement that disposal site not be a sanitary landfill within meaning of section 6944 of this title, and required that the disposal facility or site not be a facility for disposal of hazardous waste.

Par. (19). Pub. L. 96–482, §2(b), defined "recovered material" to cover byproducts, substituted provision for recovery or diversion of waste material and byproducts from solid waste for prior provision for collection or recovery of material from solid waste, and excluded materials and byproducts generated from and commonly reused within an original manufacturing process.


1978—Par. (8). Pub. L. 95–609, §7(b)(1), struck out provision stating that employees' salaries due pursuant to subchapter IV of this chapter would not be included after Dec. 31, 1979.

Par. (10). Pub. L. 95–609, §7(b)(2), substituted "management" for "disposal".

Par. (29)(C). Pub. L. 95–609, §7(b)(3), substituted "the collection, source separation, storage, transportation, transfer, processing, treatment or disposal" for "the treatment".

STATUTORY NOTES AND RELATED SUBSIDIARIES

CHANGE OF NAME


EXECUTIVE DOCUMENTS

TRANSFER OF FUNCTIONS

Enforcement functions of Administrator or other official of Environmental Protection Agency related to compliance with resource conservation and recovery permits used under this chapter with respect to pre-construction, construction, and initial operation of transportation system for Canadian and Alaskan natural gas transferred to Federal Inspector, Office of Federal Inspector for the Alaska Natural Gas Transportation System, until first anniversary of date of initial operation of Alaska Natural Gas Transportation System, see Reorg. Plan No. 1 of 1979, eff. July 1, 1979, §§102(a), 203(a), 44 F.R. 33663, 33666, 93 Stat. 1373, 1376, set out in the Appendix to Title 5, Government Organization and Employees. Office of Federal Inspector for the Alaska Natural Gas Transportation System abolished and functions and authority vested in Inspector transferred to Secretary of Energy by section 3012(b) of Pub. L. 102–486, set out as an Abolition of Office of Federal Inspector note under section 719e of Title 15, Commerce and Trade. Functions and authority vested in Secretary of Energy subsequently transferred to Federal Coordinator for Alaska Natural Gas Transportation Projects by section 720d(f) of Title 15.

§6904. Governmental cooperation

(a) Interstate cooperation

The provisions of this chapter to be carried out by States may be carried out by interstate agencies and provisions applicable to States may apply to interstate regions where such agencies and regions have been established by the respective States and approved by the Administrator. In any such case, action required to be taken by the Governor of a State, respecting regional designation shall be required to be taken by the Governor of each of the respective States with respect to so much of the interstate region as is within the jurisdiction of that State.

(b) Consent of Congress to compacts
The consent of the Congress is hereby given to two or more States to negotiate and enter into agreements or compacts, not in conflict with any law or treaty of the United States, for—

(1) cooperative effort and mutual assistance for the management of solid waste or hazardous waste (or both) and the enforcement of their respective laws relating thereto, and

(2) the establishment of such agencies, joint or otherwise, as they may deem desirable for making effective such agreements or compacts.

No such agreement or compact shall be binding or obligatory upon any State a party thereto unless it is agreed upon by all parties to the agreement and until it has been approved by the Administrator and the Congress.


EXECUTIVE DOCUMENTS

TRANSFER OF FUNCTIONS

For transfer of certain enforcement functions of Administrator or other official of Environmental Protection Agency under this chapter to Federal Inspector, Office of Federal Inspector for the Alaska Natural Gas Transportation System, and subsequent transfer to Secretary of Energy, then to Federal Coordinator for Alaska Natural Gas Transportation Projects, see note set out under section 6903 of this title.

§6905. Application of chapter and integration with other Acts

(a) Application of chapter

Nothing in this chapter shall be construed to apply to (or to authorize any State, interstate, or local authority to regulate) any activity or substance which is subject to the Federal Water Pollution Control Act [33 U.S.C. 1251 et seq.], the Safe Drinking Water Act [42 U.S.C. 300f et seq.], the Marine Protection, Research and Sanctuaries Act of 1972 [16 U.S.C. 1431 et seq., 1447 et seq., 33 U.S.C. 1401 et seq., 2801 et seq.], or the Atomic Energy Act of 1954 [42 U.S.C. 2011 et seq.] except to the extent that such application (or regulation) is not inconsistent with the requirements of such Acts.

(b) Integration with other Acts

(1) The Administrator shall integrate all provisions of this chapter for purposes of administration and enforcement and shall avoid duplication, to the maximum extent practicable, with the appropriate provisions of the Clean Air Act [42 U.S.C. 7401 et seq.], the Federal Water Pollution Control Act [33 U.S.C. 1251 et seq.], the Federal Insecticide, Fungicide, and Rodenticide Act [7 U.S.C. 136 et seq.], the Safe Drinking Water Act [42 U.S.C. 300f et seq.], the Marine Protection, Research and Sanctuaries Act of 1972 [16 U.S.C. 1431 et seq., 1447 et seq., 33 U.S.C. 1401 et seq., 2801 et seq.], and such other Acts of Congress as grant regulatory authority to the Administrator. Such integration shall be effected only to the extent that it can be done in a manner consistent with the goals and policies expressed in this chapter and in the other acts referred to in this subsection.

(2)(A) As promptly as practicable after November 8, 1984, the Administrator shall submit a report describing—

(i) the current data and information available on emissions of polychlorinated dibenzo-p-dioxins from resource recovery facilities burning municipal solid waste;

(ii) any significant risks to human health posed by these emissions; and

(iii) operating practices appropriate for controlling these emissions.

(B) Based on the report under subparagraph (A) and on any future information on such emissions, the Administrator may publish advisories or guidelines regarding the control of dioxin emissions from such facilities. Nothing in this paragraph shall be construed to preempt or otherwise affect the authority of the Administrator to promulgate any regulations under the Clean Air Act [42 U.S.C. 7401 et seq.] regarding emissions of polychlorinated dibenzo-p-dioxins.

(3) Notwithstanding any other provisions of law, in developing solid waste plans, it is the intention of this chapter that in determining the size of a waste-to-energy facility, adequate provisions shall be given to the present and reasonably anticipated future needs, including those needs created by thorough implementation of section 6952(h) of this title, of the recycling and resource recovery interests within the area encompassed by the solid waste plan.

(c) Integration with the Surface Mining Control and Reclamation Act of 1977

(1) No later than 90 days after October 21, 1980, the Administrator shall review any regulations applicable to the treatment, storage, or disposal of any coal mining wastes or overburden promulgated by the Secretary of the Interior under the Surface Mining and Reclamation Act of 1977 [30 U.S.C. 1201 et seq.]. If the Administrator determines that any requirement of final regulations promulgated under any section of subchapter III relating to mining wastes or overburden is not adequately addressed in such regulations promulgated by the Secretary, the Administrator shall promptly transmit such determination, together with suggested revisions and supporting documentation, to the Secretary.

(2) The Secretary of the Interior shall have exclusive responsibility for carrying out any requirement of subchapter III of this chapter with respect to coal mining wastes or overburden for which a surface coal mining and reclamation permit is issued or approved under the Surface Mining Control and Reclamation Act of 1977 [30 U.S.C. 1201 et seq.]. The Secretary shall, with the concurrence of the Administrator, promulgate such regulations as may be necessary to carry out the purposes of this subsection and shall integrate such regulations with regulations promulgated under the Surface Mining Control and Reclamation Act of 1977.
Editorial Notes

References in Text

The Federal Water Pollution Control Act, referred to in subsecs. (a) and (b), is act June 30, 1948, ch. 758, as amended generally by Pub. L. 92–500, §2, Oct. 18, 1972, 86 Stat. 816, which is classified generally to chapter 26 (§1251 et seq.) of Title 33, Navigation and Navigable Waters. For complete classification of this Act to the Code, see Short Title note set out under section 1251 of Title 33 and Tables.


The Marine Protection, Research and Sanctuaries Act of 1972, referred to in subsecs. (a) and (b), is Pub. L. 92–532, Oct. 23, 1972, 86 Stat. 1052, as amended, which enacted chapters 32 (§1431 et seq.) and 32A (§1447 et seq.) of Title 16, Conservation, and chapters 27 (§1401 et seq.) and 41 (§2801 et seq.) of Title 33, Navigation and Navigable Waters. For complete classification of this Act to the Code, see Short Title note set out under section 1401 of Title 33 and Tables.

The Safe Drinking Water Act, referred to in subsecs. (a) and (b), is title XIV of act July 1, 1944, as added Dec. 16, 1974, Pub. L. 93–523, §2(a), 88 Stat. 1660, as amended, which is classified generally to subchapter XII (§300f et seq.) of chapter 6A of this title. For complete classification of this Act to the Code, see Short Title note set out under section 201 of this title and Tables.

The Clean Air Act, referred to in subsec. (b)(1), (2)(B), is act July 14, 1955, ch. 360, 69 Stat. 322, as amended, which is classified generally to chapter 85 (§7401 et seq.) of this title. For complete classification of this Act to the Code, see Short Title note set out under section 7401 of this title and Tables.


The Surface Mining Control and Reclamation Act of 1977, referred to in subsec. (c), is Pub. L. 95–87, Aug. 3, 1977, 91 Stat. 445, as amended, which is classified generally to chapter 25 (§1201 et seq.) of Title 30, Mineral Lands and Mining. For complete classification of this Act to the Code, see Short Title note set out under section 1201 of Title 30 and Tables.

Prior Provisions

Provisions similar to those in this section were contained in section 3257 of this title, prior to the general amendment of the Solid Waste Disposal Act by Pub. L. 94–580.

Amendments

1984—Subsec. (b)(1), (2). Pub. L. 98–616, §102, designated existing provisions as par. (1) and added par. (2).


Statutory Notes and Related Subsidiaries

Uranium Mill Tailings


Executive Documents

Transfer of Functions

For transfer of certain enforcement functions of Administrator or other official of Environmental Protection Agency under this chapter to Federal Inspector, Office of Federal Inspector for the Alaska Natural Gas Transportation System, and subsequent transfer to Secretary of Energy, then to Federal Coordinator for Alaska Natural Gas Transportation Projects, see note set out under section 6903 of this title.
§6906. Financial disclosure

(a) Statement
Each officer or employee of the Administrator who—

(1) performs any function or duty under this chapter; and

(2) has any known financial interest in any person who applies for or receives financial assistance under this chapter

shall, beginning on February 1, 1977, annually file with the Administrator a written statement concerning all such interests held by such officer or employee during the preceding calendar year. Such statement shall be available to the public.

(b) Action by Administrator
The Administrator shall—

(1) act within ninety days after October 21, 1976—

(A) to define the term "known financial interest" for purposes of subsection (a) of this section; and

(B) to establish the methods by which the requirement to file written statements specified in subsection (a) of this section will be monitored and enforced, including appropriate provision for the filing by such officers and employees of such statements and the review by the Administrator of such statements; and

(2) report to the Congress on June 1, 1978, and of each succeeding calendar year with respect to such disclosures and the actions taken in regard thereto during the preceding calendar year.

(c) Exemption
In the rules prescribed under subsection (b) of this section, the Administrator may identify specific positions within the Environmental Protection Agency which are of a nonpolicy-making nature and provide that officers or employees occupying such positions shall be exempt from the requirements of this section.

(d) Penalty
Any officer or employee who is subject to, and knowingly violates, this section shall be fined not more than $2,500 or imprisoned not more than one year, or both.


Statutory Notes and Related Subsidiaries

Termination of Reporting Requirements
For termination, effective May 15, 2000, of reporting provisions in subsec. (b)(2) of this section, see section 3003 of Pub. L. 104–66, as amended, set out as a note under section 1113 of Title 31, Money and Finance, and the 14th item on page 164 of House Document No. 103–7.

Executive Documents

Transfer of Functions
For transfer of certain enforcement functions of Administrator or other official of Environmental Protection Agency under this chapter to Federal Inspector, Office of Federal Inspector for the Alaska Natural Gas Transportation System, and subsequent transfer to Secretary of Energy, then to Federal Coordinator for Alaska Natural Gas Transportation Projects, see note set out under section 6903 of this title.

§6907. Solid waste management information and guidelines

(a) Guidelines
Within one year of October 21, 1976, and from time to time thereafter, the Administrator shall, in cooperation with appropriate Federal, State, municipal, and intermunicipal agencies, and in consultation with other interested persons, and after public hearings, develop and publish suggested guidelines for solid waste management. Such suggested guidelines shall—

(1) provide a technical and economic description of the level of performance that can be attained by various available solid waste management practices (including operating practices) which provide for the protection of public health and the environment;

(2) not later than two years after October 21, 1976, describe levels of performance, including appropriate methods and degrees of control, that provide at a minimum for (A) protection of public health and welfare; (B) protection of the quality of ground waters and surface waters from leachates; (C) protection of the quality of surface waters from runoff through compliance with effluent limitations under the Federal Water Pollution Control Act, as amended [33 U.S.C. 1251 et seq.]; (D) protection of ambient air quality through compliance with new source performance standards or requirements of air
quality implementation plans under the Clean Air Act, as amended [42 U.S.C. 7401 et seq.]; (E) disease and vector control; (F) safety; and (G) esthetics; and

(3) provide minimum criteria to be used by the States to define those solid waste management practices which constitute the open dumping of solid waste or hazardous waste and are to be prohibited under subchapter IV of this chapter.

Where appropriate, such suggested guidelines also shall include minimum information for use in deciding the adequate location, design, and construction of facilities associated with solid waste management practices, including the consideration of regional, geographic, demographic, and climatic factors.

(b) Notice

The Administrator shall notify the Committee on Environment and Public Works of the Senate and the Committee on Energy and Commerce of the House of Representatives a reasonable time before publishing any suggested guidelines or proposed regulations under this chapter of the content of such proposed suggested guidelines or proposed regulations under this chapter.


EDITORIAL NOTES

REFERENCES IN TEXT

The Federal Water Pollution Control Act, referred to in subsec. (a)(2), is act June 30, 1948, ch. 758, as amended generally by Pub. L. 92–500, §2, Oct. 18, 1972, 86 Stat. 816, which is classified generally to chapter 26 (§1251 et seq.) of Title 33, Navigation and Navigable Waters. For complete classification of this Act to the Code, see Short Title note set out under section 1251 of Title 33 and Tables.

The Clean Air Act, as amended, referred to in subsec. (a)(2), is act July 14, 1955, ch. 360, 69 Stat. 322, as amended, which is classified generally to chapter 85 (§7401 et seq.) of this title. For complete classification of this Act to the Code, see Short Title note set out under section 7401 of this title and Tables.

PRIOR PROVISIONS

Provisions similar to those in this section were contained in section 3254c of this title, prior to the general amendment of the Solid Waste Disposal Act by Pub. L. 94–580.

AMENDMENTS


1978—Subsec. (a)(3). Pub. L. 95–609, §7(c), substituted "subchapter IV of this chapter" for "title IV of this Act".

Subsec. (b). Pub. L. 95–609, §7(d), struck out "pursuant to this section" after "any suggested guidelines" and inserted "or proposed regulations under this chapter" after "suggested guidelines" in two places.

STATUTORY NOTES AND RELATED SUBSIDIARIES

CHANGE OF NAME


EXECUTIVE DOCUMENTS

TRANSFER OF FUNCTIONS

For transfer of certain enforcement functions of Administrator or other official of Environmental Protection Agency under this chapter to Federal Inspector, Office of Federal Inspector for the Alaska Natural Gas Transportation System, and subsequent transfer to Secretary of Energy, then to Federal Coordinator for Alaska Natural Gas Transportation Projects, see note set out under section 6903 of this title.
§6908. Small town environmental planning

(a) Establishment
The Administrator of the Environmental Protection Agency (hereafter referred to as the "Administrator") shall establish a program to assist small communities in planning and financing environmental facilities. The program shall be known as the "Small Town Environmental Planning Program".

(b) Small Town Environmental Planning Task Force
(1) The Administrator shall establish a Small Town Environmental Planning Task Force which shall be composed of representatives of small towns from different areas of the United States, Federal and State governmental agencies, and public interest groups. The Administrator shall terminate the Task Force not later than 2 years after the establishment of the Task Force.
(2) The Task Force shall—
   (A) identify regulations developed pursuant to Federal environmental laws which pose significant compliance problems for small towns;
   (B) identify means to improve the working relationship between the Environmental Protection Agency (hereafter referred to as the Agency) and small towns;
   (C) review proposed regulations for the protection of the environmental and public health and suggest revisions that could improve the ability of small towns to comply with such regulations;
   (D) identify means to promote regionalization of environmental treatment systems and infrastructure serving small towns to improve the economic condition of such systems and infrastructure; and
   (E) provide such other assistance to the Administrator as the Administrator deems appropriate.

(c) Identification of environmental requirements
(1) Not later than 6 months after October 6, 1992, the Administrator shall publish a list of requirements under Federal environmental and public health statutes (and the regulations developed pursuant to such statutes) applicable to small towns. Not less than annually, the Administrator shall make such additions and deletions to and from the list as the Administrator deems appropriate.
(2) The Administrator shall, as part of the Small Town Environmental Planning Program under this section, implement a program to notify small communities of the regulations identified under paragraph (1) and of future regulations and requirements through methods that the Administrator determines to be effective to provide information to the greatest number of small communities, including any of the following:
   (A) Newspapers and other periodicals.
   (B) Other news media.
   (C) Trade, municipal, and other associations that the Administrator determines to be appropriate.
   (D) Direct mail.

(d) Small Town Ombudsman
The Administrator shall establish and staff an Office of the Small Town Ombudsman. The Office shall provide assistance to small towns in connection with the Small Town Environmental Planning Program and other business with the Agency. Each regional office shall identify a small town contact. The Small Town Ombudsman and the regional contacts also may assist larger communities, but only if first priority is given to providing assistance to small towns.

(e) Multi-media permits
(1) The Administrator shall conduct a study of establishing a multi-media permitting program for small towns. Such evaluation shall include an analysis of—
   (A) environmental benefits and liabilities of a multi-media permitting program;
   (B) the potential of using such a program to coordinate a small town's environmental and public health activities; and
   (C) the legal barriers, if any, to the establishment of such a program.

   (2) Within 3 years after October 6, 1992, the Administrator shall report to Congress on the results of the evaluation performed in accordance with paragraph (1). Included in this report shall be a description of the activities conducted pursuant to subsections (a) through (d).

(f) "Small town" defined
For purposes of this section, the term "small town" means an incorporated or unincorporated community (as defined by the Administrator) with a population of less than 2,500 individuals.

(g) Authorization
There is authorized to be appropriated the sum of $500,000 to implement this section.


EDITORIAL NOTES

CODIFICATION
Section was enacted as part of the Federal Facility Compliance Act of 1992, and not as part of the Solid Waste Disposal Act which comprises this chapter.

§6908a. Agreements with Indian tribes

On and after October 21, 1998, the Administrator is authorized to enter into assistance agreements with Federally recognized Indian tribes on such terms and conditions as the Administrator deems appropriate for the development and implementation of programs to manage hazardous waste, and underground storage tanks.


Editorial Notes

Codification

Section was enacted as part of the Departments of Veterans Affairs and Housing and Urban Development, and Independent Agencies Appropriations Act, 1999, and not as part of the Solid Waste Disposal Act which comprises this chapter.

1 So in original. Probably should not be capitalized.

Subchapter II—Office of Solid Waste; Authorities of the Administrator

§6911. Office of Solid Waste and Interagency Coordinating Committee

(a) Office of Solid Waste

The Administrator shall establish within the Environmental Protection Agency an Office of Solid Waste (hereinafter referred to as the "Office") to be headed by an Assistant Administrator of the Environmental Protection Agency. The duties and responsibilities (other than duties and responsibilities relating to research and development) of the Administrator under this chapter (as modified by applicable reorganization plans) shall be carried out through the Office.

(b) Interagency Coordinating Committee

(1) There is hereby established an Interagency Coordinating Committee on Federal Resource Conservation and Recovery Activities which shall have the responsibility for coordinating all activities dealing with resource conservation and recovery from solid waste carried out by the Environmental Protection Agency, the Department of Energy, the Department of Commerce, and all other Federal agencies which conduct such activities pursuant to this chapter or any other Act. For purposes of this subsection, the term "resource conservation and recovery activities" shall include, but not be limited to, all research, development and demonstration projects on resource conservation or energy, or material, recovery from solid waste, and all technical or financial assistance for State or local planning for, or implementation of, projects related to resource conservation or energy or material, recovery from solid waste. The Committee shall be chaired by the Administrator of the Environmental Protection Agency or such person as the Administrator may designate. Members of the Committee shall include representatives of the Department of Energy, the Department of Commerce, the Department of the Treasury, and each other Federal agency which the Administrator determines to have programs or responsibilities affecting resource conservation or recovery.

(2) The Interagency Coordinating Committee shall include oversight of the implementation of

(A) the May 1979 Memorandum of Understanding on Energy Recovery from Municipal Solid Waste between the Environmental Protection Agency and the Department of Energy;


(C) any subsequent agreements between these agencies or other Federal agencies which address Federal resource recovery or conservation activities.


Editorial Notes

References in Text

CODIFICATION

Subsection (b)(3) of this section, which required the Interagency Coordinating Committee to submit to Congress on March 1 of each year, a five-year action plan for Federal resource conservation or recovery activities, terminated, effective May 15, 2000, pursuant to section 3003 of Pub. L. 104–66, as amended, set out as a note under section 1113 of Title 31, Money and Finance. See, also, the 2nd item on page 175 of House Document No. 103–7.

AMENDMENTS

Pub. L. 96–482 designated existing provisions as subsec. (a) and added subsec. (b).

STATUTORY NOTES AND RELATED SUBSIDIARIES

EFFECTIVE DATE OF 1980 AMENDMENT

Pub. L. 96–510, title III, §307(c), Dec. 11, 1980, 94 Stat. 2810, provided that: "The amendment made by subsection (a) [amending this section] shall become effective ninety days after the date of the enactment of this Act [Dec. 11, 1980]."

EXECUTIVE DOCUMENTS

TRANSFER OF FUNCTIONS

For transfer of certain enforcement functions of Administrator or other official of Environmental Protection Agency under this chapter to Federal Inspector, Office of Federal Inspector for the Alaska Natural Gas Transportation System, and subsequent transfer to Secretary of Energy, then to Federal Coordinator for Alaska Natural Gas Transportation Projects, see note set out under section 6903 of this title.

§6911a. Assistant Administrator of Environmental Protection Agency; appointment, etc.

The Assistant Administrator of the Environmental Protection Agency appointed to head the Office of Solid Waste shall be in addition to the five Assistant Administrators of the Environmental Protection Agency provided for in section 1(d) of Reorganization Plan Numbered 3 of 1970 and the additional Assistant Administrator provided by the Toxic Substances Control Act [15 U.S.C. 2601 et seq.], shall be appointed by the President by and with the advice and consent of the Senate. (Pub. L. 96–510, title III, §307(b), Dec. 11, 1980, 94 Stat. 2810; Pub. L. 98–80, §2(c)(2)(B), Aug. 23, 1983, 97 Stat. 485.)

EDITORIAL NOTES

REFERENCES IN TEXT

Reorganization Plan Numbered 3 of 1970, referred to in text, is set out in the Appendix to Title 5, Government Organization and Employees.

The Toxic Substances Control Act, referred to in text, is Pub. L. 94–469, Oct. 11, 1976, 90 Stat. 2003, as amended, which is classified generally to chapter 53 (§2601 et seq.) of Title 15, Commerce and Trade. For complete classification of this Act to the Code, see Short Title note set out under section 2601 of Title 15 and Tables.

CODIFICATION

Section was enacted as part of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, and not as part of the Solid Waste Disposal Act which comprises this chapter.

AMENDMENTS

1983—Pub. L. 98–80 struck out ", and shall be compensated at the rate provided for Level IV of the Executive Schedule pay rates under section 5315 of title 5" after "advice and consent of the Senate".

STATUTORY NOTES AND RELATED SUBSIDIARIES

EFFECTIVE DATE

Section effective Dec. 11, 1980, see section 9652 of this title.
§6912. Authorities of Administrator

(a) Authorities
In carrying out this chapter, the Administrator is authorized to—

1. prescribe, in consultation with Federal, State, and regional authorities, such regulations as are necessary to carry out his functions under this chapter;
2. consult with or exchange information with other Federal agencies undertaking research, development, demonstration projects, studies, or investigations relating to solid waste;
3. provide technical and financial assistance to States or regional agencies in the development and implementation of solid waste plans and hazardous waste management programs;
4. consult with representatives of science, industry, agriculture, labor, environmental protection and consumer organizations, and other groups, as he deems advisable;
5. utilize the information, facilities, personnel and other resources of Federal agencies, including the National Institute of Standards and Technology and the National Bureau of the Census, on a reimbursable basis, to perform research and analyses and conduct studies and investigations related to resource recovery and conservation and to otherwise carry out the Administrator's functions under this chapter; and
6. to delegate to the Secretary of Transportation the performance of any inspection or enforcement function under this chapter relating to the transportation of hazardous waste where such delegation would avoid unnecessary duplication of activity and would carry out the objectives of this chapter and of chapter 51 of title 49.

(b) Revision of regulations
Each regulation promulgated under this chapter shall be reviewed and, where necessary, revised not less frequently than every three years.

(c) Criminal investigations
In carrying out the provisions of this chapter, the Administrator, and duly-designated agents and employees of the Environmental Protection Agency, are authorized to initiate and conduct investigations under the criminal provisions of this chapter, and to refer the results of these investigations to the Attorney General for prosecution in appropriate cases.


EDITORIAL NOTES

CODIFICATION


AMENDMENTS


EXECUTIVE DOCUMENTS

TRANSFER OF FUNCTIONS

For transfer of certain enforcement functions of Administrator or other official of Environmental Protection Agency under this chapter to Federal Inspector, Office of Federal Inspector for the Alaska Natural Gas Transportation System, and subsequent transfer to Secretary of Energy, then to Federal Coordinator for Alaska Natural Gas Transportation Projects, see note set out under section 6903 of this title.

§6913. Resource Recovery and Conservation Panels

The Administrator shall provide teams of personnel, including Federal, State, and local employees or contractors (hereinafter referred to as "Resource Conservation and Recovery Panels") to provide Federal agencies, States and local governments upon request with technical assistance on solid waste management, resource recovery, and resource conservation. Such teams shall include technical, marketing, financial, and institutional specialists, and the services of such teams shall be provided without charge to States or local governments.
§6914. Grants for discarded tire disposal

(a) Grants
The Administrator shall make available grants equal to 5 percent of the purchase price of tire shredders (including portable shredders attached to tire collection trucks) to those eligible applicants best meeting criteria promulgated under this section. An eligible applicant may be any private purchaser, public body, or public-private joint venture. Criteria for receiving grants shall be promulgated under this section and shall include the policy to offer any private purchaser the first option to receive a grant, the policy to develop widespread geographic distribution of tire shredding facilities, the need for such facilities within a geographic area, and the projected risk and viability of any such venture. In the case of an application under this section from a public body, the Administrator shall first make a determination that there are no private purchasers interested in making an application before approving a grant to a public body.

(b) Authorization of appropriations
There is authorized to be appropriated $750,000 for each of the fiscal years 1978 and 1979 to carry out this section.

§6914a. Labeling of lubricating oil
For purposes of any provision of law which requires the labeling of commodities, lubricating oil shall be treated as lawfully labeled only if it bears the following statement, prominently displayed:

"DON'T POLLUTE—CONSERVE RESOURCES; RETURN USED OIL TO COLLECTION CENTERS".

§6914b. Degradable plastic ring carriers; definitions

A prior section 2005 of Pub. L. 89–272 was renumbered section 2006 and is classified to section 6915 of this title.
As used in this title—

(1) the term "regulated item" means any plastic ring carrier device that contains at least one hole greater than 1\(\frac{1}{2}\) inches in diameter which is made, used, or designed for the purpose of packaging, transporting, or carrying multipackaged cans or bottles, and which is of a size, shape, design, or type capable, when discarded, of becoming entangled with fish or wildlife; and

(2) the term "naturally degradable material" means a material which, when discarded, will be reduced to environmentally benign subunits under the action of normal environmental forces, such as, among others, biological decomposition, photodegradation, or hydrolysis.


EDITORIAL NOTES

REFERENCES IN TEXT

This title, referred to in text, is title I of Pub. L. 100–556, Oct. 28, 1988, 102 Stat. 2779, which enacted sections 6914b and 6914b–1 of this title, and provisions set out as a note under section 6914b of this title. For complete classification of this title to the Code, see Tables.

CODIFICATION

Section was not enacted as part of the Solid Waste Disposal Act which comprises this chapter.

STATUTORY NOTES AND RELATED SUBSIDIARIES

CONGRESSIONAL FINDINGS


"(1) plastic ring carrier devices have been found in large quantities in the marine environment;

"(2) fish and wildlife have been known to have become entangled in plastic ring carriers;

"(3) nondegradable plastic ring carrier devices can remain intact in the marine environment for decades, posing a threat to fish and wildlife; and

"(4) 16 States have enacted laws requiring that plastic ring carrier devices be made from degradable material in order to reduce litter and to protect fish and wildlife."

§6914b–1. Regulation of plastic ring carriers

Not later than 24 months after October 28, 1988 (unless the Administrator of the Environmental Protection Agency determines that it is not feasible or that the byproducts of degradable regulated items present a greater threat to the environment than nondegradable regulated items), the Administrator of the Environmental Protection Agency shall require, by regulation, that any regulated item intended for use in the United States shall be made of naturally degradable material which, when discarded, decomposes within a period established by such regulation. The period within which decomposition must occur after being discarded shall be the shortest period of time consistent with the intended use of the item and the physical integrity required for such use. Such regulation shall allow a reasonable time for affected parties to come into compliance, including the use of existing inventories.


EDITORIAL NOTES

CODIFICATION

Section was not enacted as part of the Solid Waste Disposal Act which comprises this chapter.

§6915. Annual report

The Administrator shall transmit to the Congress and the President, not later than ninety days after the end of each fiscal year, a comprehensive and detailed report on all activities of the Office during the preceding fiscal year. Each such report shall include—

(1) a statement of specific and detailed objectives for the activities and programs conducted and assisted under this chapter;

(2) statements of the Administrator's conclusions as to the effectiveness of such activities and programs in meeting the stated objectives and the purposes of this chapter, measured through the end of such fiscal year;

(3) a summary of outstanding solid waste problems confronting the Administrator, in order of priority;

(4) recommendations with respect to such legislation which the Administrator deems necessary or desirable to assist in solving problems respecting solid waste;
(5) all other information required to be submitted to the Congress pursuant to any other provision of this chapter; and
(6) the Administrator's plans for activities and programs respecting solid waste during the next fiscal year.

98 Stat. 3276.)

EDITORIAL NOTES

PRIOR PROVISIONS

A prior section 2006 of Pub. L. 89–272 was renumbered section 2007 and is classified to section 6916 of this

AMENDMENTS

1984—Par. (1). Pub. L. 98–616 substituted "detailed" for "detail".

STATUTORY NOTES AND RELATED SUBSIDIARIES

TERMINATION OF REPORTING REQUIREMENTS

For termination, effective May 15, 2000, of provisions of this section relating to transmittal of annual report
to Congress, see section 3003 of Pub. L. 104–66, as amended, set out as a note under section 1113 of Title 31,

EXECUTIVE DOCUMENTS

TRANSFER OF FUNCTIONS

For transfer of certain enforcement functions of Administrator or other official of Environmental Protection
Agency under this chapter to Federal Inspector, Office of Federal Inspector for the Alaska Natural Gas
Transportation System, and subsequent transfer to Secretary of Energy, then to Federal Coordinator for
Alaska Natural Gas Transportation Projects, see note set out under section 6903 of this title.

§6916. General authorization

(a) General administration

There are authorized to be appropriated to the Administrator for the purpose of carrying out the provisions of this chapter,
$35,000,000 for the fiscal year ending September 30, 1977, $38,000,000 for the fiscal year ending September 30, 1978,
$42,000,000 for the fiscal year ending September 30, 1979, $70,000,000 for the fiscal year ending September 30, 1980,
$80,000,000 for the fiscal year ending September 30, 1981, $80,000,000 for the fiscal year ending September 30, 1982,
$70,000,000 for the fiscal year ending September 30, 1985, $80,000,000 for the fiscal year ending September 30, 1986,
$80,000,000 for the fiscal year ending September 30, 1987, and $80,000,000 for the fiscal year 1988.

(b) Resource Recovery and Conservation Panels

Not less than 20 percent of the amount appropriated under subsection (a), or $5,000,000 per fiscal year, whichever is
less, shall be used only for purposes of Resource Recovery and Conservation Panels established under section 6913 of this
title (including travel expenses incurred by such panels in carrying out their functions under this chapter).

(c) Hazardous waste

Not less than 30 percent of the amount appropriated under subsection (a) shall be used only for purposes of carrying out
subchapter III of this chapter (relating to hazardous waste) other than section 6931 of this title.

(d) State and local support

Not less than 25 percent of the total amount appropriated under this chapter, up to the amount authorized in section
6948(a)(1) of this title, shall be used only for purposes of support to State, regional, local, and interstate agencies in
accordance with subchapter IV of this chapter other than section 6948(a)(2) or 6949 of this title.

(e) Criminal investigators

There is authorized to be appropriated to the Administrator $3,246,000 for the fiscal year 1985, $2,408,300 for the fiscal
year 1986, $2,529,000 for the fiscal year 1987, and $2,529,000 for the fiscal year 1988 to be used—
1. for additional officers or employees of the Environmental Protection Agency authorized by the Administrator to
conduct criminal investigations (to investigate, or supervise the investigation of, any activity for which a criminal penalty is
provided) under this chapter; and
2. for support costs for such additional officers or employees.

(f) Underground storage tanks
(1) There are authorized to be appropriated to the Administrator for the purpose of carrying out the provisions of subchapter IX (relating to regulation of underground storage tanks), $10,000,000 for each of the fiscal years 1985 through 1988.

(2) There is authorized to be appropriated $25,000,000 for each of the fiscal years 1985 through 1988 to be used to make grants to the States for purposes of assisting the States in the development and implementation of approved State underground storage tank release detection, prevention, and correction programs under subchapter IX.


EDITORIAL NOTES

AMENDMENTS

1984—Subsec. (a). Pub. L. 98–616, §2(a), substituted "$80,000,000 for the fiscal year ending September 30, 1982, $70,000,000 for the fiscal year ending September 30, 1985, $80,000,000 for the fiscal year ending September 30, 1986, $80,000,000 for the fiscal year ending September 30, 1987, and $80,000,000 for the fiscal year 1988 for "and $80,000,000 for the fiscal year ending September 30, 1982".

Subsecs. (e), (f). Pub. L. 98–616, §2(i), added subssecs. (e) and (f).

1980—Subsec. (a). Pub. L. 96–482, §31(a), authorized appropriation of $70,000,000, $80,000,000, and $80,000,000 for fiscal years ending Sept. 30, 1980, through 1982, respectively.

Subsec. (b). Pub. L. 96–482, §6(a), inserted ", or $5,000,000 per fiscal year, whichever is less," after "subsection (a)".


EXECUTIVE DOCUMENTS

TRANSFER OF FUNCTIONS

For transfer of certain enforcement functions of Administrator or other official of Environmental Protection Agency under this chapter to Federal Inspector, Office of Federal Inspector for the Alaska Natural Gas Transportation System, and subsequent transfer to Secretary of Energy, then to Federal Coordinator for Alaska Natural Gas Transportation Projects, see note set out under section 6903 of this title.

§6917. Office of Ombudsman

(a) Establishment; functions

The Administrator shall establish an Office of Ombudsman, to be directed by an Ombudsman. It shall be the function of the Office of Ombudsman to receive individual complaints, grievances, requests for information submitted by any person with respect to any program or requirement under this chapter.

(b) Authority to render assistance

The Ombudsman shall render assistance with respect to the complaints, grievances, and requests submitted to the Office of Ombudsman, and shall make appropriate recommendations to the Administrator.

(c) Effect on procedures for grievances, appeals, or administrative matters

The establishment of the Office of Ombudsman shall not affect any procedures for grievances, appeals, or administrative matters in any other provision of this chapter, any other provision of law, or any Federal regulation.

(d) Termination

The Office of the Ombudsman shall cease to exist 4 years after November 8, 1984.


SUBCHAPTER III—HAZARDOUS WASTE MANAGEMENT

§6921. Identification and listing of hazardous waste

(a) Criteria for identification or listing

Not later than eighteen months after October 21, 1976, the Administrator shall, after notice and opportunity for public hearing, and after consultation with appropriate Federal and State agencies, develop and promulgate criteria for identifying the characteristics of hazardous waste, and for listing hazardous waste, which should be subject to the provisions of this
subchapter, taking into account toxicity, persistence, and degradability in nature, potential for accumulation in tissue, and other related factors such as flammability, corrosiveness, and other hazardous characteristics. Such criteria shall be revised from time to time as may be appropriate.

(b) Identification and listing

(1) Not later than eighteen months after October 21, 1976, and after notice and opportunity for public hearing, the Administrator shall promulgate regulations identifying the characteristics of hazardous waste, and listing particular hazardous wastes (within the meaning of section 6903(5) of this title), which shall be subject to the provisions of this subchapter. Such regulations shall be based on the criteria promulgated under subsection (a) and shall be revised from time to time thereafter as may be appropriate. The Administrator, in cooperation with the Agency for Toxic Substances and Disease Registry and the National Toxicology Program, shall also identify or list those hazardous wastes which shall be subject to the provisions of this subchapter solely because of the presence in such wastes of certain constituents (such as identified carcinogens, mutagens, or teratogens) at levels in excess of levels which endanger human health.

(2)(A) Notwithstanding the provisions of paragraph (1) of this subsection, drilling fluids, produced waters, and other wastes associated with the exploration, development, or production of crude oil or natural gas or geothermal energy shall be subject only to existing State or Federal regulatory programs in lieu of this subchapter until at least 24 months after October 21, 1980, and after promulgation of the regulations in accordance with subparagraphs (B) and (C) of this paragraph. It is the sense of the Congress that such State or Federal programs should include, for waste disposal sites which are to be closed, provisions requiring at least the following:

(i) The identification through surveying, platting, or other measures, together with recordation of such information on the public record, so as to assure that the location where such wastes are disposed of can be located in the future; except however, that no such surveying, platting, or other measure identifying the location of a disposal site for drilling fluids and associated wastes shall be required if the distance from the disposal site to the surveyed or platted location to the associated well is less than two hundred lineal feet; and

(ii) A chemical and physical analysis of a produced water and a composition of a drilling fluid suspected to contain a hazardous material, with such information to be acquired prior to closure and to be placed on the public record.

(B) Not later than six months after completion and submission of the study required by section 6982(m) of this title, the Administrator shall, after public hearings and opportunity for comment, determine either to promulgate regulations under this subchapter for drilling fluids, produced waters, and other wastes associated with the exploration, development, or production of crude oil or natural gas or geothermal energy or that such regulations are unwarranted. The Administrator shall publish his decision in the Federal Register accompanied by an explanation and justification of the reasons for it. In making the decision under this paragraph, the Administrator shall utilize the information developed or accumulated pursuant to the study required under section 6982(m) of this title.

(C) The Administrator shall transmit his decision, along with any regulations, if necessary, to both Houses of Congress. Such regulations shall take effect only when authorized by Act of Congress.

(3)(A) Notwithstanding the provisions of paragraph (1) of this subsection, each waste listed below shall, except as provided in subparagraph (B) of this paragraph, be subject only to regulation under other applicable provisions of Federal or State law in lieu of this subchapter until at least six months after the date of submission of the applicable study required to be conducted under subsection (f), (n), (o), or (p) of section 6982 of this title and after promulgation of regulations in accordance with subparagraph (C) of this paragraph:

(i) Fly ash waste, bottom ash waste, slag waste, and flue gas emission control waste generated primarily from the combustion of coal or other fossil fuels.

(ii) Solid waste from the extraction, beneficiation, and processing of ores and minerals, including phosphate rock and overburden from the mining of uranium ore.

(iii) Cement kiln dust waste.

(B)(i) Owners and operators of disposal sites for wastes listed in subparagraph (A) may be required by the Administrator, through regulations prescribed under authority of section 6912 of this title—

(I) as to disposal sites for such wastes which are to be closed, to identify the locations of such sites through surveying, platting, or other measures, together with recordation of such information on the public record, to assure that the locations where such wastes are disposed of are known and can be located in the future, and

(II) to provide chemical and physical analysis and composition of such wastes, based on available information, to be placed on the public record.

(ii)(I) In conducting any study under subsection (f), (n), (o), or (p), of section 6982 of this title, any officer, employee, or authorized representative of the Environmental Protection Agency, duly designated by the Administrator, is authorized, at reasonable times and as reasonably necessary for the purposes of such study, to enter any establishment where any waste subject to such study is generated, stored, treated, disposed of, or transported from; to inspect, take samples, and conduct monitoring and testing; and to have access to and copy records relating to such waste. Each such inspection shall be commenced and completed with reasonable promptness. If the officer, employee, or authorized representative obtains any samples prior to leaving the premises, he shall give to the owner, operator, or agent in charge a receipt describing the sample obtained and if requested a portion of each such sample equal in volume or weight to the portion retained. If any analysis is made of such samples, or monitoring and testing performed, a copy of the results shall be furnished promptly to the owner, operator, or agent in charge.

(II) Any records, reports, or information obtained from any person under subclause (I) shall be available to the public, except that upon a showing satisfactory to the Administrator by any person that records, reports, or information, or particular
part thereof, to which the Administrator has access under this subparagraph is made public, would divulge information entitled to protection under section 1905 of title 18, the Administrator shall consider such information or particular portion thereof confidential in accordance with the purposes of that section, except that such record, report, document, or information may be disclosed to other officers, employees, or authorized representatives of the United States concerned with carrying out this chapter. Any person not subject to the provisions of section 1905 of title 18 who knowingly and willfully divulges or discloses any information entitled to protection under this subparagraph shall, upon conviction, be subject to a fine of not more than $5,000 or to imprisonment not to exceed one year, or both.

(iii) The Administrator may prescribe regulations, under the authority of this chapter, to prevent radiation exposure which presents an unreasonable risk to human health from the use in construction or land reclamation (with or without revegetation) of (I) solid waste from the extraction, beneficiation, and processing of phosphate rock or (II) overburden from the mining of uranium ore.

(iv) Whenever on the basis of any information the Administrator determines that any person is in violation of any requirement of this subparagraph, the Administrator shall give notice to the violator of his failure to comply with such requirement. If such violation extends beyond the thirtieth day after the Administrator's notification, the Administrator may issue an order requiring compliance within a specified time period or the Administrator may commence a civil action in the United States district court in the district in which the violation occurred for appropriate relief, including a temporary or permanent injunction.

(C) Not later than six months after the date of submission of the applicable study required to be conducted under subsection (f), (n), (o), or (p), of section 6982 of this title, the Administrator shall, after public hearings and opportunity for comment, either determine to promulgate regulations under this subchapter for each waste listed in subparagraph (A) of this paragraph or determine that such regulations are unwarranted. The Administrator shall publish his determination, which shall be based on information developed or accumulated pursuant to such study, public hearings, and comment, in the Federal Register accompanied by an explanation and justification of the reasons for it.

(c) Petition by State Governor
   At any time after the date eighteen months after October 21, 1976, the Governor of any State may petition the Administrator to identify or list a material as a hazardous waste. The Administrator shall act upon such petition within ninety days following his receipt thereof and shall notify the Governor of such action. If the Administrator denies such petition because of financial considerations, in providing such notice to the Governor he shall include a statement concerning such considerations.

(d) Small quantity generator waste
   (1) By March 31, 1986, the Administrator shall promulgate standards under sections 6922, 6923, and 6924 of this title for hazardous waste generated by a generator in a total quantity of hazardous waste greater than one hundred kilograms but less than one thousand kilograms during a calendar month.

   (2) The standards referred to in paragraph (1), including standards applicable to the legitimate use, reuse, recycling, and reclamation of such wastes, may vary from the standards applicable to hazardous waste generated by larger quantity generators, but such standards shall be sufficient to protect human health and the environment.

   (3) Not later than two hundred and seventy days after November 8, 1984, any hazardous waste which is part of a total quantity generated by a generator generating greater than one hundred kilograms but less than one thousand kilograms during one calendar month and which is shipped off the premises on which such waste is generated shall be accompanied by a copy of the Environmental Protection Agency Uniform Hazardous Waste Manifest form signed by the generator. This form shall contain the following information:

   (A) the name and address of the generator of the waste;

   (B) the United States Department of Transportation description of the waste, including the proper shipping name, hazard class, and identification number (UN/NA), if applicable;

   (C) the number and type of containers;

   (D) the quantity of waste being transported; and

   (E) the name and address of the facility designated to receive the waste.

   If subparagraph (B) is not applicable, in lieu of the description referred to in such subparagraph (B), the form shall contain the Environmental Protection Agency identification number, or a generic description of the waste, or a description of the waste by hazardous waste characteristic. Additional requirements related to the manifest form shall apply only if determined necessary by the Administrator to protect human health and the environment.

   (4) The Administrator's responsibility under this subchapter to protect human health and the environment may require the promulgation of standards under this subchapter for hazardous wastes which are generated by any generator who does not generate more than one hundred kilograms of hazardous waste in a calendar month.

   (5) Until the effective date of standards required to be promulgated under paragraph (1), any hazardous waste identified or listed under this section generated by any generator during any calendar month in a total quantity greater than one hundred kilograms but less than one thousand kilograms, which is not treated, stored, or disposed of at a hazardous waste treatment, storage, or disposal facility with a permit under section 6925 of this title, shall be disposed of only in a facility which is permitted, licensed, or registered by a State to manage municipal or industrial solid waste.

   (6) Standards promulgated as provided in paragraph (1) shall, at a minimum, require that all treatment, storage, or disposal of hazardous wastes generated by generators referred to in paragraph (1) shall occur at a facility with interim status or a permit under this subchapter, except that onsite storage of hazardous waste generated by a generator generating a total quantity of hazardous waste greater than one hundred kilograms, but less than one thousand kilograms during a calendar month, may occur without the requirement of a permit for up to one hundred and eighty days. Such onsite storage
may occur without the requirement of a permit for not more than six thousand kilograms for up to two hundred and seventy days if such generator must ship or haul such waste over two hundred miles.

(7)(A) Nothing in this subsection shall be construed to affect or impair the validity of regulations promulgated by the Secretary of Transportation pursuant to chapter 51 of title 49.

(B) Nothing in this subsection shall be construed to affect, modify, or render invalid any requirements in regulations promulgated prior to January 1, 1983 applicable to any acutely hazardous waste identified or listed under this section which is generated by any generator during any calendar month in a total quantity less than one thousand kilograms.

(8) Effective March 31, 1986, unless the Administrator promulgates standards as provided in paragraph (1) of this subsection prior to such date, hazardous waste generated by any generator in a total quantity greater than one hundred kilograms but less than one thousand kilograms during a calendar month shall be subject to the following requirements until the standards referred to in paragraph (1) of this subsection have become effective:

(A) the notice requirements of paragraph (3) of this subsection shall apply and in addition, the information provided in the form shall include the name of the waste transporters and the name and address of the facility designated to receive the waste;

(B) except in the case of the onsite storage referred to in paragraph (6) of this subsection, the treatment, storage, or disposal of such waste shall occur at a facility with interim status or a permit under this subchapter;

(C) generators of such waste shall file manifest exception reports as required of generators producing greater amounts of hazardous waste per month except that such reports shall be filed by January 31, for any waste shipment occurring in the last half of the preceding calendar year, and by July 31, for any waste shipment occurring in the first half of the calendar year; and

(D) generators of such waste shall retain for three years a copy of the manifest signed by the designated facility that has received the waste.

Nothing in this paragraph shall be construed as a determination of the standards appropriate under paragraph (1).

(9) The last sentence of section 6930(b) of this title shall not apply to regulations promulgated under this subsection.

(e) Specified wastes

(1) Not later than 6 months after November 8, 1984, the Administrator shall, where appropriate, list under subsection (b)(1), additional wastes containing chlorinated dioxins or chlorinated-dibenzoquarins. Not later than one year after November 8, 1984, the Administrator shall, where appropriate, list under subsection (b)(1) wastes containing remaining halogenated dioxins and halogenated-dibenzofurans.

(2) Not later than fifteen months after November 8, 1984, the Administrator shall make a determination of whether or not to list under subsection (b)(1) the following wastes: Chlorinated Aliphatics, Dioxin, Dimethyl Hydrazine, TDI (toluene disocyanate), Carbarnates, Bromacil, Linuron, Organo-bromines, solvents, refining wastes, chlorinated aromatics, dyes and pigments, inorganic chemical industry wastes, lithium batteries, coke byproducts, paint production wastes, and coal slurry pipeline effluent.

(f) Delisting procedures

(1) When evaluating a petition to exclude a waste generated at a particular facility from listing under this section, the Administrator shall consider factors (including additional constituents) other than those for which the waste was listed if the Administrator has a reasonable basis to believe that such additional factors could cause the waste to be a hazardous waste. The Administrator shall provide notice and opportunity for comment on these additional factors before granting or denying such petition.

(2)(A) To the maximum extent practicable the Administrator shall publish in the Federal Register a proposal to grant or deny a petition referred to in paragraph (1) within twelve months after receiving a complete application to exclude a waste generated at a particular facility from being regulated as a hazardous waste and shall grant or deny such a petition within twenty-four months after receiving a complete application.

(B) The temporary granting of such a petition prior to November 8, 1984, without the opportunity for public comment and the full consideration of such comments shall not continue for more than twenty-four months after November 8, 1984. If a final decision to grant or deny such a petition has not been promulgated after notice and opportunity for public comment within the time limit prescribed by the preceding sentence, any such temporary granting of such petition shall cease to be in effect.

(g) EP toxicity

Not later than twenty-eight months after November 8, 1984, the Administrator shall examine the deficiencies of the extraction procedure toxicity characteristic as a predictor of the leaching potential of wastes and make changes in the extraction procedure toxicity characteristic, including changes in the leaching media, as are necessary to insure that it accurately predicts the leaching potential of wastes which pose a threat to human health and the environment when mismanaged.

(h) Additional characteristics

Not later than two years after November 8, 1984, the Administrator shall promulgate regulations under this section identifying additional characteristics of hazardous waste, including measures or indicators of toxicity.

(i) Clarification of household waste exclusion

A resource recovery facility recovering energy from the mass burning of municipal solid waste shall not be deemed to be treating, storing, disposing of, or otherwise managing hazardous wastes for the purposes of regulation under this subchapter, if—

(1) such facility—
(A) receives and burns only—
(i) household waste (from single and multiple dwellings, hotels, motels, and other residential sources), and
(ii) solid waste from commercial or industrial sources that does not contain hazardous waste identified or listed under this section, and

(B) does not accept hazardous wastes identified or listed under this section, and

(2) the owner or operator of such facility has established contractual requirements or other appropriate notification or inspection procedures to assure that hazardous wastes are not received at or burned in such facility.

(j) Methamphetamine production

Not later than every 24 months, the Administrator shall submit to the Committee on Energy and Commerce of the House of Representatives and the Committee on Environment and Public Works of the Senate a report setting forth information collected by the Administrator from law enforcement agencies, States, and other relevant stakeholders that identifies the byproducts of the methamphetamine production process and whether the Administrator considers each of the byproducts to be a hazardous waste pursuant to this section and relevant regulations.


EDITORIAL NOTES

CODIFICATION


AMENDMENTS

1996—Subsec. (d)(5). Pub. L. 104–119 made technical amendment to reference in original act which appears in text as reference to this section.
1984—Subsec. (b)(1). Pub. L. 98–616, §222(b), inserted at end "The Administrator, in cooperation with the Agency for Toxic Substances and Disease Registry and the National Toxicology Program, shall also identify or list those hazardous wastes which shall be subject to the provisions of this subchapter solely because of the presence in such wastes of certain constituents (such as identified carcinogens, mutagens, or teratogens) [sic] at levels in excess of levels which endanger human health."
Subsecs. (e) to (h). Pub. L. 98–616, §222(a), added subsecs. (e) to (h).
1980—Subsec. (b). Pub. L. 96–482 redesignated existing provisions as par. (1) and added pars. (2) and (3).

STATUTORY NOTES AND RELATED SUBSIDIARIES

REGULATION

Pub. L. 99–499, title I, §124(b), Oct. 17, 1986, 100 Stat. 1689, provided that: "Unless the Administrator of the Environmental Protection Agency promulgates regulations under subtitle C of the Solid Waste Disposal Act [42 U.S.C. 6921 et seq.] addressing the extraction of wastes from landfills as part of the process of recovering methane from such landfills, the owner and operator of equipment used to recover methane from a landfill shall not be deemed to be managing, generating, transporting, treating, storing, or disposing of hazardous or liquid wastes within the meaning of that subtitle. If the aqueous or hydrocarbon phase of the condensate or any other waste material removed from the gas recovered from the landfill meets any of the characteristics identified under section 3001 of subtitle C of the Solid Waste Disposal Act [42 U.S.C. 6921], the preceding sentence shall not apply and such condensate phase or other waste material shall be deemed a hazardous waste under that subtitle, and shall be regulated accordingly."

ASH MANAGEMENT AND DISPOSAL

Pub. L. 101–549, title III, §306, Nov. 15, 1990, 104 Stat. 2584, provided that for 2 years after Nov. 15, 1990, ash from solid waste incineration units burning municipal waste would not be regulated by the Administrator of the Environmental Protection Agency pursuant to this section.

SMALL QUANTITY GENERATOR WASTE; INFORM AND EDUCATE; WASTE GENERATORS

25/151
Pub. L. 98–616, title II, §221(b), Nov. 8, 1984, 98 Stat. 3249, directed Administrator of Environmental Protection Agency to undertake activities to inform and educate waste generators of their responsibilities under subsec. (d) of this section during the period within thirty months after Nov. 8, 1984, to help assure compliance.

**STUDY OF EXISTING MANIFEST SYSTEM FOR HAZARDOUS WASTES AS APPLICABLE TO SMALL QUANTITY GENERATORS; SUBMITTAL TO CONGRESS**

Pub. L. 98–616, title II, §221(d), Nov. 8, 1984, 98 Stat. 3250, directed Administrator of Environmental Protection Agency to cause to be studied the existing manifest system for hazardous wastes as it applies to small quantity generators and recommend whether the current system should be retained or whether a new system should be introduced, such study to include an analysis of the cost versus the benefits of the system studied as well as an analysis of the ease of retrieving and collating information and identifying a given substance, with any new proposal to include a list of those standards that are necessary to protect human health and the environment, and with such study to be submitted to Congress not later than Apr. 1, 1987.

**ADMINISTRATIVE BURDENS; SMALL QUANTITY GENERATORS; RETENTION OF CURRENT SYSTEM; REPORT TO CONGRESS**

Pub. L. 98–616, title II, §221(e), Nov. 8, 1984, 98 Stat. 3250, directed Administrator of Environmental Protection Agency, in conjunction with Secretary of Transportation, to prepare and submit to Congress, not later than Apr. 1, 1987, a report on the feasibility of easing the administrative burden on small quantity generators, increasing compliance with statutory and regulatory requirements, and simplifying enforcement efforts through a program of licensing hazardous waste transporters to assume the responsibilities of small quantity generators relating to preparation of manifests and associated recordkeeping and reporting requirements, such report to examine the appropriate licensing requirements under such a program including the need for financial assurances by licensed transporters and to make recommendations on provisions and requirements for such a program including the appropriate division of responsibilities between Department of Transportation and Environmental Protection Administration.

**EDUCATIONAL INSTITUTIONS; ACCUMULATION, STORAGE AND DISPOSAL OF HAZARDOUS WASTES; STUDY**

Pub. L. 98–616, title II, §221(f), Nov. 8, 1984, 98 Stat. 3250, as amended by Pub. L. 107–110, title X, §1076(aa), Jan. 8, 2002, 115 Stat. 2093, directed Administrator of Environmental Protection Agency, in consultation with Secretary of Education, the States, and appropriate educational associations, to conduct a comprehensive study of problems associated with accumulation, storage, and disposal of hazardous wastes from educational institutions, such study to include an investigation of feasibility and availability of environmentally sound methods for treatment, storage, or disposal of hazardous waste from such institutions, taking into account the types and quantities of such waste which are generated by these institutions, and the nonprofit nature of these institutions, and directed Administrator to submit a report to Congress containing the findings of the study not later than Apr. 1, 1987.

**EXECUTIVE DOCUMENTS**

**TRANSFER OF FUNCTIONS**

For transfer of certain enforcement functions of Administrator or other official of Environmental Protection Agency under this chapter to Federal Inspector, Office of Federal Inspector for the Alaska Natural Gas Transportation System, and subsequent transfer to Secretary of Energy, then to Federal Coordinator for Alaska Natural Gas Transportation Projects, see note set out under section 6903 of this title.

1. *So in original. Probably should be "teratogens".*

**§6922. Standards applicable to generators of hazardous waste**

(a) In general

Not later than eighteen months after October 21, 1976, and after notice and opportunity for public hearings and after consultation with appropriate Federal and State agencies, the Administrator shall promulgate regulations establishing such standards, applicable to generators of hazardous waste identified or listed under this subchapter, as may be necessary to protect human health and the environment. Such standards shall establish requirements respecting—

(1) recordkeeping practices that accurately identify the quantities of such hazardous waste generated, the constituents thereof which are significant in quantity or in potential harm to human health or the environment, and the disposition of such wastes;
(2) labeling practices for any containers used for the storage, transport, or disposal of such hazardous waste such as will identify accurately such waste;

(3) use of appropriate containers for such hazardous waste;

(4) furnishing of information on the general chemical composition of such hazardous waste to persons transporting, treating, storing, or disposing of such wastes;

(5) use of a manifest system and any other reasonable means necessary to assure that all such hazardous waste generated is designated for treatment, storage, or disposal in, and arrives at, treatment, storage, or disposal facilities (other than facilities on the premises where the waste is generated) for which a permit has been issued as provided in this subchapter, or pursuant to title I of the Marine Protection, Research, and Sanctuaries Act (86 Stat. 1052) [33 U.S.C. 1411 et seq.]; and

(6) submission of reports to the Administrator (or the State agency in any case in which such agency carries out a permit program pursuant to this subchapter) at least once every two years, setting out—

(A) the quantities and nature of hazardous waste identified or listed under this subchapter that he has generated during the year;

(B) the disposition of all hazardous waste reported under subparagraph (A);

(C) the efforts undertaken during the year to reduce the volume and toxicity of waste generated; and

(D) the changes in volume and toxicity of waste actually achieved during the year in question in comparison with previous years, to the extent such information is available for years prior to November 8, 1984.

(b) Waste minimization

Effective September 1, 1985, the manifest required by subsection (a)(5) shall contain a certification by the generator that—

(1) the generator of the hazardous waste has a program in place to reduce the volume or quantity and toxicity of such waste to the degree determined by the generator to be economically practicable; and

(2) the proposed method of treatment, storage, or disposal is that practicable method currently available to the generator which minimizes the present and future threat to human health and the environment.


EDITORIAL NOTES

REFERENCES IN TEXT


AMENDMENTS


Subsec. (a)(6). Pub. L. 98–616, §224(a)(2), amended par. (6) generally. Prior to amendment, par. (6) read as follows: "submission of reports to the Administrator (or the State agency in any case in which such agency carries out an authorized permit program pursuant to this subchapter) at such times as the Administrator (or the State agency if appropriate) deems necessary, setting out—

(A) the quantities of hazardous waste identified or listed under this subchapter that he has generated during a particular time period; and

(B) the disposition of all hazardous waste reported under subparagraph (A)."


1980—Par. (5). Pub. L. 96–482 inserted "and any other reasonable means necessary" and ", and arrives at," after "use of a manifest system" and "disposal in", respectively.


Par. (6). Pub. L. 95–609, §7(f)(2), closed the parenthetical after "to this subchapter".

EXECUTIVE DOCUMENTS

TRANSFER OF FUNCTIONS

For transfer of certain enforcement functions of Administrator or other official of Environmental Protection Agency under this chapter to Federal Inspector, Office of Federal Inspector for the Alaska Natural Gas Transportation System, and subsequent transfer to Secretary of Energy, then to Federal Coordinator for Alaska Natural Gas Transportation Projects, see note set out under section 6903 of this title.
§6923. Standards applicable to transporters of hazardous waste

(a) Standards

Not later than eighteen months after October 21, 1976, and after opportunity for public hearings, the Administrator, after consultation with the Secretary of Transportation and the States, shall promulgate regulations establishing such standards, applicable to transporters of hazardous waste identified or listed under this subchapter, as may be necessary to protect human health and the environment. Such standards shall include but need not be limited to requirements respecting—

(1) recordkeeping concerning such hazardous waste transported, and their source and delivery points;

(2) transportation of such waste only if properly labeled;

(3) compliance with the manifest system referred to in section 6922(5) of this title; and

(4) transportation of all such hazardous waste only to the hazardous waste treatment, storage, or disposal facilities which the shipper designates on the manifest form to be a facility holding a permit issued under this subchapter, or pursuant to title I of the Marine Protection, Research, and Sanctuaries Act (86 Stat. 1052) [33 U.S.C. 1411 et seq.].

(b) Coordination with regulations of Secretary of Transportation

In case of any hazardous waste identified or listed under this subchapter which is subject to chapter 51 of title 49, the regulations promulgated by the Administrator under this section shall be consistent with the requirements of such Act and the regulations thereunder. The Administrator is authorized to make recommendations to the Secretary of Transportation respecting the regulations of such hazardous waste under the Hazardous Materials Transportation Act and for addition of materials to be covered by such Act.

(c) Fuel from hazardous waste

Not later than two years after November 8, 1984, and after opportunity for public hearing, the Administrator shall promulgate regulations establishing standards, applicable to transporters of fuel produced (1) from any hazardous waste identified or listed under section 6921 of this title, or (2) from any hazardous waste identified or listed under section 6921 of this title and any other material, as may be necessary to protect human health and the environment. Such standards may include any of the requirements set forth in paragraphs (1) through (4) of subsection (a) as may be appropriate.


EDITORIAL NOTES

REFERENCES IN TEXT


CODIFICATION


AMENDMENTS


Subsec. (b). Pub. L. 95–609, §7(g)(2), substituted "Administrator under this section" for "Administrator under this subchapter".

EXECUTIVE DOCUMENTS

TRANSFER OF FUNCTIONS

For transfer of certain enforcement functions of Administrator or other official of Environmental Protection Agency under this chapter to Federal Inspector, Office of Federal Inspector for the Alaska Natural Gas Transportation System, and subsequent transfer to Secretary of Energy, then to Federal Coordinator for Alaska Natural Gas Transportation Projects, see note set out under section 6903 of this title.
§6924. Standards applicable to owners and operators of hazardous waste treatment, storage, and disposal facilities

(a) In general
Not later than eighteen months after October 21, 1976, and after opportunity for public hearings and after consultation with appropriate Federal and State agencies, the Administrator shall promulgate regulations establishing such performance standards, applicable to owners and operators of facilities for the treatment, storage, or disposal of hazardous waste identified or listed under this subchapter, as may be necessary to protect human health and the environment. In establishing such standards the Administrator shall, where appropriate, distinguish in such standards between requirements appropriate for new facilities and for facilities in existence on the date of promulgation of such regulations. Such standards shall include, but need not be limited to, requirements respecting—

1. maintaining records of all hazardous wastes identified or listed under this chapter which is treated, stored, or disposed of, as the case may be, and the manner in which such wastes were treated, stored, or disposed of;
2. satisfactory reporting, monitoring, and inspection and compliance with the manifest system referred to in section 6922(5) of this title;
3. treatment, storage, or disposal of all such waste received by the facility pursuant to such operating methods, techniques, and practices as may be satisfactory to the Administrator;
4. the location, design, and construction of such hazardous waste treatment, disposal, or storage facilities;
5. contingency plans for effective action to minimize unanticipated damage from any treatment, storage, or disposal of any such hazardous waste;
6. the maintenance of operation of such facilities and requiring such additional qualifications as to ownership, continuity of operation, training for personnel, and financial responsibility (including financial responsibility for corrective action) as may be necessary or desirable; and
7. compliance with the requirements of section 6925 of this title respecting permits for treatment, storage, or disposal.

No private entity shall be precluded by reason of criteria established under paragraph (6) from the ownership or operation of facilities providing hazardous waste treatment, storage, or disposal services where such entity can provide assurances of financial responsibility and continuity of operation consistent with the degree and duration of risks associated with the treatment, storage, or disposal of specified hazardous waste.

(b) Salt dome formations, salt bed formations, underground mines and caves

1. Effective on November 8, 1984, the placement of any noncontainerized or bulk liquid hazardous waste in any salt dome formation, salt bed formation, underground mine, or cave is prohibited until such time as—
   A. the Administrator has determined, after notice and opportunity for hearings on the record in the affected areas, that such placement is protective of human health and the environment;
   B. the Administrator has promulgated performance and permitting standards for such facilities under this subchapter, and;
   C. a permit has been issued under section 6925(c) of this title for the facility concerned.

2. Effective on November 8, 1984, the placement of any hazardous waste other than a hazardous waste referred to in paragraph (1) in a salt dome formation, salt bed formation, underground mine, or cave is prohibited until such time as a permit has been issued under section 6925(c) of this title for the facility concerned.

3. No determination made by the Administrator under subsection (d), (e), or (g) of this section regarding any hazardous waste to which such subsection (d), (e), or (g) applies shall affect the prohibition contained in paragraph (1) or (2) of this subsection.

4. Nothing in this subsection shall apply to the Department of Energy Waste Isolation Pilot Project in New Mexico.

(c) Liquids in landfills

1. Effective 6 months after November 8, 1984, the placement of bulk or noncontainerized liquid hazardous waste or free liquids contained in hazardous waste (whether or not absorbents have been added) in any landfill is prohibited. Prior to such date the requirements (as in effect on April 30, 1983) promulgated under this section by the Administrator regarding liquid hazardous waste shall remain in force and effect to the extent such requirements are applicable to the placement of bulk or noncontainerized liquid hazardous waste, or free liquids contained in hazardous waste, in landfills.

2. Not later than fifteen months after November 8, 1984, the Administrator shall promulgate final regulations which—
   A. minimize the disposal of containerized liquid hazardous waste in landfills, and
   B. minimize the presence of free liquids in containerized hazardous waste to be disposed of in landfills.

Such regulations shall also prohibit the disposal in landfills of liquids that have been absorbed in materials that biodegrade or that release liquids when compressed as might occur during routine landfill operations. Prior to the date on which such final regulations take effect, the requirements (as in effect on April 30, 1983) promulgated under this section by the Administrator shall remain in force and effect to the extent such requirements are applicable to the disposal of containerized liquid hazardous waste, or free liquids contained in hazardous waste, in landfills.
(3) Effective twelve months after November 8, 1984, the placement of any liquid which is not a hazardous waste in a
to a landfill for which a permit is required under section 6925(c) of this title or which is operating pursuant to interim status
under section 6925(e) of this title is prohibited unless the owner or operator of such landfill demonstrates to the
Administrator, or the Administrator determines, that—

(A) the only reasonably available alternative to the placement in such landfill is placement in a landfill or unlined surface
imposition, whether or not permitted under section 6925(c) of this title or operating pursuant to interim status under
section 6925(e) of this title, which contains, or may reasonably be anticipated to contain, hazardous waste; and

(B) placement in such owner or operator’s landfill will not present a risk of contamination of any underground source of
drinking water.

As used in subparagraph (B), the term "underground source of drinking water" has the same meaning as provided in
regulations under the Safe Drinking Water Act (title XIV of the Public Health Service Act) [42 U.S.C. 300f et seq.].

(4) No determination made by the Administrator under subsection (d), (e), or (g) of this section regarding any hazardous
waste to which such subsection (d), (e), or (g) applies shall affect the prohibition contained in paragraph (1) of this
subsection.

(d) Prohibitions on land disposal of specified wastes

(1) Effective 32 months after November 8, 1984 (except as provided in subsection (f) with respect to underground
injection into deep injection wells), the land disposal of the hazardous wastes referred to in paragraph (2) is prohibited
unless the Administrator determines the prohibition on one or more methods of land disposal of such waste is not required
in order to protect human health and the environment for as long as the waste remains hazardous, taking into account—

(A) the long-term uncertainties associated with land disposal,

(B) the goal of managing hazardous waste in an appropriate manner in the first instance, and

(C) the persistence, toxicity, mobility, and propensity to bioaccumulate of such hazardous wastes and their hazardous
constituents.

For the purposes of this paragraph, a method of land disposal may not be determined to be protective of human health
and the environment for a hazardous waste referred to in paragraph (2) (other than a hazardous waste which has complied
with the pretreatment regulations promulgated under subsection (m)), unless, upon application by an interested person, it
has been demonstrated to the Administrator, to a reasonable degree of certainty, that there will be no migration of
hazardous constituents from the disposal unit or injection zone for as long as the wastes remain hazardous.

(2) Paragraph (1) applies to the following hazardous wastes listed or identified under section 6921 of this title:

(A) Liquid hazardous wastes, including free liquids associated with any solid or sludge, containing free cyanides at
concentrations greater than or equal to 1,000 mg/l.

(B) Liquid hazardous wastes, including free liquids associated with any solid or sludge, containing the following metals
(or elements) or compounds of these metals (or elements) at concentrations greater than or equal to those specified below:

(i) arsenic and/or compounds (as As) 500 mg/l;

(ii) cadmium and/or compounds (as Cd) 100 mg/l;

(iii) chromium (VI and/or compounds (as Cr VI)) 500 mg/l;

(iv) lead and/or compounds (as Pb) 500 mg/l;

(v) mercury and/or compounds (as Hg) 20 mg/l;

(vi) nickel and/or compounds (as Ni) 134 mg/l;

(vii) selenium and/or compounds (as Se) 100 mg/l; and

(viii) thallium and/or compounds (as Th) 130 mg/l.

(C) Liquid hazardous waste having a pH less than or equal to two (2.0).

(D) Liquid hazardous wastes containing polychlorinated biphenyls at concentrations greater than or equal to 50 ppm.

(E) Hazardous wastes containing halogenated organic compounds in total concentration greater than or equal to 1,000
mg/kg.

When necessary to protect human health and the environment, the Administrator shall substitute more stringent
concentration levels than the levels specified in subparagraphs (A) through (E).

(3) During the period ending forty-eight months after November 8, 1984, this subsection shall not apply to any disposal of
contaminated soil or debris resulting from a response action taken under section 9004 or 9006 of this title or a corrective
action required under this subchapter.

(e) Solvents and dioxins

(1) Effective twenty-four months after November 8, 1984 (except as provided in subsection (f) with respect to underground
injection into deep injection wells), the land disposal of the hazardous wastes referred to in paragraph (2) is prohibited
unless the Administrator determines the prohibition of one or more methods of land disposal of such waste is not required in
order to protect human health and the environment for as long as the waste remains hazardous, taking into account the
factors referred to in subparagraph (A) through (C) of subsection (d)(1). For the purposes of this paragraph, a method of
land disposal may not be determined to be protective of human health and the environment for a hazardous waste referred
to in paragraph (2) (other than a hazardous waste which has complied with the pretreatment regulations promulgated under
subsection (m)), unless upon application by an interested person it has been demonstrated to the Administrator, to a
reasonable degree of certainty, that there will be no migration of hazardous constituents from the disposal unit or injection zone for as long as the wastes remain hazardous.

(2) The hazardous wastes to which the prohibition under paragraph (1) applies are as follows—

(A) dioxin-containing hazardous wastes numbered F020, F021, F022, and F023 (as referred to in the proposed rule published by the Administrator in the Federal Register for April 4, 1983), and

(B) those hazardous wastes numbered F001, F002, F003, F004, and F005 in regulations promulgated by the Administrator under section 6921 of this title (40 C.F.R. 261.31 (July 1, 1983)), as those regulations are in effect on July 1, 1983.

(3) During the period ending forty-eight months after November 8, 1984, this subsection shall not apply to any disposal of contaminated soil or debris resulting from a response action taken under section 9604 or 9606 of this title or a corrective action required under this subchapter.

(f) Disposal into deep injection wells; specified subsection (d) wastes; solvents and dioxins

(1) Not later than forty-five months after November 8, 1984, the Administrator shall complete a review of the disposal of all hazardous wastes referred to in paragraph (2) of subsection (d) and in paragraph (2) of subsection (e) by underground injection into deep injection wells.

(2) Within forty-five months after November 8, 1984, the Administrator shall make a determination regarding the disposal by underground injection into deep injection wells of the hazardous wastes referred to in paragraph (2) of subsection (d) and the hazardous wastes referred to in paragraph (2) of subsection (e). The Administrator shall promulgate final regulations prohibiting the disposal of such wastes into such wells if it may reasonably be determined that such disposal may not be protective of human health and the environment for as long as the waste remains hazardous, taking into account the factors referred to in subparagraphs (A) through (C) of subsection (d)(1). In promulgating such regulations, the Administrator shall consider each hazardous waste referred to in paragraph (2) of subsection (d) or in paragraph (2) of subsection (e) which is prohibited from disposal into such wells by any State.

(3) If the Administrator fails to make a determination under paragraph (2) for any hazardous waste referred to in paragraph (2) of subsection (d) or in paragraph (2) of subsection (e) within forty-five months after November 8, 1984, such hazardous waste shall be prohibited from disposal into any deep injection well.

(4) As used in this subsection, the term "deep injection well" means a well used for the underground injection of hazardous waste other than a well to which section 6979a(a) 2 of this title applies.

(g) Additional land disposal prohibition determinations

(1) Not later than twenty-four months after November 8, 1984, the Administrator shall submit a schedule to Congress for—

(A) reviewing all hazardous wastes listed (as of November 8, 1984) under section 6921 of this title other than those wastes which are referred to in subsection (d) or (e); and

(B) taking action under paragraph (5) of this subsection with respect to each such hazardous waste.

(2) The Administrator shall base the schedule on a ranking of such listed wastes considering their intrinsic hazard and their volume such that decisions regarding the land disposal of high volume hazardous wastes with high intrinsic hazard shall, to the maximum extent possible, be made by the date forty-five months after November 8, 1984. Decisions regarding low volume hazardous wastes with lower intrinsic hazard shall be made by the date sixty-six months after November 8, 1984.

(3) The preparation and submission of the schedule under this subsection shall not be subject to the Paperwork Reduction Act of 1980. 2 No hearing on the record shall be required for purposes of preparation or submission of the schedule. The schedule shall not be subject to judicial review.

(4) The schedule under this subsection shall require that the Administrator shall promulgate regulations in accordance with paragraph (5) or make a determination under paragraph (5)—

(A) for at least one-third of all hazardous wastes referred to in paragraph (1) by the date forty-five months after November 8, 1984;

(B) for at least two-thirds of all such listed wastes by the date fifty-five months after November 8, 1984; and

(C) for all such listed wastes and for all hazardous wastes identified under section 6921 of this title by the date sixty-six months after November 8, 1984.

In the case of any hazardous waste identified or listed under section 6921 of this title after November 8, 1984, the Administrator shall determine whether such waste shall be prohibited from one or more methods of land disposal in accordance with paragraph (5) within six months after the date of such identification or listing.

(5) Not later than the date specified in the schedule published under this subsection, the Administrator shall promulgate final regulations prohibiting one or more methods of land disposal of the hazardous wastes listed on such schedule except for methods of land disposal which the Administrator determines will be protective of human health and the environment for as long as the waste remains hazardous, taking into account the factors referred to in subparagraphs (A) through (C) of subsection (d)(1). For the purposes of this paragraph, a method of land disposal may not be determined to be protective of human health and the environment (except with respect to a hazardous waste which has complied with the pretreatment regulations promulgated under subsection (m)) unless, upon application by an interested person, it has been demonstrated to the Administrator, to a reasonable degree of certainty, that there will be no migration of hazardous constituents from the disposal unit or injection zone for as long as the wastes remain hazardous.
(6)(A) If the Administrator fails (by the date forty-five months after November 8, 1984) to promulgate regulations or make a determination under paragraph (5) for any hazardous waste which is included in the first one-third of the schedule published under this subsection, such hazardous waste may be disposed of in a landfill or surface impoundment only if—

(i) such facility is in compliance with the requirements of subsection (o) which are applicable to new facilities (relating to minimum technological requirements); and

(ii) prior to such disposal, the generator has certified to the Administrator that such generator has investigated the availability of treatment capacity and has determined that the use of such landfill or surface impoundment is the only practical alternative to treatment currently available to the generator.

The prohibition contained in this subparagraph shall continue to apply until the Administrator promulgates regulations or makes a determination under paragraph (5) for the waste concerned.

(B) If the Administrator fails (by the date 55 months after November 8, 1984) to promulgate regulations or make a determination under paragraph (5) for any hazardous waste which is included in the first two-thirds of the schedule published under this subsection, such hazardous waste may be disposed of in a landfill or surface impoundment only if—

(i) such facility is in compliance with the requirements of subsection (o) which are applicable to new facilities (relating to minimum technological requirements); and

(ii) prior to such disposal, the generator has certified to the Administrator that such generator has investigated the availability of treatment capacity and has determined that the use of such landfill or surface impoundment is the only practical alternative to treatment currently available to the generator.

The prohibition contained in this subparagraph shall continue to apply until the Administrator promulgates regulations or makes a determination under paragraph (5) for the waste concerned.

(C) If the Administrator fails to promulgate regulations, or make a determination under paragraph (5) for any hazardous waste referred to in paragraph (1) within 66 months after November 8, 1984, such hazardous waste shall be prohibited from land disposal.

(7) Solid waste identified as hazardous based solely on one or more characteristics shall not be subject to this subsection, any prohibitions under subsection (d), (e), or (f), or any requirement promulgated under subsection (m) (other than any applicable specific methods of treatment, as provided in paragraph (8)) if the waste—

(A) is treated in a treatment system that subsequently discharges to waters of the United States pursuant to a permit issued under section 1342 of title 33, treated for the purposes of the pretreatment requirements of section 1317 of title 33, or treated in a zero discharge system that prior to any permanent land disposal, engages in treatment that is equivalent to treatment required under section 1342 of title 33 for discharges to waters of the United States, as determined by the Administrator; and

(B) no longer exhibits a hazardous characteristic prior to management in any land-based solid waste management unit.

(8) Solid waste that otherwise qualifies under paragraph (7) shall nevertheless be required to meet any applicable specific methods of treatment specified for such waste by the Administrator under subsection (m), including those specified in the rule promulgated by the Administrator June 1, 1990, prior to management in a land-based unit as part of a treatment system specified in paragraph (7)(A). No solid waste may qualify under paragraph (7) that would generate toxic gases, vapors, or fumes due to the presence of cyanide when exposed to pH conditions between 2.0 and 12.5.

(9) Solid waste identified as hazardous based on one or more characteristics alone shall not be subject to this subsection, any prohibitions under subsection (d), (e), or (f), or any requirement promulgated under subsection (m) if the waste no longer exhibits a hazardous characteristic at the point of injection in any Class I injection well permitted under section 300h–1 of this title.

(10) Not later than five years after March 26, 1996, the Administrator shall complete a study of hazardous waste managed pursuant to paragraph (7) or (9) to characterize the risks to human health or the environment associated with such management. In conducting this study, the Administrator shall evaluate the extent to which risks are adequately addressed under existing State or Federal programs and whether unaddressed risks could be better addressed under such laws or programs. Upon receipt of additional information or upon completion of such study and as necessary to protect human health and the environment, the Administrator may impose additional requirements under existing Federal laws, including subsection (m)(1), or rely on other State or Federal programs or authorities to address such risks. In promulgating any treatment standards pursuant to subsection (m)(1) under the previous sentence, the Administrator shall take into account the extent to which treatment is occurring in land-based units as part of a treatment system specified in paragraph (7)(A).

(11) Nothing in paragraph (7) or (9) shall be interpreted or applied to restrict any inspection or enforcement authority under the provisions of this chapter.

(h) Variance from land disposal prohibitions

(1) A prohibition in regulations under subsection (d), (e), (f), or (g) shall be effective immediately upon promulgation.

(2) The Administrator may establish an effective date different from the effective date which would otherwise apply under subsection (d), (e), (f), or (g) with respect to a specific hazardous waste which is subject to a prohibition under subsection (d), (e), (f), or (g) or under regulations under subsection (d), (e), (f), or (g) of this section. Any such other effective date shall be established on the basis of the earliest date on which adequate alternative treatment, recovery, or disposal capacity which protects human health and the environment will be available. Any such other effective date shall in no event be later than 2 years after the effective date of the prohibition which would otherwise apply under subsection (d), (e), (f), or (g).

(3) The Administrator, after notice and opportunity for comment and after consultation with appropriate State agencies in all affected States, may on a case-by-case basis grant an extension of the effective date which would otherwise apply under subsection (d), (e), (f), or (g) under paragraph (2) for up to one year, where the applicant demonstrates that there is a
binding contractual commitment to construct or otherwise provide such alternative capacity but due to circumstances beyond the control of such applicant such alternative capacity cannot reasonably be made available by such effective date. Such extension shall be renewable once for no more than one additional year.

(4) Whenever another effective date (hereinafter referred to as a "variance") is established under paragraph (2), or an extension is granted under paragraph (3), with respect to any hazardous waste, during the period for which such variance or extension is in effect, such hazardous waste may be disposed of in a landfill or surface impoundment only if such facility is in compliance with the requirements of subsection (o).

(i) Publication of determination

If the Administrator determines that a method of land disposal will be protective of human health and the environment, he shall promptly publish in the Federal Register notice of such determination, together with an explanation of the basis for such determination.

(j) Storage of hazardous waste prohibited from land disposal

In the case of any hazardous waste which is prohibited from one or more methods of land disposal under this section (or under regulations promulgated by the Administrator under any provision of this section) the storage of such hazardous waste is prohibited unless such storage is solely for the purpose of the accumulation of such quantities of hazardous waste as are necessary to facilitate proper recovery, treatment or disposal.

(k) "Land disposal" defined

For the purposes of this section, the term "land disposal", when used with respect to a specified hazardous waste, shall be deemed to include, but not be limited to, any placement of such hazardous waste in a landfill, surface impoundment, waste pile, injection well, land treatment facility, salt dome formation, salt bed formation, or underground mine or cave.

(l) Ban on dust suppression

The use of waste or used oil or other material, which is contaminated or mixed with dioxin or any other hazardous waste identified or listed under section 6921 of this title (other than a waste identified solely on the basis of ignitability), for dust suppression or road treatment is prohibited.

(m) Treatment standards for wastes subject to land disposal prohibition

(1) Simultaneously with the promulgation of regulations under subsection (d), (e), (f), or (g) prohibiting one or more methods of land disposal of a particular hazardous waste, and as appropriate thereafter, the Administrator shall, after notice and an opportunity for hearings and after consultation with appropriate Federal and State agencies, promulgate regulations specifying those levels or methods of treatment, if any, which substantially diminish the toxicity of the waste or substantially reduce the likelihood of migration of hazardous constituents from the waste so that short-term and long-term threats to human health and the environment are minimized.

(2) If such hazardous waste has been treated to the level or by a method specified in regulations promulgated under this subsection, such waste or residue thereof shall not be subject to any prohibition promulgated under subsection (d), (e), (f), or (g) and may be disposed of in a land disposal facility which meets the requirements of this subchapter. Any regulation promulgated under this subsection for a particular hazardous waste shall become effective on the same date as any applicable prohibition promulgated under subsection (d), (e), (f), or (g).

(n) Air emissions

Not later than thirty months after November 8, 1984, the Administrator shall promulgate such regulations for the monitoring and control of air emissions at hazardous waste treatment, storage, and disposal facilities, including but not limited to open tanks, surface impoundments, and landfills, as may be necessary to protect human health and the environment.

(o) Minimum technological requirements

(1) The regulations under subsection (a) of this section shall be revised from time to time to take into account improvements in the technology of control and measurement. At a minimum, such regulations shall require, and a permit issued pursuant to section 6925(c) of this title after November 8, 1984, by the Administrator or a State shall require—

(A) for each new landfill or surface impoundment, each new landfill or surface impoundment unit at an existing facility, each replacement of an existing landfill or surface impoundment unit, and each lateral expansion of an existing landfill or surface impoundment unit, for which an application for a final determination regarding issuance of a permit under section 6925(c) of this title is received after November 8, 1984—

(i) the installation of two or more liners and a leachate collection system above (in the case of a landfill) and between such liners; and

(ii) ground water monitoring; and

(B) for each incinerator which receives a permit under section 6925(c) of this title after November 8, 1984, the attainment of the minimum destruction and removal efficiency required by regulations in effect on June 24, 1982.

The requirements of this paragraph shall apply with respect to all waste received after the issuance of the permit.

(2) Paragraph (1)(A)(i) shall not apply if the owner or operator demonstrates to the Administrator, and the Administrator finds for such landfill or surface impoundment, that alternative design and operating practices, together with location characteristics, will prevent the migration of any hazardous constituents into the ground water or surface water at least as effectively as such liners and leachate collection systems.

(3) The double-liner requirement set forth in paragraph (1)(A)(i) may be waived by the Administrator for any monofill, if—
(A) such monofil contains only hazardous wastes from foundry furnace emission controls or metal casting molding sand,
(B) such wastes do not contain constituents which would render the wastes hazardous for reasons other than the Extraction Procedure ("EP") toxicity characteristics set forth in regulations under this subchapter, and
(C) such monofil meets the same requirements as are applicable in the case of a waiver under section 6925(j)(2) or (4) of this title.

(4)(A) Not later than thirty months after November 8, 1984, the Administrator shall promulgate standards requiring that new landfill units, surface impoundment units, waste piles, underground tanks and land treatment units for the storage, treatment, or disposal of hazardous waste identified or listed under section 6921 of this title shall be required to utilize approved leak detection systems.

(B) For the purposes of subparagraph (A)—
   (i) the term "approved leak detection system" means a system or technology which the Administrator determines to be capable of detecting leaks of hazardous constituents at the earliest practicable time; and
   (ii) the term "new units" means units on which construction commences after the date of promulgation of regulations under this paragraph.

(5)(A) The Administrator shall promulgate regulations or issue guidance documents implementing the requirements of paragraph (1)(A) within two years after November 8, 1984.

(B) Until the effective date of such regulations or guidance documents, the requirement for the installation of two or more liners may be satisfied by the installation of a top liner designed, operated, and constructed of materials to prevent the migration of any constituent into such liner during the period such facility remains in operation (including any post-closure monitoring period), and a lower liner designed, operated 3 and constructed to prevent the migration of any constituent through such liner during such period. For the purpose of the preceding sentence, a lower liner shall be deemed to satisfy such requirement if it is constructed of at least a 3-foot thick layer of recompacted clay or other natural material with a permeability of no more than $1 \times 10^{-7}$ centimeter per second.

(6) Any permit under section 6925 of this title which is issued for a landfill located within the State of Alabama shall require the installation of two or more liners and a leachate collection system above and between such liners, notwithstanding any other provision of this chapter.

(7) In addition to the requirements set forth in this subsection, the regulations referred to in paragraph (1) shall specify criteria for the acceptable location of new and existing treatment, storage, or disposal facilities as necessary to protect human health and the environment. Within 18 months after November 8, 1984, the Administrator shall publish guidance criteria identifying areas of vulnerable hydrogeology.

(p) Ground water monitoring

The standards under this section concerning ground water monitoring which are applicable to surface impoundments, waste piles, land treatment units, and landfills shall apply to such a facility whether or not—

1. the facility is located above the seasonal high water table;
2. two liners and a leachate collection system have been installed at the facility; or
3. the owner or operator inspects the liner (or liners) which has been installed at the facility.

This subsection shall not be construed to affect other exemptions or waivers from such standards provided in regulations in effect on November 8, 1984, or as may be provided in revisions to those regulations, to the extent consistent with this subsection. The Administrator is authorized on a case-by-case basis to exempt from ground water monitoring requirements under this section (including subsection (o)) any engineered structure which the Administrator finds does not receive or contain liquid waste (or waste containing free liquids), is designed and operated to exclude liquid from precipitation or other runoff, utilizes multiple leak detection systems within the outer layer of containment, and provides for continuing operation and maintenance of those leak detection systems during the operating period, closure, and the period required for post-closure monitoring and for which the Administrator concludes on the basis of such findings that there is a reasonable certainty hazardous constituents will not migrate beyond the outer layer of containment prior to the end of the period required for post-closure monitoring.

(q) Hazardous waste used as fuel

1. Not later than two years after November 8, 1984, and after notice and opportunity for public hearing, the Administrator shall promulgate regulations establishing such—
   (A) standards applicable to the owners and operators of facilities which produce a fuel—
      (i) from any hazardous waste identified or listed under section 6921 of this title, or
      (ii) from any hazardous waste identified or listed under section 6921 of this title and any other material;
   (B) standards applicable to the owners and operators of facilities which burn, for purposes of energy recovery, any fuel produced as provided in subparagraph (A) or any fuel which otherwise contains any hazardous waste identified or listed under section 6921 of this title; and
   (C) standards applicable to any person who distributes or markets any fuel which is produced as provided in subparagraph (A) or any fuel which otherwise contains any hazardous waste identified or listed under section 6921 of this title;
as may be necessary to protect human health and the environment. Such standards may include any of the requirements set forth in paragraphs (1) through (7) of subsection (a) as may be appropriate. Nothing in this subsection shall be construed to affect or impair the provisions of section 6921(b)(3) of this title. For purposes of this subsection, the term "hazardous waste listed under section 6921 of this title" includes any commercial chemical product which is listed under section 6921 of this title and which, in lieu of its original intended use, is (i) produced for use as (or as a component of) a fuel, (ii) distributed for use as a fuel, or (iii) burned as a fuel.

(2) (A) This subsection, subsection (r), and subsection (s) shall not apply to petroleum refinery wastes containing oil which are converted into petroleum coke at the same facility at which such wastes were generated, unless the resulting coke product would exceed one or more characteristics by which a substance would be identified as a hazardous waste under section 6921 of this title.
(B) The Administrator may exempt from the requirements of this subsection, subsection (r), or subsection (s) facilities which burn de minimis quantities of hazardous waste as fuel, as defined by the Administrator, if the wastes are burned at the same facility at which such wastes are generated; the waste is burned to recover useful energy, as determined by the Administrator on the basis of the design and operating characteristics of the facility and the heating value and other characteristics of the waste; and the waste is burned in a type of device determined by the Administrator to be designed and operated at a destruction and removal efficiency sufficient such that protection of human health and environment is assured.
(C) (i) After November 8, 1984, and until standards are promulgated and in effect under paragraph (2) of this subsection, no fuel which contains any hazardous waste may be burned in any cement kiln which is located within the boundaries of any incorporated municipality with a population greater than five hundred thousand (based on the most recent census statistics) unless such kiln fully complies with regulations (as in effect on November 8, 1984) under this subchapter which are applicable to incinerators.
(ii) Any person who knowingly violates the prohibition contained in clause (i) shall be deemed to have violated section 6928(d)(2) of this title.

(r) Labeling

(1) Notwithstanding any other provision of law, until such time as the Administrator promulgates standards under subsection (q) specifically superseding this requirement, it shall be unlawful for any person who is required to file a notification in accordance with paragraph (1) or (3) of section 6930 of this title to distribute or market any fuel which is produced from any hazardous waste identified or listed under section 6921 of this title, or any fuel which otherwise contains any hazardous waste identified or listed under section 6921 of this title if the invoice or the bill of sale fails—
(A) to bear the following statement: "WARNING: THIS FUEL CONTAINS HAZARDOUS WASTES", and
(B) to list the hazardous wastes contained therein.

Beginning ninety days after November 8, 1984, such statement shall be located in a conspicuous place on every such invoice or bill of sale and shall appear in conspicuous and legible type in contrast by typography, layouts, or color with other printed matter on the invoice or bill of sale.
(2) Unless the Administrator determines otherwise as may be necessary to protect human health and the environment, this subsection shall not apply to fuels produced from petroleum refining waste containing oil if—
(A) such materials are generated and reinserted onsite into the refining process;
(B) contaminants are removed; and
(C) such refining waste containing oil is converted along with normal process streams into petroleum-derived fuel products at a facility at which crude oil is refined into petroleum products and which is classified as a number SIC 2911 facility under the Office of Management and Budget Standard Industrial Classification Manual.

(3) Unless the Administrator determines otherwise as may be necessary to protect human health and the environment, this subsection shall not apply to fuels produced from oily materials, resulting from normal petroleum refining, production and transportation practices, if (A) contaminants are removed; and (B) such oily materials are converted along with normal process streams into petroleum-derived fuel products at a facility at which crude oil is refined into petroleum products and which is classified as a number SIC 2911 facility under the Office of Management and Budget Standard Industrial Classification Manual.

(s) Recordkeeping

Not later than fifteen months after November 8, 1984, the Administrator shall promulgate regulations requiring that any person who is required to file a notification in accordance with subparagraph (1), (2), or (3), of section 6930(a) of this title shall maintain such records regarding fuel blending, distribution, or use as may be necessary to protect human health and the environment.

(t) Financial responsibility provisions

(1) Financial responsibility required by subsection (a) of this section may be established in accordance with regulations promulgated by the Administrator by any one, or any combination, of the following: insurance, guarantee, surety bond, letter of credit, or qualification as a self-insurer. In promulgating requirements under this section, the Administrator is authorized to specify policy or other contractual terms, conditions, or defenses which are necessary or are unacceptable in establishing such evidence of financial responsibility in order to effectuate the purposes of this chapter.
(2) In any case where the owner or operator is in bankruptcy, reorganization, or arrangement pursuant to the Federal Bankruptcy Code or where (with reasonable diligence) jurisdiction in any State court or any Federal Court cannot be obtained over an owner or operator likely to be solvent at the time of judgment, any claim arising from conduct for which evidence of financial responsibility must be provided under this section may be asserted directly against the guarantor providing such evidence of financial responsibility. In the case of any action pursuant to this subsection, such guarantor shall
be entitled to invoke all rights and defenses which would have been available to the owner or operator if any action had been brought against the owner or operator by the claimant and which would have been available to the guarantor if an action had been brought against the guarantor by the owner or operator.

(3) The total liability of any guarantor shall be limited to the aggregate amount which the guarantor has provided as evidence of financial responsibility to the owner or operator under this chapter. Nothing in this subsection shall be construed to limit any other State or Federal statutory, contractual or common law liability of a guarantor to its owner or operator including, but not limited to, the liability of such guarantor for bad faith either in negotiating or in failing to negotiate the settlement of any claim. Nothing in this subsection shall be construed to diminish the liability of any person under section 9607 or 9611 of this title or other applicable law.

(4) For the purpose of this subsection, the term "guarantor" means any person, other than the owner or operator, who provides evidence of financial responsibility for an owner or operator under this section.

(u) Continuing releases at permitted facilities

Standards promulgated under this section shall require, and a permit issued after November 8, 1984, by the Administrator or a State shall require, corrective action for all releases of hazardous waste or constituents from any solid waste management unit at a treatment, storage, or disposal facility seeking a permit under this subchapter, regardless of the time at which waste was placed in such unit. Permits issued under section 6925 of this title shall contain schedules of compliance for such corrective action (where such corrective action cannot be completed prior to issuance of the permit) and assurances of financial responsibility for completing such corrective action.

(v) Corrective action beyond facility boundary

As promptly as practicable after November 8, 1984, the Administrator shall amend the standards under this section regarding corrective action required at facilities for the treatment, storage, or disposal, of hazardous waste listed or identified under section 6921 of this title to require that corrective action be taken beyond the facility boundary where necessary to protect human health and the environment unless the owner or operator of the facility concerned demonstrates to the satisfaction of the Administrator that, despite the owner or operator’s best efforts, the owner or operator was unable to obtain the necessary permission to undertake such action. Such regulations shall take effect immediately upon promulgation, notwithstanding section 6930(b) of this title, and shall apply to—

1. all facilities operating under permits issued under subsection (c), and

2. all landfills, surface impoundments, and waste pile units (including any new units, replacements of existing units, or lateral expansions of existing units) which receive hazardous waste after July 26, 1982.

Pending promulgation of such regulations, the Administrator shall issue corrective action orders for facilities referred to in paragraphs (1) and (2), on a case-by-case basis, consistent with the purposes of this subsection.

(w) Underground tanks

Not later than March 1, 1985, the Administrator shall promulgate final permitting standards under this section for underground tanks that cannot be entered for inspection. Within forty-eight months after November 8, 1984, such standards shall be modified, if necessary, to cover at a minimum all requirements and standards described in section 6991b of this title.

(x) Mining and other special wastes

If (1) solid waste from the extraction, beneficiation or processing of ores and minerals, including phosphate rock and overburden from the mining of uranium, (2) fly ash waste, bottom ash waste, slag waste, and flue gas emission control waste generated primarily from the combustion of coal or other fossil fuels, or (3) cement kiln dust waste, is subject to regulation under this subchapter, the Administrator is authorized to modify the requirements of subsections (c), (d), (e), (f), (g), (o), and (u) and section 6925(j) of this title, in the case of landfills or surface impoundments receiving such solid waste, to take into account the special characteristics of such wastes, the practical difficulties associated with implementation of such requirements, and site-specific characteristics, including but not limited to the climate, geology, hydrology and soil chemistry at the site, so long as such modified requirements assure protection of human health and the environment.

(y) Munitions

(1) Not later than 6 months after October 6, 1992, the Administrator shall propose, after consulting with the Secretary of Defense and appropriate State officials, regulations identifying when military munitions become hazardous waste for purposes of this subchapter and providing for the safe transportation and storage of such waste. Not later than 24 months after October 6, 1992, and after notice and opportunity for comment, the Administrator shall promulgate such regulations. Any such regulations shall assure protection of human health and the environment.

(2) For purposes of this subsection, the term "military munitions" includes chemical and conventional munitions.


EDITORIAL NOTES

REFERENCES IN TEXT

The Safe Drinking Water Act, referred to in subsec. (c)(3), is title XIV of act July 1, 1944, as added Dec. 16, 1974, Pub. L. 93–523, §2(a), 88 Stat. 1660, as amended, which is classified generally to subchapter XII (§300f et seq.) of chapter 6A of this title. For complete classification of this Act to the Code see Short Title note set out under section 201 of this title and Tables.


The Federal Bankruptcy Code, referred to in subsec. (t)(2), probably means a reference to Title 11, Bankruptcy.

AMENDMENTS

1996—Subsec. (g)(5). Pub. L. 104–119, §4(3), substituted "subparagraphs (A) through (C)" for "subparagraph (A) through (C)".

Subsec. (g)(7) to (11). Pub. L. 104–119, §2, added pars. (7) to (11).


Subsec. (a). Pub. L. 98–616, §208, inserted "(including financial responsibility for corrective action)".

Subsec. (b) to (n). Pub. L. 98–616, §201(a), added subsecs. (b) to (n).


Subsec. (q) to (s). Pub. L. 98–616, §204(b), added subsecs. (q) to (s).


Subsec. (v), (w). Pub. L. 98–616, §207, added subsecs. (v) and (w).


1980—Pub. L. 96–482 required standards regulations to reflect distinction in requirements appropriate for new facilities and for facilities in existence on date of promulgation of the regulations.

EXECUTIVE DOCUMENTS

TRANSFER OF FUNCTIONS

For transfer of certain enforcement functions of Administrator or other official of Environmental Protection Agency under this chapter to Federal Inspector, Office of Federal Inspector for the Alaska Natural Gas Transportation System, and subsequent transfer to Secretary of Energy, then to Federal Coordinator for Alaska Natural Gas Transportation Projects, see note set out under section 6903 of this title.

1 See References in Text note below.

2 See References in Text note below.

3 So in original. Probably should be followed by a comma.

§6925. Permits for treatment, storage, or disposal of hazardous waste

(a) Permit requirements

Not later than eighteen months after October 21, 1976, the Administrator shall promulgate regulations requiring each person owning or operating an existing facility or planning to construct a new facility for the treatment, storage, or disposal of hazardous waste identified or listed under this subchapter to have a permit issued pursuant to this section. Such regulations shall take effect on the date provided in section 6930 of this title and upon and after such date the treatment, storage, or disposal of any such hazardous waste and the construction of any new facility for the treatment, storage, or disposal of any such hazardous waste is prohibited except in accordance with such a permit. No permit shall be required under this section.
in order to construct a facility if such facility is constructed pursuant to an approval issued by the Administrator under section 2605(e) of title 15 for the incineration of polychlorinated biphenyls and any person owning or operating such a facility may, at any time after operation or construction of such facility has begun, file an application for a permit pursuant to this section authorizing such facility to incinerate hazardous waste identified or listed under this subchapter.

(b) Requirements of permit application

Each application for a permit under this section shall contain such information as may be required under regulations promulgated by the Administrator, including information respecting—

1. estimates with respect to the composition, quantifies, and concentrations of any hazardous waste identified or listed under this subchapter, or combinations of any such hazardous waste and any other solid waste, proposed to be disposed of, treated, transported, or stored, and the time, frequency, or rate of which such waste is proposed to be disposed of, treated, transported, or stored;

2. the site at which such hazardous waste or the products of treatment of such hazardous waste will be disposed of, treated, transported to, or stored.

(c) Permit issuance

1. Upon a determination by the Administrator (or a State, if applicable), of compliance by a facility for which a permit is applied for under this section with the requirements of this section and section 6924 of this title, the Administrator (or the State) shall issue a permit for such facilities. In the event permit applicants propose modification of their facilities, or in the event the Administrator (or the State) determines that modifications are necessary to conform to the requirements under this section and section 6924 of this title, the permit shall specify the time allowed to complete the modifications.

2. (A)(i) Not later than the date four years after November 8, 1984, in the case of each application under this subsection for a permit for a land disposal facility which was submitted before such date, the Administrator shall issue a final permit pursuant to such application or issue a final denial of such application.

   (ii) Not later than the date five years after November 8, 1984, in the case of each application for a permit under this subsection for an incinerator facility which was submitted before such date, the Administrator shall issue a final permit pursuant to such application or issue a final denial of such application.

(B) Not later than the date eight years after November 8, 1984, in the case of each application for a permit under this subsection for any facility (other than a facility referred to in subparagraph (A)) which was submitted before such date, the Administrator shall issue a final permit pursuant to such application or issue a final denial of such application.

(C) The time periods specified in this paragraph shall also apply in the case of any State which is administering an authorized hazardous waste program under section 6926 of this title. Interim status under subsection (e) shall terminate for each facility referred to in subparagraph (A)(ii) or (B) on the expiration of the five- or eight-year period referred to in subparagraph (A) or (B), whichever is applicable, unless the owner or operator of the facility applies for a final determination regarding the issuance of a permit under this subsection within—

   (i) two years after November 8, 1984 (in the case of a facility referred to in subparagraph (A)(ii)), or

   (ii) four years after November 8, 1984 (in the case of a facility referred to in subparagraph (B)).

(3) Any permit under this section shall be for a fixed term, not to exceed 10 years in the case of any land disposal facility, storage facility, or incinerator or other treatment facility. Each permit for a land disposal facility shall be reviewed five years after date of issuance or reissuance and shall be modified as necessary to assure that the facility continues to comply with the currently applicable requirements of this section and section 6924 of this title. Nothing in this subsection shall preclude the Administrator from reviewing and modifying a permit at any time during its term. Review of any application for a permit renewal shall consider improvements in the state of control and measurement technology as well as changes in applicable regulations. Each permit issued under this section shall contain such terms and conditions as the Administrator (or the State) determines necessary to protect human health and the environment.

(d) Permit revocation

Upon a determination by the Administrator (or by a State, in the case of a State having an authorized hazardous waste program under section 6926 of this title) of noncompliance by a facility having a permit under this chapter with the requirements of this section or section 6924 of this title, the Administrator (or State, in the case of a State having an authorized hazardous waste program under section 6926 of this title) shall revoke such permit.

(e) Interim status

1. Any person who—

   (A) owns or operates a facility required to have a permit under this section which facility—

      (i) was in existence on November 19, 1980, or

      (ii) is in existence on the effective date of statutory or regulatory changes under this chapter that render the facility subject to the requirement to have a permit under this section,

   (B) has complied with the requirements of section 6930(a) of this title, and

   (C) has made an application for a permit under this section,

shall be treated as having been issued such permit until such time as final administrative disposition of such application is made, unless the Administrator or other plaintiff proves that final administrative disposition of such application has not been made because of the failure of the applicant to furnish information reasonably required or requested in order to process the application. This paragraph shall not apply to any facility which has been previously denied a permit under this section or if authority to operate the facility under this section has been previously terminated.
(2) In the case of each land disposal facility which has been granted interim status under this subsection before November 8, 1984, interim status shall terminate on the date twelve months after November 8, 1984, unless the owner or operator of such facility—

(A) applies for a final determination regarding the issuance of a permit under subsection (c) for such facility before the date twelve months after November 8, 1984; and

(B) certifies that such facility is in compliance with all applicable groundwater monitoring and financial responsibility requirements.

(3) In the case of each land disposal facility which is in existence on the effective date of statutory or regulatory changes under this chapter that render the facility subject to the requirement to have a permit under this section and which is granted interim status under this subsection, interim status shall terminate on the date twelve months after the date on which the facility first becomes subject to such permit requirement unless the owner or operator of such facility—

(A) applies for a final determination regarding the issuance of a permit under subsection (c) for such facility before the date twelve months after the date on which the facility first becomes subject to such permit requirement; and

(B) certifies that such facility is in compliance with all applicable groundwater monitoring and financial responsibility requirements.

(f) Coal mining wastes and reclamation permits

Notwithstanding subsection (a) through (e) of this section, any surface coal mining and reclamation permit covering any coal mining wastes or overburden which has been issued or approved under the Surface Mining Control and Reclamation Act of 1977 [30 U.S.C. 1201 et seq.] shall be deemed to be a permit issued pursuant to this section with respect to the treatment, storage, or disposal of such wastes or overburden. Regulations promulgated by the Administrator under this subchapter shall not be applicable to treatment, storage, or disposal of coal mining wastes and overburden which are covered by such a permit.

(g) Research, development, and demonstration permits

(1) The Administrator may issue a research, development, and demonstration permit for any hazardous waste treatment facility which proposes to utilize an innovative and experimental hazardous waste treatment technology or process for which permit standards for such experimental activity have not been promulgated under this subchapter. Any such permit shall include such terms and conditions as will assure protection of human health and the environment. Such permits—

(A) shall provide for the construction of such facilities, as necessary, and for operation of the facility for not longer than one year (unless renewed as provided in paragraph (4)); and

(B) shall provide for the receipt and treatment by the facility of only those types and quantities of hazardous waste which the Administrator deems necessary for purposes of determining the efficacy and performance capabilities of the technology or process and the effects of such technology or process on human health and the environment, and

(C) shall include such requirements as the Administrator deems necessary to protect human health and the environment (including, but not limited to, requirements regarding monitoring, operation, insurance or bonding, financial responsibility, closure, and remedial action), and such requirements as the Administrator deems necessary regarding testing and providing of information to the Administrator with respect to the operation of the facility.

The Administrator may apply the criteria set forth in this paragraph in establishing the conditions of each permit without separate establishment of regulations implementing such criteria.

(2) For the purpose of expediting review and issuance of permits under this subsection, the Administrator may, consistent with the protection of human health and the environment, modify or waive permit application and permit issuance requirements established in the Administrator’s general permit regulations except that there may be no modification or waiver of regulations regarding financial responsibility (including insurance) or of procedures established under section 6974(b)(2) of this title regarding public participation.

(3) The Administrator may order an immediate termination of all operations at the facility at any time he determines that termination is necessary to protect human health and the environment.

(4) Any permit issued under this subsection may be renewed not more than three times. Each such renewal shall be for a period of not more than 1 year.

(h) Waste minimization

Effective September 1, 1985, it shall be a condition of any permit issued under this section for the treatment, storage, or disposal of hazardous waste on the premises where such waste was generated that the permittee certify, no less often than annually, that—

(1) the generator of the hazardous waste has a program in place to reduce the volume or quantity and toxicity of such waste to the degree determined by the generator to be economically practicable; and

(2) the proposed method of treatment, storage, or disposal is that practicable method currently available to the generator which minimizes the present and future threat to human health and the environment.

(i) Interim status facilities receiving wastes after July 26, 1982

The standards concerning ground water monitoring, unsaturated zone monitoring, and corrective action, which are applicable under section 6924 of this title to new landfills, surface impoundments, land treatment units, and waste-pile units required to be permitted under subsection (c) shall also apply to any landfill, surface impoundment, land treatment unit, or waste-pile unit qualifying for the authorization to operate under subsection (e) which receives hazardous waste after July 26, 1982.

(j) Interim status surface impoundments
(1) Except as provided in paragraph (2), (3), or (4), each surface impoundment in existence on November 8, 1984, and qualifying for the authorization to operate under subsection (e) of this section shall not receive, store, or treat hazardous waste after the date four years after November 8, 1984, unless such surface impoundment is in compliance with the requirements of section 6924(o)(1)(A) of this title which would apply to such impoundment if it were new.

(2) Paragraph (1) of this subsection shall not apply to any surface impoundment which (A) has at least one liner, for which there is no evidence that such liner is leaking; (B) is located more than one-quarter mile from an underground source of drinking water; and (C) is in compliance with generally applicable ground water monitoring requirements for facilities with permits under subsection (c) of this section.

(3) Paragraph (1) of this subsection shall not apply to any surface impoundment which (A) contains treated waste water during the secondary or subsequent phases of an aggressive biological treatment facility subject to a permit issued under section 1342 of title 33 (or which holds such treated waste water after treatment and prior to discharge); (B) is in compliance with generally applicable ground water monitoring requirements for facilities with permits under section 1342 of this title; and (C)(i) is part of a facility in compliance with section 1311(b)(2) of title 33, or (ii) in the case of a facility for which no effluent guidelines required under section 1314(b)(2) of title 33 are in effect and no permit under section 1342(a)(1) of title 33 implementing section 1311(b)(2) of title 33 has been issued, is part of a facility in compliance with a permit under section 1342 of title 33, which is achieving significant degradation of toxic pollutants and hazardous constituents contained in the untreated waste stream and which has identified those toxic pollutants and hazardous constituents in the untreated waste stream to the appropriate permitting authority.

(4) The Administrator (or the State, in the case of a State with an authorized program), after notice and opportunity for comment, may modify the requirements of paragraph (1) for any surface impoundment if the owner or operator demonstrates that such surface impoundment is located, designed and operated so as to assure that there will be no migration of any hazardous constituent into ground water or surface water at any future time. The Administrator or the State shall take into account locational criteria established under section 6924(o)(7) of this title.

(5) The owner or operator of any surface impoundment potentially subject to paragraph (1) who has reason to believe that on the basis of paragraph (2), (3), or (4) such surface impoundment is not required to comply with the requirements of paragraph (1), shall apply to the Administrator (or the State, in the case of a State with an authorized program) not later than twenty-four months after November 8, 1984, for a determination of the applicability of paragraph (1) (in the case of paragraph (2) or (3)) or for a modification of the requirements of paragraph (1) (in the case of paragraph (4)), with respect to such surface impoundment. Such owner or operator shall provide, with such application, evidence pertinent to such decision, including:

(A) an application for a final determination regarding the issuance of a permit under subsection (c) of this section for such facility, if not previously submitted;

(B) evidence as to compliance with all applicable ground water monitoring requirements and the information and analysis from such monitoring;

(C) all reasonably ascertainable evidence as to whether such surface impoundment is leaking; and

(D) in the case of applications under paragraph (2) or (3), a certification by a registered professional engineer with academic training and experience in ground water hydrology that—

(i) under paragraph (2), the liner of such surface impoundment is designed, constructed, and operated in accordance with applicable requirements, such surface impoundment is more than one-quarter mile from an underground source of drinking water and there is no evidence such liner is leaking; or

(ii) under paragraph (3), based on analysis of those toxic pollutants and hazardous constituents that are likely to be present in the untreated waste stream, such impoundment satisfies the conditions of paragraph (3).

In the case of any surface impoundment for which the owner or operator fails to apply under this paragraph with the time provided by this paragraph or paragraph (6), such surface impoundment shall comply with paragraph (1) notwithstanding paragraph (2), (3), or (4). Within twelve months after receipt of such application and evidence and not later than thirty-six months after November 8, 1984, and after notice and opportunity to comment, the Administrator (or, if appropriate, the State) shall advise such owner or operator on the applicability of paragraph (1) to such surface impoundment or as to whether and how the requirements of paragraph (1) shall be modified and applied to such surface impoundment.

(6)(A) In any case in which a surface impoundment becomes subject to paragraph (1) after November 8, 1984, due to the promulgation of additional listings or characteristics for the identification of hazardous waste under section 6921 of this title, the period for compliance in paragraph (1) shall be four years after the date of such promulgation, the period for demonstrations under paragraph (4) and for submission of evidence under paragraph (5) shall be not later than twenty-four months after the date of such promulgation, and the period for the Administrator (or if appropriate, the State) to advise such owners or operators under paragraph (5) shall be not later than thirty-six months after the date of promulgation.

(B) In any case in which a surface impoundment is initially determined to be excluded from the requirements of paragraph (1) but due to a change in condition (including the existence of a leak) no longer satisfies the provisions of paragraph (2), (3), or (4) and therefore becomes subject to paragraph (1), the period for compliance in paragraph (1) shall be two years after the date of discovery of such change of condition, or in the case of a surface impoundment excluded under paragraph (3) three years after such date of discovery.

(7)(A) The Administrator shall study and report to the Congress on the number, range of size, construction, likelihood of hazardous constituents migrating into ground water, and potential threat to human health and the environment of existing surface impoundments excluded by paragraph (3) from the requirements of paragraph (1). Such report shall address the need, feasibility, and estimated costs of subjecting such existing surface impoundments to the requirements of paragraph (1).

(B) In the case of any existing surface impoundment or class of surface impoundments from which the Administrator (or the State, in the case of a State with an authorized program) determines hazardous constituents are likely to migrate into
ground water, the Administrator (or if appropriate, the State) is authorized to impose such requirements as may be necessary to protect human health and the environment, including the requirements of section 6924(o) of this title which would apply to such impoundments if they were new.

(C) In the case of any surface impoundment excluded by paragraph (3) from the requirements of paragraph (1) which is subsequently determined to be leaking, the Administrator (or, if appropriate, the State) shall require compliance with paragraph (1), unless the Administrator (or, if appropriate, the State) determines that such compliance is not necessary to protect human health and the environment.

(8) In the case of any surface impoundment in which the liners and leak detection system have been installed pursuant to the requirements of paragraph (1) and in good faith compliance with section 6924(o) of this title and the Administrator's regulations and guidance documents governing liners and leak detection systems, no liner or leak detection system which is different from that which was so installed pursuant to paragraph (1) shall be required for such unit by the Administrator when issuing the first permit under this section to such facility. Nothing in this paragraph shall preclude the Administrator from requiring installation of a new liner when the Administrator has reason to believe that any liner installed pursuant to the requirements of this subsection is leaking.

(9) In the case of any surface impoundment which has been excluded by paragraph (2) on the basis of a liner meeting the definition under paragraph (12)(A)(v), the closure of such impoundment the Administrator shall require the owner or operator of such impoundment to remove or decontaminate all waste residues, all contaminated liner material, and contaminated soil to the extent practicable. If all contaminated soil is not removed or decontaminated, the owner or operator of such impoundment shall be required to comply with appropriate post-closure requirements, including but not limited to ground water monitoring and corrective action.

(10) Any incremental cost attributable to the requirements of this subsection or section 6924(o) of this title shall not be considered by the Administrator (or the State, in the case of a State with an authorized program under section 1342 of title 33)—

(A) in establishing effluent limitations and standards under section 1311, 1314, 1316, 1317, or 1342 of title 33 based on effluent limitations guidelines and standards promulgated any time before twelve months after November 8, 1984; or

(B) in establishing any other effluent limitations to carry out the provisions of section 1311, 1317, or 1342 of title 33 on or before October 1, 1986.

(11)(A) If the Administrator allows a hazardous waste which is prohibited from one or more methods of land disposal under subsection (d), (e), or (g) of section 6924 of this title (or under regulations promulgated by the Administrator under such subsections) to be placed in a surface impoundment (which is operating pursuant to interim status) for storage or treatment, such impoundment shall meet the requirements that are applicable to new surface impoundments under section 6924(o)(1) of this title, unless such impoundment meets the requirements of paragraph (2) or (4).

(B) In the case of any hazardous waste which is prohibited from one or more methods of land disposal under subsection (d), (e), or (g) of section 6924 of this title (or under regulations promulgated by the Administrator under such subsection) the placement or maintenance of such hazardous waste in a surface impoundment for treatment is prohibited as of the effective date of such prohibition unless the treatment residues which are hazardous are, at a minimum, removed for subsequent management within one year of the entry of the waste into the surface impoundment.

(12)(A) For the purposes of paragraph (2)(A) of this subsection, the term "liner" means—

(i) a liner designed, constructed, installed, and operated to prevent hazardous waste from passing into the liner at any time during the active life of the facility; or

(ii) a liner designed, constructed, installed, and operated to prevent hazardous waste from migrating beyond the liner to adjacent subsurface soil, ground water, or surface water at any time during the active life of the facility.

(B) For the purposes of this subsection, the term "aggressive biological treatment facility" means a system of surface impoundments in which the initial impoundment of the secondary treatment segment of the facility utilizes intense mechanical aeration to enhance biological activity to degrade waste water pollutants and

(i) the hydraulic retention time in such initial impoundment is no longer than 5 days under normal operating conditions, on an annual average basis;

(ii) the hydraulic retention time in such initial impoundment is no longer than thirty days under normal operating conditions, on an annual average basis. Provided, That the sludge in such impoundment does not constitute a hazardous waste as identified by the extraction procedure toxicity characteristic in effect on November 8, 1984; or

(iii) such system utilizes activated sludge treatment in the first portion of secondary treatment.

(C) For the purposes of this subsection, the term "underground source or drinking water" has the same meaning as provided in regulations under the Safe Drinking Water Act (title XIV of the Public Health Service Act [42 U.S.C. 300f et seq.]).

(13) The Administrator may modify the requirements of paragraph (1) in the case of a surface impoundment for which the owner or operator, prior to October 1, 1984, has entered into, and is in compliance with, a consent order, decree, or agreement with the Administrator or a State with an authorized program mandating corrective action with respect to such surface impoundment that provides a degree of protection of human health and the environment which is at a minimum equivalent to that provided by paragraph (1).

EDITORIAL NOTES

REFERENCES IN TEXT


The Safe Drinking Water Act, referred to in subsec. (j)(12)(C), is title XIV of act July 1, 1944, as added Dec. 16, 1974, Pub. L. 93–523, §2(a), 88 Stat. 1660, as amended, which is classified generally to subchapter XII (§300f et seq.) of chapter 6A of this title. For complete classification of this Act to the Code see Short Title note set out under section 201 of this title and Tables.

AMENDMENTS

1984—Subsec. (a). Pub. L. 98–616, §211, substituted "an existing facility or planning to construct a new" for "a", inserted "and the construction of any new facility for the treatment, storage, or disposal of any such hazardous waste", and inserted at end "No permit shall be required under this section in order to construct a facility if such facility is constructed pursuant to an approval issued by the Administrator under section 2605(e) of title 15 for the incineration of polychlorinated [sic] biphenyls and any person owning or operating such a facility may, at any time after operation or construction of such facility has begun, file an application for a permit pursuant to this section authorizing such facility to incinerate hazardous waste identified or listed under this subchapter."
Subsec. (c)(1), (2). Pub. L. 98–616, §213(c), designated existing provisions as par. (1) and added par. (2).
Subsec. (e). Pub. L. 98–616, §213(a), designated existing provisions as par. (1), redesignated former pars. (1), (2), and (3) thereof as subpars. (A), (B), and (C), respectively, designated existing provisions of previously redesignated subpar. (A) as cl. (i) and added cl. (ii), inserted "This paragraph shall not apply to any facility which has been previously denied a permit under this section or if authority to operate the facility under this section has been previously terminated." to closing provisions of par. (1), and added pars. (2) and (3).
Subsec. (g). Pub. L. 98–616, §214(a), added subsec. (g).
1978—Subsec (a). Pub. L. 95–609 inserted "treatment, storage, or" after "and after such date the".

EXECUTIVE DOCUMENTS

TRANSFER OF FUNCTIONS

For transfer of certain enforcement functions of Administrator or other official of Environmental Protection Agency under this chapter to Federal Inspector, Office of Federal Inspector for the Alaska Natural Gas Transportation System, and subsequent transfer to Secretary of Energy, then to Federal Coordinator for Alaska Natural Gas Transportation Projects, see note set out under section 6903 of this title.

1 So in original. Probably should be "responsibility".

2 So in original. Probably should be "constituent".

3 So in original. Probably should be "of".

§6926. Authorized State hazardous waste programs

(a) Federal guidelines

Not later than eighteen months after October 21, 1976, the Administrator, after consultation with State authorities, shall promulgate guidelines to assist States in the Development of State hazardous waste programs.

(b) Authorization of State program
Any State which seeks to administer and enforce a hazardous waste program pursuant to this subchapter may develop and, after notice and opportunity for public hearing, submit to the Administrator an application, in such form as he shall require, for authorization of such program. Within ninety days following submission of an application under this subsection, the Administrator shall issue a notice as to whether or not he expects such program to be authorized, and within ninety days following such notice (and after opportunity for public hearing) he shall publish his findings as to whether or not the conditions listed in items (1), (2), and (3) below have been met. Such State is authorized to carry out such program in lieu of the Federal program under this subchapter in such State and to issue and enforce permits for the storage, treatment, or disposal of hazardous waste (and to enforce permits deemed to have been issued under section 6935(d)(1) of this title) unless, within ninety days following submission of the application the Administrator notifies such State that such program may not be authorized and, within ninety days following such notice and after opportunity for public hearing, he finds that (1) such State program is not equivalent to the Federal program under this subchapter, (2) such program is not consistent with the Federal or State programs applicable in other States, or (3) such program does not provide adequate enforcement of compliance with the requirements of this subchapter. In authorizing a State program, the Administrator may base his findings on the Federal program in effect one year prior to submission of a State’s application or in effect on January 26, 1983, whichever is later.

c) Interim authorization

(1) Any State which has in existence a hazardous waste program pursuant to State law before the date ninety days after the date of promulgation of regulations under sections 6922, 6923, 6924, and 6925 of this title, may submit to the Administrator evidence of such existing program and may request a temporary authorization to carry out such program under this subchapter. The Administrator shall, if the evidence submitted shows the existing State program to be substantially equivalent to the Federal program under this subchapter, grant an interim authorization to the State to carry out such program in lieu of the Federal program pursuant to this subchapter for a period ending no later than January 31, 1986.

(2) The Administrator shall, by rule, establish a date for the expiration of interim authorization under this subsection.

(3) Pending interim or final authorization of a State program for any State which reflects the amendments made by the Hazardous and Solid Waste Amendments of 1984, the State may enter into an agreement with the Administrator under which the State may assist in the administration of the requirements and prohibitions which take effect pursuant to such Amendments.

(4) In the case of a State permit program for any State which is authorized under subsection (b) or under this subchapter, until such program is amended to reflect the amendments made by the Hazardous and Solid Waste Amendments of 1984 and such program amendments receive interim or final authorization, the Administrator shall have the authority in such State to issue or deny permits or those portions of permits affected by the requirements and prohibitions established by the Hazardous and Solid Waste Amendments of 1984. The Administrator shall coordinate with States the procedures for issuing such permits.

d) Effect of State permit

Any action taken by a State under a hazardous waste program authorized under this section shall have the same force and effect as action taken by the Administrator under this subchapter.

e) Withdrawal of authorization

Whenever the Administrator determines after public hearing that a State is not administering and enforcing a program authorized under this section in accordance with requirements of this section, he shall so notify the State and, if appropriate corrective action is not taken within a reasonable time, not to exceed ninety days, the Administrator shall withdraw authorization of such program and establish a Federal program pursuant to this subchapter. The Administrator shall not withdraw authorization of any such program unless he shall first have notified the State, and made public, in writing, the reasons for such withdrawal.

f) Availability of information

No State program may be authorized by the Administrator under this section unless—

(1) such program provides for the public availability of information obtained by the State regarding facilities and sites for the treatment, storage, and disposal of hazardous waste; and

(2) such information is available to the public in substantially the same manner, and to the same degree, as would be the case if the Administrator was carrying out the provisions of this subchapter in such State.

g) Amendments made by 1984 act

(1) Any requirement or prohibition which is applicable to the generation, transportation, treatment, storage, or disposal of hazardous waste and which is imposed under this subchapter pursuant to the amendments made by the Hazardous and Solid Waste Amendments of 1984 shall take effect in each State having an interim or finally authorized State program on the same date as such requirement takes effect in other States. The Administrator shall carry out such requirement directly in each such State unless the State program is finally authorized (or is granted interim authorization as provided in paragraph (2)) with respect to such requirement.

(2) Any State which, before November 8, 1984, has an existing hazardous waste program which has been granted interim or final authorization under this section may submit to the Administrator evidence that such existing program contains (or has been amended to include) any requirement which is substantially equivalent to a requirement referred to in paragraph (1) and may request interim authorization to carry out that requirement under this subchapter. The Administrator shall, if the evidence submitted shows the State requirement to be substantially equivalent to the requirement referred to in paragraph (1), grant an interim authorization to the State to carry out such requirement in lieu of direct administration in the State by the Administrator of such requirement.
(h) State programs for used oil

In the case of used oil which is not listed or identified under this subchapter as a hazardous waste but which is regulated under section 6935 of this title, the provisions of this section regarding State programs shall apply in the same manner and to the same extent as such provisions apply to hazardous waste identified or listed under this subchapter.


EDITORIAL NOTES

REFERENCES IN TEXT

Section 6935(d)(1) of this title, referred to in subsec. (b), was in the original a reference to section 3012(d)(1) of Pub. L. 89–272, which was renumbered section 3014(d)(1) of Pub. L. 98–616 and is classified to section 6935(d)(1) of this title.

The Hazardous and Solid Waste Amendments of 1984, referred to in subs. (c)(3), (4), and (g), is Pub. L. 98–616, Nov. 8, 1984, 98 Stat. 3221, which amended this chapter. For complete classification of this Act to the Code, see Short Title of 1984 Amendment note set out under section 6901 of this title and Tables.

AMENDMENTS


1984—Subsec. (b). Pub. L. 98–616, §§225, 241(b)(2), inserted "(and to enforce permits deemed to have been issued under section 6935(d)(1) of this title)" and inserted provision at end that in authorizing a State program, the Administrator may base his findings on the Federal program in effect one year prior to submission of a State's application or in effect on January 26, 1983, whichever is later.

Subsec. (c)(1). Pub. L. 98–616, §227(1), (2), designated existing provisions as par. (1) and substituted "period ending no later than January 31, 1986" for "twenty-four month period beginning on the date six months after the date of promulgation of regulations under sections 6922 through 6925 of this title".

Subsec. (c)(2) to (4). Pub. L. 98–616, §227(3), added pars. (2) to (4).


Subsec. (g). Pub. L. 98–616, §228, added subsec. (g).

1978—Subsec. (c). Pub. L. 95–609 substituted "of" for "required for" wherever appearing and "may submit" for "submit".

STATUTORY NOTES AND RELATED SUBSIDIARIES

EFFECTIVE DATE OF 1984 AMENDMENT

Pub. L. 98–616, title II, §226(b), Nov. 8, 1984, 98 Stat. 3254, provided that: "The amendment made by subsection (a) [enacting subsec. (f) of this section] shall apply with respect to State programs authorized under section 3006 [this section] before, on, or after the date of enactment of the Hazardous and Solid Waste Amendments of 1984 [Nov. 8, 1984]."

EXECUTIVE DOCUMENTS

TRANSFER OF FUNCTIONS

For transfer of certain enforcement functions of Administrator or other official of Environmental Protection Agency under this chapter to Federal Inspector, Office of Federal Inspector for the Alaska Natural Gas Transportation System, and subsequent transfer to Secretary of Energy, then to Federal Coordinator for Alaska Natural Gas Transportation Projects, see note set out under section 6903 of this title.

1 See References in Text note below.

§6927. Inspections

(a) Access entry

For purposes of developing or assisting in the development of any regulation or enforcing the provisions of this chapter, any person who generates, stores, treats, transports, disposes of, or otherwise handles or has handled hazardous wastes shall, upon request of any officer, employee or representative of the Environmental Protection Agency, duly designated by the Administrator, or upon request of any duly designated officer, employee or representative of a State having an authorized hazardous waste program, furnish information relating to such wastes and permit such person at all reasonable times to have access to, and to copy all records relating to such wastes. For the purposes of developing or assisting in the
development of any regulation or enforcing the provisions of this chapter, such officers, employees or representatives are authorized—

(1) to enter at reasonable times any establishment or other place where hazardous wastes are or have been generated, stored, treated, disposed of, or transported from;

(2) to inspect and obtain samples from any person of any such wastes and samples of any containers or labeling for such wastes.

Each such inspection shall be commenced and completed with reasonable promptness. If the officer, employee or representative obtains any samples, prior to leaving the premises, he shall give to the owner, operator, or agent in charge a receipt describing the sample obtained and if requested a portion of each such sample equal in volume or weight to the portion retained. If any analysis is made of such samples, a copy of the results of such analysis shall be furnished promptly to the owner, operator, or agent in charge.

(b) Availability to public

(1) Any records, reports, or information (including records, reports, or information obtained by representatives of the Environmental Protection Agency) obtained from any person under this section shall be available to the public, except that upon a showing satisfactory to the Administrator (or the State, as the case may be) by any person that records, reports, or information, or particular part thereof, to which the Administrator (or the State, as the case may be) or any officer, employee or representative thereof has access under this section if made public, would divulge information entitled to protection under section 1905 of title 18, such information or particular portion thereof shall be considered confidential in accordance with the purposes of that section, except that such record, report, document, or information may be disclosed to other officers, employees, or authorized representatives of the United States concerned with carrying out this chapter, or when relevant in any proceeding under this chapter.

(2) Any person not subject to the provisions of section 1905 of title 18 who knowingly and willfully divulges or discloses any information entitled to protection under this subsection shall, upon conviction, be subject to a fine of not more than $5,000 or to imprisonment not to exceed one year, or both.

(3) In submitting data under this chapter, a person required to provide such data may—

(A) designate the data which such person believes is entitled to protection under this subsection, and

(B) submit such designated data separately from other data submitted under this chapter.

A designation under this paragraph shall be made in writing and in such manner as the Administrator may prescribe.

(4) Notwithstanding any limitation contained in this section or any other provision of law, all information reported to, or otherwise obtained by, the Administrator (or any representative of the Administrator) under this chapter shall be made available, upon written request of any duly authorized committee of the Congress, to such committee.

(c) Federal facility inspections

The Administrator shall undertake on an annual basis a thorough inspection of each facility for the treatment, storage, or disposal of hazardous waste which is owned or operated by a department, agency, or instrumentality of the United States to enforce its compliance with this subchapter and the regulations promulgated thereunder. Any State with an authorized hazardous waste program also may conduct an inspection of any such facility for purposes of enforcing the facility’s compliance with the State hazardous waste program. The records of such inspections shall be available to the public as provided in subsection (b). The department, agency, or instrumentality owning or operating each such facility shall reimburse the Environmental Protection Agency for the costs of the inspection of the facility. With respect to the first inspection of each such facility occurring after October 6, 1992, the Administrator shall conduct a comprehensive ground water monitoring evaluation at the facility, unless such an evaluation was conducted during the 12-month period preceding October 6, 1992.

(d) State-operated facilities

The Administrator shall annually undertake a thorough inspection of every facility for the treatment, storage, or disposal of hazardous waste which is operated by a State or local government for which a permit is required under section 6925 of this title. The records of such inspection shall be available to the public as provided in subsection (b).

(e) Mandatory inspections

(1) The Administrator (or the State in the case of a State having an authorized hazardous waste program under this subchapter) shall commence a program to thoroughly inspect every facility for the treatment, storage, or disposal of hazardous waste for which a permit is required under section 6925 of this title no less often than every two years as to its compliance with this subchapter (and the regulations promulgated under this subchapter). Such inspections shall commence not later than twelve months after November 8, 1984. The Administrator shall, after notice and opportunity for public comment, promulgate regulations governing the minimum frequency and manner of such inspections, including the manner in which records of such inspections shall be maintained and the manner in which reports of such inspections shall be filed. The Administrator may distinguish between classes and categories of facilities commensurate with the risks posed by each class or category.

(2) Not later than six months after November 8, 1984, the Administrator shall submit to the Congress a report on the potential for inspections of hazardous waste treatment, storage, or disposal facilities by nongovernmental inspectors as a supplement to inspections conducted by officers, employees, or representatives of the Environmental Protection Agency or States having authorized hazardous waste programs or operating under a cooperative agreement with the Administrator. Such report shall be prepared in cooperation with the States, insurance companies offering environmental impairment insurance, independent companies providing inspection services, and other such groups as appropriate. Such report shall
contain recommendations on provisions and requirements for a program of private inspections to supplement governmental inspections.


EDITORIAL NOTES

AMENDMENTS

1992—Subsec. (c). Pub. L. 102–386 in first sentence substituted "The Administrator shall undertake" for "Beginning twelve months after November 8, 1984, the Administrator shall, or in the case of a State with an authorized hazardous waste program the State may, undertake" and "department, agency, or instrumentality of the United States" for "Federal agency", inserted after first sentence "Any State with an authorized hazardous waste program also may conduct an inspection of any such facility for purposes of enforcing the facility's compliance with the State hazardous waste program.", and inserted at end "The department, agency, or instrumentality owning or operating each such facility shall reimburse the Environmental Protection Agency for the costs of the inspection of the facility. With respect to the first inspection of each such facility occurring after October 6, 1992, the Administrator shall conduct a comprehensive ground water monitoring evaluation at the facility, unless such an evaluation was conducted during the 12-month period preceding October 6, 1992."

of Pub. L. 96–482.


1980—Subsec. (a). Pub. L. 96–482, §12(a), substituted "chapter" for "subchapter", "any officer, employee or representative" for "any officer or employee", "duly designated officer, employee or representative" for "duly designated officer employee", "officer, employee or representative obtains" for "officer or employee obtains", struck out "maintained by any person" after "establishment or other place", substituted "officer, employee or representative obtains" for "officer or employee obtains", and inserted "or has handled" after "otherwise handles" and "have been" after "where hazardous wastes are".

Subsec. (b)(1). Pub. L. 96–482, §12(b)(1)–(3), designated existing provisions as par. (1), inserted "or any officer, employee or representative thereof" before "has access under this section" and substituted "such information or particular portion thereof shall be considered" for "the Administrator (or the State, as the case may be) shall consider such information or portion thereof".

Pub. L. 96–482, §12(b)(4), as modified by Pub. L. 98–616, §502(a), inserted "(including records, reports, or information obtained by representatives of the Environmental Protection Agency)" after "information".

Subsec. (b)(2) to (4). Pub. L. 96–482, §12(b)(3), added paras. (2) to (4).

1978—Subsec. (a)(1). Pub. L. 95–609 substituted "disposed of, or transported from" for "or disposed of".

EXECUTIVE DOCUMENTS

TRANSFER OF FUNCTIONS

For transfer of certain enforcement functions of Administrator or other official of Environmental Protection Agency under this chapter to Federal Inspector, Office of Federal Inspector for the Alaska Natural Gas Transportation System, and subsequent transfer to Secretary of Energy, then to Federal Coordinator for Alaska Natural Gas Transportation Projects, see note set out under section 6903 of this title.

§6928. Federal enforcement

(a) Compliance orders

(1) Except as provided in paragraph (2), whenever on the basis of any information the Administrator determines that any person has violated or is in violation of any requirement of this subchapter, the Administrator may issue an order assessing a civil penalty for any past or current violation, requiring compliance immediately or within a specified time period, or both, or the Administrator may commence a civil action in the United States district court in the district in which the violation occurred for appropriate relief, including a temporary or permanent injunction.

(2) In the case of a violation of any requirement of this subchapter where such violation occurs in a State which is authorized to carry out a hazardous waste program under section 6926 of this title, the Administrator shall give notice to the State in which such violation has occurred prior to issuing an order or commencing a civil action under this section.
(3) Any order issued pursuant to this subsection may include a suspension or revocation of any permit issued by the Administrator or a State under this subchapter and shall state with reasonable specificity the nature of the violation. Any penalty assessed in the order shall not exceed $25,000 per day of noncompliance for each violation of a requirement of this subchapter. In assessing such a penalty, the Administrator shall take into account the seriousness of the violation and any good faith efforts to comply with applicable requirements.

(b) Public hearing
Any order issued under this section shall become final unless, no later than thirty days after the order is served, the person or persons named therein request a public hearing. Upon such request the Administrator shall promptly conduct a public hearing. In connection with any proceeding under this section the Administrator may issue subpoenas for the attendance and testimony of witnesses and the production of relevant papers, books, and documents, and may promulgate rules for discovery procedures.

(c) Violation of compliance orders
If a violator fails to take corrective action within the time specified in a compliance order, the Administrator may assess a civil penalty of not more than $25,000 for each day of continued noncompliance with the order and the Administrator may suspend or revoke any permit issued to the violator (whether issued by the Administrator or the State).

d) Criminal penalties
Any person who—

(1) knowingly transports or causes to be transported any hazardous waste identified or listed under this subchapter to a facility which does not have a permit under this subchapter, or pursuant to title I of the Marine Protection, Research, and Sanctuaries Act (86 Stat. 1052) [33 U.S.C. 1411 et seq.];

(2) knowingly treats, stores, or disposes of any hazardous waste identified or listed under this subchapter—
   (A) without a permit under this subchapter or pursuant to title I of the Marine Protection, Research, and Sanctuaries Act (86 Stat. 1052) [33 U.S.C. 1411 et seq.]; or
   (B) in knowing violation of any material condition or requirement of such permit; or
   (C) in knowing violation of any material condition or requirement of any applicable interim status regulations or standards;

(3) knowingly omits material information or makes any false material statement or representation in any application, label, manifest, record, report, permit, or other document filed, maintained, or used for purposes of compliance with regulations promulgated by the Administrator (or by a State in the case of an authorized State program) under this subchapter;

(4) knowingly generates, stores, treats, transports, disposes of, exports, or otherwise handles any hazardous waste or any used oil not identified or listed as a hazardous waste under this subchapter (whether such activity took place before or takes place after November 8, 1984) and who knowingly destroys, alters, conceals, or fails to file any record, application, manifest, report, or other document required to be maintained or filed for purposes of compliance with regulations promulgated by the Administrator (or by a State in the case of an authorized State program) under this subchapter;

(5) knowingly transports without a manifest, or causes to be transported without a manifest, any hazardous waste or any used oil not identified or listed as a hazardous waste under this subchapter required by regulations promulgated under this subchapter (or by a State in the case of a State program authorized under this subchapter) to be accompanied by a manifest;

(6) knowingly exports a hazardous waste identified or listed under this subchapter (A) without the consent of the receiving country or, (B) where there exists an international agreement between the United States and the government of the receiving country establishing notice, export, and enforcement procedures for the transportation, treatment, storage, and disposal of hazardous wastes, in a manner which is not in conformance with such agreement; or

(7) knowingly stores, treats, transports, or causes to be transported, disposes of, or otherwise handles any used oil not identified or listed as a hazardous waste under this subchapter—
   (A) in knowing violation of any material condition or requirement of a permit under this subchapter; or
   (B) in knowing violation of any material condition or requirement of any applicable regulations or standards under this chapter;

shall, upon conviction, be subject to a fine of not more than $50,000 for each day of violation, or imprisonment not to exceed two years (five years in the case of a violation of paragraph (1) or (2)), or both. If the conviction is for a violation committed after a first conviction of such person under this paragraph, the maximum punishment under the respective paragraph shall be doubled with respect to both fine and imprisonment.

(e) Knowing endangerment
Any person who knowingly transports, treats, stores, disposes of, or exports any hazardous waste identified or listed under this subchapter or used oil not identified or listed as a hazardous waste under this subchapter in violation of paragraph (1), (2), (3), (4), (5), (6), or (7) of subsection (d) of this section who knows at that time that he thereby places another person in imminent danger of death or serious bodily injury, shall, upon conviction, be subject to a fine of not more than $250,000 or imprisonment for not more than fifteen years, or both. A defendant that is an organization shall, upon conviction of violating this subsection, be subject to a fine of not more than $1,000,000.

(f) Special rules
For the purposes of subsection (e)—
(1) A person's state of mind is knowing with respect to—
   (A) his conduct, if he is aware of the nature of his conduct;
   (B) an existing circumstance, if he is aware or believes that the circumstance exists; or
   (C) a result of his conduct, if he is aware or believes that his conduct is substantially certain to cause danger of death or serious bodily injury.

(2) In determining whether a defendant who is a natural person knew that his conduct placed another person in imminent danger of death or serious bodily injury—
   (A) the person is responsible only for actual awareness or actual belief that he possessed; and
   (B) knowledge possessed by a person other than the defendant but not by the defendant himself may not be attributed to the defendant;

Provided. That in proving the defendant's possession of actual knowledge, circumstantial evidence may be used, including evidence that the defendant took affirmative steps to shield himself from relevant information.

(3) It is an affirmative defense to a prosecution that the conduct charged was consented to by the person endangered and that the danger and conduct charged were reasonably foreseeable hazards of—
   (A) an occupation, a business, or a profession; or
   (B) medical treatment or medical or scientific experimentation conducted by professionally approved methods and such other person had been made aware of the risks involved prior to giving consent.

The defendant may establish an affirmative defense under this subsection by a preponderance of the evidence.

(4) All general defenses, affirmative defenses, and bars to prosecution that may apply with respect to other Federal criminal offenses may apply under subsection (e) and shall be determined by the courts of the United States according to the principles of common law as they may be interpreted in the light of reason and experience. Concepts of justification and excuse applicable under this section may be developed in the light of reason and experience.

(5) The term "organization" means a legal entity, other than a government, established, or organized for any purpose, and such term includes a corporation, company, association, firm, partnership, joint stock company, foundation, institution, trust, society, union, or any other association of persons.

(6) The term "serious bodily injury" means—
   (A) bodily injury which involves a substantial risk of death;
   (B) unconsciousness;
   (C) extreme physical pain;
   (D) protracted and obvious disfigurement; or
   (E) protracted loss or impairment of the function of a bodily member, organ, or mental faculty.

(g) Civil penalty

Any person who violates any requirement of this subchapter shall be liable to the United States for a civil penalty in an amount not to exceed $25,000 for each such violation. Each day of such violation shall, for purposes of this subsection, constitute a separate violation.

(h) Interim status corrective action orders

(1) Whenever on the basis of any information the Administrator determines that there is or has been a release of hazardous waste into the environment from a facility authorized to operate under section 6925(e) of this title, the Administrator may issue an order requiring corrective action or such other response measure as he deems necessary to protect human health or the environment or the Administrator may commence a civil action in the United States district court in the district in which the facility is located for appropriate relief, including a temporary or permanent injunction.

(2) Any order issued under this subsection may include a suspension or revocation of authorization to operate under section 6925(e) of this title, shall state with reasonable specificity the nature of the required corrective action or other response measure, and shall specify a time for compliance. If any person named in an order fails to comply with the order, the Administrator may assess, and such person shall be liable to the United States for, a civil penalty in an amount not to exceed $25,000 for each day of noncompliance with the order.


EDITORIAL NOTES

REFERENCES IN TEXT


AMENDMENTS
1986—Subsec. (d)(4). Pub. L. 99–499, §205(i)(1), inserted "or any used oil not identified or listed as a hazardous waste under this subchapter".

Subsec. (d)(5). Pub. L. 99–499, §205(i)(1), (2), inserted "or any used oil not identified or listed as a hazardous waste under this subchapter" and struck out "; or" after "accompanied by a manifest".

Subsec. (d)(6). Pub. L. 99–499, §205(i)(3), inserted at end "; or".


Subsec. (e). Pub. L. 99–499, §205(i)(5), inserted "or used oil not identified or listed as a hazardous waste under this subchapter" and substituted "(5), (6), or (7)" for "(5), or (6)".

1984—Subsec. (a)(1). Pub. L. 98–616, §403(d)(1), in amending par. (1) generally, expanded authority of Administrator by empowering him to determine that a person "has violated" a requirement of this subchapter, and to assess a civil penalty for a past or current violation.

Subsec. (a)(3). Pub. L. 98–616, §403(d)(2), in amending par. (3) generally, substituted provision that any order issued pursuant to this subsection may include a suspension or revocation of any permit issued by the Administrator or a State under this subchapter and shall state with reasonable specificity the nature of the violation, and provision that any penalty assessed in the order shall not exceed $25,000 per day of noncompliance for each violation of a requirement of this subchapter, and that in assessing such a penalty, the Administrator take into account the seriousness of the violation and any good faith efforts to comply with applicable requirements, for provision that if such violator fails to take corrective action within the time specified in the order, he shall be liable for a civil penalty of not more than $25,000 for each day of continued noncompliance and the Administrator may suspend or revoke any permit issued to the violator, whether issued by the Administrator or the State.

Subsec. (b). Pub. L. 98–616, §233(b), inserted "issued under this section".

Subsec. (c). Pub. L. 98–616, §403(d)(3), substituted provisions relating to penalties for violation of compliance orders for former provisions which set forth requirements for compliance orders.

Subsec. (d). Pub. L. 98–616, §232(a)(3), amended closing provisions generally. Prior to amendment, closing provisions read as follows: "shall, upon conviction, be subject to a fine of not more than $25,000 ($50,000 in the case of a violation of paragraph (1) or (2)) for each day of violation, or to imprisonment not to exceed one year (two years in the case of a violation of paragraph (1) or (2)), or both. If the conviction is for a violation committed after a first conviction of such person under this paragraph, punishment shall be by a fine of not more than $50,000 per day of violation, or by imprisonment for not more than two years, or by both."

Subsec. (d)(1). Pub. L. 98–616, §232(a)(1), inserted "or causes to be transported" and substituted "this subchapter" for "section 6925 of this title (or section 6926 of this title in case of a State program)"


Subsec. (d)(2)(A). Pub. L. 98–616, §232(a)(2)(B), (c), substituted "this subchapter" for "section 6925 of this title (or section 6926 of this title in case of a State program)" and struck out "having obtained" before "a permit under".


Subsec. (d)(3) to (5). Pub. L. 98–616, §232(a)(3), in amending pars. (3) and (4) generally, expanded par. (3) by providing criminal penalties for one who knowingly omits material information from documents required to be filed, maintained or used under this subchapter, expanded par. (4) by providing criminal penalties for one who knowingly fails to file required material under this subchapter, and added par. (5).

Subsec. (e). Pub. L. 98–616, §245(c), added subpar. (e).

Subsec. (e). Pub. L. 98–616, §232(b), in amending subsec. (e) generally, struck out provisions referring to violations of interim status standards and omission of material information from permit applications, struck out provision requiring proof of "unjustifiable and inexcusable disregard for human life" or "extreme indifference to human life" for conviction under this subsection, and inserted provision increasing maximum prison sentence to fifteen years for violation of subsec. (d)(1) through (6) of this section by one who knowingly places another person in imminent danger of death or serious bodily injury, replacing former provision calling for maximum imprisonment of two years, or five years in cases evidencing extreme indifference to human life.


1980—Subsec. (a)(1). Pub. L. 96–482, §13(1), (2), struck out "the Administrator shall give notice to the violator of his failure to comply with such requirement. If such violation extends beyond the thirtieth day after the Administrator's notification" before "the Administrator may issue" and substituted "compliance immediately or within a specified time period" for "compliance within a specified time period".

Subsec. (a)(2). Pub. L. 96–482, §13(2), struck out "thirty days" after "violation has occurred".

Subsec. (b). Pub. L. 96–482, §13(3), substituted "order shall become final unless, no later than thirty days after the order is served for "order or any suspension or revocation of a permit shall become final unless, no later than thirty days after the order or notice of the suspension or revocation is served".


Subsec. (d). Pub. L. 96–482, §13(5), in par. (2), designated existing provisions as subpar. (A) and added subpar. (B), in par. (3), inserted provision requiring the statement or representation to be material, added par.
(4), and in provisions following par. (4), inserted provision authorizing a fine of $50,000 and a two year imprisonment for violation of par. (1) or (2).  
Subsecs. (e) to (g). Pub. L. 96–482, §13(5), added subsecs. (e) to (g).  

**Executive Documents**

**TRANSFER OF FUNCTIONS**

For transfer of certain enforcement functions of Administrator or other official of Environmental Protection Agency under this chapter to Federal Inspector, Office of Federal Inspector for the Alaska Natural Gas Transportation System, and subsequent transfer to Secretary of Energy, then to Federal Coordinator for Alaska Natural Gas Transportation Projects, see note set out under section 6903 of this title.

§6929. Retention of State authority

Upon the effective date of regulations under this subchapter no State or political subdivision may impose any requirements less stringent than those authorized under this subchapter respecting the same matter as governed by such regulations, except that if application of a regulation with respect to any matter under this subchapter is postponed or enjoined by the action of any court, no State or political subdivision shall be prohibited from acting with respect to the same aspect of such matter until such time as such regulation takes effect. Nothing in this chapter shall be construed to prohibit any State or political subdivision thereof from imposing any requirements, including those for site selection, which are more stringent than those imposed by such regulations. Nothing in this chapter (or in any regulation adopted under this chapter) shall be construed to prohibit any State from requiring that the State be provided with a copy of each manifest used in connection with hazardous waste which is generated within that State or transported to a treatment, storage, or disposal facility within that State.  

**EDITORIAL NOTES**

**AMENDMENTS**

1984—Pub. L. 98–616 inserted "Nothing in this chapter (or in any regulation adopted under this chapter) shall be construed to prohibit any State from requiring that the State be provided with a copy of each manifest used in connection with hazardous waste which is generated within that State or transported to a treatment, storage, or disposal facility within that State."

1980—Pub. L. 96–482 prohibited construction of this chapter as barring a State from imposing more stringent requirements than provided in Federal regulations.

§6930. Effective date

(a) Preliminary notification

Not later than ninety days after promulgation of regulations under section 6921 of this title identifying by its characteristics or listing any substance as hazardous waste subject to this subchapter, any person generating or transporting such substance or owning or operating a facility for treatment, storage, or disposal of such substance shall file with the Administrator (or with States having authorized hazardous waste permit programs under section 6926 of this title) a notification stating the location and general description of such activity and the identified or listed hazardous wastes handled by such person. Not later than fifteen months after November 8, 1984—

1. the owner or operator of any facility which produces a fuel (A) from any hazardous waste identified or listed under section 6921 of this title, (B) from such hazardous waste identified or listed under section 6921 of this title and any other material, (C) from used oil, or (D) from used oil and any other material;

2. the owner or operator of any facility (other than a single- or two-family residence) which burns for purposes of energy recovery any fuel produced as provided in paragraph (1) or any fuel which otherwise contains used oil or any hazardous waste identified or listed under section 6921 of this title; and

3. any person who distributes or markets any fuel which is produced as provided in paragraph (1) or any fuel which otherwise contains used oil or any hazardous waste identified or listed under section 6921 of this title.

shall file with the Administrator (and with the State in the case of a State with an authorized hazardous waste program) a notification stating the location and general description of the facility, together with a description of the identified or listed
hazardous waste involved and, in the case of a facility referred to in paragraph (1) or (2), a description of the production or energy recovery activity carried out at the facility and such other information as the Administrator deems necessary. For purposes of the preceding provisions, the term "hazardous waste listed under section 6921 of this title" also includes any commercial chemical product which is listed under section 6921 of this title and which, in lieu of its original intended use, is (i) produced for use as (or as a component of) a fuel, (ii) distributed for use as a fuel, or (iii) burned as a fuel. Notification shall not be required under the second sentence of this subsection in the case of facilities (such as residential boilers) where the Administrator determines that such notification is not necessary in order for the Administrator to obtain sufficient information respecting current practices of facilities using hazardous waste for energy recovery. Nothing in this subsection shall be construed to affect or impair the provisions of section 6921(b)(3) of this title. Nothing in this subsection shall affect regulatory determinations under section 6935 of this title. In revising any regulation under section 6921 of this title identifying additional characteristics of hazardous waste or listing any additional substance as hazardous waste subject to this subchapter, the Administrator may require any person referred to in the preceding provisions to file with the Administrator (or with States having authorized hazardous waste permit programs under section 6926 of this title) the notification described in the preceding provisions. No more than one such notification shall be required to be filed with respect to the same substance. No identified or listed hazardous waste subject to this subchapter may be transported, treated, stored, or disposed of unless notification has been given as required under this subsection.

(b) Effective date of regulation

The regulations under this subchapter respecting requirements applicable to the generation, transportation, treatment, storage, or disposal of hazardous waste (including requirements respecting permits for such treatment, storage, or disposal) shall take effect on the date six months after the date of promulgation thereof (or six months after the date of revision in the case of any regulation which is revised after the date required for promulgation thereof). At the time a regulation is promulgated, the Administrator may provide for a shorter period prior to the effective date, or an immediate effective date for:

1. a regulation with which the Administrator finds the regulated community does not need six months to come into compliance;
2. a regulation which responds to an emergency situation; or
3. other good cause found and published with the regulation.


EDITORIAL NOTES

AMENDMENTS

1984—Subsec. (a). Pub. L. 98–616, §204(a), inserted provisions after first sentence relating to burning and blending of hazardous wastes and substituted "the preceding provisions" for "the preceding sentence" in three places.

Subsec. (b). Pub. L. 98–616, §234, inserted provision that at the time a regulation is promulgated, the Administrator may provide for a shorter period prior to the effective date, or an immediate effective date for a regulation with which the Administrator finds the regulated community does not need six months to come into compliance, a regulation which responds to an emergency situation, or other good cause found and published with the regulation.

1980—Subsec. (a). Pub. L. 96–482 struck out "or revision" after "after promulgation or revision of regulations" and inserted provision for filing of notification when revising any regulation identifying additional characteristics of hazardous waste or listing any additional substance as hazardous waste subject to this subchapter.

EXECUTIVE DOCUMENTS

TRANSFER OF FUNCTIONS

For transfer of certain enforcement functions of Administrator or other official of Environmental Protection Agency under this chapter to Federal Inspector, Office of Federal Inspector for the Alaska Natural Gas Transportation System, and subsequent transfer to Secretary of Energy, then to Federal Coordinator for Alaska Natural Gas Transportation Projects; see note set out under section 6903 of this title.

\footnote{So in original. Probably should be followed by a semicolon.}

§6931. Authorization of assistance to States

(a) Authorization of appropriations

There is authorized to be appropriated $25,000,000 for each of the fiscal years 1978 and 1979 \footnote{1} $20,000,000 for fiscal year 1980, $35,000,000 for fiscal year 1981, $40,000,000 for the fiscal year 1982, $55,000,000 for the fiscal year 1985, $60,000,000 for the fiscal year 1986, $60,000,000 for the fiscal year 1987, and $60,000,000 for the fiscal year 1988 to be
used to make grants to the States for purposes of assisting the States in the development and implementation of authorized State hazardous waste programs.

(b) Allocation
Amounts authorized to be appropriated under subsection (a) shall be allocated among the States on the basis of regulations promulgated by the Administrator, after consultation with the States, which take into account, the extent to which hazardous waste is generated, transported, treated, stored, and disposed of within such State, the extent of exposure of human beings and the environment within such State to such waste, and such other factors as the Administrator deems appropriate.

(c) Activities included
State hazardous waste programs for which grants may be made under subsection (a) may include (but shall not be limited to) planning for hazardous waste treatment, storage and disposal facilities, and the development and execution of programs to protect health and the environment from inactive facilities which may contain hazardous waste.


EDITORIAL NOTES

AMENDMENTS
1984—Subsec. (a). Pub. L. 98–616 substituted "$40,000,000 for fiscal year 1982, $55,000,000 for fiscal year 1985, $60,000,000 for fiscal year 1986, $60,000,000 for fiscal year 1987, and $60,000,000 for fiscal year 1988" for "and $40,000,000 for fiscal year 1982".
1980—Subsec. (a). Pub. L. 96–482, §31(b), authorized appropriation of $20,000,000, $35,000,000, and $40,000,000 for fiscal years 1980, 1981, and 1982, respectively.

EXECUTIVE DOCUMENTS

TRANSFER OF FUNCTIONS

For transfer of certain enforcement functions of Administrator or other official of Environmental Protection Agency under this chapter to Federal Inspector, Office of Federal Inspector for the Alaska Natural Gas Transportation System, and subsequent transfer to Secretary of Energy, then to Federal Coordinator for Alaska Natural Gas Transportation Projects, see note set out under section 6903 of this title.

1 So in original. Probably should be followed by a comma.

§6932. Transferred

EDITORIAL NOTES

CODIFICATION


§6933. Hazardous waste site inventory

(a) State inventory programs
Each State shall, as expeditiously as practicable, undertake a continuing program to compile, publish, and submit to the Administrator an inventory describing the location of each site within such State at which hazardous waste has at any time been stored or disposed of. Such inventory shall contain—

(1) a description of the location of the sites at which any such storage or disposal has taken place before the date on which permits are required under section 6925 of this title for such storage or disposal;

(2) such information relating to the amount, nature, and toxicity of the hazardous waste at each such site as may be practicable to obtain and as may be necessary to determine the extent of any health hazard which may be associated with such site;

(3) the name and address, or corporate headquarters of, the owner of each such site, determined as of the date of preparation of the inventory;
(4) an identification of the types or techniques of waste treatment or disposal which have been used at each such site; and

(5) information concerning the current status of the site, including information respecting whether or not hazardous waste is currently being treated or disposed of at such site (and if not, the date on which such activity ceased) and information respecting the nature of any other activity currently carried out at such site.

For purposes of assisting the States in compiling information under this section, the Administrator shall make available to each State undertaking a program under this section such information as is available to him concerning the items specified in paragraphs (1) through (5) with respect to the sites within such State, including such information as the Administrator is able to obtain from other agencies or departments of the United States and from surveys and studies carried out by any committee or subcommittee of the Congress. Any State may exercise the authority of section 6927 of this title for purposes of this section in the same manner and to the same extent as provided in such section in the case of States having an authorized hazardous waste program, and any State may by order require any person to submit such information as may be necessary to compile the data referred to in paragraphs (1) through (5).

(b) Environmental Protection Agency program

If the Administrator determines that any State program under subsection (a) is not adequately providing information respecting the sites in such State referred to in subsection (a), the Administrator shall notify the State. If within ninety days following such notification, the State program has not been revised or amended in such manner as will adequately provide such information, the Administrator shall carry out the inventory program in such State. In any such case—

(1) the Administrator shall have the authorities provided with respect to State programs under subsection (a);

(2) the funds allocated under subsection (c) for grants to States under this section may be used by the Administrator for carrying out such program in such State; and

(3) no further expenditure may be made for grants to such State under this section until such time as the Administrator determines that such State is carrying out, or will carry out, an inventory program which meets the requirements of this section.

(c) Grants

(1) Upon receipt of an application submitted by any State to carry out a program under this section, the Administrator may make grants to the States for purposes of carrying out such a program. Grants under this section shall be allocated among the several States by the Administrator based upon such regulations as he prescribes to carry out the purposes of this section. The Administrator may make grants to any State which has conducted an inventory program which effectively carried out the purposes of this section before October 21, 1980, to reimburse such State for all, or any portion of, the costs incurred by such State in conducting such program.

(2) There are authorized to be appropriated to carry out this section $25,000,000 for each of the fiscal years 1985 through 1988.

(d) No impediment to immediate remedial action

Nothing in this section shall be construed to provide that the Administrator or any State should, pending completion of the inventory required under this section, postpone undertaking any enforcement or remedial action with respect to any site at which hazardous waste has been treated, stored, or disposed of.


EDITORIAL NOTES

CODIFICATION


AMENDMENTS

1984—Subsec. (c)(2). Pub. L. 98–616 substituted "$25,000,000 for each of the fiscal years 1985 through 1988" for "$20,000,000".

EXECUTIVE DOCUMENTS

TRANSFER OF FUNCTIONS

For transfer of certain enforcement functions of Administrator or other official of Environmental Protection Agency under this chapter to Federal Inspector, Office of Federal Inspector for the Alaska Natural Gas Transportation System, and subsequent transfer to Secretary of Energy, then to Federal Coordinator for Alaska Natural Gas Transportation Projects, see note set out under section 6903 of this title.

§6934. Monitoring, analysis, and testing
(a) Authority of Administrator

If the Administrator determines, upon receipt of any information, that—

(1) the presence of any hazardous waste at a facility or site at which hazardous waste is, or has been, stored, treated, or disposed of, or

(2) the release of any such waste from such facility or site

may present a substantial hazard to human health or the environment, he may issue an order requiring the owner or operator of such facility or site to conduct such monitoring, testing, analysis, and reporting with respect to such facility or site as the Administrator deems reasonable to ascertain the nature and extent of such hazard.

(b) Previous owners and operators

In the case of any facility or site not in operation at the time a determination is made under subsection (a) with respect to the facility or site, if the Administrator finds that the owner of such facility or site could not reasonably be expected to have actual knowledge of the presence of hazardous waste at such facility or site and of its potential for release, he may issue an order requiring the most recent previous owner or operator of such facility or site who could reasonably be expected to have such actual knowledge to carry out the actions referred to in subsection (a).

(c) Proposal

An order under subsection (a) or (b) shall require the person to whom such order is issued to submit to the Administrator within 30 days from the issuance of such order a proposal for carrying out the required monitoring, testing, analysis, and reporting. The Administrator may, after providing such person with an opportunity to confer with the Administrator respecting such proposal, require such person to carry out such monitoring, testing, analysis, and reporting in accordance with such proposal, and such modifications in such proposal as the Administrator deems reasonable to ascertain the nature and extent of the hazard.

(d) Monitoring, etc., carried out by Administrator

(1) If the Administrator determines that no owner or operator referred to in subsection (a) or (b) is able to conduct monitoring, testing, analysis, or reporting satisfactory to the Administrator, if the Administrator deems any such action carried out by an owner or operator to be unsatisfactory, or if the Administrator cannot initially determine that there is an owner or operator referred to in subsection (a) or (b) who is able to conduct such monitoring, testing, analysis, or reporting, he may—

(A) conduct monitoring, testing, or analysis (or any combination thereof) which he deems reasonable to ascertain the nature and extent of the hazard associated with the site concerned, or

(B) authorize a State or local authority or other person to carry out any such action,

and require, by order, the owner or operator referred to in subsection (a) or (b) to reimburse the Administrator or other authority or person for the costs of such activity.

(2) No order may be issued under this subsection requiring reimbursement of the costs of any action carried out by the Administrator which confirms the results of an order issued under subsection (a) or (b).

(3) For purposes of carrying out this subsection, the Administrator or any authority or other person authorized under paragraph (1), may exercise the authorities set forth in section 6927 of this title.

(e) Enforcement

The Administrator may commence a civil action against any person who fails or refuses to comply with any order issued under this section. Such action shall be brought in the United States district court in which the defendant is located, resides, or is doing business. Such court shall have jurisdiction to require compliance with such order and to assess a civil penalty of not to exceed $5,000 for each day during which such failure or refusal occurs.


Executive Documents

TRANSFER OF FUNCTIONS

For transfer of certain enforcement functions of Administrator or other official of Environmental Protection Agency under this chapter to Federal Inspector, Office of Federal Inspector for the Alaska Natural Gas Transportation System, and subsequent transfer to Secretary of Energy, then to Federal Coordinator for Alaska Natural Gas Transportation Projects, see note set out under section 6903 of this title.

§6935. Restrictions on recycled oil

(a) In general

Not later than one year after October 15, 1980, the Administrator shall promulgate regulations establishing such performance standards and other requirements as may be necessary to protect the public health and the environment from hazards associated with recycled oil. In developing such regulations, the Administrator shall conduct an analysis of the economic impact of the regulations on the oil recycling industry. The Administrator shall ensure that such regulations do not discourage the recovery or recycling of used oil, consistent with the protection of human health and the environment.
(b) Identification or listing of used oil as hazardous waste

Not later than twelve months after November 8, 1984, the Administrator shall propose whether to list or identify used automobile and truck crankcase oil as hazardous waste under section 6921 of this title. Not later than twenty-four months after November 8, 1984, the Administrator shall make a final determination whether to list or identify used automobile and truck crankcase oil and other used oil as hazardous wastes under section 6921 of this title.

(c) Used oil which is recycled

(1) With respect to generators and transporters of used oil identified or listed as a hazardous waste under section 6921 of this title, the standards promulgated under section 6921(d), 6922, and 6923 of this title shall not apply to such used oil if such used oil is recycled.

(2)(A) In the case of used oil which is exempt under paragraph (1), not later than twenty-four months after November 8, 1984, the Administrator shall promulgate such standards under this subsection regarding the generation and transportation of used oil which is recycled as may be necessary to protect human health and the environment. In promulgating such regulations with respect to generators, the Administrator shall take into account the effect of such regulations on environmentally acceptable types of used oil recycling and the effect of such regulations on small quantity generators and generators which are small businesses (as defined by the Administrator).

(B) The regulations promulgated under this subsection shall provide that no generator of used oil which is exempt under paragraph (1) from the standards promulgated under section 6921(d), 6922, and 6923 of this title shall be subject to any manifest requirement or any associated recordkeeping and reporting requirement with respect to such used oil if such generator—

(i) either—

(1) enters into an agreement or other arrangement (including an agreement or arrangement with an independent transporter or with an agent of the recycler) for delivery of such used oil to a recycling facility which has a permit under section 6925(c) of this title (or for which a valid permit is deemed to be in effect under subsection (d)), or

(2) recycles such used oil at one or more facilities of the generator which has such a permit under section 6925 of this title (or for which a valid permit is deemed to have been issued under subsection (d) of this section);

(ii) such used oil is not mixed by the generator with other types of hazardous wastes; and

(iii) the generator maintains such records relating to such used oil, including records of agreements or other arrangements for delivery of such used oil to any recycling facility referred to in clause (i)(l), as the Administrator deems necessary to protect human health and the environment.

(3) The regulations under this subsection regarding the transportation of used oil which is exempt from the standards promulgated under section 6921(d), 6922, and 6923 of this title under paragraph (1) shall require the transporters of such used oil to deliver such used oil to a facility which has a valid permit under section 6925 of this title or which is deemed to have a valid permit under subsection (d) of this section. The Administrator shall also establish other standards for such transporters as may be necessary to protect human health and the environment.

(d) Permits

(1) The owner or operator of a facility which recycles used oil which is exempt under subsection (c)(1), shall be deemed to have a permit under this subsection for all such treatment or recycling (and any associated tank or container storage) if such owner and operator comply with standards promulgated by the Administrator under section 6924 of this title; except that the Administrator may require such owners and operators to obtain an individual permit under section 6925(c) of this title if he determines that an individual permit is necessary to protect human health and the environment.

(2) Notwithstanding any other provision of law, any generator who recycles used oil which is exempt under subsection (c) (1) shall not be required to obtain a permit under section 6925(c) of this title with respect to such used oil until the Administrator has promulgated standards under section 6924 of this title regarding the recycling of such used oil.


EDITORIAL NOTES

CODIFICATION

Section was formerly classified to section 6932 of this title.

AMENDMENTS

1984—Subsec. (a). Pub. L. 98–616, §§241(a), 242, designated existing provisions as subsec. (a) and inserted "consistent with the protection of human health and the environment" at end. Subsecs. (b) to (d). Pub. L. 98–616, §241(a), added subsecs. (b) to (d).

EXECUTIVE DOCUMENTS

TRANSFER OF FUNCTIONS
For transfer of certain enforcement functions of Administrator or other official of Environmental Protection Agency under this chapter to Federal Inspector, Office of Federal Inspector for the Alaska Natural Gas Transportation System, and subsequent transfer to Secretary of Energy, then to Federal Coordinator for Alaska Natural Gas Transportation Projects, see note set out under section 6903 of this title.

1 So in original. Probably should be "sections".

§6936. Expansion during interim status

(a) Waste piles

The owner or operator of a waste pile qualifying for the authorization to operate under section 6925(e) of this title shall be subject to the same requirements for liners and leachate collection systems or equivalent protection provided in regulations promulgated by the Administrator under section 6924 of this title before October 1, 1982, or revised under section 6924(o) of this title (relating to minimum technological requirements), for new facilities receiving individual permits under subsection (c) of section 6925 of this title, with respect to each new unit, replacement of an existing unit, or lateral expansion of an existing unit that is within the waste management area identified in the permit application submitted under section 6925 of this title, and with respect to waste received beginning six months after November 8, 1984.

(b) Landfills and surface impoundments

(1) The owner or operator of a landfill or surface impoundment qualifying for the authorization to operate under section 6925(e) of this title shall be subject to the requirements of section 6924(o) of this title (relating to minimum technological requirements), with respect to each new unit, replacement of an existing unit, or lateral expansion of an existing unit that is within the waste management area identified in the permit application submitted under this section, and with respect to waste received beginning 6 months after November 8, 1984.

(2) The owner or operator of each unit referred to in paragraph (1) shall notify the Administrator (or the State, if appropriate) at least sixty days prior to receiving waste. The Administrator (or the State) shall require the filing, within six months of receipt of such notice, of an application for a final determination regarding the issuance of a permit for each facility submitting such notice.

(3) In the case of any unit in which the liner and leachate collection system has been installed pursuant to the requirements of this section and in good faith compliance with the Administrator's regulations and guidance documents governing liners and leachate collection systems, no liner or leachate collection system which is different from that which was so installed pursuant to this section shall be required for such unit by the Administrator when issuing the first permit under section 6925 of this title to such facility, except that the Administrator shall not be precluded from requiring installation of a new liner when the Administrator has reason to believe that any liner installed pursuant to the requirements of this section is leaking. The Administrator may, under section 6924 of this title, amend the requirements for liners and leachate collection systems required under this section as may be necessary to provide additional protection for human health and the environment.


§6937. Inventory of Federal agency hazardous waste facilities

(a) Program requirement; submission; availability; contents

Each Federal agency shall undertake a continuing program to compile, publish, and submit to the Administrator (and to the State in the case of sites in States having an authorized hazardous waste program) an inventory of each site which the Federal agency owns or operates or has owned or operated at which hazardous waste is stored, treated, or disposed of or has been disposed of at any time. The inventory shall be submitted every two years beginning January 31, 1986. Such inventory shall be available to the public as provided in section 6927(b) of this title. Information previously submitted by a Federal agency under section 9603 of this title, or under section 6925 or 6930 of this title, or under this section need not be resubmitted except that the agency shall update any previous submission to reflect the latest available data and information. The inventory shall include each of the following:

(1) A description of the location of each site at which any such treatment, storage, or disposal has taken place before the date on which permits are required under section 6925 of this title for such storage, treatment, or disposal, and where hazardous waste has been disposed, a description of hydrogeology of the site and the location of withdrawal wells and surface water within one mile of the site.

(2) Such information relating to the amount, nature, and toxicity of the hazardous waste in each site as may be necessary to determine the extent of any health hazard which may be associated with any site.

(3) Information on the known nature and extent of environmental contamination at each site, including a description of the monitoring data obtained.

(4) Information concerning the current status of the site, including information respecting whether or not hazardous waste is currently being treated, stored, or disposed of at such site (and if not, the date on which such activity ceased) and information respecting the nature of any other activity currently carried out at such site.

(5) A list of sites at which hazardous waste has been disposed and environmental monitoring data has not been obtained, and the reasons for the lack of monitoring data at each site.

(6) A description of response actions undertaken or contemplated at contaminated sites.
(7) An identification of the types of techniques of waste treatment, storage, or disposal which have been used at each site.
(8) The name and address and responsible Federal agency for each site, determined as of the date of preparation of the inventory.

(b) Environmental Protection Agency program
If the Administrator determines that any Federal agency under subsection (a) is not adequately providing information respecting the sites referred to in subsection (a), the Administrator shall notify the chief official of such agency. If within ninety days following such notification, the Federal agency has not undertaken a program to adequately provide such information, the Administrator shall carry out the inventory program for such agency.


§6938. Export of hazardous wastes

(a) In general
Beginning twenty-four months after November 8, 1984, no person shall export any hazardous waste identified or listed under this subchapter unless

1. (1)(A) such person has provided the notification required in subsection (c) of this section,
   (B) the government of the receiving country has consented to accept such hazardous waste,
   (C) a copy of the receiving country's written consent is attached to the manifest accompanying each waste shipment, and
   (D) the shipment conforms with the terms of the consent of the government of the receiving country required pursuant to subsection (e), or
   (2) the United States and the government of the receiving country have entered into an agreement as provided for in subsection (f) and the shipment conforms with the terms of such agreement.

(b) Regulations
Not later than twelve months after November 8, 1984, the Administrator shall promulgate the regulations necessary to implement this section. Such regulations shall become effective one hundred and eighty days after promulgation.

(c) Notification
Any person who intends to export a hazardous waste identified or listed under this subchapter beginning twelve months after November 8, 1984, shall, before such hazardous waste is scheduled to leave the United States, provide notification to the Administrator. Such notification shall contain the following information:

1. the name and address of the exporter;
   2. the types and estimated quantities of hazardous waste to be exported;
   3. the estimated frequency or rate at which such waste is to be exported; and the period of time over which such waste is to be exported;
   4. the ports of entry;
   5. a description of the manner in which such hazardous waste will be transported to and treated, stored, or disposed in the receiving country; and
   6. the name and address of the ultimate treatment, storage or disposal facility.

(d) Procedures for requesting consent of receiving country
Within thirty days of the Administrator's receipt of a complete notification under this section, the Secretary of State, acting on behalf of the Administrator, shall—

1. forward a copy of the notification to the government of the receiving country;
   2. advise the government that United States law prohibits the export of hazardous waste unless the receiving country consents to accept the hazardous waste;
   3. request the government to provide the Secretary with a written consent or objection to the terms of the notification; and
   4. forward to the government of the receiving country a description of the Federal regulations which would apply to the treatment, storage, and disposal of the hazardous waste in the United States.

(e) Conveyance of written consent to exporter
Within thirty days of receipt by the Secretary of State of the receiving country’s written consent or objection (or any subsequent communication withdrawing a prior consent or objection), the Administrator shall forward such a consent, objection, or other communication to the exporter.

(f) International agreements
Where there exists an international agreement between the United States and the government of the receiving country establishing notice, export, and enforcement procedures for the transportation, treatment, storage, and disposal of hazardous wastes, only the requirements of subsections (a)(2) and (g) shall apply.

(g) Reports
After November 8, 1984, any person who exports any hazardous waste identified or listed under section 6921 of this title shall file with the Administrator no later than March 1 of each year, a report summarizing the types, quantities, frequency, and ultimate destination of all such hazardous waste exported during the previous calendar year.
(h) Other standards

Nothing in this section shall preclude the Administrator from establishing other standards for the export of hazardous wastes under section 6922 of this title or section 6923 of this title.


1 So in original. Probably should be followed by a dash.

§6939. Domestic sewage

(a) Report

The Administrator shall, not later than 15 months after November 8, 1984, submit a report to the Congress concerning those substances identified or listed under section 6921 of this title which are not regulated under this subchapter by reason of the exclusion for mixtures of domestic sewage and other wastes that pass through a sewer system to a publicly owned treatment works. Such report shall include the types, size and number of generators which dispose of such substances in this manner, the types and quantities disposed of in this manner, and the identification of significant generators, wastes, and waste constituents not regulated under existing Federal law or regulated in a manner sufficient to protect human health and the environment.

(b) Revisions of regulations

Within eighteen months after submitting the report specified in subsection (a), the Administrator shall revise existing regulations and promulgate such additional regulations pursuant to this subchapter (or any other authority of the Administrator, including section 1317 of title 33) as are necessary to assure that substances identified or listed under section 6921 of this title which pass through a sewer system to a publicly owned treatment works are adequately controlled to protect human health and the environment.

(c) Report on wastewater lagoons

The Administrator shall, within thirty-six months after November 8, 1984, submit a report to Congress concerning wastewater lagoons at publicly owned treatment works and their effect on groundwater quality. Such report shall include—

(1) the number and size of such lagoons;
(2) the types and quantities of waste contained in such lagoons;
(3) the extent to which such waste has been or may be released from such lagoons and contaminate ground water; and
(4) available alternatives for preventing or controlling such releases.

The Administrator may utilize the authority of sections 6927 and 6934 of this title for the purpose of completing such report.

(d) Application of sections 6927 and 6930

The provisions of sections 6927 and 6930 of this title shall apply to solid or dissolved materials in domestic sewage to the same extent and in the same manner as such provisions apply to hazardous waste.


§6939a. Exposure information and health assessments

(a) Exposure information

Beginning on the date nine months after November 8, 1984, each application for a final determination regarding a permit under section 6925(c) of this title for a landfill or surface impoundment shall be accompanied by information reasonably ascertainable by the owner or operator on the potential for the public to be exposed to hazardous wastes or hazardous constituents through releases related to the unit. At a minimum, such information must address:

(1) reasonably foreseeable potential releases from both normal operations and accidents at the unit, including releases associated with transportation to or from the unit;
(2) the potential pathways of human exposure to hazardous wastes or constituents resulting from the releases described under paragraph (1); and
(3) the potential magnitude and nature of the human exposure resulting from such releases.

The owner or operator of a landfill or surface impoundment for which an application for such a final determination under section 6925(c) of this title has been submitted prior to November 8, 1984, shall submit the information required by this subsection to the Administrator (or the State, in the case of a State with an authorized program) no later than the date nine months after November 8, 1984.

(b) Health assessments

(1) The Administrator (or the State, in the case of a State with an authorized program) shall make the information required by subsection (a), together with other relevant information, available to the Agency for Toxic Substances and Disease Registry established by section 9604(i) of this title.
(2) Whenever in the judgment of the Administrator, or the State (in the case of a State with an authorized program), a
landfill or a surface impoundment poses a substantial potential risk to human health, due to the existence of releases of
hazardous constituents, the magnitude of contamination with hazardous constituents which may be the result of a release,
or the magnitude of the population exposed to such release or contamination, the Administrator or the State (with the
concurrency of the Administrator) may request the Administrator of the Agency for Toxic Substances and Disease Registry
to conduct a health assessment in connection with such facility and take other appropriate action with respect to such risks
as authorized by section 9604(b) and (i) of this title. If funds are provided in connection with such request the Administrator
of such Agency shall conduct such health assessment.

(c) Members of the public
Any member of the public may submit evidence of releases of or exposure to hazardous constituents from such a facility,
or as to the risks or health effects associated with such releases or exposure, to the Administrator of the Agency for Toxic
Substances and Disease Registry, the Administrator, or the State (in the case of a State with an authorized program).

(d) Priority
In determining the order in which to conduct health assessments under this subsection, the Administrator of the Agency
for Toxic Substances and Disease Registry shall give priority to those facilities or sites at which there is documented
evidence of release of hazardous constituents, at which the potential risk to human health appears highest, and for which in
the judgment of the Administrator of such Agency existing health assessment data is inadequate to assess the potential risk
to human health as provided in subsection (f).

(e) Periodic reports
The Administrator of such Agency shall issue periodic reports which include the results of all the assessments carried out
under this section. Such assessments or other activities shall be reported after appropriate peer review.

(f) "Health assessments" defined
For the purposes of this section, the term "health assessments" shall include preliminary assessments of the potential risk
to human health posed by individual sites and facilities subject to this section, based on such factors as the nature and
extent of contamination, the existence of potential for pathways of human exposure (including ground or surface water
contamination, air emissions, and food chain contamination), the size and potential susceptibility of the community within the
likely pathways of exposure, the comparison of expected human exposure levels to the short-term and long-term health
effects associated with identified contaminants and any available recommended exposure or tolerance limits for such
contaminants, and the comparison of existing morbidity and mortality data on diseases that may be associated with the
observed levels of exposure. The assessment shall include an evaluation of the risks to the potentially affected population
from all sources of such contaminants, including known point or nonpoint sources other than the site or facility in question. A
purpose of such preliminary assessments shall be to help determine whether full-scale health or epidemiological studies and
medical evaluations of exposed populations shall be undertaken.

(g) Cost recovery
In any case in which a health assessment performed under this section discloses the exposure of a population to the
release of a hazardous substance, the costs of such health assessment may be recovered as a cost of response under section 9607
of this title from persons causing or contributing to such release of such hazardous substance or, in the case of multiple
releases contributing to such exposure, to all such release.


§6939b. Interim control of hazardous waste injection

(a) Underground source of drinking water
No hazardous waste may be disposed of by underground injection—

(1) into a formation which contains (within one-quarter mile of the well used for such underground injection) an
underground source of drinking water; or
(2) above such a formation.

The prohibitions established under this section shall take effect 6 months after November 8, 1984, except in the case of
any State in which identical or more stringent prohibitions are in effect before such date under the Safe Drinking Water Act
[42 U.S.C. 300f et seq.].

(b) Actions under Comprehensive Environmental Response, Compensation, and Liability Act
Subsection (a) shall not apply to the injection of contaminated ground water into the aquifer from which it was withdrawn, if—

(1) such injection is—
(A) a response action taken under section 9604 or 9606 of this title, or
(B) part of corrective action required under this chapter 1

intended to clean up such contamination;
(2) such contaminated ground water is treated to substantially reduce hazardous constituents prior to such injection; and

1.
(3) such response action or corrective action will, upon completion, be sufficient to protect human health and the environment.

(c) Enforcement
In addition to enforcement under the provisions of this chapter, the prohibitions established under paragraphs (1) and (2) of subsection (a) shall be enforceable under the Safe Drinking Water Act [42 U.S.C. 300f et seq.] in any State—

(1) which has adopted identical or more stringent prohibitions under part C of the Safe Drinking Water Act [42 U.S.C. 300h et seq.] and which has assumed primary enforcement responsibility under that Act for enforcement of such prohibitions; or

(2) in which the Administrator has adopted identical or more stringent prohibitions under the Safe Drinking Water Act [42 U.S.C. 300f et seq.] and is exercising primary enforcement responsibility under that Act for enforcement of such prohibitions.

(d) Definitions
The terms "primary enforcement responsibility", "underground source of drinking water", "formation" and "well" have the same meanings as provided in regulations of the Administrator under the Safe Drinking Water Act [42 U.S.C. 300f et seq.]. The term "Safe Drinking Water Act" means title XIV of the Public Health Service Act.


EDITORIAL NOTES

REFERENCES IN TEXT
Title XIV of the Public Health Service Act, referred to in subsec. (d), is title XIV of act July 1, 1944, as added Dec. 16, 1974, Pub. L. 93–523, §2(a), 88 Stat. 1660, as amended, known as the Safe Drinking Water Act, which is classified generally to subchapter XII (§300f et seq.) of chapter 6A of this title. Part C of the Act is classified generally to part C (§300h et seq.) of subchapter XII of chapter 6A of this title. For complete classification of this Act to the Code, see Short Title note set out under section 201 of this title and Tables.

CODIFICATION
Section was formerly classified to section 6979a of this title, prior to renumbering by Pub. L. 99–339.

AMENDMENTS
1986—Subsec. (c). Pub. L. 99–339, §201(c)(1), substituted "enforcement under the provisions of this chapter" for "enforcement under sections 6972 and 6973 of this title".

1 So in original. Probably should be followed by a comma.

§6939c. Mixed waste inventory reports and plan
(a) Mixed waste inventory reports
(1) Requirement
Not later than 180 days after October 6, 1992, the Secretary of Energy shall submit to the Administrator and to the Governor of each State in which the Department of Energy stores or generates mixed wastes the following reports:

(A) A report containing a national inventory of all such mixed wastes, regardless of the time they were generated, on a State-by-State basis.

(B) A report containing a national inventory of mixed waste treatment capacities and technologies.

(2) Inventory of wastes
The report required by paragraph (1)(A) shall include the following:

(A) A description of each type of mixed waste at each Department of Energy facility in each State, including, at a minimum, the name of the waste stream.

(B) The amount of each type of mixed waste currently stored at each Department of Energy facility in each State, set forth separately by mixed waste that is subject to the land disposal prohibition requirements of section 6924 of this title and mixed waste that is not subject to such prohibition requirements.

(C) An estimate of the amount of each type of mixed waste the Department expects to generate in the next 5 years at each Department of Energy facility in each State.

(D) A description of any waste minimization actions the Department has implemented at each Department of Energy facility in each State for each mixed waste stream.

(E) The EPA hazardous waste code for each type of mixed waste containing waste that has been characterized at each Department of Energy facility in each State.

(F) An inventory of each type of waste that has not been characterized by sampling and analysis at each Department of Energy facility in each State.
(G) The basis for the Department's determination of the applicable hazardous waste code for each type of mixed waste at each Department of Energy facility and a description of whether the determination is based on sampling and analysis conducted on the waste or on the basis of process knowledge.

(H) A description of the source of each type of mixed waste at each Department of Energy facility in each State.

(I) The land disposal prohibition treatment technology or technologies specified for the hazardous waste component of each type of mixed waste at each Department of Energy facility in each State.

(J) A statement of whether and how the radionuclide content of the waste alters or affects use of the technologies described in subparagraph (I).

(3) Inventory of treatment capacities and technologies

The report required by paragraph (1)(B) shall include the following:

(A) An estimate of the available treatment capacity for each waste described in the report required by paragraph (1) (A) for which treatment technologies exist.

(B) A description, including the capacity, number and location, of each treatment unit considered in calculating the estimate under subparagraph (A).

(C) A description, including the capacity, number and location, of any existing treatment unit that was not considered in calculating the estimate under subparagraph (A) but that could, alone or in conjunction with other treatment units, be used to treat any of the wastes described in the report required by paragraph (1)(A) to meet the requirements of regulations promulgated pursuant to section 6924(m) of this title.

(D) For each unit listed in subparagraph (C), a statement of the reasons why the unit was not included in calculating the estimate under subparagraph (A).

(E) A description, including the capacity, number, location, and estimated date of availability, of each treatment unit currently proposed to increase the treatment capacities estimated under subparagraph (A).

(F) For each waste described in the report required by paragraph (1)(A) for which the Department has determined no treatment technology exists, information sufficient to support such determination and a description of the technological approaches the Department anticipates will need to be developed to treat the waste.

(4) Comments and revisions

Not later than 90 days after the date of the submission of the reports by the Secretary of Energy under paragraph (1), the Administrator and each State which received the reports shall submit any comments they may have concerning the reports to the Department of Energy. The Secretary of Energy shall consider and publish the comments prior to publication of the final report.

(5) Requests for additional information

Nothing in this subsection limits or restricts the authority of States or the Administrator to request additional information from the Secretary of Energy.

(b) Plan for development of treatment capacities and technologies

(1) Plan requirement

(A)(i) For each facility at which the Department of Energy generates or stores mixed wastes, except any facility subject to a permit, agreement, or order described in clause (ii), the Secretary of Energy shall develop and submit, as provided in paragraph (2), a plan for developing treatment capacities and technologies to treat all of the facility's mixed wastes, regardless of the time they were generated, to the standards promulgated pursuant to section 6924(m) of this title.

(ii) Clause (i) shall not apply with respect to any facility subject to any permit establishing a schedule for treatment of such wastes, or any existing agreement or administrative or judicial order governing the treatment of such wastes, to which the State is a party.

(B) Each plan shall contain the following:

(i) For mixed wastes for which treatment technologies exist, a schedule for submitting all applicable permit applications, entering into contracts, initiating construction, conducting systems testing, commencing operations, and processing backlogged and currently generated mixed wastes.

(ii) For mixed wastes for which no treatment technologies exist, a schedule for identifying and developing such technologies, identifying the funding requirements for the identification and development of such technologies, submitting treatability study exemptions, and submitting research and development permit applications.

(iii) For all cases where the Department proposes radionuclide separation of mixed wastes, or materials derived from mixed wastes, it shall provide an estimate of the volume of waste generated by each case of radionuclide separation, the volume of waste that would exist or be generated without radionuclide separation, the estimated costs of waste treatment and disposal if radionuclide separation is used compared to the estimated costs if it is not used, and the assumptions underlying such waste volume and cost estimates.

(C) A plan required under this subsection may provide for centralized, regional, or on-site treatment of mixed wastes, or any combination thereof.

(2) Review and approval of plan

(A) For each facility that is located in a State (i) with authority under State law to prohibit land disposal of mixed waste until the waste has been treated and (ii) with both authority under State law to regulate the hazardous components of mixed waste and authorization from the Environmental Protection Agency under section 6926 of this title to regulate the hazardous components of mixed waste, the Secretary of Energy shall submit the plan required under paragraph (1) to the appropriate State regulatory officials for their review and approval, modification, or disapproval. In reviewing the plan, the State shall consider the need for regional treatment facilities. The State shall consult with the Administrator and any other
State in which a facility affected by the plan is located and consider public comments in making its determination on the plan. The State shall approve, approve with modifications, or disapprove the plan within 6 months after receipt of the plan.

(B) For each facility located in a State that does not have the authority described in subparagraph (A), the Secretary shall submit the plan required under paragraph (1) to the Administrator of the Environmental Protection Agency for review and approval, modification, or disapproval. A copy of the plan also shall be provided by the Secretary to the State in which such facility is located. In reviewing the plan, the Administrator shall consider the need for regional treatment facilities. The Administrator shall consult with the State or States in which any facility affected by the plan is located and consider public comments in making a determination on the plan. The Administrator shall approve, approve with modifications, or disapprove the plan within 6 months after receipt of the plan.

(C) Upon the approval of a plan under this paragraph by the Administrator or a State, the Administrator shall issue an order under section 6928(a) of this title, or the State shall issue an order under appropriate State authority, requiring compliance with the approved plan.

(3) Public participation

Upon submission of a plan by the Secretary of Energy to the Administrator or a State, and before approval of the plan by the Administrator or a State, the Administrator or State shall publish a notice of the availability of the submitted plan and make such submitted plan available to the public on request.

(4) Revisions of plan

If any revisions of an approved plan are proposed by the Secretary of Energy or required by the Administrator or a State, the provisions of paragraphs (2) and (3) shall apply to the revisions in the same manner as they apply to the original plan.

(5) Waiver of plan requirement

(A) A State may waive the requirement for the Secretary of Energy to develop and submit a plan under this subsection for a facility located in the State if the State (i) enters into an agreement with the Secretary of Energy that addresses compliance at that facility with section 6924(j) of this title with respect to mixed waste, and (ii) issues an order requiring compliance with such agreement and which is in effect.

(B) Any violation of an agreement or order referred to in subparagraph (A) is subject to the waiver of sovereign immunity contained in section 6961(a) of this title.

(c) Schedule and progress reports

(1) Schedule

Not later than 6 months after October 6, 1992, the Secretary of Energy shall publish in the Federal Register a schedule for submitting the plans required under subsection (b).

(2) Progress reports

(A) Not later than the deadlines specified in subparagraph (B), the Secretary of Energy shall submit to the Committee on Environment and Public Works of the Senate and the Committee on Energy and Commerce of the House of Representatives a progress report containing the following:

(i) An identification, by facility, of the plans that have been submitted to States or the Administrator of the Environmental Protection Agency pursuant to subsection (b).

(ii) The status of State and Environmental Protection Agency review and approval of each such plan.

(iii) The number of orders requiring compliance with such plans that are in effect.

(iv) For the first 2 reports required under this paragraph, an identification of the plans required under such subsection (b) that the Secretary expects to submit in the 12-month period following submission of the report.

(B) The Secretary of Energy shall submit a report under subparagraph (A) not later than 12 months after October 6, 1992, 24 months after October 6, 1992, and 36 months after October 6, 1992.


STATUTORY NOTES AND RELATED SUBSIDIARIES

CHANGE OF NAME


GAO REPORT

Pub. L. 102–386, title I, §105(c), Oct. 6, 1992, 106 Stat. 1512, provided that not later than 18 months after Oct. 6, 1992, the Comptroller General would submit to Congress a report, containing certain specified data, on the Department of Energy's progress in complying with subsec. (b) of this section.
§6939d. Public vessels

(a) Waste generated on public vessels
Any hazardous waste generated on a public vessel shall not be subject to the storage, manifest, inspection, or recordkeeping requirements of this chapter until such waste is transferred to a shore facility, unless—

(1) the waste is stored on the public vessel for more than 90 days after the public vessel is placed in reserve or is otherwise no longer in service; or

(2) the waste is transferred to another public vessel within the territorial waters of the United States and is stored on such vessel or another public vessel for more than 90 days after the date of transfer.

(b) Computation of storage period
For purposes of subsection (a), the 90-day period begins on the earlier of—

(1) the date on which the public vessel on which the waste was generated is placed in reserve or is otherwise no longer in service; or

(2) the date on which the waste is transferred from the public vessel on which the waste was generated to another public vessel within the territorial waters of the United States;

and continues, without interruption, as long as the waste is stored on the original public vessel (if in reserve or not in service) or another public vessel.

(c) Definitions
For purposes of this section:

(1) The term "public vessel" means a vessel owned or bareboat chartered and operated by the United States, or by a foreign nation, except when the vessel is engaged in commerce.

(2) The terms "in reserve" and "in service" have the meanings applicable to those terms under section 8663 and sections 8674 through 8678 of title 10 and regulations prescribed under those sections.

(d) Relationship to other law
Nothing in this section shall be construed as altering or otherwise affecting the provisions of section 8681 of title 10.


EDITORIAL NOTES

AMENDMENTS

2018—Subsec. (c)(2). Pub. L. 115–232, §809(n)(2)(A), substituted "section 8663 and sections 8674 through 8678 of title 10" for "section 7293 and sections 7304 through 7308 of title 10".

Subsec. (d). Pub. L. 115–232, §809(n)(2)(B), substituted "section 8681 of title 10" for "section 7311 of title 10".

STATUTORY NOTES AND RELATED SUBSIDIARIES

EFFECTIVE DATE OF 2018 AMENDMENT

Amendment by Pub. L. 115–232 effective Feb. 1, 2019, with provision for the coordination of amendments and special rule for certain redesignations, see section 800 of Pub. L. 115–232, set out as a note preceding section 3001 of Title 10, Armed Forces.

§6939e. Federally owned treatment works

(a) In general
For purposes of section 6903(27) of this title, the phrase "but does not include solid or dissolved material in domestic sewage" shall apply to any solid or dissolved material introduced by a source into a federally owned treatment works if—

(1) such solid or dissolved material is subject to a pretreatment standard under section 1317 of title 33, and the source is in compliance with such standard;

(2) for a solid or dissolved material for which a pretreatment standard has not been promulgated pursuant to section 1317 of title 33, the Administrator has promulgated a schedule for establishing such a pretreatment standard which would be applicable to such solid or dissolved material not later than 7 years after October 6, 1992, such standard is promulgated on or before the date established in the schedule, and after the effective date of such standard the source is in compliance with such standard;

(3) such solid or dissolved material is not covered by paragraph (1) or (2) and is not prohibited from land disposal under subsections 1(d), (e), (f), or (g) of section 6924 of this title because such material has been treated in accordance with section 6924(m) of this title; or
(4) notwithstanding paragraphs 1 (1), (2), or (3), such solid or dissolved material is generated by a household or person which generates less than 100 kilograms of hazardous waste per month unless such solid or dissolved material would otherwise be an acutely hazardous waste and subject to standards, regulations, or other requirements under this chapter notwithstanding the quantity generated.

(b) Prohibition
It is unlawful to introduce into a federally owned treatment works any pollutant that is a hazardous waste.

(c) Enforcement
(1) Actions taken to enforce this section shall not require closure of a treatment works if the hazardous waste is removed or decontaminated and such removal or decontamination is adequate, in the discretion of the Administrator or, in the case of an authorized State, of the State, to protect human health and the environment.

(2) Nothing in this subsection shall be construed to prevent the Administrator or an authorized State from ordering the closure of a treatment works if the Administrator or State determines such closure is necessary for protection of human health and the environment.

(3) Nothing in this subsection shall be construed to affect any other enforcement authorities available to the Administrator or a State under this subchapter.

(d) "Federally owned treatment works" defined
For purposes of this section, the term "federally owned treatment works" means a facility that is owned and operated by a department, agency, or instrumentality of the Federal Government treating wastewater, a majority of which is domestic sewage, prior to discharge in accordance with a permit issued under section 1342 of title 33.

(e) Savings clause
Nothing in this section shall be construed as affecting any agreement, permit, or administrative or judicial order, or any condition or requirement contained in such an agreement, permit, or order, that is in existence on October 6, 1992, and that requires corrective action or closure at a federally owned treatment works or solid waste management unit or facility related to such a treatment works.


1 So in original. Probably should be singular.

§6939f. Long-term storage

(a) Designation of facility

(1) In general
Not later than January 1, 2010, the Secretary of Energy (referred to in this section as the "Secretary") shall designate a facility or facilities of the Department of Energy, which shall not include the Y–12 National Security Complex or any other portion or facility of the Oak Ridge Reservation of the Department of Energy, for the purpose of long-term management and storage of elemental mercury generated within the United States.

(2) Operation of facility
Not later than January 1, 2019, the facility designated in paragraph (1) shall be operational and shall accept custody, for the purpose of long-term management and storage, of elemental mercury generated within the United States and delivered to such facility.

(b) Fees

(1) In general

(A) Assessment and collection
After consultation with persons who are likely to deliver elemental mercury to a designated facility for long-term management and storage under the program prescribed in subsection (a), and with other interested persons, the Secretary shall assess and collect a fee at the time of delivery for providing such management and storage, based on the pro rata cost of long-term management and storage of elemental mercury delivered to the facility.

(B) Amount
The amount of the fees described in subparagraph (A)—
(i) shall be made publicly available not later than October 1, 2018;
(ii) may be adjusted annually;
(iii) shall be set in an amount sufficient to cover the costs described in paragraph (2), subject to clause (iv); and
(iv) for generators temporarily accumulating elemental mercury in a facility subject to subparagraphs (B) and (D)(iv) of subsection (g)(2) if the facility designated in subsection (a) is not operational by January 1, 2019, shall be adjusted to subtract the cost of the temporary accumulation during the period in which the facility designated under subsection (a) is not operational.

(C) Conveyance of title and permitting
If the facility designated in subsection (a) is not operational by January 1, 2020, the Secretary—
(i) shall immediately accept the conveyance of title to all elemental mercury that has accumulated in facilities in accordance with subsection (g)(2)(D), before January 1, 2020, and deliver the accumulated mercury to the facility designated under subsection (a) on the date on which the facility becomes operational;

(ii) shall pay any applicable Federal permitting costs, including the costs for permits issued under section 3005(c) of the Solid Waste Disposal Act (42 U.S.C. 6925(c)); and

(iii) shall store, or pay the cost of storage of, until the time at which a facility designated in subsection (a) is operational, accumulated mercury to which the Secretary has title under this subparagraph in a facility that has been issued a permit under section 3005(c) of the Solid Waste Disposal Act (42 U.S.C. 6925(c)).

(2) Costs

The costs referred to in paragraph (1)(B)(iii) are the costs to the Department of Energy of providing such management and storage, including facility operation and maintenance, security, monitoring, reporting, personnel, administration, inspections, training, fire suppression, closure, and other costs required for compliance with applicable law. Such costs shall not include costs associated with land acquisition or permitting of a designated facility under the Solid Waste Disposal Act [42 U.S.C. 6901 et seq.] or other applicable law. Building design and building construction costs shall only be included to the extent that the Secretary finds that the management and storage of elemental mercury accepted under the program under this section cannot be accomplished without construction of a new building or buildings.

(c) Report

Not later than 60 days after the end of each Federal fiscal year, the Secretary shall transmit to the Committee on Energy and Commerce of the House of Representatives and the Committee on Environment and Public Works of the Senate a report on all of the costs incurred in the previous fiscal year associated with the long-term management and storage of elemental mercury. Such report shall set forth separately the costs associated with activities taken under this section.

(d) Management standards for a facility

(1) Guidance

Not later than October 1, 2009, the Secretary, after consultation with the Administrator of the Environmental Protection Agency and all appropriate State agencies in affected States, shall make available, including to potential users of the long-term management and storage program established under subsection (a), guidance that establishes procedures and standards for the receipt, management, and long-term storage of elemental mercury at a designated facility or facilities, including requirements to ensure appropriate use of flasks or other suitable shipping containers. Such procedures and standards shall be protective of human health and the environment and shall ensure that the elemental mercury is stored in a safe, secure, and effective manner. In addition to such procedures and standards, elemental mercury managed and stored under this section at a designated facility shall be subject to the requirements of the Solid Waste Disposal Act [42 U.S.C. 6901 et seq.], including the requirements of subtitle C of that Act [42 U.S.C. 6921 et seq.], except as provided in subsection (g)(2) of this section. A designated facility is authorized to operate under interim status pursuant to section 3005(e) of the Solid Waste Disposal Act [42 U.S.C. 6925(e)] until a final decision on a permit application is made pursuant to section 3005(c) of the Solid Waste Disposal Act [42 U.S.C. 6925(c)]. Not later than January 1, 2020, the Administrator of the Environmental Protection Agency (or an authorized State) shall issue a final decision on the permit application.

(2) Training

The Secretary shall conduct operational training and emergency training for all staff that have responsibilities related to elemental mercury management, transfer, storage, monitoring, or response.

(3) Equipment

The Secretary shall ensure that each designated facility has all equipment necessary for routine operations, emergencies, monitoring, checking inventory, loading, and storing elemental mercury at the facility.

(4) Fire detection and suppression systems

The Secretary shall—

(A) ensure the installation of fire detection systems at each designated facility, including smoke detectors and heat detectors; and

(B) ensure the installation of a permanent fire suppression system, unless the Secretary determines that a permanent fire suppression system is not necessary to protect human health and the environment.

(e) Indemnification of persons delivering elemental mercury

(1) In general

(A) Except as provided in subparagraph (B) and subject to paragraph (2), the Secretary shall hold harmless, defend, and indemnify in full any person who delivers elemental mercury to a designated facility under the program established under subsection (a) from and against any suit, claim, demand or action, liability, judgment, cost, or other fee arising out of any claim for personal injury or property damage (including death, illness, or loss of or damage to property or economic loss) that results from, or is in any manner predicated upon, the release or threatened release of elemental mercury as a result of acts or omissions occurring after such mercury is delivered to a designated facility described in subsection (a).

(B) To the extent that a person described in subparagraph (A) contributed to any such release or threatened release, subparagraph (A) shall not apply.

(2) Conditions

No indemnification may be afforded under this subsection unless the person seeking indemnification—
(A) notifies the Secretary in writing within 30 days after receiving written notice of the claim for which indemnification is sought;
(B) furnishes to the Secretary copies of pertinent papers the person receives;
(C) furnishes evidence or proof of any claim, loss, or damage covered by this subsection; and
(D) provides, upon request by the Secretary, access to the records and personnel of the person for purposes of defending or settling the claim or action.

(3) Authority of Secretary
(A) In any case in which the Secretary determines that the Department of Energy may be required to make indemnification payments to a person under this subsection for any suit, claim, demand or action, liability, judgment, cost, or other fee arising out of any claim for personal injury or property damage referred to in paragraph (1)(A), the Secretary may settle or defend, on behalf of that person, the claim for personal injury or property damage.
(B) In any case described in subparagraph (A), if the person to whom the Department of Energy may be required to make indemnification payments does not allow the Secretary to settle or defend the claim, the person may not be afforded indemnification with respect to that claim under this subsection.

(f) Terms, conditions, and procedures
The Secretary is authorized to establish such terms, conditions, and procedures as are necessary to carry out this section.

(g) Effect on other law
(1) In general
Except as provided in paragraph (2), nothing in this section changes or affects any Federal, State, or local law or the obligation of any person to comply with such law.

(2) Exception
(A) Elemental mercury that the Secretary is storing on a long-term basis shall not be subject to the storage prohibition of section 3004(j) of the Solid Waste Disposal Act (42 U.S.C. 6924(j)). For the purposes of section 3004(j) of the Solid Waste Disposal Act, a generator accumulating elemental mercury destined for a facility designated by the Secretary under subsection (a) for 90 days or less shall be deemed to be accumulating the mercury to facilitate proper treatment, recovery, or disposal.
(B) Elemental mercury may be stored at a facility with respect to which any permit has been issued under section 3005(c) of the Solid Waste Disposal Act (42 U.S.C. 6925(c)), and shall not be subject to the storage prohibition of section 3004(j) of the Solid Waste Disposal Act (42 U.S.C. 6924(j)) if—
   (i) the Secretary is unable to accept the mercury at a facility designated by the Secretary under subsection (a) for reasons beyond the control of the owner or operator of the permitted facility;
   (ii) the owner or operator of the permitted facility certifies in writing to the Secretary that it will ship the mercury to the designated facility when the Secretary is able to accept the mercury; and
   (iii) the owner or operator of the permitted facility certifies in writing to the Secretary that it will not sell, or otherwise place into commerce, the mercury.

(C) Subparagraph (B) shall not apply to mercury with respect to which the owner or operator of the permitted facility fails to comply with a certification provided under clause (ii) or (iii) of that subparagraph.
(D) A generator producing elemental mercury incidentally from the beneficiation or processing of ore or related pollution control activities may accumulate the mercury produced onsite that is destined for a facility designated by the Secretary under subsection (a) for more than 90 days without a permit issued under section 3005(c) of the Solid Waste Disposal Act (42 U.S.C. 6925(c)), and shall not be subject to the storage prohibition of section 3004(j) of that Act (42 U.S.C. 6924(j)), if—
   (i) the Secretary is unable to accept the mercury at a facility designated by the Secretary under subsection (a) for reasons beyond the control of the generator;
   (ii) the generator certifies in writing to the Secretary that the generator will ship the mercury to a designated facility when the Secretary is able to accept the mercury;
   (iii) the generator certifies in writing to the Secretary that the generator is storing only mercury the generator has produced or recovered onsite and will not sell, or otherwise place into commerce, the mercury; and
   (iv) the generator has obtained an identification number under section 262.12 of title 40, Code of Federal Regulations, and complies with the requirements described in paragraphs (1) through (4) of section 262.34(a) of title 40, Code of Federal Regulations (as in effect on the date of enactment of this subparagraph).

(E) MANAGEMENT STANDARDS FOR TEMPORARY STORAGE.—Not later than January 1, 2017, the Secretary, after consultation with the Administrator of the Environmental Protection Agency and State agencies in affected States, shall develop and make available guidance that establishes procedures and standards for the management and short-term storage of elemental mercury at a generator covered under subparagraph (D), including requirements to ensure appropriate use of flasks or other suitable containers. Such procedures and standards shall be protective of health and the environment and shall ensure that the elemental mercury is stored in a safe, secure, and effective manner. A generator may accumulate mercury in accordance with subparagraph (D) immediately upon enactment of this subparagraph, and notwithstanding that guidance called for by this paragraph has not been developed or made available.

(h) Study
Not later than July 1, 2014, the Secretary shall transmit to the Congress the results of a study, conducted in consultation with the Administrator of the Environmental Protection Agency, that—

(1) determines the impact of the long-term storage program under this section on mercury recycling; and

(2) includes proposals, if necessary, to mitigate any negative impact identified under paragraph (1).


EDITORIAL NOTES

REFERENCES IN TEXT


AMENDMENTS


Subsec. (b)(1)(A). Pub. L. 114–182, §10(c)(2)(A)(ii), designated first sentence of par. (1) as subpar. (A) and inserted heading. Former subpar. (A) redesignated cl. (i) of subpar. (B).

Subsec. (b)(1)(B). Pub. L. 114–182, §10(c)(2)(A)(i), (iii), (iv), designated second sentence of par. (1) as subpar. (B), inserted heading, substituted "The amount of the fees described in subparagraph (A)" for "The amount of such fees" in introductory provisions, redesignated former subpars. (A) to (C) of par. (1) as cl. (i) to (iii), respectively, of subpar. (B) and realigned margins, substituted "publicly available not later than October 1, 2018" for "publicly available not later than October 1, 2012" in cl. (i) and ", subject to clause (iv); and" for period at end of cl. (iii), and added cl. (iv).


Subsec. (g)(2)(C). Pub. L. 114–182, §10(c)(3)(A), (B), redesignated concluding provisions of subpar. (B) as (C), substituted "Subparagraph (B)" for "This subparagraph", and inserted "of that subparagraph" before period at end.

Subsec. (g)(2)(D), (E). Pub. L. 114–182, §10(c)(3)(C), added subpars. (D) and (E).

CODIFICATION

Section was enacted as part of the Mercury Export Ban Act of 2008, and not as part of the Solid Waste Disposal Act which comprises this chapter.

STATUTORY NOTES AND RELATED SUBSIDIARIES

DEPOSIT OF FEES


§6939g. Hazardous waste electronic manifest system

(a) Definitions

In this section:

(1) Board

The term "Board" means the Hazardous Waste Electronic Manifest System Advisory Board established under subsection (f).

(2) Fund

The term "Fund" means the Hazardous Waste Electronic Manifest System Fund established by subsection (d).

(3) Person

The term "person" includes an individual, corporation (including a Government corporation), company, association, firm, partnership, society, joint stock company, trust, municipality, commission, Federal agency, State, political subdivision of a
State, or interstate body.

(4) System
The term "system" means the hazardous waste electronic manifest system established under subsection (b).

(5) User
The term "user" means a hazardous waste generator, a hazardous waste transporter, an owner or operator of a hazardous waste treatment, storage, recycling, or disposal facility, or any other person that—

(A) is required to use a manifest to comply with any Federal or State requirement to track the shipment, transportation, and receipt of hazardous waste or other material that is shipped from the site of generation to an off-site facility for treatment, storage, disposal, or recycling; and

(B)(i) elects to use the system to complete and transmit an electronic manifest format; or

(ii) submits to the system for data processing purposes a paper copy of the manifest (or data from such a paper copy), in accordance with such regulations as the Administrator may promulgate to require such a submission.

(b) Establishment
Not later than 3 years after October 5, 2012, the Administrator shall establish a hazardous waste electronic manifest system that may be used by any user.

(c) User fees

(1) In general
In accordance with paragraph (4), the Administrator may impose on users such reasonable service fees as the Administrator determines to be necessary to pay costs incurred in developing, operating, maintaining, and upgrading the system, including any costs incurred in collecting and processing data from any paper manifest submitted to the system after the date on which the system enters operation.

(2) Collection of fees
The Administrator shall—

(A) collect the fees described in paragraph (1) from the users in advance of, or as reimbursement for, the provision by the Administrator of system-related services; and

(B) deposit the fees in the Fund.

(3) Fee structure

(A) In general
The Administrator, in consultation with information technology vendors, shall determine through the contract award process described in subsection (e) the fee structure that is necessary to recover the full cost to the Administrator of providing system-related services, including—

(i) contractor costs relating to—

(I) materials and supplies;

(II) contracting and consulting;

(III) overhead;

(IV) information technology (including costs of hardware, software, and related services);

(V) information management;

(VI) collection of service fees;

(VII) reporting and accounting; and

(VIII) project management; and

(ii) costs of employment of direct and indirect Government personnel dedicated to establishing, managing, and maintaining the system.

(B) Adjustments in fee amount

(i) In general
The Administrator, in consultation with the Board, shall increase or decrease the amount of a service fee determined under the fee structure described in subparagraph (A) to a level that will—

(I) result in the collection of an aggregate amount for deposit in the Fund that is sufficient and not more than reasonably necessary to cover current and projected system-related costs (including any necessary system upgrades); and

(II) minimize, to the maximum extent practicable, the accumulation of unused amounts in the Fund.

(ii) Exception for initial period of operation
The requirement described in clause (i)(II) shall not apply to any additional fees that accumulate in the Fund, in an amount that does not exceed $2,000,000, during the 3-year period beginning on the date on which the system enters operation.

(iii) Timing of adjustments
Adjustments to service fees described in clause (i) shall be made—

(I) initially, at the time at which initial development costs of the system have been recovered by the Administrator such that the service fee may be reduced to reflect the elimination of the system development component of the fee; and
(II) periodically thereafter, upon receipt and acceptance of the findings of any annual accounting or auditing report under subsection (d)(3), if the report discloses a significant disparity for a fiscal year between the funds collected from service fees under this subsection for the fiscal year and expenditures made for the fiscal year to provide system-related services.

(4) Crediting and availability of fees

Fees authorized under this section shall be collected and available for obligation only to the extent and in the amount provided in advance in appropriations Acts.

(d) Hazardous Waste Electronic Manifest System Fund

(1) Establishment

There is established in the Treasury of the United States a revolving fund, to be known as the "Hazardous Waste Electronic Manifest System Fund", consisting of such amounts as are deposited in the Fund under subsection (c)(2)(B).

(2) Expenditures from Fund

(A) In general

Only to the extent provided in advance in appropriations Acts, on request by the Administrator, the Secretary of the Treasury shall transfer from the Fund to the Administrator amounts appropriated to pay costs incurred in developing, operating, maintaining, and upgrading the system under subsection (c).

(B) Use of funds by Administrator

Fees collected by the Administrator and deposited in the Fund under this section shall be available to the Administrator subject to appropriations Acts for use in accordance with this section without fiscal year limitation.

(C) Oversight of funds

The Administrator shall carry out all necessary measures to ensure that amounts in the Fund are used only to carry out the goals of establishing, operating, maintaining, upgrading, managing, supporting, and overseeing the system.

(3) Accounting and auditing

(A) Accounting

For each 2-fiscal-year period, the Administrator shall prepare and submit to the Committee on Environment and Public Works and the Committee on Appropriations of the Senate and the Committee on Energy and Commerce and the Committee on Appropriations of the House of Representatives a report that includes—

(i) an accounting of the fees paid to the Administrator under subsection (c) and disbursed from the Fund for the period covered by the report, as reflected by financial statements provided in accordance with—

(I) the Chief Financial Officers Act of 1990 (Public Law 101–576; 104 Stat. 2838) and amendments made by that Act; and

(II) the Government Management Reform Act of 1994 (Public Law 103–356; 108 Stat. 3410) and amendments made by that Act; and

(ii) an accounting describing actual expenditures from the Fund for the period covered by the report for costs described in subsection (c)(1).

(B) Auditing

(i) In general

For the purpose of section 3515(c) of title 31, the Fund shall be considered a component of an Executive agency.

(ii) Components of audit

The annual audit required in accordance with sections 3515(b) and 3521 of title 31 of the financial statements of activities carried out using amounts from the Fund shall include an analysis of—

(I) the fees collected and disbursed under this section;

(II) the reasonableness of the fee structure in place as of the date of the audit to meet current and projected costs of the system;

(III) the level of use of the system by users; and

(IV) the success to date of the system in operating on a self-sustaining basis and improving the efficiency of tracking waste shipments and transmitting waste shipment data.

(iii) Federal responsibility

The Inspector General of the Environmental Protection Agency shall—

(I) conduct the annual audit described in clause (ii); and

(II) submit to the Administrator a report that describes the findings and recommendations of the Inspector General resulting from the audit.

(e) Contracts

(1) Authority to enter into contracts funded by service fees

After consultation with the Secretary of Transportation, the Administrator may enter into 1 or more information technology contracts with entities determined to be appropriate by the Administrator (referred to in this subsection as "contractors") for the provision of system-related services.
(2) Term of contract
A contract awarded under this subsection shall have a term of not more than 10 years.

(3) Achievement of goals
The Administrator shall ensure, to the maximum extent practicable, that a contract awarded under this subsection—
(A) is performance-based;
(B) identifies objective outcomes; and
(C) contains performance standards that may be used to measure achievement and goals to evaluate the success of a contractor in performing under the contract and the right of the contractor to payment for services under the contract, taking into consideration that a primary measure of successful performance shall be the development of a hazardous waste electronic manifest system that—
(i) meets the needs of the user community (including States that rely on data contained in manifests);
(ii) attracts sufficient user participation and service fee revenues to ensure the viability of the system;
(iii) decreases the administrative burden on the user community; and
(iv) provides the waste receipt data applicable to the biennial reports required by section 6922(a)(6) of this title.

(4) Payment structure
Each contract awarded under this subsection shall include a provision that specifies—
(A) the service fee structure of the contractor that will form the basis for payments to the contractor; and
(B) the fixed-share ratio of monthly service fee revenues from which the Administrator shall reimburse the contractor for system-related development, operation, and maintenance costs.

(5) Cancellation and termination
(A) In general
If the Administrator determines that sufficient funds are not made available for the continuation in a subsequent fiscal year of a contract entered into under this subsection, the Administrator may cancel or terminate the contract.

(B) Negotiation of amounts
The amount payable in the event of cancellation or termination of a contract entered into under this subsection shall be negotiated with the contractor at the time at which the contract is awarded.

(6) No effect on ownership
Regardless of whether the Administrator enters into a contract under this subsection, the system shall be owned by the Federal Government.

(f) Hazardous Waste Electronic Manifest System Advisory Board

(1) Establishment
Not later than 3 years after October 5, 2012, the Administrator shall establish a board to be known as the "Hazardous Waste Electronic Manifest System Advisory Board".

(2) Composition
The Board shall be composed of 9 members, of which—
(A) 1 member shall be the Administrator (or a designee), who shall serve as Chairperson of the Board; and
(B) 8 members shall be individuals appointed by the Administrator—
(i) at least 2 of whom shall have expertise in information technology;
(ii) at least 3 of whom shall have experience in using or represent users of the manifest system to track the transportation of hazardous waste under this subchapter (or an equivalent State program); and
(iii) at least 3 of whom shall be a State representative responsible for processing those manifests.

(3) Duties
The Board shall meet annually to discuss, evaluate the effectiveness of, and provide recommendations to the Administrator relating to, the system.

(g) Regulations

(1) Promulgation
(A) In general
Not later than 1 year after October 5, 2012, after consultation with the Secretary of Transportation, the Administrator shall promulgate regulations to carry out this section.

(B) Inclusions
The regulations promulgated pursuant to subparagraph (A) may include such requirements as the Administrator determines to be necessary to facilitate the transition from the use of paper manifests to the use of electronic manifests, or to accommodate the processing of data from paper manifests in the electronic manifest system, including a requirement that users of paper manifests submit to the system copies of the paper manifests for data processing purposes.

(C) Requirements
The regulations promulgated pursuant to subparagraph (A) shall ensure that each electronic manifest provides, to the same extent as paper manifests under applicable Federal and State law, for—
(i) the ability to track and maintain legal accountability of—
   (I) the person that certifies that the information provided in the manifest is accurately described; and
   (II) the person that acknowledges receipt of the manifest;

(ii) if the manifest is electronically submitted, State authority to access paper printout copies of the manifest from
     the system; and
   (iii) access to all publicly available information contained in the manifest.

(2) Effective date of regulations

Any regulation promulgated by the Administrator under paragraph (1) and in accordance with section 6923 of this title
relating to electronic manifesting of hazardous waste shall take effect in each State as of the effective date specified in the
regulation.

(3) Administration

The Administrator shall carry out regulations promulgated under this subsection in each State unless the State program
is fully authorized to carry out such regulations in lieu of the Administrator.

(h) Requirement of compliance with respect to certain States

In any case in which the State in which waste is generated, or the State in which waste will be transported to a designated
facility, requires that the waste be tracked through a hazardous waste manifest, the designated facility that receives the
waste shall, regardless of the State in which the facility is located—
   (1) complete the facility portion of the applicable manifest;
   (2) sign and date the facility certification; and
   (3) submit to the system a final copy of the manifest for data processing purposes.

(i) Authorization for start-up activities

There are authorized to be appropriated $2,000,000 for each of fiscal years 2013 through 2015 for start-up activities to
carry out this section, to be offset by collection of user fees under subsection (c) such that all such appropriated funds are
offset by fees as provided in subsection (c).


EDITORIAL NOTES

REFERENCES IN TEXT

note set out under section 501 of Title 31, Money and Finance, and Tables.

note set out under section 3301 of Title 31, Money and Finance, and Tables.

SUBCHAPTER IV—STATE OR REGIONAL SOLID WASTE PLANS

§6941. Objectives of subchapter

The objectives of this subchapter are to assist in developing and encouraging methods for the disposal of solid waste
which are environmentally sound and which maximize the utilization of valuable resources including energy and materials
which are recoverable from solid waste and to encourage resource conservation. Such objectives are to be accomplished
through Federal technical and financial assistance to States or regional authorities for comprehensive planning pursuant to
Federal guidelines designed to foster cooperation among Federal, State, and local governments and private industry. In
developing such comprehensive plans, it is the intention of this chapter that in determining the size of the waste-to-energy
facility, adequate provision shall be given to the present and reasonably anticipated future needs, including those needs
created by thorough implementation of section 6962(h) of this title, of the recycling and resource recovery interest within the
area encompassed by the planning process.


EDITORIAL NOTES

PRIOR PROVISIONS

Provisions similar to those in this section were contained in section 3254 of this title, prior to the general
AMENDMENTS

1984—Pub. L. 98–616, §501(f)(1), inserted ", including those needs created by thorough implementation of section 6962(h) of this title,".

Pub. L. 98–616, §301(a), inserted at end "In developing such comprehensive plans, it is the intention of this chapter that in determining the size of the waste-to-energy facility, adequate provision shall be given to the present and reasonably anticipated future needs of the recycling and resource recovery interest within the area encompassed by the planning process."

1980—Pub. L. 96–482 included as an objective in the disposal of solid waste the utilization of energy and materials recoverable from solid waste.

§6941a. Energy and materials conservation and recovery; Congressional findings

The Congress finds that—

(1) significant savings could be realized by conserving materials in order to reduce the volume or quantity of material which ultimately becomes waste;

(2) solid waste contains valuable energy and material resources which can be recovered and used thereby conserving increasingly scarce and expensive fossil fuels and virgin materials;

(3) the recovery of energy and materials from municipal waste, and the conservation of energy and materials contributing to such waste streams, can have the effect of reducing the volume of the municipal waste stream and the burden of disposing of increasing volumes of solid waste;

(4) the technology to conserve resources exists and is commercially feasible to apply;

(5) the technology to recover energy and materials from solid waste is of demonstrated commercial feasibility; and

(6) various communities throughout the nation have different needs and different potentials for conserving resources and for utilizing techniques for the recovery of energy and materials from waste, and Federal assistance in planning and implementing such energy and materials conservation and recovery programs should be available to all such communities on an equitable basis in relation to their needs and potential.


EDITORIAL NOTES

CODIFICATION

Section was enacted as part of the Solid Waste Disposal Act Amendments of 1980, and not as part of the Solid Waste Disposal Act which comprises this chapter.

§6942. Federal guidelines for plans

(a) Guidelines for identification of regions

For purposes of encouraging and facilitating the development of regional planning for solid waste management, the Administrator, within one hundred and eighty days after October 21, 1976, and after consultation with appropriate Federal, State, and local authorities, shall by regulation publish guidelines for the identification of those areas which have common solid waste management problems and are appropriate units for planning regional solid waste management services. Such guidelines shall consider—

(1) the size and location of areas which should be included,

(2) the volume of solid waste which should be included, and

(3) the available means of coordinating regional planning with other related regional planning and for coordination of such regional planning into the State plan.

(b) Guidelines for State plans

Not later than eighteen months after October 21, 1976, and after notice and hearing, the Administrator shall, after consultation with appropriate Federal, State, and local authorities, promulgate regulations containing guidelines to assist in the development and implementation of State solid waste management plans (hereinafter in this chapter referred to as "State plans"). The guidelines shall contain methods for achieving the objectives specified in section 6941 of this title. Such guidelines shall be reviewed from time to time, but not less frequently than every three years, and revised as may be appropriate.

(c) Considerations for State plan guidelines

The guidelines promulgated under subsection (b) shall consider—

(1) the varying regional, geologic, hydrologic, climatic, and other circumstances under which different solid waste practices are required in order to insure the reasonable protection of the quality of the ground and surface waters from leachate contamination, the reasonable protection of the quality of the surface waters from surface runoff contamination, and the reasonable protection of ambient air quality;

(2) characteristics and conditions of collection, storage, processing, and disposal operating methods, techniques and practices, and location of facilities where such operating methods, techniques, and practices are conducted, taking into
account the nature of the material to be disposed;
(3) methods for closing or upgrading open dumps for purposes of eliminating potential health hazards;
(4) population density, distribution, and projected growth;
(5) geographic, geologic, climatic, and hydrologic characteristics;
(6) the type and location of transportation;
(7) the profile of industries;
(8) the constituents and generation rates of waste;
(9) the political, economic, organizational, financial, and management problems affecting comprehensive solid waste management;
(10) types of resource recovery facilities and resource conservation systems which are appropriate; and
(11) available new and additional markets for recovered material and energy and energy resources recovered from solid waste as well as methods for conserving such materials and energy.


EDITORIAL NOTES

AMENDMENTS

1980—Subsec. (c)(11). Pub. L. 96–482 required State plan guidelines to consider energy and energy resources recovered from solid waste as well as methods for conserving such materials and energy.

EXECUTIVE DOCUMENTS

TRANSFER OF FUNCTIONS

For transfer of certain enforcement functions of Administrator or other official of Environmental Protection Agency under this chapter to Federal Inspector, Office of Federal Inspector for the Alaska Natural Gas Transportation System, and subsequent transfer to Secretary of Energy, then to Federal Coordinator for Alaska Natural Gas Transportation Projects, see note set out under section 6903 of this title.

§6943. Requirements for approval of plans

(a) Minimum requirements

In order to be approved under section 6947 of this title, each State plan must comply with the following minimum requirements—

(1) The plan shall identify (in accordance with section 6946(b) of this title) (A) the responsibilities of State, local, and regional authorities in the implementation of the State plan, (B) the distribution of Federal funds to the authorities responsible for development and implementation of the State plan, and (C) the means for coordinating regional planning and implementation under the State plan.

(2) The plan shall, in accordance with sections 6944(b) and 6945(a) of this title, prohibit the establishment of new open dumps within the State, and contain requirements that all solid waste (including solid waste originating in other States, but not including hazardous waste) shall be (A) utilized for resource recovery or (B) disposed of in sanitary landfills (within the meaning of section 6944(a) of this title) or otherwise disposed of in an environmentally sound manner.

(3) The plan shall provide for the closing or upgrading of all existing open dumps within the State pursuant to the requirements of section 6945 of this title.

(4) The plan shall provide for the establishment of such State regulatory powers as may be necessary to implement the plan.

(5) The plan shall provide that no State or local government within the State shall be prohibited under State or local law from negotiating and entering into long-term contracts for the supply of solid waste to resource recovery facilities, from entering into long-term contracts for the operation of such facilities, or from securing long-term markets for material and energy recovered from such facilities or for conserving materials or energy by reducing the volume of waste.

(6) The plan shall provide for such resource conservation or recovery and for the disposal of solid waste in sanitary landfills or any combination of practices so as may be necessary to use or dispose of such waste in a manner that is environmentally sound.

(b) Discretionary plan provisions relating to recycled oil

Any State plan submitted under this subchapter may include, at the option of the State, provisions to carry out each of the following:

(1) Encouragement, to the maximum extent feasible and consistent with the protection of the public health and the environment, of the use of recycled oil in all appropriate areas of State and local government.

(2) Encouragement of persons contracting with the State to use recycled oil to the maximum extent feasible, consistent with protection of the public health and the environment.

(3) Informing the public of the uses of recycled oil.
(4) Establishment and implementation of a program (including any necessary licensing of persons and including the use, where appropriate, of manifests) to assure that used oil is collected, transported, treated, stored, reused, and disposed of, in a manner which does not present a hazard to the public health or the environment.

Any plan submitted under this chapter before October 15, 1980, may be amended, at the option of the State, at any time after such date to include any provision referred to in this subsection.

(c) Energy and materials conservation and recovery feasibility planning and assistance

(1) A State which has a plan approved under this subchapter or which has submitted a plan for such approval shall be eligible for assistance under section 6948(a)(3) of this title if the Administrator determines that under such plan the State will —

(A) analyze and determine the economic and technical feasibility of facilities and programs to conserve resources which contribute to the waste stream or to recover energy and materials from municipal waste;

(B) analyze the legal, institutional, and economic impediments to the development of systems and facilities for conservation of energy or materials which contribute to the waste stream or for the recovery of energy and materials from municipal waste and make recommendations to appropriate governmental authorities for overcoming such impediments;

(C) assist municipalities within the State in developing plans, programs, and projects to conserve resources or recover energy and materials from municipal waste; and

(D) coordinate the resource conservation and recovery planning under subparagraph (C).

(2) The analysis referred to in paragraph (1)(A) shall include—

(A) the evaluation of, and establishment of priorities among, market opportunities for industrial and commercial users of all types (including public utilities and industrial parks) to utilize energy and materials recovered from municipal waste;

(B) comparisons of the relative costs of energy recovered from municipal waste in relation to the costs of energy derived from fossil fuels and other sources;

(C) studies of the transportation and storage problems and other problems associated with the development of energy and materials recovery technology, including curbside source separation;

(D) the evaluation and establishment of priorities among ways of conserving energy or materials which contribute to the waste stream;

(E) comparison of the relative total costs between conserving resources and disposing of or recovering such waste; and

(F) studies of impediments to resource conservation or recovery, including business practices, transportation requirements, or storage difficulties.

Such studies and analyses shall also include studies of other sources of solid waste from which energy and materials may be recovered or minimized.

(d) Size of waste-to-energy facilities

Notwithstanding any of the above requirements, it is the intention of this chapter and the planning process developed pursuant to this chapter that in determining the size of the waste-to-energy facility, adequate provision shall be given to the present and reasonably anticipated future needs of the recycling and resource recovery interest within the area encompassed by the planning process.


EDITORIAL NOTES

CODIFICATION

Another section 5(b) of Pub. L. 96–463 amended section 6948 of this title.

AMENDMENTS

1984—Subsecs. (b), (c). Pub. L. 98–616, §502(h), redesignated the subsec. (b) entitled energy and materials conservation and recovery feasibility planning and assistance, as subsec. (c).


Subsec. (a)(2). Pub. L. 96–482, §18(a), substituted reference to sections 6944(b) and 6945(a) of this title for reference to section 6945(c) of this title.

Subsec. (a)(5). Pub. L. 96–482, §§18(b), 32(d)(1), substituted "State or local government" for "local government" and required State plan recognition of right to enter into long-term contracts for operation of resource recovery facilities and to secure long-term markets for material and energy recovered from such facilities, and required State plan recognition of right to negotiate long-term contracts and to negotiate and enter into such contracts for conserving materials or energy by reducing the volume of waste.

Subsec. (b). Pub. L. 96–463, §5(b), added subsec. (b) relating to discretionary plan provisions for recycled oil.
§6944. Criteria for sanitary landfills; sanitary landfills required for all disposal

(a) Criteria for sanitary landfills

Not later than one year after October 21, 1976, after consultation with the States, and after notice and public hearings, the Administrator shall promulgate regulations containing criteria for determining which facilities shall be classified as sanitary landfills and which shall be classified as open dumps within the meaning of this chapter. At a minimum, such criteria shall provide that a facility may be classified as a sanitary landfill and not an open dump only if there is no reasonable probability of adverse effects on health or the environment from disposal of solid waste at such facility. Such regulations may provide for the classification of the types of sanitary landfills.

(b) Disposal required to be in sanitary landfills, etc.

For purposes of complying with section 6943(2)\(^1\) of this title each State plan shall prohibit the establishment of open dumps and contain a requirement that disposal of all solid waste within the State shall be in compliance with such section 6943(2)\(^1\) of this title.

(c) Effective date

The prohibition contained in subsection (b) shall take effect on the date six months after the date of promulgation of regulations under subsection (a).


EDITORIAL NOTES

REFERENCES IN TEXT


AMENDMENTS

1984—Subsec. (c). Pub. L. 98–616 struck out "or on the date of approval of the State plan, whichever is later" at end.

EXECUTIVE DOCUMENTS

TRANSFER OF FUNCTIONS

For transfer of certain enforcement functions of Administrator or other official of Environmental Protection Agency under this chapter to Federal Inspector, Office of Federal Inspector for the Alaska Natural Gas Transportation System, and subsequent transfer to Secretary of Energy, then to Federal Coordinator for Alaska Natural Gas Transportation Projects, see note set out under section 6903 of this title.

\(^1\) See References in Text note below.

§6945. Upgrading of open dumps

(a) Closing or upgrading of existing open dumps

Upon promulgation of criteria under section 6907(a)(3) of this title, any solid waste management practice or disposal of solid waste or hazardous waste which constitutes the open dumping of solid waste or hazardous waste is prohibited, except in the case of any practice or disposal of solid waste under a timetable or schedule for compliance established under this section. The prohibition contained in the preceding sentence shall be enforceable under section 6972 of this title against persons engaged in the act of open dumping. For purposes of complying with section 6943(a)(2) and 6943(a)(3) of this title, each State plan shall contain a requirement that all existing disposal facilities or sites for solid waste in such State which are open dumps listed in the inventory under subsection (b) shall comply with such measures as may be promulgated by the Administrator to eliminate health hazards and minimize potential health hazards. Each such plan shall establish, for any entity which demonstrates that it has considered other public or private alternatives for solid waste management to comply with the prohibition on open dumping and is unable to utilize such alternatives to so comply, a timetable or schedule for compliance for such practice or disposal of solid waste which specifies a schedule of remedial measures, including an enforceable sequence of actions or operations, leading to compliance with the prohibition on open dumping of solid waste within a reasonable time (not to exceed 5 years from the date of publication of criteria under section 6907(a)(3) of this title).
(b) Inventory

To assist the States in complying with section 6943(a)(3) of this title, not later than one year after promulgation of regulations under section 6944 of this title, the Administrator, with the cooperation of the Bureau of the Census shall publish an inventory of all disposal facilities or sites in the United States which are open dumps within the meaning of this chapter.

(c) Control of hazardous disposal

(1)(A) Not later than 36 months after November 8, 1984, each State shall adopt and implement a permit program or other system of prior approval and conditions to assure that each solid waste management facility within such State which may receive hazardous household waste or hazardous waste due to the provision of section 6921(d) of this title for small quantity generators (otherwise not subject to the requirement for a permit under section 6925 of this title) will comply with the applicable criteria promulgated under section 6944(a) and 6907(a)(3) of this title.

(B) Not later than eighteen months after the promulgation of revised criteria under subsection 1 of section 6944(a) of this title (as required by section 6949(a)(c) of this title), each State shall adopt and implement a permit program or other system for prior approval and conditions, to assure that each solid waste management facility within such State which may receive hazardous household waste or hazardous waste due to the provision of section 6921(d) of this title for small quantity generators (otherwise not subject to the requirement for a permit under section 6925 of this title) will comply with the criteria revised under subsection 6944(a) of this title.

(C) The Administrator shall determine whether each State has developed an adequate program under this paragraph. The Administrator may make such a determination in conjunction with approval, disapproval or partial approval of a State plan under section 6947 of this title.

(2)(A) In any State that the Administrator determines has not adopted an adequate program for such facilities under paragraph (1)(B) by the date provided in such paragraph, the Administrator may use the authorities available under sections 6927 and 6928 of this title to enforce the prohibition contained in subsection (a) of this section with respect to such facilities.

(B) For purposes of this paragraph, the term "requirement of this subchapter" in section 6928 of this title shall be deemed to include criteria promulgated by the Administrator under sections 6907(a)(3) and 6944(a) of this title, and the term "hazardous wastes" in section 6927 of this title shall be deemed to include solid waste facilities that may handle hazardous household wastes or hazardous wastes from small quantity generators.

(d) State programs for control of coal combustion residuals

(1) Approval by Administrator

(A) In general

Each State may submit to the Administrator, in such form as the Administrator may establish, evidence of a permit program or other system of prior approval and conditions under State law for regulation by the State of coal combustion residuals units that are located in the State that, after approval by the Administrator, will operate in lieu of regulation of coal combustion residuals units in the State by—

(i) application of part 257 of title 40, Code of Federal Regulations (or successor regulations promulgated pursuant to sections 6907(a)(3) and 6944(a) of this title); or

(ii) implementation by the Administrator of a permit program under paragraph (2)(B).

(B) Requirement

Not later than 180 days after the date on which a State submits the evidence described in subparagraph (A), the Administrator, after public notice and an opportunity for public comment, shall approve, in whole or in part, a permit program or other system of prior approval and conditions submitted under subparagraph (A) if the Administrator determines that the program or other system requires each coal combustion residuals unit located in the State to achieve compliance with—

(i) the applicable criteria for coal combustion residuals units under part 257 of title 40, Code of Federal Regulations (or successor regulations promulgated pursuant to sections 6907(a)(3) and 6944(a) of this title); or

(ii) such other State criteria that the Administrator, after consultation with the State, determines to be at least as protective as the criteria described in clause (i).

(C) Permit requirements

The Administrator shall approve under subparagraph (B)(ii) a State permit program or other system of prior approval and conditions that allows a State to include technical standards for individual permits or conditions of approval that differ from the criteria under part 257 of title 40, Code of Federal Regulations (or successor regulations promulgated pursuant to sections 6907(a)(3) and 6944(a) of this title) if, based on site-specific conditions, the Administrator determines that the technical standards established pursuant to a State permit program or other system are at least as protective as the criteria under that part.

(D) Program review and notification

(i) Program review

The Administrator shall review a State permit program or other system of prior approval and conditions that is approved under subparagraph (B)—

(I) from time to time, as the Administrator determines necessary, but not less frequently than once every 12 years;

(II) not later than 3 years after the date on which the Administrator revises the applicable criteria for coal combustion residuals units under part 257 of title 40, Code of Federal Regulations (or successor regulations promulgated pursuant to sections 6907(a)(3) and 6944(a) of this title);
III) not later than 1 year after the date of a significant release (as defined by the Administrator), that was not authorized at the time the release occurred, from a coal combustion residuals unit located in the State; and

IV) on request of any other State that asserts that the soil, groundwater, or surface water of the State is or is likely to be adversely affected by a release or potential release from a coal combustion residuals unit located in the State for which the program or other system was approved.

(ii) Notification and opportunity for a public hearing

The Administrator shall provide to a State notice of deficiencies with respect to the permit program or other system of prior approval and conditions of the State that is approved under subparagraph (B), and an opportunity for a public hearing, if the Administrator determines that—

(I) a revision or correction to the permit program or other system of prior approval and conditions of the State is necessary to ensure that the permit program or other system of prior approval and conditions continues to ensure that each coal combustion residuals unit located in the State achieves compliance with the criteria described in clauses (i) and (ii) of subparagraph (B);

(II) the State has not implemented an adequate permit program or other system of prior approval and conditions that requires each coal combustion residuals unit located in the State to achieve compliance with the criteria described in subparagraph (B); or

(III) the State has, at any time, approved or failed to revoke a permit for a coal combustion residuals unit, a release from which adversely affects or is likely to adversely affect the soil, groundwater, or surface water of another State.

(E) Withdrawal

(i) In general

The Administrator shall withdraw approval of a State permit program or other system of prior approval and conditions if, after the Administrator provides notice and an opportunity for a public hearing to the relevant State under subparagraph (D)(ii), the Administrator determines that the State has not corrected the deficiencies identified by the Administrator under subparagraph (D)(ii).

(ii) Reinstatement of State approval

Any withdrawal of approval under clause (i) shall cease to be effective on the date on which the Administrator makes a determination that the State has corrected the deficiencies identified by the Administrator under subparagraph (D)(ii).

(2) Nonparticipating states

(A) Definition of nonparticipating State

In this paragraph, the term "nonparticipating State" means a State—

(i) for which the Administrator has not approved a State permit program or other system of prior approval and conditions under paragraph (1)(B);

(ii) the Governor of which has not submitted to the Administrator for approval evidence to operate a State permit program or other system of prior approval and conditions under paragraph (1)(A);

(iii) the Governor of which provides notice to the Administrator that, not fewer than 90 days after the date on which the Governor provides the notice to the Administrator, the State will relinquish an approval under paragraph (1)(B) to operate a permit program or other system of prior approval and conditions; or

(iv) for which the Administrator has withdrawn approval for a permit program or other system of prior approval and conditions under paragraph (1)(E).

(B) Implementation of permit program

In the case of a nonparticipating State and subject to the availability of appropriations specifically provided in an appropriations Act to carry out a program in a nonparticipating State, the Administrator shall implement a permit program to require each coal combustion residuals unit located in the nonparticipating State to achieve compliance with applicable criteria established by the Administrator under part 257 of title 40, Code of Federal Regulations (or successor regulations promulgated pursuant to sections 6907(a)(3) and 6944(a) of this title).

(3) Applicability of criteria

The applicable criteria for coal combustion residuals units under part 257 of title 40, Code of Federal Regulations (or successor regulations promulgated pursuant to sections 6907(a)(3) and 6944(a) of this title), shall apply to each coal combustion residuals unit in a State unless—

(A) a permit under a State permit program or other system of prior approval and conditions approved by the Administrator under paragraph (1)(B) is in effect for the coal combustion residuals unit; or

(B) a permit issued by the Administrator in a State in which the Administrator is implementing a permit program under paragraph (2)(B) is in effect for the coal combustion residuals unit.

(4) Prohibition on open dumping

(A) In general

The Administrator may use the authority provided by sections 6927 and 6928 of this title to enforce the prohibition on open dumping under subsection (a) with respect to a coal combustion residuals unit—

(i) in a nonparticipating State (as defined in paragraph (2)); and
(ii) located in a State that is approved to operate a permit program or other system of prior approval and conditions under paragraph (1)(B), in accordance with subparagraph (B) of this paragraph.

(B) Federal enforcement in an approved State

(i) In general

In the case of a coal combustion residuals unit located in a State that is approved to operate a permit program or other system of prior approval and conditions under paragraph (1)(B), the Administrator may commence an administrative or judicial enforcement action under section 6928 of this title if—

(I) the State requests that the Administrator provide assistance in the performance of an enforcement action; or

(II) after consideration of any other administrative or judicial enforcement action involving the coal combustion residuals unit, the Administrator determines that an enforcement action is likely to be necessary to ensure that the coal combustion residuals unit is operating in accordance with the criteria established under the permit program or other system of prior approval and conditions.

(ii) Notification

In the case of an enforcement action by the Administrator under clause (i)(II), before issuing an order or commencing a civil action, the Administrator shall notify the State in which the coal combustion residuals unit is located.

(iii) Annual report to Congress

(I) In general

Subject to subclause (II), not later than December 31, 2017, and December 31 of each year thereafter, the Administrator shall submit to the Committee on Environment and Public Works of the Senate and the Committee on Energy and Commerce of the House of Representatives a report that describes any enforcement action commenced under clause (i), including a description of the basis for the enforcement action.

(II) Applicability

Subclause (I) shall not apply for any calendar year during which the Administrator does not commence an enforcement action under clause (i).

(5) Indian country

The Administrator shall establish and carry out a permit program, in accordance with this subsection, for coal combustion residuals units in Indian country (as defined in section 1151 of title 18) to require each coal combustion residuals unit located in Indian country to achieve compliance with the applicable criteria established by the Administrator under part 257 of title 40, Code of Federal Regulations (or successor regulations promulgated pursuant to sections 6907(a)(3) and 6944(a) of this title).

(6) Treatment of coal combustion residuals units

A coal combustion residuals unit shall be considered to be a sanitary landfill for purposes of this chapter, including subsection (a), only if the coal combustion residuals unit is operating in accordance with—

(A) the requirements of a permit issued by—

(i) the State in accordance with a program or system approved under paragraph (1)(B); or

(ii) the Administrator pursuant to paragraph (2)(B) or paragraph (5); or

(B) the applicable criteria for coal combustion residuals units under part 257 of title 40, Code of Federal Regulations (or successor regulations promulgated pursuant to sections 6907(a)(3) and 6944(a) of this title).

(7) Effect of subsection

Nothing in this subsection affects any authority, regulatory determination, other law, or legal obligation in effect on the day before December 16, 2016.


EDITORIAL NOTES

CODIFICATION

Another section 19(b) of Pub. L. 96–482 amended section 6946 of this title.

AMENDMENTS


1984—Subsec. (a). Pub. L. 98–616, §403(c), inserted after first sentence "The prohibition contained in the preceding sentence shall be enforceable under section 6972 of this title against persons engaged in the act of open dumping."

Pub. L. 98–616, §502(c), inserted a closing parenthesis before the period at end.

Subsec. (c). Pub. L. 98–616, §302(c), added subsec. (c).
Subsec. (a). Pub. L. 96–482, §19(a), (b)(1), struck out subsec. (a) which defined "open dump", which is covered in section 6903(14) of this title, redesignated subsec. (c) as (a) and substituted "Upon promulgation of criteria under section 6907(a)(3) of this title, any" for "Any", "section 6943(a)(2) and 6943(a)(3) of this title" for "section 6943(2) of this title", and "criteria under section 6907(a)(3) of this title" for "the inventory under subsection (b)".

Amendment by section 19(b)(1) of Pub. L. 96–482, directing that following reference to "4003(2)", which had been editorially translated as section 6943(2) of this title, the phrase "and 4003(3)" be inserted, was executed by translating "4003(2) and 4003(3)" as section 6943(a)(2) and 6943(a)(3) of this title, in view of the designation of the existing provisions of section 6943 of this title as subsec. (a) of section 6943 of this title by section 5(b) of Pub. L. 96–463 and also by section 32(d)(2) of Pub. L. 96–482.

Subsec. (b). Pub. L. 96–482, §19(b)(2), inserted introductory phrase "To assist the States in complying with section 6943(a)(3) of this title". Amendment referring to section "4003(3)" was executed by translating "4003(3)" as section 6943(a)(3) of this title, in view of the designation of the existing provisions of section 6943 of this title as subsec. (a) of section 6943 of this title by section 5(b) of Pub. L. 96–463 and also by section 32(d)(2) of Pub. L. 96–482.

Subsec. (c). Pub. L. 96–482, §19(a), redesignated subsec. (c) as (a).

EXECUTIVE DOCUMENTS

TRANSFER OF FUNCTIONS

For transfer of certain enforcement functions of Administrator or other official of Environmental Protection Agency under this chapter to Federal Inspector, Office of Federal Inspector for the Alaska Natural Gas Transportation System, and subsequent transfer to Secretary of Energy, then to Federal Coordinator for Alaska Natural Gas Transportation Projects, see note set out under section 6903 of this title.

1 So in original. Probably should be "section".

2 So in original. Probably should be "of".

§6946. Procedure for development and implementation of State plan

(a) Identification of regions

Within one hundred and eighty days after publication of guidelines under section 6942(a) of this title (relating to identification of regions), the Governor of each State, after consultation with local elected officials, shall promulgate regulations based on such guidelines identifying the boundaries of each area within the State which, as a result of urban concentrations, geographic conditions, markets, and other factors, is appropriate for carrying out regional solid waste management. Such regulations may be modified from time to time (identifying additional or different regions) pursuant to such guidelines.

(b) Identification of State and local agencies and responsibilities

(1) Within one hundred and eighty days after the Governor promulgates regulations under subsection (a), for purposes of facilitating the development and implementation of a State plan which will meet the minimum requirements of section 6943 of this title, the State, together with appropriate elected officials of general purpose units of local government, shall jointly (A) identify an agency to develop the State plan and identify one or more agencies to implement such plan, and (B) identify which solid waste management activities will, under such State plan, be planned for and carried out by the State and which such management activities will, under such State plan, be planned for and carried out by a regional or local authority or a combination of regional or local and State authorities. If a multi-functional regional agency authorized by State law to conduct solid waste planning and management (the members of which are appointed by the Governor) is in existence on October 21, 1976, the Governor shall identify such authority for purposes of carrying out within such region clause (A) of this paragraph. Where feasible, designation of the agency for the affected area designated under section 1288 of title 33 shall be considered. A State agency identified under this paragraph shall be established or designated by the Governor of such State. Local or regional agencies identified under this paragraph shall be composed of individuals at least a majority of whom are elected local officials.

(2) If planning and implementation agencies are not identified and designated or established as required under paragraph (1) for any affected area, the governor shall, before the date two hundred and seventy days after promulgation of regulations under subsection (a), establish or designate a State agency to develop and implement the State plan for such area.

(c) Interstate regions

(1) In the case of any region which, pursuant to the guidelines published by the Administrator under section 6942(a) of this title (relating to identification of regions), would be located in two or more States, the Governors of the respective States, after consultation with local elected officials, shall consult, cooperate, and enter into agreements identifying the boundaries of such region pursuant to subsection (a).

(2) Within one hundred and eighty days after an interstate region is identified by agreement under paragraph (1), appropriate elected officials of general purpose units of local government within such region shall jointly establish or designate an agency to develop a plan for such region. If no such agency is established or designated within such period by
such officials, the Governors of the respective States may, by agreement, establish or designate for such purpose a single representative organization including elected officials of general purpose units of local government within such region.

(3) Implementation of interstate regional solid waste management plans shall be conducted by units of local government for any portion of a region within their jurisdiction, or by multijurisdictional agencies or authorities designated in accordance with State law, including those designated by agreement by such units of local government for such purpose. If no such unit, agency, or authority is so designated, the respective Governors shall designate or establish a single interstate agency to implement such plan.

(4) For purposes of this subchapter, so much of an interstate regional plan as is carried out within a particular State shall be deemed part of the State plan for such State.


**EDITORIAL NOTES**

**CODIFICATION**

Another section 19(b) of Pub. L. 96–482 amended section 6945 of this title.

**AMENDMENTS**


**EXECUTIVE DOCUMENTS**

**TRANSFER OF FUNCTIONS**

For transfer of certain enforcement functions of Administrator or other official of Environmental Protection Agency under this chapter to Federal Inspector, Office of Federal Inspector for the Alaska Natural Gas Transportation System, and subsequent transfer to Secretary of Energy, then to Federal Coordinator for Alaska Natural Gas Transportation Projects, see note set out under section 6903 of this title.

§6947. Approval of State plan; Federal assistance

(a) Plan approval

The Administrator shall, within six months after a State plan has been submitted for approval, approve or disapprove the plan. The Administrator shall approve a plan if he determines that—

1) it meets the requirements of paragraphs (1), (2), (3), and (5) of section 6943(a) of this title; and

2) it contains provision for revision of such plan, after notice and public hearing, whenever the Administrator, by regulation, determines—

(A) that revised regulations respecting minimum requirements have been promulgated under paragraphs (1), (2), (3), and (5) of section 6943(a) of this title with which the State plan is not in compliance;

(B) that information has become available which demonstrates the inadequacy of the plan to effectuate the purposes of this subchapter; or

(C) that such revision is otherwise necessary.

The Administrator shall review approved plans from time to time and if he determines that revision or corrections are necessary to bring such plan into compliance with the minimum requirements promulgated under section 6943 of this title (including new or revised requirements), he shall, after notice and opportunity for public hearing, withdraw his approval of such plan. Such withdrawal of approval shall cease to be effective upon the Administrator's determination that such complies with such minimum requirements.

(b) Eligibility of States for Federal financial assistance

1) The Administrator shall approve a State application for financial assistance under this subchapter, and make grants to such State, if such State and local and regional authorities within such State have complied with the requirements of section 6946 of this title within the period required under such section and if such State has a State plan which has been approved by the Administrator under this subchapter.

2) The Administrator shall approve a State application for financial assistance under this subchapter, and make grants to such State, for fiscal years 1978 and 1979 if the Administrator determines that the State plan continues to be eligible for approval under subsection (a) and is being implemented by the State.

3) Upon withdrawal of approval of a State plan under subsection (a), the Administrator shall withhold Federal financial and technical assistance under this subchapter (other than such technical assistance as may be necessary to assist in obtaining the reinstatement of approval) until such time as such approval is reinstated.

(c) Existing activities

Nothing in this subchapter shall be construed to prevent or affect any activities respecting solid waste planning or management which are carried out by State, regional, or local authorities unless such activities are inconsistent with a State
plan approved by the Administrator under this subchapter.


EDITORIAL NOTES

AMENDMENTS

1996—Subsec. (a)(1), (2)(A). Pub. L. 104–119 substituted "section 6943(a) of this title" for "section 6943 of this title".


EXECUTIVE DOCUMENTS

TRANSFER OF FUNCTIONS

For transfer of certain enforcement functions of Administrator or other official of Environmental Protection Agency under this chapter to Federal Inspector, Office of Federal Inspector for the Alaska Natural Gas Transportation System, and subsequent transfer to Secretary of Energy, then to Federal Coordinator for Alaska Natural Gas Transportation Projects, see note set out under section 6903 of this title.

§6948. Federal assistance

(a) Authorization of Federal financial assistance

(1) There are authorized to be appropriated $30,000,000 for fiscal year 1978, $40,000,000 for fiscal year 1979, $20,000,000 for fiscal year 1980, $15,000,000 for fiscal year 1981, $20,000,000 for the fiscal year 1982, and $10,000,000 for each of the fiscal years 1985 through 1988 for purposes of financial assistance to States and local, regional, and interstate authorities for the development and implementation of plans approved by the Administrator under this subchapter (other than the provisions of such plans referred to in section 6943(b) of this title, relating to feasibility planning for municipal waste energy and materials conservation and recovery).

(2)(A) The Administrator is authorized to provide financial assistance to States, counties, municipalities, and intermunicipal agencies and State and local public solid waste management authorities for implementation of programs to provide solid waste management, resource recovery, and resource conservation services and hazardous waste management. Such assistance shall include assistance for facility planning and feasibility studies; expert consultation; surveys and analyses of market needs; marketing of recovered resources; technology assessments; legal expenses; construction feasibility studies; source separation projects; and fiscal or economic investigations or studies; but such assistance shall not include any other element of construction, or any acquisition of land or interest in land, or any subsidy for the price of recovered resources. Agencies assisted under this subsection shall consider existing solid waste management and hazardous waste management services and facilities as well as facilities proposed for construction.

(B) An applicant for financial assistance under this paragraph must agree to comply with respect to the project or program assisted with the applicable requirements of section 6945 of this title and subchapter III of this chapter and apply applicable solid waste management practices, methods, and levels of control consistent with any guidelines published pursuant to section 6907 of this title. Assistance under this paragraph shall be available only for programs certified by the State to be consistent with any applicable State or area-wide solid waste management plan or program. Applicants for technical and financial assistance under this section shall not preclude or foreclose consideration of programs for the recovery of recyclable materials through source separation or other resource recovery techniques.

(C) There are authorized to be appropriated $15,000,000 for each of the fiscal years 1978 and 1979 for purposes of this section. There are authorized to be appropriated $10,000,000 for fiscal year 1980, $10,000,000 for fiscal year 1981, $10,000,000 for fiscal year 1982, and $10,000,000 for each of the fiscal years 1985 through 1988 for purposes of this paragraph.

(D) There are authorized—

(i) to be made available $15,000,000 out of funds appropriated for fiscal year 1985, and

(ii) to be appropriated for each of the fiscal years 1986 through 1988, $20,000,000.

for grants to States (and where appropriate to regional, local, and interstate agencies) to implement programs requiring compliance by solid waste management facilities with the criteria promulgated under section 6944(a) of this title and section 6907(a)(3) of this title and with the provisions of section 6945 of this title. To the extent practicable, such programs shall require such compliance not later than thirty-six months after November 8, 1984.

(3)(A) There is authorized to be appropriated for the fiscal year beginning October 1, 1981, and for each fiscal year thereafter before October 1, 1986, $4,000,000 for purposes of making grants to States to carry out section 6943(b) of this title. No amount may be appropriated for such purposes for the fiscal year beginning on October 1, 1986, or for any fiscal year thereafter.
(B) Assistance provided by the Administrator under this paragraph shall be used only for the purposes specified in section 6943(b) of this title. Such assistance may not be used for purposes of land acquisition, final facility design, equipment purchase, construction, startup or operation activities.

(C) Where appropriate, any State receiving assistance under this paragraph may make all or any part of such assistance available to municipalities within the State to carry out the activities specified in section 6943(b)(1)(A) and (B) of this title.

(b) State allotment

The sums appropriated in any fiscal year under subsection (a)(1) shall be allotted by the Administrator among all States, in the ratio that the population in each State bears to the population in all of the States, except that no State shall receive less than one-half of 1 per cent of the sums so allotted in any fiscal year. No State shall receive any grant under this section during any fiscal year when its expenditures of non-Federal funds for other than non-recurrent expenditures for solid waste management control programs will be less than its expenditures were for such programs during fiscal year 1975, except that such funds may be reduced by an amount equal to their proportionate share of any general reduction of State spending ordered by the Governor or legislature of such State. No State shall receive any grant for solid waste management programs unless the Administrator is satisfied that such grant will be so used as to supplement and, to the extent practicable, increase the level of State, local, regional, or other non-Federal funds that would in the absence of such grant be made available for the maintenance of such programs.

(c) Distribution of Federal financial assistance within the State

The Federal assistance allotted to the States under subsection (b) shall be allocated by the State receiving such funds to State, local, regional, and interstate authorities carrying out planning and implementation of the State plan. Such allocation shall be based upon the responsibilities of the respective parties as determined pursuant to section 6946(b) of this title.

(d) Technical assistance

(1) The Administrator may provide technical assistance to State and local governments for purposes of developing and implementing State plans. Technical assistance respecting resource recovery and conservation may be provided through resource recovery and conservation panels, established in the Environmental Protection Agency under subchapter II, to assist the State and local governments with respect to particular resource recovery and conservation projects under consideration and to evaluate their effect on the State plan.

(2) In carrying out this subsection, the Administrator may, upon request, provide technical assistance to States to assist in the removal or modification of legal, institutional, economic, and other impediments to the recycling of used oil. Such impediments may include laws, regulations, and policies, including State procurement policies, which are not favorable to the recycling of used oil.

(3) In carrying out this subsection, the Administrator is authorized to provide technical assistance to States, municipalities, regional authorities, and intermunicipal agencies upon request, to assist in the removal or modification of legal, institutional, and economic impediments which have the effect of impeding the development of systems and facilities to recovery energy and materials from municipal waste or to conserve energy or materials which contribute to the waste stream. Such impediments may include—

(A) laws, regulations, and policies, including State and local procurement policies, which are not favorable to resource conservation and recovery programs, systems, and facilities;

(B) impediments to the financing of facilities to conserve or recover energy and materials from municipal waste through the exercise of State and local authority to issue revenue bonds and the use of State and local credit assistance; and

(C) impediments to institutional arrangements necessary to undertake projects for the conservation or recovery of energy and materials from municipal waste, including the creation of special districts, authorities, or corporations where necessary having the power to secure the supply of waste of a project, to conserve resources, to implement the project, and to undertake related activities.

(e) Special communities

(1) The Administrator, in cooperation with State and local officials, shall identify local governments within the United States (A) having a solid waste disposal facility (i) which is owned by the unit of local government, (ii) for which an order has been issued by the State to cease receiving solid waste for treatment, storage, or disposal, and (iii) which is subject to a State-approved end-use recreation plan, and (B) which are located over an aquifer which is the source of drinking water for any person or public water system and which has serious environmental problems resulting from the disposal of such solid waste, including possible methane migration.

(2) There is authorized to be appropriated to the Administrator $2,500,000 for the fiscal year 1980 and $1,500,000 for each of the fiscal years 1981 and 1982 to make grants to be used for containment and stabilization of solid waste located at the disposal sites referred to in paragraph (1). Not more than one community in any State shall be eligible for grants under this paragraph and not more than one project in any State shall be eligible for such grants. No unit of local government shall be eligible for grants under this paragraph with respect to any site which exceeds 65 acres in size.

(f) Assistance to States for discretionary program for recycled oil

(1) The Administrator may make grants to States, which have a State plan approved under section 6947 of this title, or which have submitted a State plan for approval under such section, if such plan includes the discretionary provisions described in section 6943(b) of this title. Grants under this subsection shall be for purposes of assisting the State in carrying out such discretionary provisions. No grant under this subsection may be used for construction or for the acquisition of land or equipment.

(2) Grants under this subsection shall be allotted among the States in the same manner as provided in the first sentence of subsection (b).
(3) No grant may be made under this subsection unless an application therefor is submitted to, and approved by, the Administrator. The application shall be in such form, be submitted in such manner, and contain such information as the Administrator may require.

(4) For purposes of making grants under this subsection, there are authorized to be appropriated $5,000,000 for fiscal year 1982, $5,000,000 for fiscal year 1983, and $5,000,000 for each of the fiscal years 1985 through 1988.

(g) Assistance to municipalities for energy and materials conservation and recovery planning activities

(1) The Administrator is authorized to make grants to municipalities, regional authorities, and intermunicipal agencies to carry out activities described in subparagraphs (A) and (B) of section 6943(b)(1) of this title. Such grants may be made only pursuant to an application submitted to the Administrator by the municipality which application has been approved by the State and determined by the State to be consistent with any State plan approved or submitted under this subchapter or any other appropriate planning carried out by the State.

(2) There is authorized to be appropriated for the fiscal year beginning October 1, 1981, and for each fiscal year thereafter before October 1, 1986, $8,000,000 for purposes of making grants to municipalities under this subsection. No amount may be appropriated for such purposes for the fiscal year beginning on October 1, 1986, or for any fiscal year thereafter.

(3) Assistance provided by the Administrator under this subsection shall be used only for the purposes specified in paragraph (1). Such assistance may not be used for purposes of land acquisition, final facility design, equipment purchase, construction, startup or operation activities.


EDITORIAL NOTES

REFERENCES IN TEXT

Section 6943(b) of this title, referred to in subsecs. (a)(1), (3) and (g)(1), was redesignated section 6943(c) of this title by Pub. L. 98–616, title V, §502(h), Nov. 8, 1984, 98 Stat. 3277.

CODIFICATION

Section 2(d)–(g) of Pub. L. 98–616, cited as a credit to this section, appears to contain typographical error in that the text of subsec. (f)(1) of section 2007 of the Solid Waste Disposal Act (as added by section 2(i) of Pub. L. 98–616) is also shown as the text of subsec. "(f)(1)" of such section 2. Subsec. (f) of section 2, as set out in the Conference Report (H. Rept. 98–1133) to accompany H.R. 2867 (which became Pub. L. 98–616) read: "(f) Section 4008(e)(2) of the Solid Waste Disposal Act (relating to special communities) is amended by striking out 'and $1,500,000 for each of the fiscal years 1981 and 1982' and substituting ', $1,500,000 for each of the fiscal years 1981 and 1982, and $500,000 for each of the fiscal years 1985 through 1988'."

Another section 5(b) of Pub. L. 96–463 amended section 6943 of this title.

AMENDMENTS


Subsec. (d)(2), (3). Pub. L. 98–616, §502(d), redesignated second par. (2), relating to recovery of energy and materials from municipal waste, as par. (3).

Subsec. (f). Pub. L. 98–616, §502(e), redesignated second subsec. (f), relating to assistance to municipalities for energy and materials conservation and recovery planning activities, as subsec. (g).


Subsec. (g). Pub. L. 98–616, §502(e), redesignated second subsec. (f), relating to assistance to municipalities for energy and materials conservation and recovery planning activities, as subsec. (g).

1980—Subsec. (a)(1). Pub. L. 96–482, §31(c), authorized appropriations of $20,000,000, $15,000,000, and $20,000,000 for fiscal years, 1980, 1981, and 1982, respectively, and substituted provision making appropriation available for financial assistance to States, and local, regional, and interstate authorities for development and implementation of plans approved by the Administrator, except plans referred to in section 6943(b) of this title, relating to feasibility planning for municipal waste energy and materials conservation and recovery for provision making appropriations available to State for development and implementation of State plans.

Subsec. (a)(2)(B). Pub. L. 96–482, §32(e)(1), provided that applicants for technical and financial assistance shall not preclude or foreclose consideration of programs for recovery of recyclable materials through source separation or other resource recovery techniques.


Subsec. (d)(2). Pub. L. 96–463, §6, added par. (2) authorizing the Administrator to provide technical assistance to States to assist in the removal or modification of legal, institutional, economic, and other impediments to the recycling of used oil.

Pub. L. 96–482, §32(f), added par. (2) authorizing the Administrator to provide technical assistance to States, municipalities, regional authorities, and intermunicipal agencies to assist in the removal or modification of legal, institutional, and economic impediments which have the effect of impeding the development of systems and facilities to recover energy and materials from municipal waste.

Subsec. (e)(1). Pub. L. 96–482, §20(1)–(5), substituted in provision preceding cl. (A) "identify local governments" for "identify communities", struck out cl. (A), which required the Administrator to identify populations of less than twenty-five thousand persons, redesignated cls. (B) and (C) as (A) and (B), respectively, in cl. (A) as so redesignated, substituted "a solid waste disposal facility (i) which is owned by the unit of local government, (ii) for which an order has been issued by the State to cease receiving solid waste for treatment, storage, or disposal, and (iii) which is subject to a State-approved end-use recreation plan" for "solid waste disposal facilities in which more than 75 per centum of the solid waste of is from areas outside the jurisdiction of the communities" in cl. (B) as so redesignated, substituted "which are located over an aquifer which is the source of drinking water for any person or public water system and which has" for "which have" and inserted "including possible methane migration" after "such solid waste."

Subsec. (e)(2). Pub. L. 96–482, §20(6)–(8), substituted appropriations authorization of $2,500,000; $1,500,000; and $1,500,000 for fiscal years 1980, 1981, and 1982, for prior authorization of $2,500,000 for fiscal years 1978 and 1979, substituted provision for grants for "containment and stabilization of solid waste located at the disposal sites referred to in paragraph (1)" for such grants for "the conversion, improvement, or consolidation of existing solid waste disposal facilities, or for the construction of new solid waste disposal facilities, or for both, within communities identified under paragraph (1)", and prohibited grants to units of local government when site exceeds 65 acres in size.

Subsec. (e)(3). Pub. L. 96–482, §20(9), struck out par. (3) which required that grants to States be made only when the projects are consistent with applicable and approved State plan and will assist in carrying out such plan.

Subsec. (f). Pub. L. 96–463, §5(b), added subsec. (f) relating to assistance to States for discretionary program for recycled oil.

Pub. L. 96–482, §32(e)(3), added subsec. (f) relating to assistance to municipalities for energy and materials conservation and recovery planning activities.

**Executive Documents**

**TRANSFER OF FUNCTIONS**

For transfer of certain enforcement functions of Administrator or other official of Environmental Protection Agency under this chapter to Federal Inspector, Office of Federal Inspector for the Alaska Natural Gas Transportation System, and subsequent transfer to Secretary of Energy, then to Federal Coordinator for Alaska Natural Gas Transportation Projects, see note set out under section 6903 of this title.

1 See References in Text note below.

2 So in original. Probably should be "through".

3 So in original. Probably should be followed by a comma.

**§6949. Rural communities assistance**

(a) In general

The Administrator shall make grants to States to provide assistance to municipalities with a population of five thousand or less, or counties with a population of ten thousand or less or less than twenty persons per square mile and not within a metropolitan area, for solid waste management facilities (including equipment) necessary to meet the requirements of section 6945 of this title or restrictions on open burning or other requirements arising under the Clean Air Act [42 U.S.C. 7401 et seq.] or the Federal Water Pollution Control Act [33 U.S.C. 1251 et seq.]. Such assistance shall only be available—

1 to any municipality or county which could not feasibly be included in a solid waste management system or facility serving an urbanized, multijurisdictional area because of its distance from such systems;

2 where existing or planned solid waste management services or facilities are unavailable or insufficient to comply with the requirements of section 6945 of this title; and
(3) for systems which are certified by the State to be consistent with any plans or programs established under any State or areawide planning process.

(b) Allotment
The Administrator shall allot the sums appropriated to carry out this section in any fiscal year among the States in accordance with regulations promulgated by him on the basis of the average of the ratio which the population of rural areas of each State bears to the total population of rural areas of all the States, the ratio which the population of counties in each State having less than twenty persons per square mile bears to the total population of such counties in all the States, and the ratio which the population of such low-density counties in each State having 33 per centum or more of all families with incomes not in excess of 125 per centum of the poverty level bears to the total population of such counties in all the States.

(c) Limit
The amount of any grant under this section shall not exceed 75 per centum of the costs of the project. No assistance under this section shall be available for the acquisition of land or interests in land.

(d) Authorization of appropriations
There are authorized to be appropriated $25,000,000 for each of the fiscal years 1978 and 1979 to carry out this section. There are authorized to be appropriated $10,000,000 for the fiscal year 1980 and $15,000,000 for each of the fiscal years 1981 and 1982 to carry out this section.

(e) Additional appropriations

(1) In general
There are authorized to be appropriated to carry out this section for the Denali Commission to provide assistance to municipalities in the State of Alaska $1,500,000 for each of fiscal years 2008 through 2012.

(2) Administration
For the purpose of carrying out this subsection, the Denali Commission shall—
(A) be considered a State; and
(B) comply with all other requirements and limitations of this section.


EDITORIAL NOTES

REFERENCES IN TEXT
The Clean Air Act, referred to in subsec. (a), is act July 14, 1955, ch. 360, 69 Stat. 322, as amended, which is classified generally to chapter 85 (§7401 et seq.) of this title. For complete classification of this Act to the Code, see Short title note set out under section 7401 of this title and Tables.

The Federal Water Pollution Control Act, referred to in subsec. (a), is act June 30, 1948, ch. 758, as amended generally by Pub. L. 92–500, §2, Oct. 18, 1972, 86 Stat. 816, which is classified generally to chapter 26 (§1251 et seq.) of title 33, Navigation and Navigable Waters. For complete classification of this Act to the Code, see Short title note set out under section 1251 of title 33 and Tables.

CODIFICATION

AMENDMENTS
1980—Subsec. (d). Pub. L. 96–482 authorized appropriation of $10,000,000, $15,000,000, and $15,000,000 for fiscal years 1980, 1981, 1982, respectively.

STATUTORY NOTES AND RELATED SUBSIDIARIES

EFFECTIVE DATE OF 2008 AMENDMENT

EXECUTIVE DOCUMENTS

TRANSFER OF FUNCTIONS

85/151
§6949a. Adequacy of certain guidelines and criteria

(a) Study

The Administrator shall conduct a study of the extent to which the guidelines and criteria under this chapter (other than guidelines and criteria for facilities to which subchapter III applies) which are applicable to solid waste management and disposal facilities, including, but not limited to landfills and surface impoundments, are adequate to protect human health and the environment from ground water contamination. Such study shall include a detailed assessment of the degree to which the criteria under section 6907(a) of this title and the criteria under section 6944 of this title regarding monitoring, prevention of contamination, and remedial action are adequate to protect ground water and shall also include recommendation with respect to any additional enforcement authorities which the Administrator, in consultation with the Attorney General, deems necessary for such purposes.

(b) Report

Not later than thirty-six months after November 8, 1984, the Administrator shall submit a report to the Congress setting forth the results of the study required under this section, together with any recommendations made by the Administrator on the basis of such study.

(c) Revisions of guidelines and criteria

(1) In general

Not later than March 31, 1988, the Administrator shall promulgate revisions of the criteria promulgated under paragraph (1) of section 6944(a) of this title and under section 6907(a)(3) of this title for facilities that may receive hazardous household wastes or hazardous wastes from small quantity generators under section 6921(d) of this title. The criteria shall be those necessary to protect human health and the environment and may take into account the practicable capability of such facilities. At a minimum such revisions for facilities potentially receiving such wastes should require ground water monitoring as necessary to detect contamination, establish criteria for the acceptable location of new or existing facilities, and provide for corrective action as appropriate.

(2) Additional revisions

Subject to paragraph (3), the requirements of the criteria described in paragraph (1) relating to ground water monitoring shall not apply to an owner or operator of a new municipal solid waste landfill unit, an existing municipal solid waste landfill unit, or a lateral expansion of a municipal solid waste landfill unit, that disposes of less than 20 tons of municipal solid waste daily, based on an annual average, if—

(A) there is no evidence of ground water contamination from the municipal solid waste landfill unit or expansion; and

(B) the municipal solid waste landfill unit or expansion serves—

(i) a community that experiences an annual interruption of at least 3 consecutive months of surface transportation that prevents access to a regional waste management facility; or

(ii) a community that has no practicable waste management alternative and the landfill unit is located in an area that annually receives less than or equal to 25 inches of precipitation.

(3) Protection of ground water resources

(A) Monitoring requirement

A State may require ground water monitoring of a solid waste landfill unit that would otherwise be exempt under paragraph (2) if necessary to protect ground water resources and ensure compliance with a State ground water protection plan, where applicable.

(B) Methods

If a State requires ground water monitoring of a solid waste landfill unit under subparagraph (A), the State may allow the use of a method other than the use of ground water monitoring wells to detect a release of contamination from the unit.

(C) Corrective action

If a State finds a release from a solid waste landfill unit, the State shall require corrective action as appropriate.

(4) No-migration exemption

(A) In general

Ground water monitoring requirements may be suspended by the Director of an approved State for a landfill operator if the operator demonstrates that there is no potential for migration of hazardous constituents from the unit to the uppermost aquifer during the active life of the unit and the post-closure care period.

(B) Certification

A demonstration under subparagraph (A) shall be certified by a qualified ground-water scientist and approved by the Director of an approved State.
(C) Guidance

Not later than 6 months after March 26, 1996, the Administrator shall issue a guidance document to facilitate small community use of the no migration 1 exemption under this paragraph.

(5) Alaska Native villages

Upon certification by the Governor of the State of Alaska that application of the requirements described in paragraph (1) to a solid waste landfill unit of a Native village (as defined in section 1602 of title 43) or unit that is located in or near a small, remote Alaska village would be infeasible, or would not be cost-effective, or is otherwise inappropriate because of the remote location of the unit, the State may exempt the unit from some or all of those requirements. This paragraph shall apply only to solid waste landfill units that dispose of less than 20 tons of municipal solid waste daily, based on an annual average.

(6) Further revisions of guidelines and criteria

Recognizing the unique circumstances of small communities, the Administrator shall, not later than two years after March 26, 1996, promulgate revisions to the guidelines and criteria promulgated under this subchapter to provide additional flexibility to approved States to allow landfills that receive 20 tons or less of municipal solid waste per day, based on an annual average, to use alternative frequencies of daily cover application, frequencies of methane gas monitoring, infiltration layers for final cover, and means for demonstrating financial assurance: Provided, That such alternative requirements take into account climatic and hydrogeologic conditions and are protective of human health and environment.


EDITORIAL NOTES

AMENDMENTS

1996—Subsec. (c). Pub. L. 104–119 designated existing provisions as par. (1), inserted heading, and added pars. (2) to (6).

STATUTORY NOTES AND RELATED SUBSIDIARIES

REINSTATEMENT OF REGULATORY EXEMPTION

Pub. L. 104–119, §3(b), Mar. 26, 1996, 110 Stat. 833, provided that: "It is the intent of section 4010(c)(2) of the Solid Waste Disposal Act [42 U.S.C. 6949a(c)(2)], as added by subsection (a), to immediately reinstate subpart E of part 258 of title 40, Code of Federal Regulations, as added by the final rule published at 56 Federal Register 50798 on October 9, 1991."

1 So in original. Probably should be "no-migration".

SUBCHAPTER V—DUTIES OF SECRETARY OF COMMERCE IN RESOURCE AND RECOVERY

§6951. Functions

The Secretary of Commerce shall encourage greater commercialization of proven resource recovery technology by providing—

(1) accurate specifications for recovered materials;
(2) stimulation of development of markets for recovered materials;
(3) promotion of proven technology; and
(4) a forum for the exchange of technical and economic data relating to resource recovery facilities.


§6952. Development of specifications for secondary materials

The Secretary of Commerce, acting through the National Institute of Standards and Technology, and in conjunction with national standards-setting organizations in resource recovery, shall, after public hearings, and not later than two years after September 1, 1979, publish guidelines for the development of specifications for the classification of materials recovered from waste which were destined for disposal. The specifications shall pertain to the physical and chemical properties and characteristics of such materials with regard to their use in replacing virgin materials in various industrial, commercial, and governmental uses. In establishing such guidelines the Secretary shall also, to the extent feasible, provide such information as may be necessary to assist Federal agencies with procurement of items containing recovered materials. The Secretary
shall continue to cooperate with national standards-setting organizations, as may be necessary, to encourage the publication, promulgation and updating of standards for recovered materials and for the use of recovered materials in various industrial, commercial, and governmental uses.


EDITORIAL NOTES

AMENDMENTS


§6953. Development of markets for recovered materials

The Secretary of Commerce shall within two years after September 1, 1979, take such actions as may be necessary to—

(1) identify the geographical location of existing or potential markets for recovered materials;

(2) identify the economic and technical barriers to the use of recovered materials; and

(3) encourage the development of new uses for recovered materials.


EDITORIAL NOTES

AMENDMENTS


§6954. Technology promotion

The Secretary of Commerce is authorized to evaluate the commercial feasibility of resource recovery facilities and to publish the results of such evaluation, and to develop a data base for purposes of assisting persons in choosing such a system.


§6955. Marketing policies, establishment; nondiscrimination requirement

In establishing any policies which may affect the development of new markets for recovered materials and in making any determination concerning whether or not to impose monitoring or other controls on any marketing or transfer of recovered materials, the Secretary of Commerce may consider whether to establish the same or similar policies or impose the same or similar monitoring or other controls on virgin materials.


§6956. Authorization of appropriations

There are authorized to be appropriated to the Secretary of Commerce $5,000,000 for each of fiscal years 1980, 1981, and 1982 and $1,500,000 for each of the fiscal years 1985 through 1988 to carry out the purposes of this subchapter.


EDITORIAL NOTES

AMENDMENTS


SUBCHAPTER VI—FEDERAL RESPONSIBILITIES
§6961. Application of Federal, State, and local law to Federal facilities

(a) In general
Each department, agency, and instrumentality of the executive, legislative, and judicial branches of the Federal Government (1) having jurisdiction over any solid waste management facility or disposal site, or (2) engaged in any activity resulting, or which may result, in the disposal or management of solid waste or hazardous waste shall be subject to, and comply with, all Federal, State, interstate, and local requirements, both substantive and procedural (including any requirement for permits or reporting or any provisions for injunctive relief and such sanctions as may be imposed by a court to enforce such relief), respecting control and abatement of solid waste or hazardous waste disposal and management in the same manner, and to the same extent, as any person is subject to such requirements, including the payment of reasonable service charges. The Federal, State, interstate, and local substantive and procedural requirements referred to in this subsection include, but are not limited to, all administrative orders and all civil and administrative penalties and fines, regardless of whether such penalties or fines are punitive or coercive in nature or are imposed for isolated, intermittent, or continuing violations. The United States hereby expressly waives any immunity otherwise applicable to the United States with respect to any such substantive or procedural requirement (including, but not limited to, any injunctive relief, administrative order or civil or administrative penalty or fine referred to in the preceding sentence, or reasonable service charge). The reasonable service charges referred to in this subsection include, but are not limited to, fees or charges assessed in connection with the processing and issuance of permits, renewal of permits, amendments to permits, review of plans, studies, and other documents, and inspection and monitoring of facilities, as well as any other nondiscriminatory charges that are assessed in connection with a Federal, State, interstate, or local solid waste or hazardous waste regulatory program. Neither the United States, nor any agent, employee, or officer thereof, shall be immune or exempt from any process or sanction of any State or Federal Court with respect to the enforcement of any such injunctive relief. No agent, employee, or officer of the United States shall be personally liable for any civil penalty under any Federal, State, interstate, or local solid or hazardous waste law with respect to any act or omission within the scope of the official duties of the agent, employee, or officer. An agent, employee, or officer of the United States shall be subject to any criminal sanction (including, but not limited to, any fine or imprisonment) under any Federal or State solid or hazardous waste law, but no department, agency, or instrumentality of the executive, legislative, or judicial branch of the Federal Government shall be subject to any such sanction. The President may exempt any solid waste management facility of any department, agency, or instrumentality in the executive branch from compliance with such a requirement if he determines it to be in the paramount interest of the United States to do so. No such exemption shall be granted due to lack of appropriation unless the President shall have specifically requested such appropriation as a part of the budgetary process and the Congress shall have failed to make available such requested appropriation. Any exemption shall be for a period not in excess of one year, but additional exemptions may be granted for periods not to exceed one year upon the President's making a new determination. The President shall report each January to the Congress all exemptions from the requirements of this section granted during the preceding calendar year, together with his reason for granting each such exemption.

(b) Administrative enforcement actions
(1) The Administrator may commence an administrative enforcement action against any department, agency, or instrumentality of the executive, legislative, or judicial branch of the Federal Government pursuant to the enforcement authorities contained in this chapter. The Administrator shall initiate an administrative enforcement action against such a department, agency, or instrumentality in the same manner and under the same circumstances as an action would be initiated against another person. Any voluntary resolution or settlement of such an action shall be set forth in a consent order.

(2) No administrative order issued to such a department, agency, or instrumentality shall become final until such department, agency, or instrumentality has had the opportunity to confer with the Administrator.

(c) Limitation on State use of funds collected from Federal Government
Unless a State law in effect on October 6, 1992, or a State constitution requires the funds to be used in a different manner, all funds collected by a State from the Federal Government from penalties and fines imposed for violation of any substantive or procedural requirement referred to in subsection (a) shall be used by the State only for projects designed to improve or protect the environment or to defray the costs of environmental protection or enforcement.


EDITORIAL NOTES

AMENDMENTS

1992—Pub. L. 102–386 designated existing provisions as subsec. (a), inserted heading, inserted in first sentence "and management" before "in the same manner", inserted second to fourth, sixth, and seventh sentences specifying Federal, State, interstate, and local substantive and procedural requirements, waiving sovereign immunity, determining reasonable service charges, and providing no agent, employee, or officer of the United States be personally liable for a civil penalty for an act or omission within the scope of official duties but be subject to criminal sanction, with no department, agency, or instrumentality of the executive, legislative, or judicial branch subject to such sanction, and added subsecs. (b) and (c).
1978—Pub. L. 95–609 inserted "or management" after "disposal" in cl. (2).

Statutory Notes and Related Subsidiaries

Effective Date of 1992 Amendment

Pub. L. 102–386, title I, §102(c), Oct. 6, 1992, 106 Stat. 1506, provided that:

"(1) IN GENERAL.—Except as otherwise provided in paragraphs (2) and (3), the amendments made by subsection (a) [amending this section] shall take effect upon the date of the enactment of this Act [Oct. 6, 1992].

“(2) DELAYED EFFECTIVE DATE FOR CERTAIN MIXED WASTE.—Until the date that is 3 years after the date of the enactment of this Act, the waiver of sovereign immunity contained in section 6001(a) of the Solid Waste Disposal Act [subsec. (a) of this section] with respect to civil, criminal, and administrative penalties and fines (as added by the amendments made by subsection (a)) shall not apply to departments, agencies, and instrumentalities of the executive branch of the Federal Government for violations of section 3004(j) of the Solid Waste Disposal Act [42 U.S.C. 6924(j)] involving storage of mixed waste that is not subject to an existing agreement, permit, or administrative or judicial order, so long as such waste is managed in compliance with all other applicable requirements.

“(3) EFFECTIVE DATE FOR CERTAIN MIXED WASTE.—(A) Except as provided in subparagraph (B), after the date that is 3 years after the date of the enactment of this Act, the waiver of sovereign immunity contained in section 6001(a) of the Solid Waste Disposal Act with respect to civil, criminal, and administrative penalties and fines (as added by the amendments made by subsection (a)) shall apply to departments, agencies, and instrumentalities of the executive branch of the Federal Government for violations of section 3004(j) of the Solid Waste Disposal Act involving storage of mixed waste.

“(B) With respect to the Department of Energy, the waiver of sovereign immunity referred to in subparagraph (A) shall not apply after the date that is 3 years after the date of the enactment of this Act for violations of section 3004(j) of such Act involving storage of mixed waste, so long as the Department of Energy is in compliance with both—

"(i) a plan that has been submitted and approved pursuant to section 3021(b) of the Solid Waste Disposal Act [42 U.S.C. 6939c(b)] and which is in effect; and

"(ii) an order requiring compliance with such plan which has been issued pursuant to such section 3021(b) and which is in effect.

“(4) APPLICATION OF WAIVER TO AGREEMENTS AND ORDERS.—The waiver of sovereign immunity contained in section 6001(a) of the Solid Waste Disposal Act (as added by the amendments made by subsection (a)) shall take effect on the date of the enactment of this Act with respect to any agreement, permit, or administrative or judicial order existing on such date of enactment (and any subsequent modifications to such an agreement, permit, or order), including, without limitation, any provision of an agreement, permit, or order that addresses compliance with section 3004(j) of such Act with respect to mixed waste.

“(5) AGREEMENT OR ORDER.—Except as provided in paragraph (4), nothing in this Act [see Short Title of 1992 Amendment note set out under section 6901 of this title] shall be construed to alter, modify, or change in any manner any agreement, permit, or administrative or judicial order, including, without limitation, any provision of an agreement, permit, or order—

"(i) that addresses compliance with section 3004(j) of the Solid Waste Disposal Act with respect to mixed waste;

"(ii) that is in effect on the date of enactment of this Act; and

"(iii) to which a department, agency, or instrumentality of the executive branch of the Federal Government is a party.

Termination of Reporting Requirements

For termination, effective May 15, 2000, of provisions in subsec. (a) of this section requiring the President to report annually to Congress, see section 3003 of Pub. L. 104–68, as amended, set out as a note under section 1113 of Title 31, Money and Finance, and the 8th item on page 20 of House Document No. 103–7.

Executive Documents

Executive Order No. 12780


Executive Order No. 12873

**EXECUTIVE ORDER NO. 13101**

Ex. Ord. No. 13101, Sept. 14, 1998, 63 F.R. 49643, which directed executive agencies to incorporate waste prevention and recycling policies in their daily operations and created a Steering Committee, a Federal Environmental Executive, a Task Force, and Agency Environmental Executive positions responsible for ensuring the implementation of this order, was revoked by Ex. Ord. No. 13423, §11(a)(i), Jan. 24, 2007, 72 F.R. 3923, formerly set out in a note under section 4321 of this title.

**§6962. Federal procurement**

**(a) Application of section**

Except as provided in subsection (b), a procuring agency shall comply with the requirements set forth in this section and any regulations issued under this section, with respect to any purchase or acquisition of a procurement item where the purchase price of the item exceeds $10,000 or where the quantity of such items or of functionally equivalent items purchased or acquired in the course of the preceding fiscal year was $10,000 or more.

**(b) Procurement subject to other law**

Any procurement, by any procuring agency, which is subject to regulations of the Administrator under section 6964 of this title (as promulgated before October 21, 1976, under comparable provisions of prior law) shall not be subject to the requirements of this section to the extent that such requirements are inconsistent with such regulations.

**(c) Requirements**

1. After the date specified in applicable guidelines prepared pursuant to subsection (e) of this section, each procuring agency which procures any items designated in such guidelines shall procure such items composed of the highest percentage of recovered materials practicable (and in the case of paper, the highest percentage of the postconsumer recovered materials referred to in subsection (h)(1) practicable), consistent with maintaining a satisfactory level of competition, considering such guidelines. The decision not to procure such items shall be based on a determination that such procurement items—
   (A) are not reasonably available within a reasonable period of time;
   (B) fail to meet the performance standards set forth in the applicable specifications or fail to meet the reasonable performance standards of the procuring agencies; or
   (C) are only available at an unreasonable price. Any determination under subparagraph (B) shall be made on the basis of the guidelines of the National Institute of Standards and Technology in any case in which such material is covered by such guidelines.

2. Agencies that generate heat, mechanical, or electrical energy from fossil fuel in systems that have the technical capability of using energy or fuels derived from solid waste as a primary or supplementary fuel shall use such capability to the maximum extent practicable.

3. (A) After the date specified in any applicable guidelines prepared pursuant to subsection (e) of this section, contracting officers shall require that vendors:
   (i) certify that the percentage of recovered materials to be used in the performance of the contract will be at least the amount required by applicable specifications or other contractual requirements and
   (ii) estimate the percentage of the total material utilized for the performance of the contract which is recovered materials.

4. Clause (ii) of subparagraph (A) applies only to a contract in an amount greater than $100,000.

**(d) Specifications**

All Federal agencies that have the responsibility for drafting or reviewing specifications for procurement items procured by Federal agencies shall—

1. as expeditiously as possible but in any event no later than eighteen months after November 8, 1984, eliminate from such specifications—
   (A) any exclusion of recovered materials and
   (B) any requirement that items be manufactured from virgin materials; and

2. within one year after the date of publication of applicable guidelines under subsection (e), or as otherwise specified in such guidelines, assure that such specifications require the use of recovered materials to the maximum extent possible without jeopardizing the intended end use of the item.

**(e) Guidelines**
The Administrator, after consultation with the Administrator of General Services, the Secretary of Commerce (acting through the National Institute of Standards and Technology), and the Director of the Government Publishing Office, shall prepare, review not less frequently than once every 5 years, and, if appropriate, revise, in consultation with recyclers and manufacturers of products containing recycled content, not later than 2 years after the completion of the initial review after November 15, 2021, and thereafter, as appropriate, guidelines for the use of procuring agencies in complying with the requirements of this section. Such guidelines shall—

(1) designate those items which are or can be produced with recovered materials and whose procurement by procuring agencies will carry out the objectives of this section, and in the case of paper, provide for maximizing the use of post consumer recovered materials referred to in subsection (h)(1); and

(2) set forth recommended practices with respect to the procurement of recovered materials and items containing such materials and with respect to certification by vendors of the percentage of recovered materials used,

and shall provide information as to the availability, relative price, and performance of such materials and items and where appropriate shall recommend the level of recovered material to be contained in the procured product. The Administrator shall prepare final guidelines for paper within one hundred and eighty days after November 8, 1984, and for three additional product categories (including tires) by October 1, 1985. In making the designation under paragraph (1), the Administrator shall consider, but is not limited in his considerations, to—

(A) the availability of such items;
(B) the impact of the procurement of such items by procuring agencies on the volume of solid waste which must be treated, stored or disposed of;
(C) the economic and technological feasibility of producing and using such items; and
(D) other uses for such recovered materials.

(f) Procurement of services

A procuring agency shall, to the maximum extent practicable, manage or arrange for the procurement of solid waste management services in a manner which maximizes energy and resource recovery.

(g) Executive Office

The Office of Procurement Policy in the Executive Office of the President, in cooperation with the Administrator, shall implement the requirements of this section. It shall be the responsibility of the Office of Procurement Policy to coordinate this policy with other policies for Federal procurement, in such a way as to maximize the use of recovered resources, and to, every two years beginning in 1984, report to the Congress on actions taken by Federal agencies and the progress made in the implementation of this section, including agency compliance with subsection (d).

(h) "Recovered materials" defined

As used in this section, in the case of paper products, the term "recovered materials" includes—

(1) postconsumer materials such as—
(A) paper, paperboard, and fibrous wastes from retail stores, office buildings, homes, and so forth, after they have passed through their end-usage as a consumer item, including: used corrugated boxes; old newspapers; old magazines; mixed waste paper; tabulating cards; and used cordage; and
(B) all paper, paperboard, and fibrous wastes that enter and are collected from municipal solid waste, and

(2) manufacturing, forest residues, and other wastes such as—

(A) dry paper and paperboard waste generated after completion of the papermaking process (that is, those manufacturing operations up to and including the cutting and trimming of the paper machine reel into smaller rolls or rough sheets) including: envelope cuttings, bindery trimmings, and other paper and paperboard waste, resulting from printing, cutting, forming, and other converting operations; bag, box, and carton manufacturing wastes; and butt rolls, mill wrappers, and rejected unused stock; and
(B) finished paper and paperboard from obsolete inventories of paper and paperboard manufacturers, merchants, wholesalers, dealers, printers, converters, or others;
(C) fibrous byproducts of harvesting, manufacturing, extractive, or wood-cutting processes, flax, straw, linters, bagasse, slash, and other forest residues;
(D) wastes generated by the conversion of goods made from fibrous material (that is, waste rope from cordage manufacture, textile mill waste, and cuttings); and
(E) fibers recovered from waste water which otherwise would enter the waste stream.

(i) Procurement program

(1) Within one year after the date of publication of applicable guidelines under subsection (e), each procuring agency shall develop an affirmative procurement program which will assure that items composed of recovered materials will be purchased to the maximum extent practicable and which is consistent with applicable provisions of Federal procurement law.

(2) Each affirmative procurement program required under this subsection shall, at a minimum, contain—

(A) a recovered materials preference program;
(B) an agency promotion program to promote the preference program adopted under subparagraph (A); and
(C) a program for requiring estimates of the total percentage of recovered material utilized in the performance of a contract; certification of minimum recovered material content actually utilized, where appropriate; and reasonable verification procedures for estimates and certifications; and
(D) annual review and monitoring of the effectiveness of an agency's affirmative procurement program.
In the case of paper, the recovered materials preference program required under subparagraph (A) shall provide for the maximum use of the post consumer recovered materials referred to in subsection (h)(1).

(3) In developing the preference program, the following options shall be considered for adoption:

(A) Case-by-Case Policy Development: Subject to the limitations of subsection (c)(1)(A) through (C), a policy of awarding contracts to the vendor offering an item composed of the highest percentage of recovered materials practicable (and in the case of paper, the highest percentage of the post consumer recovered materials referred to in subsection (h)(1)). Subject to such limitations, agencies may make an award to a vendor offering items with less than the maximum recovered materials content.

(B) Minimum Content Standards: Minimum recovered materials content specifications which are set in such a way as to assure that the recovered materials content (and in the case of paper, the content of post consumer materials referred to in subsection (h)(1)) required is the maximum available without jeopardizing the intended end use of the item, or violating the limitations of subsection (c)(1)(A) through (C).

Procuring agencies shall adopt one of the options set forth in subparagraphs (A) and (B) or a substantially equivalent alternative, for inclusion in the affirmative procurement program.

(j) Consultation and provision of information by Administrator

The Administrator shall—

(1) consult with each procuring agency, including contractors of the procuring agency, to clarify the responsibilities of the procuring agency under this section; and

(2) provide to each procuring agency information on the requirements under this section and the responsibilities of the procuring agency under this section.

(k) Reports

The Administrator, in consultation with the Administrator of General Services, shall submit to Congress an annual report describing—

(1) the quantity of federally procured recycled products listed in the guidelines under subsection (e); and

(2) with respect to the products described in paragraph (1), the percentage of recycled material in each product.


EDITORIAL NOTES

CODIFICATION


AMENDMENTS

2021—Subsec. (e). Pub. L. 117–58, §70402(c)(1), which directed substitution of "review not less frequently than once every 5 years, and, if appropriate, revise, in consultation with recyclers and manufacturers of products containing recycled content, not later than 2 years after the completion of the initial review after November 15, 2021, and thereafter, as appropriate" for "and from time to time, revise" in introductory provisions, was executed by making the substitution for "and from time to time revise" to reflect the probable intent of Congress.

Subsecs. (j), (k). Pub. L. 117–58, §70402(c)(2), added subsecs. (j) and (k).

1994—Subsec. (c)(3). Pub. L. 103–355, §4104(e), designated existing provisions as subpar. (A), redesignated subpars. (A) and (B) as cls. (i) and (ii), respectively, and added subpar. (B).


1984—Subsec. (c)(1). Pub. L. 98–616, §501(c), inserted "(and in the case of paper, the highest percentage of the post consumer recovered materials referred to in subsection (h)(1) practicable)".

Subsec. (d)(1). Pub. L. 98–616, §501(e), substituted "eighteen months after November 8, 1984" for "five years after October 21, 1976".
Subsec. (e). Pub. L. 98–616, §501(b)(2), substituted "for paper within one hundred and eighty days after November 8, 1984, and for three additional product categories (including tires) by October 1, 1985" for "for at least three product categories, including paper, by May 1, 1981, and for two additional product categories, including construction materials, by September 30, 1982." in provisions following par. (2).

Subsec. (e)(1). Pub. L. 98–616, §501(b)(1), inserted ", and in the case of paper, for providing for maximizing the use of post consumer recovered materials referred to in subsection (h)(1)".

Subsec. (g). Pub. L. 98–616, §501(d), substituted "the requirements of for "the policy expressed in" and inserted ", and to, every two years beginning in 1984, report to the Congress on actions taken by Federal agencies and the progress made in the implementation of this section, including agency compliance with subsection (d)".

Subsecs. (h), (i). Pub. L. 98–616, §501(a), added subsecs. (h) and (i).

1982—Subsec. (g). Pub. L. 97–375 struck out provision requiring the Office of Procurement Policy to report annually to Congress on actions taken by Federal agencies and the progress made in the implementation of the policy expressed in this section.

1980—Subsec. (c)(1). Pub. L. 96–482, §22(1), (2), in provision preceding subpar. (A), substituted "After the date specified in applicable guidelines prepared pursuant to subsection (e) of this section, each procuring agency which procures any item designated in such guidelines shall procure such" for "After two years after October 21, 1976, each procuring agency shall procure", and in subpar. (C), "paragraph (B)" for "clause (B)".

Subsec. (c)(2). Pub. L. 96–482, §22(3), substituted "energy or fuels derived from solid waste" for "recovered material and recovered-material-derived fuel".

Subsec. (c)(3). Pub. L. 96–482, §22(4), substituted subpars. (A) and (B) for provision requiring certification of the percentage of the total material utilized for the performance of the contract which is recovered materials.

Subsec. (d). Pub. L. 96–482, §22(5), in par. (1), substituted provision requiring Federal agencies to eliminate from specifications as expeditiously as possible, but in no event later than 5 years after Oct. 21, 1976, any exclusion of recovered materials and any requirement that items be manufactured from virgin materials for provision that Federal agencies in reviewing specifications, ascertain whether those specifications violate prohibitions in par. (2)(A) to (C), with such review undertaken not later than 18 months after Oct. 21, 1976, and in par. (2), substituted provision that Federal agencies act within 1 year from publication of applicable guidelines under subsec. (e) of this section for provision that in drafting or revising specifications after Oct. 21, 1976, any exclusion of recovered materials be eliminated and specifications not require the item to be manufactured from virgin materials.

Subsec. (e). Pub. L. 96–482, §22(6), designated provision relating to requirements of guidelines as cl. (2) and subpars. (A) and (C), added cl. (1), subpars. (B) and (C), and provision preceding subpar. (A), and struck out provision requiring information on source of supply.

1978—Subsec. (c). Pub. L. 95–609, §7(n)(1), (2), redesignated subpar. (1)(A) as par. (1), subpars. (1)(B) and (C) as pars. (2) and (3), respectively, and cls. (i) to (iii) of former subpar. (1)(A) as subpars. (A) to (C), respectively, of par. (1), and in par. (3), as so redesignated, inserted "After the date specified in any applicable guidelines prepared pursuant to subsection (e) of this section," before "contracting".

Subsec. (e). Pub. L. 95–609, §7(n)(3), inserted provision dealing with certification by vendors of the materials used.

STATUTORY NOTES AND RELATED SUBSIDIARIES

CHANGE OF NAME

"Director of the Government Publishing Office" substituted for "Public Printer" in subsec. (e) on authority of section 1301(d) of Pub. L. 113–235, set out as a note under section 301 of Title 44, Public Printing and Documents.

EFFECTIVE DATE OF 1994 AMENDMENT

For effective date and applicability of amendment by Pub. L. 103–355, see section 10001 of Pub. L. 103–355, set out as a note under section 8752 of Title 10, Armed Forces.

EXECUTIVE DOCUMENTS

TRANSFER OF FUNCTIONS

For transfer of certain enforcement functions of Administrator or other official of Environmental Protection Agency under this chapter to Federal Inspector, Office of Federal Inspector for the Alaska Natural Gas Transportation System, and subsequent transfer to Secretary of Energy, then to Federal Coordinator for Alaska Natural Gas Transportation Projects, see note set out under section 6903 of this title.
§6963. Cooperation with Environmental Protection Agency

(a) General rule
All Federal agencies shall assist the Administrator in carrying out his functions under this chapter and shall promptly make available all requested information concerning past or present Agency waste management practices and past or present Agency owned, leased, or operated solid or hazardous waste facilities. This information shall be provided in such format as may be determined by the Administrator.

(b) Information relating to energy and materials conservation and recovery
The Administrator shall collect, maintain, and disseminate information concerning the market potential of energy and materials recovered from solid waste, including materials obtained through source separation, and information concerning the savings potential of conserving resources contributing to the waste stream. The Administrator shall identify the regions in which the increased substitution of such energy for energy derived from fossil fuels and other sources is most likely to be feasible, and provide information on the technical and economic aspects of developing integrated resource conservation or recovery systems which provide for the recovery of source-separated materials to be recycled or the conservation of resources. The Administrator shall utilize the authorities of subsection (a) in carrying out this subsection.


EDITORIAL NOTES

AMENDMENTS

1980—Pub. L. 96–482 designated existing provision as subsec. (a), substituted provision that information be provided in a format determined by the Administrator for provision that information be furnished on a reimbursable basis, and added subsec. (b).

EXECUTIVE DOCUMENTS

TRANSFER OF FUNCTIONS

For transfer of certain enforcement functions of Administrator or other official of Environmental Protection Agency under this chapter to Federal Inspector, Office of Federal Inspector for the Alaska Natural Gas Transportation System, and subsequent transfer to Secretary of Energy, then to Federal Coordinator for Alaska Natural Gas Transportation Projects, see note set out under section 6903 of this title.

§6964. Applicability of solid waste disposal guidelines to Executive agencies

(a) Compliance

(1) If—
(A) an Executive agency (as defined in section 105 of title 5) or any unit of the legislative branch of the Federal Government has jurisdiction over any real property or facility the operation or administration of which involves such agency in solid waste management activities, or
(B) such an agency enters into a contract with any person for the operation by such person of any Federal property or facility, and the performance of such contract involves such person in solid waste management activities,

then such agency shall insure compliance with the guidelines recommended under section 6907 of this title and the purposes of this chapter in the operation or administration of such property or facility, or the performance of such contract, as the case may be.

(2) Each Executive agency or any unit of the legislative branch of the Federal Government which conducts any activity—
(A) which generates solid waste, and
(B) which, if conducted by a person other than such agency, would require a permit or license from such agency in order to dispose of such solid waste,

shall insure compliance with such guidelines and the purposes of this chapter in conducting such activity.

(3) Each Executive agency which permits the use of Federal property for purposes of disposal of solid waste shall insure compliance with such guidelines and the purposes of this chapter in the disposal of such waste.

(4) The President or the Committee on House Oversight of the House of Representatives and the Committee on Rules and Administration of the Senate with regard to any unit of the legislative branch of the Federal Government shall prescribe regulations to carry out this subsection.

(b) Licenses and permits
Each Executive agency which issues any license or permit for disposal of solid waste shall, prior to the issuance of such license or permit, consult with the Administrator to insure compliance with guidelines recommended under section 6907 of this title and the purposes of this chapter.


EDITORIAL NOTES

PRIOR PROVISIONS

Provisions similar to those in this section were contained in section 3254e of this title, prior to the general amendment of the Solid Waste Disposal Act by Pub. L. 94–580.

AMENDMENTS

   Subsec. (a)(4). Pub. L. 96–482, §23(3), required House Committee on House Administration and Senate Committee on Rules and Administration with regard to any unit of the legislative branch of the Federal Government to prescribe implementing regulations.
   Subsec. (b). Pub. L. 95–609, §7(o)(3), substituted "Administrator" for "Secretary".

STATUTORY NOTES AND RELATED SUBSIDIARIES

CHANGE OF NAME

Committee on House Oversight of House of Representatives changed to Committee on House Administration of House of Representatives by House Resolution No. 5, One Hundred Sixth Congress, Jan. 6, 1999.

EXECUTIVE DOCUMENTS

TRANSFER OF FUNCTIONS

For transfer of certain enforcement functions of Administrator or other official of Environmental Protection Agency under this chapter to Federal Inspector, Office of Federal Inspector for the Alaska Natural Gas Transportation System, and subsequent transfer to Secretary of Energy, then to Federal Coordinator for Alaska Natural Gas Transportation Projects, see note set out under section 6903 of this title.

§6965. Chief Financial Officer report

The Chief Financial Officer of each affected agency shall submit to Congress an annual report containing, to the extent practicable, a detailed description of the compliance activities undertaken by the agency for mixed waste streams, and an accounting of the fines and penalties imposed on the agency for violations involving mixed waste.


EDITORIAL NOTES

CODIFICATION

Section was enacted as part of the Federal Facility Compliance Act of 1992, and not as part of the Solid Waste Disposal Act which comprises this chapter.

§6966. Increased use of recovered mineral component in federally funded projects involving procurement of cement or concrete

(a) Definitions

In this section:
(1) Agency head
The term "agency head" means—
(A) the Secretary of Transportation; and
(B) the head of any other Federal agency that, on a regular basis, procures, or provides Federal funds to pay or assist in paying the cost of procuring, material for cement or concrete projects.

(2) Cement or concrete project
The term "cement or concrete project" means a project for the construction or maintenance of a highway or other transportation facility or a Federal, State, or local government building or other public facility that—
(A) involves the procurement of cement or concrete; and
(B) is carried out, in whole or in part, using Federal funds.

(3) Recovered mineral component
The term "recovered mineral component" means—
(A) ground granulated blast furnace slag, excluding lead slag;
(B) coal combustion fly ash; and
(C) any other waste material or byproduct recovered or diverted from solid waste that the Administrator, in consultation with an agency head, determines should be treated as recovered mineral component under this section for use in cement or concrete projects paid for, in whole or in part, by the agency head.

(b) Implementation of requirements

(1) In general
Not later than 1 year after August 8, 2005, the Administrator and each agency head shall take such actions as are necessary to implement fully all procurement requirements and incentives in effect as of August 8, 2005 (including guidelines under section 6962 of this title) that provide for the use of cement and concrete incorporating recovered mineral component in cement or concrete projects.

(2) Priority
In carrying out paragraph (1), an agency head shall give priority to achieving greater use of recovered mineral component in cement or concrete projects for which recovered mineral components historically have not been used or have been used only minimally.

(3) Federal procurement requirements
The Administrator and each agency head shall carry out this subsection in accordance with section 6962 of this title.

(c) Full implementation study

(1) In general
The Administrator, in cooperation with the Secretary of Transportation and the Secretary of Energy, shall conduct a study to determine the extent to which procurement requirements, when fully implemented in accordance with subsection (b), may realize energy savings and environmental benefits attainable with substitution of recovered mineral component in cement used in cement or concrete projects.

(2) Matters to be addressed
The study shall—
(A) quantify—
   (i) the extent to which recovered mineral components are being substituted for Portland cement, particularly as a result of procurement requirements; and
   (ii) the energy savings and environmental benefits associated with the substitution;

   (B) identify all barriers in procurement requirements to greater realization of energy savings and environmental benefits, including barriers resulting from exceptions from the law; and
   (C)(i) identify potential mechanisms to achieve greater substitution of recovered mineral component in types of cement or concrete projects for which recovered mineral components historically have not been used or have been used only minimally;
   (ii) evaluate the feasibility of establishing guidelines or standards for optimized substitution rates of recovered mineral component in those cement or concrete projects; and
   (iii) identify any potential environmental or economic effects that may result from greater substitution of recovered mineral component in those cement or concrete projects.

(3) Report
Not later than 30 months after August 8, 2005, the Administrator shall submit to Congress a report on the study.

(d) Additional procurement requirements
Unless the study conducted under subsection (c) identifies any effects or other problems described in subsection (c)(2)(C) (iii) that warrant further review or delay, the Administrator and each agency head shall, not later than 1 year after the date on which the report under subsection (c)(3) is submitted, take additional actions under this chapter to establish procurement requirements and incentives that provide for the use of cement and concrete with increased substitution of recovered mineral component in the construction and maintenance of cement or concrete projects—
(1) to realize more fully the energy savings and environmental benefits associated with increased substitution; and
(2) to eliminate barriers identified under subsection (c)(2)(B).

(e) Effect of section

Nothing in this section affects the requirements of section 6962 of this title (including the guidelines and specifications for implementing those requirements).


EDITORIAL NOTES

CODIFICATION

Another section 6005 of Pub. L. 89–272 is classified to section 6966a of this title.

§6966a. Increased use of recovered mineral component in federally funded projects involving procurement of cement or concrete

(a) Definitions

In this section:

(1) Agency head

The term "agency head" means—

(A) the Secretary of Transportation; and

(B) the head of each other Federal agency that on a regular basis procures, or provides Federal funds to pay or assist in paying the cost of procuring, material for cement or concrete projects.

(2) Cement or concrete project

The term "cement or concrete project" means a project for the construction or maintenance of a highway or other transportation facility or a Federal, State, or local government building or other public facility that—

(A) involves the procurement of cement or concrete; and

(B) is carried out in whole or in part using Federal funds.

(3) Recovered mineral component

The term "recovered mineral component" means—

(A) ground granulated blast furnace slag other than lead slag;

(B) coal combustion fly ash;

(C) blast furnace slag aggregate other than lead slag aggregate;

(D) silica fume; and

(E) any other waste material or byproduct recovered or diverted from solid waste that the Administrator, in consultation with an agency head, determines should be treated as recovered mineral component under this section for use in cement or concrete projects paid for, in whole or in part, by the agency head.

(b) Implementation of requirements

(1) In general

Not later than 1 year after August 10, 2005, the Administrator and each agency head shall take such actions as are necessary to implement fully all procurement requirements and incentives in effect as of August 10, 2005 (including guidelines under section 6962 of this title) that provide for the use of cement and concrete incorporating recovered mineral component in cement or concrete projects.

(2) Priority

In carrying out paragraph (1) an agency head shall give priority to achieving greater use of recovered mineral component in cement or concrete projects for which recovered mineral components historically have not been used or have been used only minimally.

(3) Conformance

The Administrator and each agency head shall carry out this subsection in accordance with section 6962 of this title.

(c) Full implementation study

(1) In general

The Administrator, in cooperation with the Secretary of Transportation and the Secretary of Energy, shall conduct a study to determine the extent to which current procurement requirements, when fully implemented in accordance with subsection (b), may realize energy savings and environmental benefits attainable with substitution of recovered mineral component in cement used in cement or concrete projects.

(2) Matters to be addressed

The study shall—

(A) quantify the extent to which recovered mineral components are being substituted for Portland cement, particularly as a result of current procurement requirements, and the energy savings and environmental benefits associated with
that substitution;
(B) identify all barriers in procurement requirements to greater realization of energy savings and environmental benefits, including barriers resulting from exceptions from current law; and
(C)(i) identify potential mechanisms to achieve greater substitution of recovered mineral component in types of cement or concrete projects for which recovered mineral components historically have not been used or have been used only minimally;
(ii) evaluate the feasibility of establishing guidelines or standards for optimized substitution rates of recovered mineral component in those cement or concrete projects; and
(iii) identify any potential environmental or economic effects that may result from greater substitution of recovered mineral component in those cement or concrete projects.

(3) Report
Not later than 30 months after August 10, 2005, the Administrator shall submit to Congress a report on the study.

(d) Additional procurement requirements
Unless the study conducted under subsection (c) identifies any effects or other problems described in subsection (c)(2)(C) (iii) that warrant further review or delay, the Administrator and each agency head shall, not later than 1 year after the release of the report in accordance with subsection (c)(3), take additional actions authorized under this chapter to establish procurement requirements and incentives that provide for the use of cement and concrete with increased substitution of recovered mineral component in the construction and maintenance of cement or concrete projects, so as to—
(1) realize more fully the energy savings and environmental benefits associated with increased substitution; and
(2) eliminate barriers identified under subsection (c).

(e) Effect of section
Nothing in this section affects the requirements of section 6962 of this title (including the guidelines and specifications for implementing those requirements).


EDITORIAL NOTES

CODIFICATION

Another section 6005 of Pub. L. 89–272 is classified to section 6966 of this title.

§6966b. Use of granular mine tailings

(a) Mine tailings

(1) In general
Not later than 180 days after August 10, 2005, the Administrator, in consultation with the Secretary of Transportation and heads of other Federal agencies, shall establish criteria (including an evaluation of whether to establish a numerical standard for concentration of lead and other hazardous substances) for the safe and environmentally protective use of granular mine tailings from the Tar Creek, Oklahoma Mining District, known as "chat", for—
(A) cement or concrete projects; and
(B) transportation construction projects (including transportation construction projects involving the use of asphalt) that are carried out, in whole or in part, using Federal funds.

(2) Requirements
In establishing criteria under paragraph (1), the Administrator shall consider—
(A) the current and previous uses of granular mine tailings as an aggregate for asphalt; and
(B) any environmental and public health risks and benefits derived from the removal, transportation, and use in transportation projects of granular mine tailings.

(3) Public participation
In establishing the criteria under paragraph (1), the Administrator shall solicit and consider comments from the public.

(4) Applicability of criteria
On the establishment of the criteria under paragraph (1), any use of the granular mine tailings described in paragraph (1) in a transportation project that is carried out, in whole or in part, using Federal funds, shall meet the criteria established under paragraph (1).

(b) Effect of sections
Nothing in this section or section 6966a of this title affects any requirement of any law (including a regulation) in effect on August 10, 2005.


EDITORIAL NOTES
REFERENCES IN TEXT

Section 6966a of this title, referred to in subsec. (b), was in the original "section 6005" meaning section 6005 of Pub. L. 89–272, which was translated as meaning the section 6005 of Pub. L. 89–272 as added by section 6017(a) of Pub. L. 109–59, to reflect the probable intent of Congress.

§6966c. Best practices for battery recycling and labeling guidelines

(a) Definitions
In this section:

(1) Administrator
The term "Administrator" means the Administrator of the Environmental Protection Agency.

(2) Battery
The term "battery" means a device that—
   (A) consists of 1 or more electrochemical cells that are electrically connected; and
   (B) is designed to store and deliver electric energy.

(3) Recycling
The term "recycling" means the series of activities—
   (A) during which recyclable materials are processed into specification-grade commodities, and consumed as raw-material feedstock, in lieu of virgin materials, in the manufacturing of new products;
   (B) that may include collection, processing, and brokering; and
   (C) that result in subsequent consumption by a materials manufacturer, including for the manufacturing of new products.

(b) Best practices for collection of batteries to be recycled

(1) In general
The Administrator shall develop best practices that may be implemented by State, Tribal, and local governments with respect to the collection of batteries to be recycled in a manner that—
   (A) to the maximum extent practicable, is technically and economically feasible for State, Tribal, and local governments;
   (B) is environmentally sound and safe for waste management workers; and
   (C) optimizes the value and use of material derived from recycling of batteries.

(2) Consultation
The Administrator shall develop the best practices described in paragraph (1) in coordination with State, Tribal, and local governments and relevant nongovernmental and private sector entities.

(3) Report
Not later than 2 years after November 15, 2021, the Administrator shall submit to Congress a report describing the best practices developed under paragraph (1).

(4) Authorization of appropriations
There is authorized to be appropriated to the Administrator to carry out this subsection $10,000,000 for fiscal year 2022, to remain available until September 30, 2026.

(c) Voluntary labeling guidelines

(1) In general
There is established within the Environmental Protection Agency a program (referred to in this subsection as the "program") to promote battery recycling through the development of—
   (A) voluntary labeling guidelines for batteries; and
   (B) other forms of communication materials for battery producers and consumers about the reuse and recycling of critical materials from batteries.

(2) Purposes
The purposes of the program are to improve battery collection and reduce battery waste, including by—
   (A) identifying battery collection locations and increasing accessibility to those locations;
   (B) promoting consumer education about battery collection and recycling; and
   (C) reducing safety concerns relating to the improper disposal of batteries.

(3) Other standards and law
The Administrator shall make every reasonable effort to ensure that voluntary labeling guidelines and other forms of communication materials developed under the program are consistent with—
   (A) international battery labeling standards; and
   (B) the Mercury-Containing and Rechargeable Battery Management Act (42 U.S.C. 14301 et seq.).

(4) Authorization of appropriations
There is authorized to be appropriated to the Administrator to carry out this subsection $15,000,000 for fiscal year 2022, to remain available until September 30, 2026.


EDITORIAL NOTES

REFERENCES IN TEXT


CODIFICATION

Section was enacted as part of the Infrastructure Investment and Jobs Act, and not as part of the Solid Waste Disposal Act which comprises this chapter.

§6966d. Consumer recycling education and outreach grant program; Federal procurement

(a) Definition of Administrator

In this section, the term "Administrator" means the Administrator of the Environmental Protection Agency.

(b) Consumer recycling education and outreach grant program

(1) In general

The Administrator shall establish a program (referred to in this subsection as the "grant program") to award competitive grants to eligible entities to improve the effectiveness of residential and community recycling programs through public education and outreach.

(2) Criteria

The Administrator shall award grants under the grant program for projects that, by using one or more eligible activities described in paragraph (5)—

(A) inform the public about residential or community recycling programs;

(B) provide information about the recycled materials that are accepted as part of a residential or community recycling program that provides for the separate collection of residential solid waste from recycled material; and

(C) increase collection rates and decrease contamination in residential and community recycling programs.

(3) Eligible entities

(A) In general

An entity that is eligible to receive a grant under the grant program is—

(i) a State;

(ii) a unit of local government;

(iii) an Indian Tribe (as defined in section 5304 of title 25);

(iv) a Native Hawaiian organization (as defined in section 7517 of title 20);

(v) the Department of Hawaiian Home Lands;

(vi) the Office of Hawaiian Affairs;

(vii) a nonprofit organization; or

(viii) a public-private partnership.

(B) Coordination of activities

2 or more entities described in subparagraph (A) may receive a grant under the grant program to coordinate the provision of information to residents that may access 2 or more residential recycling programs, including programs that accept different recycled materials, to provide to the residents information regarding differences among those residential recycling programs.

(4) Requirement

(A) In general

To receive a grant under the grant program, an eligible entity shall demonstrate to the Administrator that the grant funds will be used to encourage the collection of recycled materials that are sold to an existing or developing market.

(B) Business plans and financial data

(i) In general

An eligible entity may make a demonstration under subparagraph (A) through the submission to the Administrator of appropriate business plans and financial data.
(ii) Confidentiality
The Administrator shall treat any business plans or financial data received under clause (i) as confidential information.

(5) Eligible activities
An eligible entity that receives a grant under the grant program may use the grant funds for activities including—
(A) public service announcements;
(B) a door-to-door education and outreach campaign;
(C) social media and digital outreach;
(D) an advertising campaign on recycling awareness;
(E) the development and dissemination of—
(i) a toolkit for a municipal and commercial recycling program;
(ii) information on the importance of quality in the recycling stream;
(iii) information on the economic and environmental benefits of recycling; and
(iv) information on what happens to materials after the materials are placed into a residential or community recycling program;

(F) businesses recycling outreach;
(G) bin, cart, and other receptacle labeling and signs; and
(H) such other activities that the Administrator determines are appropriate to carry out the purposes of this subsection.

(6) Prohibition on use of funds
No funds may be awarded under the grant program for a residential recycling program that—
(A) does not provide for the separate collection of residential solid waste (as defined in section 246.101 of title 40, Code of Federal Regulations (as in effect on November 15, 2021)) from recycled material (as defined in that section), unless the funds are used to promote a transition to a system that separately collects recycled materials; or
(B) promotes the establishment of, or conversion to, a residential collection system that does not provide for the separate collection of residential solid waste from recycled material (as those terms are defined under subparagraph (A)).

(7) Model recycling program toolkit
(A) In general
In carrying out the grant program, the Administrator, in consultation with other relevant Federal agencies, States, Indian Tribes, units of local government, nonprofit organizations, and the private sector, shall develop a model recycling program toolkit for States, Indian Tribes, and units of local government that includes, at a minimum—
(i) a standardized set of terms and examples that may be used to describe materials that are accepted by a residential recycling program;
(ii) information that the Administrator determines can be widely applied across residential recycling programs, taking into consideration the differences in recycled materials accepted by residential recycling programs;
(iii) educational principles on best practices for the collection and processing of recycled materials;
(iv) a community self-assessment guide to identify gaps in existing recycling programs;
(v) training modules that enable States and nonprofit organizations to provide technical assistance to units of local government;
(vi) access to consumer educational materials that States, Indian Tribes, and units of local government can adapt and use in recycling programs; and
(vii) a guide to measure the effectiveness of a grant received under the grant program, including standardized measurements for recycling rates and decreases in contamination.

(B) Requirement
In developing the standardized set of terms and examples under subparagraph (A)(i), the Administrator may not establish any requirements for—
(I) what materials shall be accepted by a residential recycling program; or
(II) the labeling of products.

(8) School curriculum
The Administrator shall provide assistance to the educational community, including nonprofit organizations, such as an organization the science, technology, engineering, and mathematics program of which incorporates recycling, to promote the introduction of recycling principles and best practices into public school curricula.

(9) Reports
(A) To the Administrator
Not earlier than 180 days, and not later than 2 years, after the date on which a grant under the grant program is awarded to an eligible entity, the eligible entity shall submit to the Administrator a report describing, by using the guide developed under paragraph (7)(A)(vii)—
(i) the change in volume of recycled material collected through the activities funded with the grant;
(ii) the change in participation rate of the recycling program funded with the grant;
(iii) the reduction of contamination in the recycling stream as a result of the activities funded with the grant; and
(iv) such other information as the Administrator determines to be appropriate.

(B) To Congress
The Administrator shall submit to Congress an annual report describing—
(i) the effectiveness of residential recycling programs awarded funds under the grant program, including statistics comparing the quantity and quality of recycled materials collected by those programs, as described in the reports submitted to the Administrator under subparagraph (A); and
(ii) recommendations on additional actions to improve residential recycling.

(c) Omitted

(d) Authorization of appropriations

(1) In general
There is authorized to be appropriated to the Administrator to carry out this section and the amendments made by this section $15,000,000 for each of fiscal years 2022 through 2026.

(2) Requirement
Of the amount made available under paragraph (1) for a fiscal year, not less than 20 percent shall be allocated to—
(A) low-income communities;
(B) rural communities; and
(C) communities identified as Native American pursuant to section 3001(9) of title 25.


EDITORIAL NOTES

REFERENCES IN TEXT
The amendments made by this section, referred to in subsec. (d)(1), means the amendments made by section 70402(c) of Pub. L. 117–58, which amended section 6962 of this title. See Codification note below.

CODIFICATION

Section is comprised of section 70402 of Pub. L. 117–58. Subsec. (c) of section 70402 of Pub. L. 117–58 amended section 6962 of this title.

Section was enacted as part of the Infrastructure Investment and Jobs Act, and not as part of the Solid Waste Disposal Act which comprises this chapter.

SUBCHAPTER VII—MISCELLANEOUS PROVISIONS

§6971. Employee protection

(a) General
No person shall fire, or in any other way discriminate against, or cause to be fired or discriminated against, any employee or any authorized representative of employees by reason of the fact that such employee or representative has filed, instituted, or caused to be filed or instituted any proceeding under this chapter or under any applicable implementation plan, or has testified or is about to testify in any proceeding resulting from the administration or enforcement of the provisions of this chapter or of any applicable implementation plan.

(b) Remedy
Any employee or a representative of employees who believes that he has been fired or otherwise discriminated against by any person in violation of subsection (a) of this section may, within thirty days after such alleged violation occurs, apply to the Secretary of Labor for a review of such firing or alleged discrimination. A copy of the application shall be sent to such person who shall be the respondent. Upon receipt of such application, the Secretary of Labor shall cause such investigation to be made as he deems appropriate. Such investigation shall provide an opportunity for a public hearing at the request of any party to such review to enable the parties to present information relating to such alleged violation. The parties shall be given written notice of the time and place of the hearing at least five days prior to the hearing. Any such hearing shall be of record and shall be subject to section 554 of title 5. Upon receiving the report of such investigation, the Secretary of Labor shall make findings of fact. If he finds that such violation did occur, he shall issue a decision, incorporating an order therein and his findings, requiring the party committing such violation to take such affirmative action to abate the violation as the Secretary of Labor deems appropriate, including, but not limited to, the rehiring or reinstatement of the employee or representative of employees to his former position with compensation. If he finds that there was no such violation, he shall issue an order denying the application. Such order issued by the Secretary of Labor under this subparagraph shall be subject to judicial review in the same manner as orders and decisions of the Administrator or subject to judicial review under this chapter.

(c) Costs
Whenever an order is issued under this section to abate such violation, at the request of the applicant, a sum equal to the aggregate amount of all costs and expenses (including the attorney's fees) as determined by the Secretary of Labor, to have been reasonably incurred by the applicant for, or in connection with, the institution and prosecution of such proceedings, shall be assessed against the person committing such violation.

(d) Exception
This section shall have no application to any employee who, acting without direction from his employer (or his agent) deliberately violates any requirement of this chapter.

(e) Employment shifts and loss
The Administrator shall conduct continuing evaluations of potential loss or shifts of employment which may result from the administration or enforcement of the provisions of this chapter and applicable implementation plans, including, where appropriate, investigating threatened plant closures or reductions in employment allegedly resulting from such administration or enforcement. Any employee who is discharged, or laid off, threatened with discharge or layoff, or otherwise discriminated against by any person because of the alleged results of such administration or enforcement, or any representative of such employee, may request the Administrator to conduct a full investigation of the matter. The Administrator shall thereupon investigate the matter and, at the request of any party, shall hold public hearings on not less than five days' notice, and shall at such hearings require the parties, including the employer involved, to present information relating to the actual or potential effect of such administration or enforcement on employment and on any alleged discharge, layoff, or other discrimination and the detailed reasons or justification therefor. Any such hearing shall be of record and shall be subject to section 554 of title 5. Upon receiving the report of such investigation, the Administrator shall make findings of fact as to the effect of such administration or enforcement on employment and on the alleged discharge, layoff, or discrimination and shall make such recommendations as he deems appropriate. Such report, findings, and recommendations shall be available to the public. Nothing in this subsection shall be construed to require or authorize the Administrator or any State to modify or withdraw any standard, limitation, or any other requirement of this chapter or any applicable implementation plan.

(f) Occupational safety and health
In order to assist the Secretary of Labor and the Director of the National Institute for Occupational Safety and Health in carrying out their duties under the Occupational Safety and Health Act of 1970 [29 U.S.C. 651 et seq.], the Administrator shall—

1. provide the following information, as such information becomes available, to the Secretary and the Director:
   A. the identity of any hazardous waste generation, treatment, storage, disposal facility or site where cleanup is planned or underway;
   B. information identifying the hazards to which persons working at a hazardous waste generation, treatment, storage, disposal facility or site or otherwise handling hazardous waste may be exposed, the nature and extent of the exposure, and methods to protect workers from such hazards; and
   C. incidents of worker injury or harm at a hazardous waste generation, treatment, storage or disposal facility or site; and

2. notify the Secretary and the Director of the Administrator’s receipt of notifications under section 6930 or reports under sections 6922, 6923, and 6924 of this title and make such notifications and reports available to the Secretary and the Director.


EDITORIAL NOTES

REFERENCES IN TEXT

AMENDMENTS

EXECUTIVE DOCUMENTS

TRANSFER OF FUNCTIONS
For transfer of certain enforcement functions of Administrator or other official of Environmental Protection Agency under this chapter to Federal Inspector, Office of Federal Inspector for the Alaska Natural Gas Transportation System, and subsequent transfer to Secretary of Energy, then to Federal Coordinator for Alaska Natural Gas Transportation Projects, see note set out under section 6903 of this title.
§6972. Citizen suits

(a) In general

Except as provided in subsection (b) or (c) of this section, any person may commence a civil action on his own behalf—

(1)(A) against any person (including (a) the United States, and (b) any other governmental instrumentality or agency, to the extent permitted by the eleventh amendment to the Constitution) who is alleged to be in violation of any permit, standard, regulation, condition, requirement, prohibition, or order which has become effective pursuant to this chapter; or

(B) against any person, including the United States and any other governmental instrumentality or agency, to the extent permitted by the eleventh amendment to the Constitution, and including any past or present generator, past or present transporter, or past or present owner or operator of a treatment, storage, or disposal facility, who has contributed or who is contributing to the past or present handling, storage, treatment, transportation, or disposal of any solid or hazardous waste which may present an imminent and substantial endangerment to health or the environment; or

(2) against the Administrator where there is alleged a failure of the Administrator to perform any act or duty under this chapter which is not discretionary with the Administrator.

Any action under paragraph (a)(1) of this subsection shall be brought in the district court for the district in which the alleged violation occurred or the alleged endangerment may occur. Any action brought under paragraph (a)(2) of this subsection may be brought in the district court for the district in which the alleged violation occurred or in the District Court of the District of Columbia. The district court shall have jurisdiction, without regard to the amount in controversy or the citizenship of the parties, to enforce the permit, standard, regulation, condition, requirement, prohibition, or order, referred to in paragraph (1)(A), to restrain any person who has contributed or who is contributing to the past or present handling, storage, treatment, transportation, or disposal of any solid or hazardous waste referred to in paragraph (1)(B), to order such person to take such other action as may be necessary, or both, or to order the Administrator to perform the act or duty referred to in paragraph (2), as the case may be, and to apply any appropriate civil penalties under section 6928(a) and (g) of this title.

(b) Actions prohibited

(1) No action may be commenced under subsection (a)(1)(A) of this section—

(A) prior to 60 days after the plaintiff has given notice of the violation to—

(i) the Administrator;

(ii) the State in which the alleged violation occurs; and

(iii) to any alleged violator of such permit, standard, regulation, condition, requirement, prohibition, or order,

except that such action may be brought immediately after such notification in the case of an action under this section respecting a violation of subchapter III of this chapter; or

(B) if the Administrator or State has commenced and is diligently prosecuting a civil or criminal action in a court of the United States or a State to require compliance with such permit, standard, regulation, condition, requirement, prohibition, or order.

In any action under subsection (a)(1)(A) in a court of the United States, any person may intervene as a matter of right.

(2)(A) No action may be commenced under subsection (a)(1)(B) of this section prior to ninety days after the plaintiff has given notice of the endangerment to—

(i) the Administrator;

(ii) the State in which the alleged endangerment may occur;

(iii) any person alleged to have contributed or to be contributing to the past or present handling, storage, treatment, transportation, or disposal of any solid or hazardous waste referred to in subsection (a)(1)(B),

except that such action may be brought immediately after such notification in the case of an action under this section respecting a violation of subchapter III of this chapter.

(B) No action may be commenced under subsection (a)(1)(B) of this section if the Administrator, in order to restrain or abate acts or conditions which may have contributed or are contributing to the activities which may present the alleged endangerment—

(i) has commenced and is diligently prosecuting an action under section 6973 of this title or under section 106 of the Comprehensive Environmental Response, Compensation and Liability Act of 1980 [42 U.S.C. 9060];

(ii) is actually engaging in a removal action under section 104 of the Comprehensive Environmental Response, Compensation and Liability Act of 1980 [42 U.S.C. 9004];

(iii) has incurred costs to initiate a Remedial Investigation and Feasibility Study under section 104 of the Comprehensive Environmental Response, Compensation and Liability Act of 1980 [42 U.S.C. 9004] and is diligently proceeding with a remedial action under that Act [42 U.S.C. 9001 et seq.]; or

(iv) has obtained a court order (including a consent decree) or issued an administrative order under section 106 of the Comprehensive Environmental Response, Compensation and Liability Act of 980 [42 U.S.C. 9060] or section 6973 of this title pursuant to which a responsible party is diligently conducting a removal action, Remedial Investigation and Feasibility Study (RIFS), or proceeding with a remedial action.
In the case of an administrative order referred to in clause (iv), actions under subsection (a)(1)(B) are prohibited only as to
the scope and duration of the administrative order referred to in clause (iv).
(C) No action may be commenced under subsection (a)(1)(B) of this section if the State, in order to restrain or abate acts
or conditions which may have contributed or are contributing to the activities which may present the alleged endangerment

- (i) has commenced and is diligently prosecuting an action under subsection (a)(1)(B);
- (ii) is actually engaging in a removal action under section 104 of the Comprehensive Environmental Response,
Compensation and Liability Act of 1980 [42 U.S.C. 9604]; or
- (iii) has incurred costs to initiate a Remedial Investigation and Feasibility Study under section 104 of the
Comprehensive Environmental Response, Compensation and Liability Act of 1980 [42 U.S.C. 9604] and is diligently
proceeding with a remedial action under that Act [42 U.S.C. 9601 et seq.].

(D) No action may be commenced under subsection (a)(1)(B) by any person (other than a State or local government) with
respect to the siting of a hazardous waste treatment, storage, or a disposal facility, nor to restrain or enjoin the issuance of a
permit for such facility.

(E) In any action under subsection (a)(1)(B) in a court of the United States, any person may intervene as a matter of right
when the applicant claims an interest relating to the subject of the action and he is so situated that the disposition of the
action may, as a practical matter, impair or impede his ability to protect that interest, unless the Administrator or the State
shows that the applicant’s interest is adequately represented by existing parties.

(F) Whenever any action is brought under subsection (a)(1)(B) in a court of the United States, the plaintiff shall serve a
copy of the complaint on the Attorney General of the United States and with the Administrator.

c Notice

No action may be commenced under paragraph (a)(2) of this section prior to sixty days after the plaintiff has given notice
to the Administrator that he will commence such action, except that such action may be brought immediately after such
notification in the case of an action under this section respecting a violation of subchapter III. Notice under this subsection
shall be given in such manner as the Administrator shall prescribe by regulation. Any action respecting a violation under
this chapter may be brought under this section only in the judicial district in which such alleged violation occurs.

d Intervention

In any action under this section the Administrator, if not a party, may intervene as a matter of right.

e Costs

The court, in issuing any final order in any action brought pursuant to this section or section 6976 of this title, may award
costs of litigation (including reasonable attorney and expert witness fees) to the prevailing or substantially prevailing party,
whenever the court determines such an award is appropriate. The court may, if a temporary restraining order or preliminary
injunction is sought, require the filing of a bond or equivalent security in accordance with the Federal Rules of Civil
Procedure.

f Other rights preserved

Nothing in this section shall restrict any right which any person (or class of persons) may have under any statute or
common law to seek enforcement of any standard or requirement relating to the management of solid waste or hazardous
waste, or to seek any other relief (including relief against the Administrator or a State agency).

g Transporters

A transporter shall not be deemed to have contributed or to be contributing to the handling, storage, treatment, or
disposal, referred to in subsection (a)(1)(B) taking place after such solid waste or hazardous waste has left the possession
or control of such transporter, if the transportation of such waste was under a sole contractual arrangement arising from a
published tariff and acceptance for carriage by common carrier by rail and such transporter has exercised due care in the
past or present handling, storage, treatment, transportation and disposal of such waste.


EDITORIAL NOTES

REFERENCES IN TEXT

known as the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, which is classified principally to chapter 103 (§9601 et seq.) of this title. For complete classification of this Act to
the Code, see Short Title note set out under section 9601 of this title and Tables.

The Federal Rules of Civil Procedure, referred to in subsec. (e), are set out in the Appendix to Title 28, Judiciary and Judicial Procedure.

AMENDMENTS

1984—Subsec. (a). Pub. L. 98–616, §401(a), (b), designated existing provisions of subsec. (a)(1) as subpar. (A)
thereof, inserted "prohibition," after "requirement," added subpar. (B), and in provisions following par. (2)
inserted "or the alleged endangerment may occur" in first sentence and substituted "to enforce the permit,
standard, regulation, condition, requirement, prohibition, or order, referred to in paragraph (1)(A), to restrain any person who has contributed or who is contributing to the past or present handling, storage, treatment, transportation, or disposal of any solid or hazardous waste referred to in paragraph (1)(B), to order such person to take such other action as may be necessary, or both, or to order the Administrator to perform the act or duty referred to in paragraph (2), as the case may be, and to apply any appropriate civil penalties under section 6928(a) and (g) of this title" for "to enforce such regulation or order, or to order the Administrator to perform such act or duty as the case may be".

Subsec. (b). Pub. L. 98–616, §401(d), amended subsec. (b) generally. Prior to amendment, subsec. (b) read as follows: "No action may be commenced under paragraph (a)(1) of this section—

"(1) prior to sixty days after the plaintiff has given notice of the violation (A) to the Administrator; (B) to the State in which the alleged violation occurs; and (C) to any alleged violator of such permit, standard, regulation, condition, requirement, or order; or

"(2) if the Administrator or State has commenced and is diligently prosecuting a civil or criminal action in a court of the United States or a State to require compliance with such permit, standard, regulation, condition, requirement, or order: Provided, however, That in any such action in a court of the United States, any person may intervene as a matter of right."

Subsec. (e). Pub. L. 98–616, §401(e), substituted "to the prevailing or substantially prevailing party" for "to any party" and inserted "or section 6976 of this title".

Subsec. (g). Pub. L. 98–616, §401(c), added subsec. (g).

1978—Subsec. (c). Pub. L. 95–609, §7(p)(1), substituted "subchapter III" for "section 212 of this Act."

Subsec. (e). Pub. L. 95–609, §7(p)(2), substituted "require" for "requiring".

---

**EXECUTIVE DOCUMENTS**

**TRANSFER OF FUNCTIONS**

For transfer of certain enforcement functions of Administrator or other official of Environmental Protection Agency under this chapter to Federal Inspector, Office of Federal Inspector for the Alaska Natural Gas Transportation System, and subsequent transfer to Secretary of Energy, then to Federal Coordinator for Alaska Natural Gas Transportation Projects, see note set out under section 6903 of this title.

1. *So in original. The comma probably should be a semicolon.*

2. *So in original. Probably should be "1980".*

---

**§6973. Imminent hazard**

(a) Authority of Administrator

Notwithstanding any other provision of this chapter, upon receipt of evidence that the past or present handling, storage, treatment, transportation or disposal of any solid waste or hazardous waste may present an imminent and substantial endangerment to health or the environment, the Administrator may bring suit on behalf of the United States in the appropriate district court against any person (including any past or present generator, past or present transporter, or past or present owner or operator of a treatment, storage, or disposal facility) who has contributed or who is contributing to such handling, storage, treatment, transportation or disposal to restrain such person from such handling, storage, treatment, transportation, or disposal, to order such person to take such other action as may be necessary, or both. A transporter shall not be deemed to have contributed or to be contributing to such handling, storage, treatment, or disposal taking place after such solid waste or hazardous waste has left the possession or control of such transporter if the transportation of such waste was under a sole contractual arrangement arising from a published tariff and acceptance for carriage by common carrier by rail and such transporter has exercised due care in the past or present handling, storage, treatment, transportation and disposal of such waste. The Administrator shall provide notice to the affected State of any such suit. The Administrator may also, after notice to the affected State, take other action under this section including, but not limited to, issuing such orders as may be necessary to protect public health and the environment.

(b) Violations

Any person who willfully violates, or fails or refuses to comply with, any order of the Administrator under subsection (a) may, in an action brought in the appropriate United States district court to enforce such order, be fined not more than $5,000 for each day in which such violation occurs or such failure to comply continues.

(c) Immediate notice

Upon receipt of information that there is hazardous waste at any site which has presented an imminent and substantial endangerment to human health or the environment, the Administrator shall provide immediate notice to the appropriate local government agencies. In addition, the Administrator shall require notice of such endangerment to be promptly posted at the site where the waste is located.

(d) Public participation in settlements
Whenever the United States or the Administrator proposes to covenant not to sue or to forbear from suit or to settle any claim arising under this section, notice, and opportunity for a public meeting in the affected area, and a reasonable opportunity to comment on the proposed settlement prior to its final entry shall be afforded to the public. The decision of the United States or the Administrator to enter into or not to enter into such Consent Decree, covenant or agreement shall not constitute a final agency action subject to judicial review under this chapter or chapter 7 of title 5.


EDITORIAL NOTES

CODIFICATION

In subsec. (d), "chapter 7 of title 5" substituted for "the Administrative Procedure Act" on authority of Pub. L. 89–554, §7(b), Sept. 6, 1966, 80 Stat. 631, the first section of which enacted Title 5, Government Organization and Employees.

AMENDMENTS

1984—Subsec. (a). Pub. L. 98–616, §402, inserted "past or present" after "evidence that the", substituted "against any person (including any past or present generator, past or present transporter, or past or present owner or operator of a treatment, storage, or disposal facility who has contributed or, who is ".

Subsec. (c). Pub. L. 98–616, §403(a), added subsec. (c).


1980—Pub. L. 96–482, §25, designated existing provisions as subsec. (a), substituted "may present" for "is presenting" and "such handling, storage, treatment, transportation or disposal" for "the alleged disposal" and authorized other action to be taken by the Administrator after notice including issuance of protective orders relating to public health and the environment, and added subsec. (b).

1978—Pub. L. 95–609 struck out "for" after "restrain any person".

EXECUTIVE DOCUMENTS

TRANSFER OF FUNCTIONS

For transfer of certain enforcement functions of Administrator or other official of Environmental Protection Agency under this chapter to Federal Inspector, Office of Federal Inspector for the Alaska Natural Gas Transportation System, and subsequent transfer to Secretary of Energy, then to Federal Coordinator for Alaska Natural Gas Transportation Projects, see note set out under section 6903 of this title.

1 So in original. Probably should be "contractual".

§6974. Petition for regulations; public participation

(a) Petition

Any person may petition the Administrator for the promulgation, amendment, or repeal of any regulation under this chapter. Within a reasonable time following receipt of such petition, the Administrator shall take action with respect to such petition and shall publish notice of such action in the Federal Register, together with the reasons therefor.

(b) Public participation

(1) Public participation in the development, revision, implementation, and enforcement of any regulation, guideline, information, or program under this chapter shall be provided for, encouraged, and assisted by the Administrator and the States. The Administrator, in cooperation with the States, shall develop and publish minimum guidelines for public participation in such processes.

(2) Before the issuing of a permit to any person with any respect to any facility for the treatment, storage, or disposal of hazardous wastes under section 6925 of this title, the Administrator shall—
(A) cause to be published in major local newspapers of general circulation and broadcast over local radio stations notice of the agency's intention to issue such permit, and

(B) transmit in writing notice of the agency's intention to issue such permit to each unit of local government having jurisdiction over the area in which such facility is proposed to be located and to each State agency having any authority under State law with respect to the construction or operation of such facility.

If within 45 days the Administrator receives written notice of opposition to the agency's intention to issue such permit and a request for a hearing, or if the Administrator determines on his own initiative, he shall hold an informal public hearing (including an opportunity for presentation of written and oral views) on whether he should issue a permit for the proposed facility. Whenever possible the Administrator shall schedule such hearing at a location convenient to the nearest population center to such proposed facility and give notice in the aforementioned manner of the date, time, and subject matter of such hearing. No State program which provides for the issuance of permits referred to in this paragraph may be authorized by the Administrator under section 6926 of this title unless such program provides for the notice and hearing required by the paragraph.


EDITORIAL NOTES

AMENDMENTS

1980—Subsec. (b). Pub. L. 96–482 designated existing provisions as par. (1) and added par. (2).

EXECUTIVE DOCUMENTS

TRANSFER OF FUNCTIONS

For transfer of certain enforcement functions of Administrator or other official of Environmental Protection Agency under this chapter to Federal Inspector, Office of Federal Inspector for the Alaska Natural Gas Transportation System, and subsequent transfer to Secretary of Energy, then to Federal Coordinator for Alaska Natural Gas Transportation Projects, see note set out under section 6903 of this title.

§6975. Separability

If any provision of this chapter, or the application of any provision of this chapter to any person or circumstance, is held invalid, the application of such provision to other persons or circumstances, and the remainder of this chapter, shall not be affected thereby.


§6976. Judicial review

(a) Review of final regulations and certain petitions

Any judicial review of final regulations promulgated pursuant to this chapter and the Administrator's denial of any petition for the promulgation, amendment, or repeal of any regulation under this chapter shall be in accordance with sections 701 through 706 of title 5, except that—

(1) a petition for review of action of the Administrator in promulgating any regulation, or requirement under this chapter or denying any petition for the promulgation, amendment or repeal of any regulation under this chapter may be filed only in the United States Court of Appeals for the District of Columbia, and such petition shall be filed within ninety days from the date of such promulgation or denial, or after such date if such petition for review is based solely on grounds arising after such ninetieth day; action of the Administrator with respect to which review could have been obtained under this subsection shall not be subject to judicial review in civil or criminal proceedings for enforcement; and

(2) in any judicial proceeding brought under this section in which review is sought of a determination under this chapter required to be made on the record after notice and opportunity for hearing, if a party seeking review under this chapter applies to the court for leave to adduce additional evidence, and shows to the satisfaction of the court that the information is material and that there were reasonable grounds for the failure to adduce such evidence in the proceeding before the Administrator, the court may order such additional evidence (and evidence in rebuttal thereof) to be taken before the Administrator, and to be adduced upon the hearing in such manner and upon such terms and conditions as the court may deem proper; the Administrator may modify his findings as to the facts, or make new findings, by reason of the additional evidence so taken, and he shall file with the court such modified or new findings and his recommendation, if any, for the modification or setting aside of his original order, with the return of such additional evidence.

(b) Review of certain actions under sections 6925 and 6926 of this title

Review of the Administrator's action (1) in issuing, denying, modifying, or revoking any permit under section 6925 of this title (or in modifying or revoking any permit which is deemed to have been issued under section 6935(d)(1) of this title), or
(2) in granting, denying, or withdrawing authorization or interim authorization under section 6926 of this title, may be had by any interested person in the Circuit Court of Appeals of the United States for the Federal judicial district in which such person resides or transacts such business upon application by such person. Any such application shall be made within ninety days from the date of such issuance, denial, modification, revocation, grant, or withdrawal, or after such date only if such application is based solely on grounds which arose after such ninetieth day. Action of the Administrator with respect to which review could have been obtained under this subsection shall not be subject to judicial review in civil or criminal proceedings for enforcement. Such review shall be in accordance with sections 701 through 706 of title 5.


EDITORIAL NOTES

REFERENCES IN TEXT

Section 6935(d)(1) of this title, referred to in subsec. (b), was in the original a reference to section 3012(d)(1) of Pub. L. 89–272, which was renumbered section 3014(d)(1) of Pub. L. 89–272 by Pub. L. 98–616 and is classified to section 6935(d)(1) of this title.

AMENDMENTS

1984—Pub. L. 98–616 inserted "(or in modifying or revoking any permit which is deemed to have been issued under section 6935(d)(1) of this title)" and inserted "Action of the Administrator with respect to which review could have been obtained under this subsection shall not be subject to judicial review in civil or criminal proceedings for enforcement."

1980—Pub. L. 96–482, §27(a), designated existing provisions as subsec. (a), in provision preceding par. (1), included judicial review of Administrator's denial of any petition for promulgation, amendment, or repeal of any regulation in par. (1), included review of Administrator's denial of any petition for promulgation, amendment, or repeal of any regulation, and substituted "District of Columbia, and" for "District of Columbia. Any", "date of such promulgation or denial" for "date of such promulgation", "petition for review is based" for "petition is based", and ";" for ". Action", and in par. (2), substituted "proper; the" for "proper. The", and added subsec. (b).

EXECUTIVE DOCUMENTS

TRANSFER OF FUNCTIONS

For transfer of certain enforcement functions of Administrator or other official of Environmental Protection Agency under this chapter to Federal Inspector, Office of Federal Inspector for the Alaska Natural Gas Transportation System, and subsequent transfer to Secretary of Energy, then to Federal Coordinator for Alaska Natural Gas Transportation Projects, see note set out under section 6903 of this title.

See References in Text note below.

§6977. Grants or contracts for training projects

(a) General authority

The Administrator is authorized to make grants to, and contracts with any eligible organization. For purposes of this section the term "eligible organization" means a State or interstate agency, a municipality, educational institution, and any other organization which is capable of effectively carrying out a project which may be funded by grant under subsection (b) of this section.

(b) Purposes

(1) Subject to the provisions of paragraph (2), grants or contracts may be made to pay all or a part of the costs, as may be determined by the Administrator, of any project operated or to be operated by an eligible organization, which is designed—

(A) to develop, expand, or carry out a program (which may combine training, education, and employment) for training persons for occupations involving the management, supervision, design, operation, or maintenance of solid waste management and resource recovery equipment and facilities; or

(B) to train instructors and supervisory personnel to train or supervise persons in occupations involving the design, operation, and maintenance of solid waste management and resource recovery equipment and facilities.

(2) A grant or contract authorized by paragraph (1) of this subsection may be made only upon application to the Administrator at such time or times and containing such information as he may prescribe, except that no such application shall be approved unless it provides for the same procedures and reports (and access to such reports and to other records)
as required by section 3254a(b)(4) and (5) \(^1\) of this title (as in effect before October 21, 1976) with respect to applications made under such section (as in effect before October 21, 1976).


**EDITORIAL NOTES**

**REFERENCES IN TEXT**

Section 3254a(b)(4) and (5) of this title, referred to in subsec. (b)(2), was in the original "section 207(b)(4) and (5)"., meaning section 207(b)(4) and (5) of the Solid Waste Disposal Act, which was omitted in the general revision of the Solid Waste Disposal Act by Pub. L. 94–580 on Oct. 21, 1976.

**PRIOR PROVISIONS**

Provisions similar to those in this section were contained in section 3254d of this title, prior to the general amendment of the Solid Waste Disposal Act by Pub. L. 94–580.

**AMENDMENTS**

1998—Subsec. (c). Pub. L. 105–362 struck out heading and text of subsec. (c) which related to Administrator's study and report on State and local training needs and obstacles to employment and occupational advancement in solid waste management and resource recovery field.

1978—Subsec. (b)(1). Pub. L. 95–609, §7(r)(1), (2), substituted "management" for "disposal" in two places, and "resource" for "resources".

Subsec. (c)(3). Pub. L. 95–609, §7(r)(3), substituted "management" for "disposal".

**EXECUTIVE DOCUMENTS**

**TRANSFER OF FUNCTIONS**

For transfer of certain enforcement functions of Administrator or other official of Environmental Protection Agency under this chapter to Federal Inspector, Office of Federal Inspector for the Alaska Natural Gas Transportation System, and subsequent transfer to Secretary of Energy, then to Federal Coordinator for Alaska Natural Gas Transportation Projects, see note set out under section 6903 of this title.

\(^1\) See References in Text note below.

**§6978. Payments**

(a) General rule

Payments of grants under this chapter may be made (after necessary adjustment on account of previously made underpayments or overpayments) in advance or by way of reimbursement, and in such installments and on such conditions as the Administrator may determine.

(b) Prohibition

No grant may be made under this chapter to any private profitmaking organization.


**EDITORIAL NOTES**

**PRIOR PROVISIONS**

Provisions similar to those in this section were contained in section 3258 of this title, prior to the general amendment of the Solid Waste Disposal Act by Pub. L. 94–580.

**EXECUTIVE DOCUMENTS**

**TRANSFER OF FUNCTIONS**

For transfer of certain enforcement functions of Administrator or other official of Environmental Protection Agency under this chapter to Federal Inspector, Office of Federal Inspector for the Alaska Natural Gas Transportation System, and subsequent transfer to Secretary of Energy, then to Federal Coordinator for Alaska Natural Gas Transportation Projects, see note set out under section 6903 of this title.
§6979. Labor standards

No grant for a project of construction under this chapter shall be made unless the Administrator finds that the application contains or is supported by reasonable assurance that all laborers and mechanics employed by contractors or subcontractors on projects of the type covered by sections 3141–3144, 3146, and 3147 of title 40, will be paid wages at rates not less than those prevailing on similar work in the locality as determined by the Secretary of Labor in accordance with those sections; and the Secretary of Labor shall have with respect to the labor standards specified in this section the authority and functions set forth in Reorganization Plan Numbered 14 of 1950 (15 F.R. 3176) and section 3145 of title 40.


Editorial Notes

References in Text

Reorganization Plan Numbered 14 of 1950, referred to in text, is set out in the Appendix to Title 5, Government Organization and Employees.

Codification


Prior Provisions

Provisions similar to those in this section were contained in section 3256 of this title, prior to the general amendment of the Solid Waste Disposal Act by Pub. L. 94–580.

Amendments

1980—Pub. L. 96–482 substituted "Administrator" for "Secretary".

§6979a. Transferred

Editorial Notes

Codification


§6979b. Law enforcement authority

The Attorney General of the United States shall, at the request of the Administrator and on the basis of a showing of need, deputize qualified employees of the Environmental Protection Agency to serve as special deputy United States marshals in criminal investigations with respect to violations of the criminal provisions of this chapter.


Editorial Notes

Prior Provisions

A prior section 7010 of Pub. L. 89–272, which was classified to section 6979a of this title, was renumbered section 3020 and transferred to section 6939b of this title.

Subchapter VIII—Research, Development, Demonstration, and Information
§6981. Research, demonstration, training, and other activities

(a) General authority

The Administrator, alone or after consultation with the Secretary of Energy, shall conduct, and encourage, cooperate with, and render financial and other assistance to appropriate public (whether Federal, State, interstate, or local) authorities, agencies, and institutions, private agencies and institutions, and individuals in the conduct of, and promote the coordination of, research, investigations, experiments, training, demonstrations, surveys, public education programs, and studies relating to—

(1) any adverse health and welfare effects of the release into the environment of material present in solid waste, and methods to eliminate such effects;
(2) the operation and financing of solid waste management programs;
(3) the planning, implementation, and operation of resource recovery and resource conservation systems and hazardous waste management systems, including the marketing of recovered resources;
(4) the production of usable forms of recovered resources, including fuel, from solid waste;
(5) the reduction of the amount of such waste and unsalvageable waste materials;
(6) the development and application of new and improved methods of collecting and disposing of solid waste and processing and recovering materials and energy from solid wastes;
(7) the identification of solid waste components and potential materials and energy recoverable from such waste components;
(8) small scale and low technology solid waste management systems, including but not limited to, resource recovery source separation systems;
(9) methods to improve the performance characteristics of resources recovered from solid waste and the relationship of such performance characteristics to available and potentially available markets for such resources;
(10) improvements in land disposal practices for solid waste (including sludge) which may reduce the adverse environmental effects of such disposal and other aspects of solid waste disposal on land, including means for reducing the harmful environmental effects of earlier and existing landfills, means for restoring areas damaged by such earlier or existing landfills, means for rendering landfills safe for purposes of construction and other uses, and techniques of recovering materials and energy from landfills;
(11) methods for the sound disposal of, or recovery of resources, including energy, from, sludge (including sludge from pollution control and treatment facilities, coal slurry pipelines, and other sources);
(12) methods of hazardous waste management, including methods of rendering such waste environmentally safe; and
(13) any adverse effects on air quality (particularly with regard to the emission of heavy metals) which result from solid waste which is burned (either alone or in conjunction with other substances) for purposes of treatment, disposal or energy recovery.

(b) Management program

(1)(A) In carrying out his functions pursuant to this chapter, and any other Federal legislation respecting solid waste or discarded material research, development, and demonstrations, the Administrator shall establish a management program or system to insure the coordination of all such activities and to facilitate and accelerate the process of development of sound new technology (or other discoveries) from the research phase, through development, and into the demonstration phase.
(B) The Administrator shall (i) assist, on the basis of any research projects which are developed with assistance under this chapter or without Federal assistance, the construction of pilot plant facilities for the purpose of investigating or testing the technological feasibility of any promising new fuel, energy, or resource recovery or resource conservation method or technology; and (ii) demonstrate each such method and technology that appears justified by an evaluation at such pilot plant stage or at a pilot plant stage developed without Federal assistance. Each such demonstration shall incorporate new or innovative technical advances or shall apply such advances to different circumstances and conditions, for the purpose of evaluating design concepts or to test the performance, efficiency, and economic feasibility of a particular method or technology under actual operating conditions. Each such demonstration shall be so planned and designed that, if successful, it can be expanded or utilized directly as a full-scale operational fuel, energy, or resource recovery or resource conservation facility.

(2) Any energy-related research, development, or demonstration project for the conversion including bioconversion, of solid waste carried out by the Environmental Protection Agency or by the Secretary of Energy pursuant to this chapter or any other Act shall be administered in accordance with the May 7, 1976, Interagency Agreement between the Environmental Protection Agency and the Energy Research and Development Administration on the Development of Energy from Solid Wastes and specifically, that in accordance with this agreement, (A) for those energy-related projects of mutual interest, planning will be conducted jointly by the Environmental Protection Agency and the Secretary of Energy, following which project responsibility will be assigned to one agency; (B) energy-related portions of projects for recovery of synthetic fuels or other forms of energy from solid waste shall be the responsibility of the Secretary of Energy; (C) the Environmental Protection Agency shall retain responsibility for the environmental, economic, and institutional aspects of solid waste projects and for assurance that such projects are consistent with any applicable suggested guidelines published pursuant to section 6907 of this title, and any applicable State or regional solid waste management plan; and (D) any activities undertaken under provisions of sections 6982 and 6983 of this title as related to energy; as related to energy or synthetic fuels recovery from waste; or as related to energy conservation shall be accomplished through coordination and consultation with the Secretary of Energy.

(c) Authorities
(1) In carrying out subsection (a) of this section respecting solid waste research, studies, development, and demonstration, except as otherwise specifically provided in section 6984(d) of this title, the Administrator may make grants to or enter into contracts (including contracts for construction) with, public agencies and authorities or private persons.

(2) Contracts for research, development, or demonstrations or for both (including contracts for construction) shall be made in accordance with and subject to the limitations provided with respect to research contracts of the military departments in section 2353 of title 10, except that the determination, approval, and certification required thereby shall be made by the Administrator.

(3) Any invention made or conceived in the course of, or under, any contract under this chapter shall be subject to section 9 of the Federal Nonnuclear Energy Research and Development Act of 1974 [42 U.S.C. 5908] to the same extent and in the same manner as inventions made or conceived in the course of contracts under such Act [42 U.S.C. 5901 et seq.], except that in applying such section, the Environmental Protection Agency shall be substituted for the Secretary of Energy and the words “solid waste” shall be substituted for the word “energy” where appropriate.

(4) For carrying out the purpose of this chapter the Administrator may detail personnel of the Environmental Protection Agency to agencies eligible for assistance under this section.


EDITORIAL NOTES

REFERENCES IN TEXT


PRIOR PROVISIONS

Provisions similar to those in this section were contained in section 3253 of this title, prior to the general amendment of the Solid Waste Disposal Act by Pub. L. 94–580.

AMENDMENTS

1978—Subsec. (a)(2). Pub. L. 95–609, §7(s)(1), substituted "management" for "disposal".

Subsec. (a)(13). Pub. L. 95–609, §7(s)(2), inserted "treatment," after "for purpose of".

STATUTORY NOTES AND RELATED SUBSIDIARIES

TRANSFER OF FUNCTIONS

"Secretary of Energy" was substituted for "Administrator of the Federal Energy Administration, the Administrator of the Energy Research and Development Administration, or the Chairman of the Federal Power Commission" in subsec. (a), and for "Energy Research and Development Administration" in subssecs. (b)(2) and (c)(3), in view of the termination of the Federal Energy Administration, the Energy Research and Development Administration, and the Federal Power Commission and the transfer of their functions and the functions of the Administrators and Chairman thereof (with certain exceptions) to the Secretary of Energy pursuant to sections 301, 703, and 707 of Pub. L. 95–91, which are classified to sections 7151, 7293, and 7297 of this title.

EPA STUDY OF METHODS TO REDUCE PLASTIC POLLUTION

Pub. L. 100–220, title II, §2202, Dec. 29, 1987, 101 Stat. 1465, directed Administrator of Environmental Protection Agency, in consultation with Secretary of Commerce, to conduct a study of the adverse effects of improper disposal of plastic articles on environment and on waste disposal, and various methods to reduce or eliminate such adverse effects, and directed Administrator, within 18 months after Dec. 29, 1987, to report results of this study to Congress.

NATIONAL ADVISORY COMMISSION ON RESOURCE CONSERVATION AND RECOVERY

Pub. L. 96–482, §33, Oct. 21, 1980, 94 Stat. 2356, as amended by Pub. L. 105–362, title V, §501(g), Nov. 10, 1998, 112 Stat. 3284, provided for establishment, membership, functions, etc., of a National Advisory Commission on Resource Conservation and Recovery, directed Commission, upon expiration of the two-year period beginning on the date when all initial members of the Commission have been appointed or the date initial funds become available, whichever is later, to transmit a final report to President and Congress containing a detailed statement of the findings and conclusions of the Commission, and terminated the Commission 30 days after submission of its final report.
SOLID WASTE CLEANUP ON FEDERAL LANDS IN ALASKA; STUDY AND REPORT TO CONGRESSIONAL COMMITTEES


LEACHATE CONTROL RESEARCH PROGRAM IN DELAWARE

Pub. L. 94–580, §4, Oct. 21, 1976, 90 Stat. 2840, directed Administrator of Environmental Protection Agency, in order to demonstrate effective means of dealing with contamination of public water supplies by leachate from abandoned or other landfills, to provide technical and financial assistance for a research program, designed by New Castle County area wide waste management program, to control leachate from Llangollen Landfill in New Castle County, Delaware, and provided up to $250,000 in each of the fiscal years 1978 and 1979 for the operating costs of a counter-pumping program to contain the leachate from the Llangollen Landfill during the period of this study.

EXECUTIVE DOCUMENTS

TRANSFER OF FUNCTIONS

For transfer of certain enforcement functions of Administrator or other official of Environmental Protection Agency under this chapter to Federal Inspector, Office of Federal Inspector for the Alaska Natural Gas Transportation System, and subsequent transfer to Secretary of Energy, then to Federal Coordinator for Alaska Natural Gas Transportation Projects, see note set out under section 6903 of this title.

§6982. Special studies; plans for research, development, and demonstrations

(a) Glass and plastic

The Administrator shall undertake a study and publish a report on resource recovery from glass and plastic waste, including a scientific, technological, and economic investigation of potential solutions to implement such recovery.

(b) Composition of waste stream

The Administrator shall undertake a systematic study of the composition of the solid waste stream and of anticipated future changes in the composition of such stream and shall publish a report containing the results of such study and quantitatively evaluating the potential utility of such components.

(c) Priorities study

For purposes of determining priorities for research on recovery of materials and energy from solid waste and developing materials and energy recovery research, development, and demonstration strategies, the Administrator shall review, and make a study of, the various existing and promising techniques of energy recovery from solid waste (including, but not limited to, waterwall furnace incinerators, dry shredded fuel systems, pyrolysis, densified refuse-derived fuel systems, anaerobic digestion, and fuel and feedstock preparation systems). In carrying out such study the Administrator shall investigate with respect to each such technique—

(1) the degree of public need for the potential results of such research, development, or demonstration,

(2) the potential for research, development, and demonstration without Federal action, including the degree of restraint on such potential posed by the risks involved, and

(3) the magnitude of effort and period of time necessary to develop the technology to the point where Federal assistance can be ended.

(d) Small-scale and low technology study

The Administrator shall undertake a comprehensive study and analysis of, and publish a report on, systems of small-scale and low technology solid waste management, including household resource recovery and resource recovery systems which have special application to multiple dwelling units and high density housing and office complexes. Such study and analysis shall include an investigation of the degree to which such systems could contribute to energy conservation.

(e) Front-end source separation

The Administrator shall undertake research and studies concerning the compatibility of front-end source separation systems with high technology resource recovery systems and shall publish a report containing the results of such research and studies.

(f) Mining waste

The Administrator, in consultation with the Secretary of the Interior, shall conduct a detailed and comprehensive study on the adverse effects of solid wastes from active and abandoned surface and underground mines on the environment, including, but not limited to, the effects of such wastes on humans, water, air, health, welfare, and natural resources, and on
the adequacy of means and measures currently employed by the mining industry, Government agencies, and others to dispose of and utilize such solid wastes and to prevent or substantially mitigate such adverse effects. Such study shall include an analysis of—

1. the sources and volume of discarded material generated per year from mining;
2. present disposal practices;
3. potential dangers to human health and the environment from surface runoff of leachate and air pollution by dust;
4. alternatives to current disposal methods;
5. the cost of those alternatives in terms of the impact on mine product costs; and
6. potential for use of discarded material as a secondary source of the mine product.

In furtherance of this study, the Administrator shall, as he deems appropriate, review studies and other actions of other Federal agencies concerning such wastes with a view toward avoiding duplication of effort and the need to expedite such study. Not later than thirty-six months after October 21, 1980, the Administrator shall publish a report of such study and shall include appropriate findings and recommendations for Federal and non-Federal actions concerning such effects. Such report shall be submitted to the Committee on Environment and Public Works of the United States Senate and the Committee on Energy and Commerce of the United States House of Representatives.

(g) Sludge

The Administrator shall undertake a comprehensive study and publish a report on sludge. Such study shall include an analysis of—

1. what types of solid waste (including but not limited to sewage and pollution treatment residues and other residues from industrial operations such as extraction of oil from shale, liquefaction and gasification of coal and coal slurry pipeline operations) shall be classified as sludge;
2. the effects of air and water pollution legislation on the creation of large volumes of sludge;
3. the amounts of sludge originating in each State and in each industry producing sludge;
4. methods of disposal of such sludge, including the cost, efficiency, and effectiveness of such methods;
5. alternative methods for the use of sludge, including agricultural applications of sludge and energy recovery from sludge; and
6. methods to reclaim areas which have been used for the disposal of sludge or which have been damaged by sludge.

(h) Tires

The Administrator shall undertake a study and publish a report respecting discarded motor vehicle tires which shall include an analysis of the problems involved in the collection, recovery of resources including energy, and use of such tires.

(i) Resource recovery facilities

The Administrator shall conduct research and report on the economics of, and impediments, to the effective functioning of resource recovery facilities.

(j) Resource Conservation Committee

1. The Administrator shall serve as Chairman of a Committee composed of himself, the Secretary of Commerce, the Secretary of Labor, the Chairman of the Council on Environmental Quality, the Secretary of Treasury, the Secretary of the Interior, the Secretary of Energy, the Chairman of the Council of Economic Advisors, and a representative of the Office of Management and Budget, which shall conduct a full and complete investigation and study of all aspects of the economic, social, and environmental consequences of resource conservation with respect to—

(A) the appropriateness of recommended incentives and disincentives to foster resource conservation;
(B) the effect of existing public policies (including subsidies and economic incentives and disincentives, percentage depletion allowances, capital gains treatment and other tax incentives and disincentives) upon resource conservation, and the likely effect of the modification or elimination of such incentives and disincentives upon resource conservation;
(C) the appropriateness and feasibility of restricting the manufacture or use of categories of consumer products as a resource conservation strategy;
(D) the appropriateness and feasibility of employing as a resource conservation strategy the imposition of solid waste management charges on consumer products, which charges would reflect the costs of solid waste management services, litter pickup, the value of recoverable components of such product, final disposal, and any social value associated with the nonrecycling or uncontrolled disposal of such product; and
(E) the need for further research, development, and demonstration in the area of resource conservation.

2. The study required in paragraph (1)(D) may include pilot scale projects, and shall consider and evaluate alternative strategies with respect to—

(A) the product categories on which such charges would be imposed;
(B) the appropriate state in the production of such consumer product at which to levy such charge;
(C) appropriate criteria for establishing such charges for each consumer product category;
(D) methods for the adjustment of such charges to reflect actions such as recycling which would reduce the overall quantities of solid waste requiring disposal; and
(E) procedures for amending, modifying, or revising such charges to reflect changing conditions.

3. The design for the study required in paragraph (1) of this subsection shall include timetables for the completion of the study. A preliminary report putting forth the study design shall be sent to the President and the Congress within six months.
following October 21, 1976, and followup reports shall be sent six months thereafter. Each recommendation resulting from
the study shall include at least two alternatives to the proposed recommendation.

(4) The results of such investigation and study, including recommendations, shall be reported to the President and the
Congress not later than two years after October 21, 1976.

(5) There are authorized to be appropriated not to exceed $2,000,000 to carry out this subsection.

(k) Airport landfills

The Administrator shall undertake a comprehensive study and analysis of and publish a report on systems to alleviate the
hazards to aviation from birds congregating and feeding on landfills in the vicinity of airports.

(l) Completion of research and studies

The Administrator shall complete the research and studies, and submit the reports, required under subsections (b), (c),
(d), (e), (f), (g), and (k) not later than October 1, 1978. The Administrator shall complete the research and studies, and
submit the reports, required under subsections (a), (h), and (i) not later than October 1, 1979. Upon completion, each study
specified in subsections (a) through (k) of this section, the Administrator shall prepare a plan for research, development, and
demonstration respecting the findings of the study and shall submit any legislative recommendations resulting from such
study to appropriate committees of Congress.

(m) Drilling fluids, produced waters, and other wastes associated with the exploration, development, or production
of crude oil or natural gas or geothermal energy

(1) The Administrator shall conduct a detailed and comprehensive study and submit a report on the adverse effects, if
any, of drilling fluids, produced waters, and other wastes associated with the exploration, development, or production of
 crude oil or natural gas or geothermal energy on human health and the environment, including, but not limited to, the effects
of such wastes on humans, water, air, health, welfare, and natural resources and on the adequacy of means and measures
currently employed by the oil and gas and geothermal drilling and production industry, Government agencies, and others to
dispose of and utilize such wastes and to prevent or substantially mitigate such adverse effects. Such study shall include an
analysis of—

(A) the sources and volume of discarded material generated per year from such wastes;
(B) present disposal practices;
(C) potential danger to human health and the environment from the surface runoff or leachate;
(D) documented cases which prove or have caused danger to human health and the environment from surface runoff or
leachate;
(E) alternatives to current disposal methods;
(F) the cost of such alternatives; and
(G) the impact of those alternatives on the exploration for, and development and production of, crude oil and natural gas
or geothermal energy.

In furtherance of this study, the Administrator shall, as he deems appropriate, review studies and other actions of other
Federal agencies concerning such wastes with a view toward avoiding duplication of effort and the need to expedite such
study. The Administrator shall publish a report of such study and shall include appropriate findings and recommendations for
Federal and non-Federal actions concerning such effects.

(2) The Administrator shall complete the research and study and submit the report required under paragraph (1) not later
than twenty-four months from October 21, 1980. Upon completion of the study, the Administrator shall prepare a summary
of the findings of the study, a plan for research, development, and demonstration respecting the findings of the study, and
shall submit the findings and the study, along with any recommendations resulting from such study, to the Committee on
Environment and Public Works of the United States Senate and the Committee on Energy and Commerce of the United
States House of Representatives.

(3) There are authorized to be appropriated not to exceed $1,000,000 to carry out the provisions of this subsection.

(n) Materials generated from the combustion of coal and other fossil fuels

The Administrator shall conduct a detailed and comprehensive study and submit a report on the adverse effects on
human health and the environment, if any, of the disposal and utilization of fly ash waste, bottom ash waste, slag waste, flue
gas emission control waste, and other byproduct materials generated primarily from the combustion of coal or other fossil
fuels. Such study shall include an analysis of—

(1) the source and volumes of such material generated per year;
(2) present disposal and utilization practices;
(3) potential danger, if any, to human health and the environment from the disposal and reuse of such materials;
(4) documented cases in which danger to human health or the environment from surface runoff or leachate has been
proved;
(5) alternatives to current disposal methods;
(6) the costs of such alternatives;
(7) the impact of those alternatives on the use of coal and other natural resources; and
(8) the current and potential utilization of such materials.

In furtherance of this study, the Administrator shall, as he deems appropriate, review studies and other actions of other
Federal and State agencies concerning such material and invite participation by other concerned parties, including industry
and other Federal and State agencies, with a view toward avoiding duplication of effort. The Administrator shall publish a
report on such study, which shall include appropriate findings, not later than twenty-four months after October 21, 1980.
Such study and findings shall be submitted to the Committee on Environment and Public Works of the United States Senate and the Committee on Energy and Commerce of the United States House of Representatives.

(o) Cement kiln dust waste
The Administrator shall conduct a detailed and comprehensive study of the adverse effects on human health and the environment, if any, of the disposal of cement kiln dust waste. Such study shall include an analysis of—
(1) the source and volumes of such materials generated per year;
(2) present disposal practices;
(3) potential danger, if any, to human health and the environment from the disposal of such materials;
(4) documented cases in which danger to human health or the environment has been proved;
(5) alternatives to current disposal methods;
(6) the costs of such alternatives;
(7) the impact of those alternatives on the use of natural resources; and
(8) the current and potential utilization of such materials.

In furtherance of this study, the Administrator shall, as he deems appropriate, review studies and other actions of other Federal and State agencies concerning such waste or materials and invite participation by other concerned parties, including industry and other Federal and State agencies, with a view toward avoiding duplication of effort. The Administrator shall publish a report of such study, which shall include appropriate findings, not later than thirty-six months after October 21, 1980. Such report shall be submitted to the Committee on Environment and Public Works of the United States Senate and the Committee on Energy and Commerce of the United States House of Representatives.

(p) Materials generated from extraction, beneficiation, and processing of ores and minerals, including phosphate rock and overburden from uranium mining
The Administrator shall conduct a detailed and comprehensive study of the adverse effects on human health and the environment, if any, of the disposal and utilization of solid waste from the extraction, beneficiation, and processing of ores and minerals, including phosphate rock and overburden from uranium mining. Such study shall be conducted in conjunction with the study of mining wastes required by subsection (f) of this section and shall include an analysis of—
(1) the source and volumes of such materials generated per year;
(2) present disposal and utilization practices;
(3) potential danger, if any, to human health and the environment from the disposal and reuse of such materials;
(4) documented cases in which danger to human health or the environment has been proved;
(5) alternatives to current disposal methods;
(6) the costs of such alternatives;
(7) the impact of those alternatives on the use of phosphate rock and uranium ore, and other natural resources; and
(8) the current and potential utilization of such materials.

In furtherance of this study, the Administrator shall, as he deems appropriate, review studies and other actions of other Federal and State agencies concerning such waste or materials and invite participation by other concerned parties, including industry and other Federal and State agencies, with a view toward avoiding duplication of effort. The Administrator shall publish a report of such study, which shall include appropriate findings, in conjunction with the publication of the report of the study of mining wastes required to be conducted under subsection (f) of this section. Such report and findings shall be submitted to the Committee on Environment and Public Works of the United States Senate and the Committee on Energy and Commerce of the United States House of Representatives.

(q) Authorization of appropriations
There are authorized to be appropriated not to exceed $8,000,000 for the fiscal years 1978 and 1979 to carry out this section other than subsection (j).

(r) Minimization of hazardous waste
The Administrator shall compile, and not later than October 1, 1986, submit to the Congress, a report on the feasibility and desirability of establishing standards of performance or of taking other additional actions under this chapter to require the generators of hazardous waste to reduce the volume or quantity and toxicity of the hazardous waste they generate, and of establishing with respect to hazardous wastes required management practices or other requirements to assure such wastes are managed in ways that minimize present and future risks to human health and the environment. Such report shall include any recommendations for legislative changes which the Administrator determines are feasible and desirable to implement the national policy established by section 6902 of this title.

(s) Extending landfill life and reusing landfilled areas
The Administrator shall conduct detailed, comprehensive studies of methods to extend the useful life of sanitary landfills and to better use sites in which filled or closed landfills are located. Such studies shall address—
(1) methods to reduce the volume of materials before placement in landfills;
(2) more efficient systems for depositing waste in landfills;
(3) methods to enhance the rate of decomposition of solid waste in landfills, in a safe and environmentally acceptable manner;
(4) methane production from closed landfill units;
(5) innovative uses of closed landfill sites, including use for energy production such as solar or wind energy and use for metals recovery;
(6) potential for use of sewage treatment sludge in reclaiming landfilled areas; and
(7) methods to coordinate use of a landfill owned by one municipality by nearby municipalities, and to establish equitable rates for such use, taking into account the need to provide future landfill capacity to replace that so used.

The Administrator is authorized to conduct demonstrations in the areas of study provided in this subsection. The Administrator shall periodically report on the results of such studies, with the first such report not later than October 1, 1986. In carrying out this subsection, the Administrator need not duplicate other studies which have been completed and may rely upon information which has previously been compiled.


**EDITORIAL NOTES**

**AMENDMENTS**


Subsecs. (m) to (q). Pub. L. 96–482, §29(2), added subsecs. (m) to (p) and redesignated former subsec. (m) as (q).

1978—Subsec. (g)(1). Pub. L. 95–609, §7(t)(1), substituted "shale, liquefaction" for "shale liquefaction".
Subsec. (j)(1). Pub. L. 95–609, §7(t)(2), enacted a provision adding the Secretary of Energy and the Chairman of the Council of Economic Advisors to the Committee.
Subsec. (j)(2). Pub. L. 95–609, §7(t)(3), substituted "paragraph (1)(D)" for "paragraph (2)(D)".
Subsec. (j)(3). Pub. L. 95–609, §7(t)(4), substituted "paragraph (1)" for "paragraph (2)(D)".
Subsec. (1). Pub. L. 95–609, §7(t)(5), struck out requirement of submission of reports under subsec. (j) of this section.

**STATUTORY NOTES AND RELATED SUBSIDIARIES**

**CHANGE OF NAME**


**EXECUTIVE DOCUMENTS**

**TRANSFER OF FUNCTIONS**

For transfer of certain enforcement functions of Administrator or other official of Environmental Protection Agency under this chapter to Federal Inspector, Office of Federal Inspector for the Alaska Natural Gas Transportation System, and subsequent transfer to Secretary of Energy, then to Federal Coordinator for Alaska Natural Gas Transportation Projects, see note set out under section 6903 of this title.

§6983. Coordination, collection, and dissemination of information

(a) Information

The Administrator shall develop, collect, evaluate, and coordinate information on—

1 methods and costs of the collection of solid waste;
2 solid waste management practices, including data on the different management methods and the cost, operation, and maintenance of such methods;
3 the amounts and percentages of resources (including energy) that can be recovered from solid waste by use of various solid waste management practices and various technologies;
4 methods available to reduce the amount of solid waste that is generated;
(5) existing and developing technologies for the recovery of energy or materials from solid waste and the costs, reliability, and risks associated with such technologies;

(6) hazardous solid waste, including incidents of damage resulting from the disposal of hazardous solid wastes; inherently and potentially hazardous solid wastes; methods of neutralizing or properly disposing of hazardous solid wastes; facilities that properly dispose of hazardous wastes;

(7) methods of financing resource recovery facilities or, sanitary landfills, or hazardous solid waste treatment facilities, whichever is appropriate for the entity developing such facility or landfill (taking into account the amount of solid waste reasonably expected to be available to such entity);

(8) the availability of markets for the purchase of resources, either materials or energy, recovered from solid waste; and

(9) research and development projects respecting solid waste management.

(b) Library

(1) The Administrator shall establish and maintain a central reference library for (A) the materials collected pursuant to subsection (a) of this section and (B) the actual performance and cost effectiveness records and other data and information with respect to—

(i) the various methods of energy and resource recovery from solid waste,

(ii) the various systems and means of resource conservation,

(iii) the various systems and technologies for collection, transport, storage, treatment, and final disposition of solid waste, and

(iv) other aspects of solid waste and hazardous solid waste management.

Such central reference library shall also contain, but not be limited to, the model codes and model accounting systems developed under this section, the information collected under subsection (d), and, subject to any applicable requirements of confidentiality, information respecting any aspect of solid waste provided by officers and employees of the Environmental Protection Agency which has been acquired by them in the conduct of their functions under this chapter and which may be of value to Federal, State, and local authorities and other persons.

(2) Information in the central reference library shall, to the extent practicable, be collated, analyzed, verified, and published and shall be made available to State and local governments and other persons at reasonable times and subject to such reasonable charges as may be necessary to defray expenses of making such information available.

(c) Model accounting system

In order to assist State and local governments in determining the cost and revenues associated with the collection and disposal of solid waste and with resource recovery operations, the Administrator shall develop and publish a recommended model cost and revenue accounting system applicable to the solid waste management functions of State and local governments. Such system shall be in accordance with generally accepted accounting principles. The Administrator shall periodically, but not less frequently than once every five years, review such accounting system and revise it as necessary.

(d) Model codes

The Administrator is authorized, in cooperation with appropriate State and local agencies, to recommend model codes, ordinances, and statutes, providing for sound solid waste management.

(e) Information programs

(1) The Administrator shall implement a program for the rapid dissemination of information on solid waste management, hazardous waste management, resource conservation, and methods of resource recovery from solid waste, including the results of any relevant research, investigations, experiments, surveys, studies, or other information which may be useful in the implementation of new or improved solid waste management practices and methods and information on any other technical, managerial, financial, or market aspect of resource conservation and recovery facilities.

(2) The Administrator shall develop and implement educational programs to promote citizen understanding of the need for environmentally sound solid waste management practices.

(f) Coordination

In collecting and disseminating information under this section, the Administrator shall coordinate his actions and cooperate to the maximum extent possible with State and local authorities.

(g) Special restriction

Upon request, the full range of alternative technologies, programs or processes deemed feasible to meet the resource recovery or resource conservation needs of a jurisdiction shall be described in such a manner as to provide a sufficient evaluative basis from which the jurisdiction can make its decisions, but no officer or employee of the Environmental Protection Agency shall, in an official capacity, lobby for or otherwise represent an agency position in favor of resource recovery or resource conservation, as a policy alternative for adoption into ordinances, codes, regulations, or law by any State or political subdivision thereof.


EDITORIAL NOTES

AMENDMENTS

EXECUTIVE DOCUMENTS

TRANSFER OF FUNCTIONS

For transfer of certain enforcement functions of Administrator or other official of Environmental Protection Agency under this chapter to Federal Inspector, Office of Federal Inspector for the Alaska Natural Gas Transportation System, and subsequent transfer to Secretary of Energy, then to Federal Coordinator for Alaska Natural Gas Transportation Projects, see note set out under section 6903 of this title.

§6984. Full-scale demonstration facilities

(a) Authority

The Administrator may enter into contracts with public agencies or authorities or private persons for the construction and operation of a full-scale demonstration facility under this chapter, or provide financial assistance in the form of grants to a full-scale demonstration facility under this chapter only if the Administrator finds that—

(1) such facility or proposed facility will demonstrate at full scale a new or significantly improved technology or process, a practical and significant improvement in solid waste management practice, or the technological feasibility and cost effectiveness of an existing, but unproven technology, process, or practice, and will not duplicate any other Federal, State, local, or commercial facility which has been constructed or with respect to which construction has begun (determined as of the date action is taken by the Administrator under this chapter),

(2) such contract or assistance meets the requirements of section 6981 of this title and meets other applicable requirements of this chapter,

(3) such facility will be able to comply with the guidelines published under section 6907 of this title and with other laws and regulations for the protection of health and the environment,

(4) in the case of a contract for construction or operation, such facility is not likely to be constructed or operated by State, local, or private persons or in the case of an application for financial assistance, such facility is not likely to receive adequate financial assistance from other sources, and

(5) any Federal interest in, or assistance to, such facility will be disposed of or terminated, with appropriate compensation, within such period of time as may be necessary to carry out the basic objectives of this chapter.

(b) Time limitation

No obligation may be made by the Administrator for financial assistance under this subchapter for any full-scale demonstration facility after the date ten years after October 21, 1976. No expenditure of funds for any such full-scale demonstration facility under this subchapter may be made by the Administrator after the date fourteen years after October 21, 1976.

(c) Cost sharing

(1) Wherever practicable, in constructing, operating, or providing financial assistance under this subchapter to a full-scale demonstration facility, the Administrator shall endeavor to enter into agreements and make other arrangements for maximum practicable cost sharing with other Federal, State, and local agencies, private persons, or any combination thereof.

(2) The Administrator shall enter into arrangements, wherever practicable and desirable, to provide monitoring of full-scale solid waste facilities (whether or not constructed or operated under this chapter) for purposes of obtaining information concerning the other aspects of such facilities. Where the Administrator provides only monitoring and evaluation instruments or personnel (or both) or funds for such instruments or personnel and provides no other financial assistance to a facility, notwithstanding section 6981(c)(3) of this title, title to any invention made or conceived of in the course of developing, constructing, or operating such facility shall not be required to vest in the United States and patents respecting such invention shall not be required to be issued to the United States.

(d) Prohibition

After October 21, 1976, the Administrator shall not construct or operate any full-scale facility (except by contract with public agencies or authorities or private persons).


EDITORIAL NOTES

AMENDMENTS

1984—Subsec. (c)(1). Pub. L. 98–616 inserted "(1)" before "Wherever".
1978—Subsec. (a)(1). Pub. L. 95–609 substituted "solid waste" for "discarded material".

EXECUTIVE DOCUMENTS
TRANSFER OF FUNCTIONS

For transfer of certain enforcement functions of Administrator or other official of Environmental Protection Agency under this chapter to Federal Inspector, Office of Federal Inspector for the Alaska Natural Gas Transportation System, and subsequent transfer to Secretary of Energy, then to Federal Coordinator for Alaska Natural Gas Transportation Projects, see note set out under section 6903 of this title.

§6985. Special study and demonstration projects on recovery of useful energy and materials

(a) Studies

The Administrator shall conduct studies and develop recommendations for administrative or legislative action on—

(1) means of recovering materials and energy from solid waste, recommended uses of such materials and energy for national or international welfare, including identification of potential markets for such recovered resources, the impact of distribution of such resources on existing markets, and potentials for energy conservation through resource conservation and resource recovery;

(2) actions to reduce waste generation which have been taken voluntarily or in response to governmental action, and those which practically could be taken in the future, and the economic, social, and environmental consequences of such actions;

(3) methods of collection, separation, and containerization which will encourage efficient utilization of facilities and contribute to more effective programs of reduction, reuse, or disposal of wastes;

(4) the use of Federal procurement to develop market demand for recovered resources;

(5) recommended incentives (including Federal grants, loans, and other assistance) and disincentives to accelerate the reclamation or recycling of materials from solid wastes, with special emphasis on motor vehicle hulks;

(6) the effect of existing public policies, including subsidies and economic incentives and disincentives, percentage depletion allowances, capital gains treatment and other tax incentives and disincentives, upon the recycling and reuse of materials, and the likely effect of the modification or elimination of such incentives and disincentives upon the reuse, recycling and conservation of such materials;

(7) the necessity and method of imposing disposal or other charges on packaging, containers, vehicles, and other manufactured goods, which charges would reflect the cost of final disposal, the value of recoverable components of the item, and any social costs associated with nonrecycling or uncontrolled disposal of such items; and

(8) the legal constraints and institutional barriers to the acquisition of land needed for solid waste management, including land for facilities and disposal sites;

(9) in consultation with the Secretary of Agriculture, agricultural waste management problems and practices, the extent of reuse and recovery of resources in such wastes, the prospects for improvement, Federal, State, and local regulations governing such practices, and the economic, social, and environmental consequences of such practices; and

(10) in consultation with the Secretary of the Interior, mining waste management problems, and practices, including an assessment of existing authorities, technologies, and economics, and the environmental and public health consequences of such practices.

(b) Demonstration

The Administrator is also authorized to carry out demonstration projects to test and demonstrate methods and techniques developed pursuant to subsection (a).

(c) Application of other sections

Section 6981(b) and (c) of this title shall be applicable to investigations, studies, and projects carried out under this section.


EDITORIAL NOTES

PRIOR PROVISIONS

Provisions similar to those in this section were contained in section 3253a of this title, prior to the general amendment of the Solid Waste Disposal Act by Pub. L. 94–580.

EXECUTIVE DOCUMENTS

TRANSFER OF FUNCTIONS

For transfer of certain enforcement functions of Administrator or other official of Environmental Protection Agency under this chapter to Federal Inspector, Office of Federal Inspector for the Alaska Natural Gas Transportation System, and subsequent transfer to Secretary of Energy, then to Federal Coordinator for Alaska Natural Gas Transportation Projects, see note set out under section 6903 of this title.
§6986. Grants for resource recovery systems and improved solid waste disposal facilities

(a) Authority
The Administrator is authorized to make grants pursuant to this section to any State, municipal, or interstate or intermunicipal agency for the demonstration of resource recovery systems or for the construction of new or improved solid waste disposal facilities.

(b) Conditions
(1) Any grant under this section for the demonstration of a resource recovery system may be made only if it (A) is consistent with any plans which meet the requirements of subchapter IV of this chapter; (B) is consistent with the guidelines recommended pursuant to section 6907 of this title; (C) is designed to provide area-wide resource recovery systems consistent with the purposes of this chapter, as determined by the Administrator, pursuant to regulations promulgated under subsection (d) of this section; and (D) provides an equitable system for distributing the costs associated with construction, operation, and maintenance of any resource recovery system among the users of such system.
(2) The Federal share for any project to which paragraph (1) applies shall not be more than 75 percent.

(c) Limitations
(1) A grant under this section for the construction of a new or improved solid waste disposal facility may be made only if—
   (A) a State or interstate plan for solid waste disposal has been adopted which applies to the area involved, and the facility to be constructed (i) is consistent with such plan, (ii) is included in a comprehensive plan for the area involved which is satisfactory to the Administrator for the purposes of this chapter, and (iii) is consistent with the guidelines recommended under section 6907 of this title, and
   (B) the project advances the state of the art by applying new and improved techniques in reducing the environmental impact of solid waste disposal, in achieving recovery of energy or resources, or in recycling useful materials.

(2) The Federal share for any project to which paragraph (1) applies shall be not more than 50 percent in the case of a project serving an area which includes only one municipality, and not more than 75 percent in any other case.

(d) Regulations
(1) The Administrator shall promulgate regulations establishing a procedure for awarding grants under this section which—
   (A) provides that projects will be carried out in communities of varying sizes, under such conditions as will assist in solving the community waste problems of urban-industrial centers, metropolitan regions, and rural areas, under representative geographic and environmental conditions; and
   (B) provides deadlines for submission of, and action on, grant requests.

(2) In taking action on applications for grants under this section, consideration shall be given by the Administrator (A) to the public benefits to be derived by the construction and the propriety of Federal aid in making such grant; (B) to the extent applicable, to the economic and commercial viability of the project (including contractual arrangements with the private sector to market any resources recovered); (C) to the potential of such project for general application to community solid waste disposal problems; and (D) to the use by the applicant of comprehensive regional or metropolitan area planning.

(e) Additional limitations
A grant under this section—
(1) may be made only in the amount of the Federal share of (A) the estimated total design and construction costs, plus (B) in the case of a grant to which subsection (b)(1) applies, the first-year operation and maintenance costs; (2) may not be provided for land acquisition or (except as otherwise provided in paragraph (1)(B)) for operating or maintenance costs; (3) may not be made until the applicant has made provision satisfactory to the Administrator for proper and efficient operation and maintenance of the project (subject to paragraph (1)(B)); and
(4) may be made subject to such conditions and requirements, in addition to those provided in this section, as the Administrator may require to properly carry out his functions pursuant to this chapter.

For purposes of paragraph (1), the non-Federal share may be in any form, including, but not limited to, lands or interests therein needed for the project or personal property or services, the value of which shall be determined by the Administrator.

(f) Single State
(1) Not more than 15 percent of the total of funds authorized to be appropriated for any fiscal year to carry out this section shall be granted under this section for projects in any one State.
(2) The Administrator shall prescribe by regulation the manner in which this subsection shall apply to a grant under this section for a project in an area which includes all or part of more than one State.


EDITORIAL NOTES

123/151
PRIOR PROVISIONS

Provisions similar to those in this section were contained in section 3254b of this title, prior to the general amendment of the Solid Waste Disposal Act by Pub. L. 94–580.

EXECUTIVE DOCUMENTS

TRANSFER OF FUNCTIONS

For transfer of certain enforcement functions of Administrator or other official of Environmental Protection Agency under this chapter to Federal Inspector, Office of Federal Inspector for the Alaska Natural Gas Transportation System, and subsequent transfer to Secretary of Energy, then to Federal Coordinator for Alaska Natural Gas Transportation Projects, see note set out under section 6903 of this title.

§6987. Authorization of appropriations

There are authorized to be appropriated not to exceed $35,000,000 for the fiscal year 1978 to carry out the purposes of this subchapter (except for section 6982 of this title).


EDITORIAL NOTES

PRIOR PROVISIONS

Provisions similar to those in this section were contained in section 3259 of this title, prior to the general amendment of the Solid Waste Disposal Act by Pub. L. 94–580.

SUBCHAPTER IX—REGULATION OF UNDERGROUND STORAGE TANKS

§6991. Definitions and exemptions

In this subchapter:

(1) INDIAN TRIBE.—

(A) IN GENERAL.—The term "Indian tribe" means any Indian tribe, band, nation, or other organized group or community that is recognized as being eligible for special programs and services provided by the United States to Indians because of their status as Indians.

(B) INCLUSIONS.—The term "Indian tribe" includes an Alaska Native village, as defined in or established under the Alaska Native Claims Settlement Act (43 U.S.C. 1601 et seq.); and 1

(2) The term "nonoperational storage tank" means any underground storage tank in which regulated substances will not be deposited or from which regulated substances will not be dispensed after November 8, 1984.

(3) The term "operator" means any person in control of, or having responsibility for, the daily operation of the underground storage tank.

(4) The term "owner" means—

(A) in the case of an underground storage tank in use on November 8, 1984, or brought into use after that date, any person who owns an underground storage tank used for the storage, use, or dispensing of regulated substances and

(B) in the case of any underground storage tank in use before November 8, 1984, but no longer in use on November 8, 1984, any person who owned such tank immediately before the discontinuation of its use.

(5) The term "person" has the same meaning as provided in section 6903(15) of this title, except that such term includes a consortium, a joint venture, and a commercial entity, and the United States Government.

(6) The term "petroleum" means petroleum, including crude oil or any fraction thereof which is liquid at standard conditions of temperature and pressure (60 degrees Fahrenheit and 14.7 pounds per square inch absolute).

(7) The term "regulated substance" means—

(A) any substance defined in section 9601(14) of this title (but not including any substance regulated as a hazardous waste under subchapter III), and

(B) petroleum.

(8) The term "release" means any spilling, leaking, emitting, discharging, escaping, leaching, or disposing from an underground storage tank into ground water, surface water or subsurface soils.

(9) TRUST FUND.—The term "Trust Fund" means the Leaking Underground Storage Tank Trust Fund established by section 9508 of title 26.
(10) The term "underground storage tank" means any one or combination of tanks (including underground pipes connected thereto) which is used to contain an accumulation of regulated substances, and the volume of which (including the volume of the underground pipes connected thereto) is 10 per centum or more beneath the surface of the ground. Such term does not include any—

(A) farm or residential tank of 1,100 gallons or less capacity used for storing motor fuel for noncommercial purposes,

(B) tank used for storing heating oil for consumptive use on the premises where stored,

(C) septic tank,

(D) pipeline facility (including gathering lines)—

(i) which is regulated under chapter 601 of title 49, or

(ii) which is an intrastate pipeline facility regulated under State laws as provided in chapter 601 of title 49,

and which is determined by the Secretary to be connected to a pipeline or to be operated or intended to be capable of operating at pipeline pressure or as an integral part of a pipeline,

(E) surface impoundment, pit, pond, or lagoon,

(F) storm water or waste water collection system,

(G) flow-through process tank,

(H) liquid trap or associated gathering lines directly related to oil or gas production and gathering operations, or

(I) storage tank situated in an underground area (such as a basement, cellar, mineworking, drift, shaft, or tunnel) if the storage tank is situated or upon or above the surface of the floor.

The term "underground storage tank" shall not include any pipes connected to any tank which is described in subparagraphs (A) through (I).


EDITORIAL NOTES

REFERENCES IN TEXT

The Alaska Native Claims Settlement Act, referred to in par. (1)(B), is Pub. L. 92–203, Dec. 18, 1971, 85 Stat. 688, as amended, which is classified generally to chapter 33 (§1601 et seq.) of Title 43, Public Lands. For complete classification of this Act to the Code, see Short Title note set out under section 1601 of Title 43 and Tables.

AMENDMENTS

2005—Pub. L. 109–58 substituted "In this subchapter:" for "For the purposes of this subchapter—" in introductory provisions, added pars. (1) and (9), redesignated former pars. (1) to (8) as pars. (10), (7), (4), (3), (8), (5), (2), and (6), respectively, and, in par. (4)(A), substituted "substances" for "substances".

1994—Par. (1)(D). Pub. L. 103–429 amended subpar. (D) generally. Prior to amendment, subpar. (D) read as follows: "pipeline facility (including gathering lines)—

"(i) which is regulated under the Natural Gas Pipeline Safety Act of 1968 (49 U.S.C. App. 1671 et seq.),

"(ii) which is regulated under the Hazardous Liquid Pipeline Safety Act of 1979 (49 U.S.C. App. 2001 et seq.), or

"(iii) which is an intrastate pipeline facility regulated under State laws as provided in the provisions of law referred to in clause (i) or (ii) of this subparagraph, and which is determined by the Secretary to be connected to a pipeline or to be operated or intended to be capable of operating at pipeline pressure or as an integral part of a pipeline."

1992—Par. (1)(D). Pub. L. 102–508 amended subpar. (D) generally. Prior to amendment, subpar. (D) read as follows: "pipeline facility (including gathering lines) regulated under—

"(i) the Natural Gas Pipeline Safety Act of 1968,

"(ii) the Hazardous Liquid Pipeline Safety Act of 1979, or

"(iii) which is an intrastate pipeline facility regulated under State laws comparable to the provisions of law referred to in clause (i) or (ii) of this subparagraph."

1986—Par. (2)(B). Pub. L. 99–499 struck out ", including crude oil or any fraction thereof which is liquid at standard conditions of temperature and pressure (60 degrees Fahrenheit and 14.7 pounds per square inch absolute)". See par. (8).


STATUTORY NOTES AND RELATED SUBSIDIARIES

ABoveground Storage Tank Grant Program
Pub. L. 106–554, §1(a)(4) [div. B, title XII, §1201], Dec. 21, 2000, 114 Stat. 2763, 2763A-313, provided that:

"(a) Definitions.—In this provision:

"(1) Aboveground storage tank.—The term 'aboveground storage tank' means any tank or combination of tanks (including any connected pipe)—

"(A) that is used to contain an accumulation of regulated substances; and

"(B) the volume of which (including the volume of any connected pipe) is located wholly above the surface of the ground.

"(2) Administrator.—The term 'Administrator' means the Administrator of the Environmental Protection Agency.


"(4) Federal environmental law.—The term 'Federal environmental law' means—

"(A) the Oil Pollution Control Act of 1990 (33 U.S.C. 2701 et seq.);

"(B) the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (42 U.S.C. 9601 et seq.);

"(C) the Solid Waste Disposal Act (42 U.S.C. 6901 et seq.);

"(D) the Federal Water Pollution Control Act (33 U.S.C. 1251 et seq.); or

"(E) any other Federal law that is applicable to the release into the environment of a regulated substance, as determined by the Administrator.

"(5) Native village.—The term 'Native village' has the meaning given the term in section 11(b) in Public Law 92–203 (85 Stat. 688) [43 U.S.C. 1610(b)].

"(6) Program.—The term 'program' means the Aboveground Storage Tank Grant Program established by subsection (b)(1).

"(7) Regulated substance.—The term 'regulated substance' has the meaning given the term in section 9001 of the Solid Waste Disposal Act (42 U.S.C. 6991).

"(8) State.—The term 'State' means the State of Alaska.

"(b) Establishment.—

"(1) In general.—There is established a grant program to be known as the 'Aboveground Storage Tank Grant Program'.

"(2) Grants.—Under the program, the Administrator shall award a grant to—

"(A) the State, on behalf of a Native village; or

"(B) the Denali Commission.

"(c) Use of Grants.—The State or the Denali Commission shall use the funds of a grant under subsection (b) to repair, upgrade, or replace one or more aboveground storage tanks that—

"(1) leaks or poses an imminent threat of leaking, as certified by the Administrator, the Commandant of the Coast Guard, or any other appropriate Federal or State agency (as determined by the Administrator); and

"(2) is located in a Native village—

"(A) the median household income of which is less than 80 percent of the median household income in the State;

"(B) that is located—

"(i) within the boundaries of—

"(II) a unit of the National Park System;

"(III) a unit of the National Wildlife Refuge System; or

"(ii) on public land under the administrative jurisdiction of the Bureau of Land Management; or

"(C) that receives payments from the Federal Government under chapter 69 of title 31, United States Code (commonly known as 'payments in lieu of taxes').

"(d) Reports.—Not later than 1 year after the date on which the State or the Denali Commission receives a grant under subsection (c), and annually thereafter, the State or the Denali Commission, as the case may be, shall submit a report describing each project completed with grant funds and any projects planned for the following year, to—

"(1) the Administrator;

"(2) the Committee on Resources [now Committee on Natural Resources] of the House of Representatives;

"(3) the Committee on Environment and Public Works of the Senate;

"(4) the Committee on Appropriations of the House of Representatives; and

"(5) the Committee on Appropriations of the Senate.

"(e) Authorization of Appropriations.—There are authorized to be appropriated to carry out this Act [probably means this section], to remain available until expended—

"(1) $20,000,000 for fiscal year 2001; and

"(2) such sums as are necessary for each fiscal year thereafter.
§6991a. Notification

(a) Underground storage tanks

(1) Within 18 months after November 8, 1984, each owner of an underground storage tank shall notify the State or local agency or department designated pursuant to subsection (b)(1) of the existence of such tank, specifying the age, size, type, location, and uses of such tank.

(2)(A) For each underground storage tank taken out of operation after January 1, 1974, the owner of such tank shall, within eighteen months after November 8, 1984, notify the State or local agency, or department designated pursuant to subsection (b)(1) of the existence of such tanks (unless the owner knows the tank subsequently was removed from the ground). The owner of a tank taken out of operation on or before January 1, 1974, shall not be required to notify the State or local agency under this subsection.

(B) Notice under subparagraph (A) shall specify, to the extent known to the owner—

(i) the date the tank was taken out of operation,

(ii) the age of the tank on the date taken out of operation,

(iii) the size, type and location of the tank, and

(iv) the type and quantity of substances left stored in such tank on the date taken out of operation.

(3) Any owner which brings into use an underground storage tank after the initial notification period specified under paragraph (1), shall notify the designated State or local agency or department within thirty days of the existence of such tank, specifying the age, size, type, location and uses of such tank.

(4) Paragraphs (1) through (3) of this subsection shall not apply to tanks for which notice was given pursuant to section 9603(c) of this title.

(5) Beginning thirty days after the Administrator prescribes the form of notice pursuant to subsection (b)(2) and for eighteen months thereafter, any person who deposits regulated substances in an underground storage tank shall reasonably notify the owner or operator of such tank of the owner’s notification requirements pursuant to this subsection.

(6) Beginning thirty days after the Administrator issues new tank performance standards pursuant to section 6991b(c) of this title, any person who sells a tank intended to be used as an underground storage tank shall notify the purchaser of such tank of the owner’s notification requirements pursuant to this subsection.

(b) Agency designation

(1) Within one hundred and eighty days after November 8, 1984, the Governors of each State shall designate the appropriate State agency or department or local agencies or departments to receive the notifications under subsection (a) (1), (2), or (3).

(2) Within twelve months after November 8, 1984, the Administrator, in consultation with State and local officials designated pursuant to subsection (b)(1), and after notice and opportunity for public comment, shall prescribe the form of the notice and the information to be included in the notifications under subsection (a)(1), (2), or (3). In prescribing the form of such notice, the Administrator shall take into account the effect on small businesses and other owners and operators.

(c) State inventories

Each State shall make 2 separate inventories of all underground storage tanks in such State containing regulated substances. One inventory shall be made with respect to petroleum and one with respect to other regulated substances. In making such inventories, the State shall utilize and aggregate the data in the notification forms submitted pursuant to subsections (a) and (b) of this section. Each State shall submit such aggregated data to the Administrator not later than 270 days after October 17, 1986.

(d) Public record

(1) In general

The Administrator shall require each State that receives Federal funds to carry out this subchapter to maintain, update at least annually, and make available to the public, in such manner and form as the Administrator shall prescribe (after consultation with States), a record of underground storage tanks regulated under this subchapter.

(2) Considerations

To the maximum extent practicable, the public record of a State, respectively, shall include, for each year—

(A) the number, sources, and causes of underground storage tank releases in the State;

(B) the record of compliance by underground storage tanks in the State with—

(i) this subchapter; or

(ii) an applicable State program approved under section 6991c of this title; and
(C) data on the number of underground storage tank equipment failures in the State.


**EDITORIAL NOTES**

**AMENDMENTS**


§6991b. Release detection, prevention, and correction regulations

(a) Regulations

The Administrator, after notice and opportunity for public comment, and at least three months before the effective dates specified in subsection (f), shall promulgate release detection, prevention, and correction regulations applicable to all owners and operators of underground storage tanks, as may be necessary to protect human health and the environment.

(b) Distinctions in regulations

In promulgating regulations under this section, the Administrator may distinguish between types, classes, and ages of underground storage tanks. In making such distinctions, the Administrator may take into consideration factors, including, but not limited to: location of the tanks, soil and climate conditions, uses of the tanks, history of maintenance, age of the tanks, current industry recommended practices, national consensus codes, hydrogeology, water table, size of the tanks, quantity of regulated substances periodically deposited in or dispensed from the tank, the technical capability of the owners and operators, and the compatibility of the regulated substance and the materials of which the tank is fabricated.

(c) Requirements

The regulations promulgated pursuant to this section shall include, but need not be limited to, the following requirements respecting all underground storage tanks—

1. requirements for maintaining a leak detection system, an inventory control system together with tank testing, or a comparable system or method designed to identify releases in a manner consistent with the protection of human health and the environment;

2. requirements for maintaining records of any monitoring or leak detection system or inventory control system or tank testing or comparable system;

3. requirements for reporting of releases and corrective action taken in response to a release from an underground storage tank;

4. requirements for taking corrective action in response to a release from an underground storage tank;

5. requirements for the closure of tanks to prevent future releases of regulated substances into the environment; and

6. requirements for maintaining evidence of financial responsibility for taking corrective action and compensating third parties for bodily injury and property damage caused by sudden and nonsudden accidental releases arising from operating an underground storage tank.

(d) Financial responsibility

1. Financial responsibility required by this subsection may be established in accordance with regulations promulgated by the Administrator by any one, or any combination, of the following: insurance, guarantee, surety bond, letter of credit, qualification as a self-insurer or any other method satisfactory to the Administrator. In promulgating requirements under this subsection, the Administrator is authorized to specify policy or other contractual terms, conditions, or defenses which are necessary or are unacceptable in establishing such evidence of financial responsibility in order to effectuate the purposes of this subchapter.

2. In any case where the owner or operator is in bankruptcy, reorganization, or arrangement pursuant to the Federal Bankruptcy Code or where with reasonable diligence jurisdiction in any State court of the Federal courts cannot be obtained over an owner or operator likely to be solvent at the time of judgment, any claim arising from conduct for which evidence of financial responsibility must be provided under this subsection may be asserted directly against the guarantor providing such evidence of financial responsibility. In the case of any action pursuant to this paragraph such guarantor shall be entitled to invoke all rights and defenses which would have been available to the owner or operator if any action had been brought against the owner or operator by the claimant and which would have been available to the guarantor if an action had been brought against the guarantor by the owner or operator.

3. The total liability of any guarantor shall be limited to the aggregate amount which the guarantor has provided as evidence of financial responsibility to the owner or operator under this section. Nothing in this subsection shall be construed to limit any other State or Federal statutory, contractual or common law liability of a guarantor to its owner or operator including, but not limited to, the liability of such guarantor for bad faith either in negotiating or in failing to negotiate the settlement of any claim. Nothing in this subsection shall be construed to diminish the liability of any person under section 9607 or 9611 of this title or other applicable law.

4. For the purpose of this subsection, the term "guarantor" means any person, other than the owner or operator, who provides evidence of financial responsibility for an owner or operator under this subsection.
(5)(A) The Administrator, in promulgating financial responsibility regulations under this section, may establish an amount of coverage for particular classes or categories of underground storage tanks containing petroleum which shall satisfy such regulations and which shall not be less than $1,000,000 for each occurrence with an appropriate aggregate requirement.

(B) The Administrator may set amounts lower than the amounts required by subparagraph (A) of this paragraph for underground storage tanks containing petroleum which are at facilities not engaged in petroleum production, refining, or marketing and which are not used to handle substantial quantities of petroleum.

(C) In establishing classes and categories for purposes of this paragraph, the Administrator may consider the following factors:
   (i) The size, type, location, storage, and handling capacity of underground storage tanks in the class or category and the volume of petroleum handled by such tanks.
   (ii) The likelihood of release and the potential extent of damage from any release from underground storage tanks in the class or category.
   (iii) The economic impact of the limits on the owners and operators of each such class or category, particularly relating to the small business segment of the petroleum marketing industry.
   (iv) The availability of methods of financial responsibility in amounts greater than the amount established by this paragraph.
   (v) Such other factors as the Administrator deems pertinent.

(D) The Administrator may suspend enforcement of the financial responsibility requirements for a particular class or category of underground storage tanks in a particular State, if the Administrator makes a determination that methods of financial responsibility satisfying the requirements of this subsection are not generally available for underground storage tanks in that class or category, and—
   (i) steps are being taken to form a risk retention group for such class of tanks; or
   (ii) such State is taking steps to establish a fund pursuant to section 6991(c)(1) of this title to be submitted as evidence of financial responsibility.

A suspension by the Administrator pursuant to this paragraph shall extend for a period not to exceed 180 days. A determination to suspend may be made with respect to the same class or category or for the same State at the end of such period, but only if substantial progress has been made in establishing a risk retention group, or the owners or operators in the class or category demonstrate, and the Administrator finds, that the formation of such a group is not possible and that the State is unable or unwilling to establish such a fund pursuant to clause (ii).

(e) New tank performance standards
   The Administrator shall, not later than three months prior to the effective date specified in subsection (f), issue performance standards for underground storage tanks brought into use on or after the effective date of such standards. The performance standards for new underground storage tanks shall include, but need not be limited to, design, construction, installation, release detection, and compatibility standards.

(f) Effective dates
   (1) Regulations issued pursuant to subsections (c) and (d), and standards issued pursuant to subsection (e) of this section, for underground storage tanks containing regulated substances defined in section 6991(7)(B) of this title (petroleum, including crude oil or any fraction thereof which is liquid at standard conditions of temperature and pressure) shall be effective not later than thirty months after November 8, 1984.
   (2) Standards issued pursuant to subsection (e) of this section (entitled "New Tank Performance Standards") for underground storage tanks containing regulated substances defined in section 6991(7)(A) of this title shall be effective not later than thirty-six months after November 8, 1984.
   (3) Regulations issued pursuant to subsection (c) of this section (entitled "Requirements") and standards issued pursuant to subsection (d) of this section (entitled "Financial Responsibility") for underground storage tanks containing regulated substances defined in section 6991(7)(A) of this title shall be effective not later than forty-eight months after November 8, 1984.

(g) Interim prohibition
   (1) Until the effective date of the standards promulgated by the Administrator under subsection (e) and after one hundred and eighty days after November 8, 1984, no person may install an underground storage tank for the purpose of storing regulated substances unless such tank (whether of single or double wall construction)—
      (A) will prevent releases due to corrosion or structural failure for the operational life of the tank;
      (B) is cathodically protected against corrosion, constructed of noncorrosive material, steel clad with a noncorrosive material, or designed in a manner to prevent the release or threatened release of any stored substance; and
      (C) the material used in the construction or lining of the tank is compatible with the substance to be stored.

   (2) Notwithstanding paragraph (1), if soil tests conducted in accordance with ASTM Standard G57–78, or another standard approved by the Administrator, show that soil resistivity in an installation location is 12,000 ohm/cm or more (unless a more stringent standard is prescribed by the Administrator by rule), a storage tank without corrosion protection may be installed in that location during the period referred to in paragraph (1).

(h) EPA response program for petroleum

   (1) Before regulations
Before the effective date of regulations under subsection (c), the Administrator (or a State pursuant to paragraph (7)) is authorized to—

(A) require the owner or operator of an underground storage tank to undertake corrective action with respect to any release of petroleum when the Administrator (or the State) determines that such corrective action will be done properly and promptly by the owner or operator of the underground storage tank from which the release occurs; or

(B) undertake corrective action with respect to any release of petroleum into the environment from an underground storage tank if such action is necessary, in the judgment of the Administrator (or the State), to protect human health and the environment.

The corrective action undertaken or required under this paragraph shall be such as may be necessary to protect human health and the environment. The Administrator shall use funds in the Trust Fund for payment of costs incurred for corrective action under subparagraph (B), enforcement action under subparagraph (A), and cost recovery under paragraph (6) of this subsection. Subject to the priority requirements of paragraph (3), the Administrator (or the State) shall give priority in undertaking such actions under subparagraph (B) to cases where the Administrator (or the State) cannot identify a solvent owner or operator of the tank who will undertake action properly.

(2) After regulations

Following the effective date of regulations under subsection (c), all actions or orders of the Administrator (or a State pursuant to paragraph (7)) described in paragraph (1) of this subsection shall be in conformity with such regulations. Following such effective date, the Administrator (or the State) may undertake corrective action with respect to any release of petroleum into the environment from an underground storage tank only if such action is necessary, in the judgment of the Administrator (or the State), to protect human health and the environment and one or more of the following situations exists:

(A) No person can be found, within 90 days or such shorter period as may be necessary to protect human health and the environment, who is—

(i) an owner or operator of the tank concerned,

(ii) subject to such corrective action regulations, and

(iii) capable of carrying out such corrective action properly.

(B) A situation exists which requires prompt action by the Administrator (or the State) under this paragraph to protect human health and the environment.

(C) Corrective action costs at a facility exceed the amount of coverage required by the Administrator pursuant to the provisions of subsections (c) and (d)(5) of this section and, considering the class or category of underground storage tank from which the release occurred, expenditures from the Trust Fund are necessary to assure an effective corrective action.

(D) The owner or operator of the tank has failed or refused to comply with an order of the Administrator under this subsection or section 6991e of this title or with the order of a State under this subsection to comply with the corrective action regulations.

(3) Priority of corrective actions

The Administrator (or a State pursuant to paragraph (7)) shall give priority in undertaking corrective actions under this subsection, and in issuing orders requiring owners or operators to undertake such actions, to releases of petroleum from underground storage tanks which pose the greatest threat to human health and the environment.

(4) Corrective action orders

The Administrator is authorized to issue orders to the owner or operator of an underground storage tank to carry out subparagraph (A) of paragraph (1) or to carry out regulations issued under subsection (c)(4). A State acting pursuant to paragraph (7) of this subsection is authorized to carry out subparagraph (A) of paragraph (1) only until the State's program is approved by the Administrator under section 6991c of this title. Such orders shall be issued and enforced in the same manner and subject to the same requirements as orders under section 6991e of this title.

(5) Allowable corrective actions

The corrective actions undertaken by the Administrator (or a State pursuant to paragraph (7)) under paragraph (1) or (2) may include temporary or permanent relocation of residents and alternative household water supplies. In connection with the performance of any corrective action under paragraph (1) or (2), the Administrator may undertake an exposure assessment as defined in paragraph (10) of this subsection or provide for such an assessment in a cooperative agreement with a State pursuant to paragraph (7) of this subsection. The costs of any such assessment may be treated as corrective action for purposes of paragraph (6), relating to cost recovery.

(6) Recovery of costs

(A) In general

Whenever costs have been incurred by the Administrator, or by a State pursuant to paragraph (7), for undertaking corrective action or enforcement action with respect to the release of petroleum from an underground storage tank, the owner or operator of such tank shall be liable to the Administrator or the State for such costs. The liability under this paragraph shall be construed to be the standard of liability which obtains under section 1321 of title 33.

(B) Recovery

In determining the equities for seeking the recovery of costs under subparagraph (A), the Administrator (or a State pursuant to paragraph (7) of this subsection) may consider the amount of financial responsibility required to be
maintained under subsections (c) and (d)(5) of this section and the factors considered in establishing such amount under subsection (d)(5).

(C) Effect on liability

(i) No transfers of liability

No indemnification, hold harmless, or similar agreement or conveyance shall be effective to transfer from the owner or operator of any underground storage tank or from any person who may be liable for a release or threat of release under this subsection, to any other person the liability imposed under this subsection. Nothing in this subsection shall bar any agreement to insure, hold harmless, or indemnify a party to such agreement for any liability under this section.

(ii) No bar to cause of action

Nothing in this subsection, including the provisions of clause (i) of this subparagraph, shall bar a cause of action that an owner or operator or any other person subject to liability under this section, or a guarantor, has or would have, by reason of subrogation or otherwise against any person.

(D) Facility

For purposes of this paragraph, the term "facility" means, with respect to any owner or operator, all underground storage tanks used for the storage of petroleum which are owned or operated by such owner or operator and located on a single parcel of property (or on any contiguous or adjacent property).

(E) Inability or limited ability to pay

(i) In general

In determining the level of recovery effort, or amount that should be recovered, the Administrator (or the State pursuant to paragraph (7)) shall consider the owner or operator's ability to pay. An inability or limited ability to pay corrective action costs must be demonstrated to the Administrator (or the State pursuant to paragraph (7)) by the owner or operator.

(ii) Considerations

In determining whether or not a demonstration is made under clause (i), the Administrator (or the State pursuant to paragraph (7)) shall take into consideration the ability of the owner or operator to pay corrective action costs and still maintain its basic business operations, including consideration of the overall financial condition of the owner or operator and demonstrable constraints on the ability of the owner or operator to raise revenues.

(iii) Information

An owner or operator requesting consideration under this subparagraph shall promptly provide the Administrator (or the State pursuant to paragraph (7)) with all relevant information needed to determine the ability of the owner or operator to pay corrective action costs.

(iv) Alternative payment methods

The Administrator (or the State pursuant to paragraph (7)) shall consider alternative payment methods as may be necessary or appropriate if the Administrator (or the State pursuant to paragraph (7)) determines that an owner or operator cannot pay all or a portion of the costs in a lump sum payment.

(v) Misrepresentation

If an owner or operator provides false information or otherwise misrepresents their financial situation under clause (ii), the Administrator (or the State pursuant to paragraph (7)) shall seek full recovery of the costs of all such actions pursuant to the provisions of subparagraph (A) without consideration of the factors in subparagraph (B).

(7) State authorities

(A) General

A State may exercise the authorities in paragraphs (1), (2), and (12), subject to the terms and conditions of paragraphs (3), (5), (9), (10), and (11), and the authority under sections 6991j and 6991k of this title and paragraphs (4), (6), and (8), if—

(i) the Administrator determines that the State has the capabilities to carry out effective corrective actions and enforcement activities; and

(ii) the Administrator enters into a cooperative agreement with the State setting out the actions to be undertaken by the State.

The Administrator may provide funds from the Trust Fund for the reasonable costs of the State’s actions under the cooperative agreement.

(B) Cost share

Following the effective date of the regulations under subsection (c) of this section, the State shall pay 10 per centum of the cost of corrective actions undertaken either by the Administrator or by the State under a cooperative agreement, except that the Administrator may take corrective action at a facility where immediate action is necessary to respond to an imminent and substantial endangerment to human health or the environment if the State fails to pay the cost share.

(8) Emergency procurement powers
Notwithstanding any other provision of law, the Administrator may authorize the use of such emergency procurement powers as he deems necessary.

(9) Definition of owner or operator

(A) In general

As used in this subchapter, the terms "owner" and "operator" do not include a person that, without participating in the management of an underground storage tank and otherwise not engaged in petroleum production, refining, or marketing, holds indicia of ownership primarily to protect the person's security interest.

(B) Security interest holders

The provisions regarding holders of security interests in subparagraphs (E) through (G) of section 9601(20) of this title and the provisions regarding fiduciaries at section 9607(n) of this title shall apply in determining a person's liability as an owner or operator of an underground storage tank for the purposes of this subchapter.

(C) Effect on rule

Nothing in subparagraph (B) shall be construed as modifying or affecting the final rule issued by the Administrator on September 7, 1995 (60 Fed. Reg. 46,692), or as limiting the authority of the Administrator to amend the final rule, in accordance with applicable law. The final rule in effect on September 30, 1996, shall prevail over any inconsistent provision regarding holders of security interests in subparagraphs (E) through (G) of section 9601(20) of this title or any inconsistent provision regarding fiduciaries in section 9607(n) of this title. Any amendment to the final rule shall be consistent with the provisions regarding holders of security interests in subparagraphs (E) through (G) of section 9601(20) of this title and the provisions regarding fiduciaries in section 9607(n) of this title. This subparagraph does not preclude judicial review of any amendment of the final rule made after September 30, 1996.

(10) Definition of exposure assessment

As used in this subsection, the term "exposure assessment" means an assessment to determine the extent of exposure of, or potential for exposure of, individuals to petroleum from a release from an underground storage tank based on such factors as the nature and extent of contamination and the existence of or potential for pathways of human exposure (including ground or surface water contamination, air emissions, and food chain contamination), the size of the community within the likely pathways of exposure, and the comparison of expected human exposure levels to the short-term and long-term health effects associated with identified contaminants and any available recommended exposure or tolerance limits for such contaminants. Such assessment shall not delay corrective action to abate immediate hazards or reduce exposure.

(11) Facilities without financial responsibility

At any facility where the owner or operator has failed to maintain evidence of financial responsibility in amounts at least equal to the amounts established by subsection (d)(5)(A) of this section (or a lesser amount if such amount is applicable to such facility as a result of subsection (d)(5)(B) of this section) for whatever reason the Administrator shall expend no monies from the Trust Fund to clean up releases at such facility pursuant to the provisions of paragraph (1) or (2) of this subsection. At such facilities the Administrator shall use the authorities provided in subparagraph (A) of paragraph (1) and paragraph (4) of this subsection and section 6991e of this title to order corrective action to clean up such releases. States acting pursuant to paragraph (7) of this subsection shall use the authorities provided in subparagraph (A) of paragraph (1) and paragraph (4) of this subsection to order corrective action to clean up such releases. Notwithstanding the provisions of this paragraph, the Administrator may use monies from the fund to take the corrective actions authorized by paragraph (5) of this subsection to protect human health at such facilities and shall seek full recovery of the costs of all such actions pursuant to the provisions of paragraph (6)(A) of this subsection and without consideration of the factors in paragraph (6)(B) of this subsection. Nothing in this paragraph shall prevent the Administrator (or a State pursuant to paragraph (7) of this subsection) from taking corrective action at a facility where there is no solvent owner or operator or where immediate action is necessary to respond to an imminent and substantial endangerment of human health or the environment.

(12) Remediation of oxygenated fuel contamination

(A) In general

The Administrator and the States may use funds made available under section 6991m(2)(B) of this title to carry out corrective actions with respect to a release of a fuel containing an oxygenated fuel additive that presents a threat to human health or welfare or the environment.

(B) Applicable authority

The Administrator or a State shall carry out subparagraph (A) in accordance with paragraph (2), and in the case of a State, in accordance with a cooperative agreement entered into by the Administrator and the State under paragraph (7).

(i) Additional measures to protect groundwater from contamination

The Administrator shall require each State that receives funding under this subchapter to require one of the following:

(1) Tank and piping secondary containment

(A) Each new underground storage tank, or piping connected to any such new tank, installed after the effective date of this subsection, or any existing underground storage tank, or existing piping connected to such existing tank, that is replaced after the effective date of this subsection, shall be secondarily contained and monitored for leaks if the new or replaced underground storage tank or piping is within 1,000 feet of any existing community water system or any existing potable drinking water well.
(B) In the case of a new underground storage tank system consisting of one or more underground storage tanks and connected by piping, subparagraph (A) shall apply to all underground storage tanks and connected pipes comprising such system.

(C) In the case of a replacement of an existing underground storage tank or existing piping connected to the underground storage tank, subparagraph (A) shall apply only to the specific underground storage tank or piping being replaced, not to other underground storage tanks and connected pipes comprising such system.

(D) Each installation of a new motor fuel dispenser system, after the effective date of this subsection, shall include under-dispenser spill containment if the new dispenser is within 1,000 feet of any existing community water system or any existing potable drinking water well.

(E) This paragraph shall not apply to repairs to an underground storage tank, piping, or dispenser that are meant to restore a tank, pipe, or dispenser to operating condition.

(F) As used in this subsection:

(i) The term "secondarily contained" means a release detection and prevention system that meets the requirements of 40 CFR 280.43(g), but shall not include under-dispenser spill containment or control systems.

(ii) The term "underground storage tank" has the meaning given to it in section 6991 of this title, except that such term does not include tank combinations or more than a single underground pipe connected to a tank.

(iii) The term "installation of a new motor fuel dispenser system" means the installation of a new motor fuel dispenser and the equipment necessary to connect the dispenser to the underground storage tank system, but does not mean the installation of a motor fuel dispenser installed separately from the equipment need to connect the dispenser to the underground storage tank system.

(2) Evidence of financial responsibility and certification

(A) Manufacturer and installer financial responsibility

A person that manufactures an underground storage tank or piping for an underground storage tank system or that installs an underground storage tank system is required to maintain evidence of financial responsibility under subsection (d) in order to provide for the costs of corrective actions directly related to releases caused by improper manufacture or installation unless the person can demonstrate themselves to be already covered as an owner or operator of an underground storage tank under this section.

(B) Installer certification

The Administrator and each State that receives funding under this subchapter, as appropriate, shall require that a person that installs an underground storage tank system is—

(i) certified or licensed by the tank and piping manufacturer;

(ii) certified or licensed by the Administrator or a State, as appropriate;

(iii) has their underground storage tank system installation certified by a registered professional engineer with education and experience in underground storage tank system installation;

(iv) has had their installation of the underground storage tank inspected and approved by the Administrator or the State, as appropriate;

(v) compliant with a code of practice developed by a nationally recognized association or independent testing laboratory and in accordance with the manufacturer’s instructions; or

(vi) compliant with another method that is determined by the Administrator or a State, as appropriate, to be no less protective of human health and the environment.

(C) Savings clause

Nothing in subparagraph (A) alters or affects the liability of any owner or operator of an underground storage tank.

(j) Government-owned tanks

(1) State compliance report

(A) Not later than 2 years after August 8, 2005, each State that receives funding under this subchapter shall submit to the Administrator a State compliance report that—

(i) lists the location and owner of each underground storage tank described in subparagraph (B) in the State that, as of the date of submission of the report, is not in compliance with this section; and

(ii) specifies the date of the last inspection and describes the actions that have been and will be taken to ensure compliance of the underground storage tank listed under clause (i) with this subchapter.

(B) An underground storage tank described in this subparagraph is an underground storage tank that is—

(i) regulated under this subchapter; and

(ii) owned or operated by the Federal, State, or local government.

(C) The Administrator shall make each report, received under subparagraph (A), available to the public through an appropriate media.

(2) Financial incentive

The Administrator may award to a State that develops a report described in paragraph (1), in addition to any other funds that the State is entitled to receive under this subchapter, not more than $50,000, to be used to carry out the report.

(3) Not a safe harbor
This subsection does not relieve any person from any obligation or requirement under this subchapter.


EDITORIAL NOTES

REFERENCES IN TEXT

The Federal Bankruptcy Code, referred to in subsec. (d)(2), probably means a reference to Title 11, Bankruptcy.

The effective date of this subsection, referred to in subsec. (i)(1)(A), (D), is 18 months after Aug. 8, 2005. See Effective Date of 2005 Amendment note set out below.

AMENDMENTS

2006—Subsecs. (i), (j). Pub. L. 109–168 redesignated subsec. (i), relating to government-owned tanks, as (j). Subsec. (j) was editorially transferred to the end of the section to reflect the probable intent of Congress.

2005—Subsec. (f)(1). Pub. L. 109–58, §1533(2), substituted "subsections (c) and (d)" for "subsection (c) and (d) of this section".

Pub. L. 109–58, §1532(b)(1)(A), substituted "6991(7)(B)" for "6991(2)(B)".


Pub. L. 109–58, §1525(1), in introductory provisions, substituted "paragraphs (1), (2), and (12)" for "paragraphs (1) and (2) of this subsection" and "and the authority under sections 6991 and 6991k of this title and paragraphs (4), (6), and (8)," for "and including the authorities of paragraphs (4), (6), and (8) of this subsection".


Subsec. (i). Pub. L. 109–58, §1530(a), added subsec. (i) relating to additional measures to protect groundwater from contamination.

Pub. L. 109–58, §1526(b), added subsec. (i) relating to government-owned tanks.

1996—Subsec. (h)(9). Pub. L. 104–208 added par. (9) and struck out heading and text of former par. (9). Text read as follows: "As used in this subsection, the term 'owner' does not include any person who, without participating in the management of an underground storage tank and otherwise not engaged in petroleum production, refining, and marketing, holds indicia of ownership primarily to protect the owner's security interest in the tank."


Subsec. (d)(1). Pub. L. 99–499, §205(c)(3), which directed that par. (1) be amended by "striking out 'or' after 'credit,' and by striking out the period at the end thereof and inserting in lieu thereof the following: 'or any other method satisfactory to the Administrator.'", was executed by striking the period and making insertion at end of first sentence, rather than at end of par. (1), as the probable intent of Congress, because an earlier version of the amending legislation had provided that such amendment be made to first sentence.

Pub. L. 99–499, §205(c)(2), redesignated par. (2) as (1) and struck out former par. (1) which read as follows: "As he deems necessary or desirable, the Administrator shall promulgate regulations containing requirements for maintaining evidence of financial responsibility as he deems necessary and desirable for taking corrective action and compensating third parties for bodily injury and property damage caused by sudden and nonsudden accidental releases arising from operating an underground storage tank."

Subsec. (d)(2) to (5). Pub. L. 99–499, §205(c)(2), (4), added par. (5) and redesignated pars. (3) to (5) as (2) to (4), respectively. Former par. (2) redesignated (1).


STATUTORY NOTES AND RELATED SUBSIDIARIES

EFFECTIVE DATE OF 2005 AMENDMENT

Pub. L. 109–58, title XV, §1530(b), Aug. 8, 2005, 119 Stat. 1104, provided that: "This subsection [probably means this section, which amended this section and section 6991e of this title and enacted provisions set out as
notes under this section] shall take effect 18 months after the date of enactment of this subsection [Aug. 8, 2005]."

**Effective Date of 1996 Amendment**


**Regulations**

Pub. L. 109–58, title XV, §1530(c), Aug. 8, 2005, 119 Stat. 1104, provided that: "The Administrator shall issue regulations or guidelines implementing the requirements of this subsection [probably means this section, which amended this section and section 6991e of this title and enacted provisions set out as notes under this section], including guidance to differentiate between the terms 'repair' and 'replace' for the purposes of section 9003(i)(1) of the Solid Waste Disposal Act [42 U.S.C. 6991b(i)(1)]."

**Assistance Agreements With Indian Tribes**

Pub. L. 105–276, title III, Oct. 21, 1998, 112 Stat. 2497, provided in part: "That hereafter, the Administrator is authorized to enter into assistance agreements with Federally recognized Indian tribes on such terms and conditions as the Administrator deems appropriate for the same purposes as are set forth in section 9003(h) (7) of the Resource Conservation and Recovery Act [probably means section 9003(h)(7) of Pub. L. 89–272, 42 U.S.C. 6991b(h)(7)]."

**Pollution Liability Insurance**


"(1) **STUDY.**—The Comptroller General shall conduct a study of the availability of pollution liability insurance, leak insurance, and contamination insurance for owners and operators of petroleum storage and distribution facilities. The study shall assess the current and projected extent to which private insurance can contribute to the financial responsibility of owners and operators of underground storage tanks and the ability of owners and operators of underground storage tanks to maintain financial responsibility through other methods. The study shall consider the experience of owners and operators of marine vessels in getting insurance for their liabilities under the Federal Water Pollution Control Act [33 U.S.C. 1251 et seq.] and the operation of the Water Quality Insurance Syndicate.

"(2) **REPORT.**—The Comptroller General shall report the findings under this subsection to the Congress within 15 months after the enactment of this subsection [Oct. 17, 1986]. Such report shall include recommendations for legislative or administrative changes that will enable owners and operators of underground storage tanks to maintain financial responsibility sufficient to provide all clean-up costs and damages that may result from reasonably foreseeable releases and events."

1 So in original.

2 So in original. Probably should be "medium."

**§6991c. Approval of State programs**

(a) **Elements of State program**

Beginning 30 months after November 8, 1984, any State may,1 submit an underground storage tank release detection, prevention, and correction program for review and approval by the Administrator. The program may cover tanks used to store regulated substances referred to in subparagraph (A) or (B) of section 6991(7) of this title. A State program may be approved by the Administrator under this section only if the State demonstrates that the State program includes the following requirements and standards and provides for adequate enforcement of compliance with such requirements and standards—

(1) requirements for maintaining a leak detection system, an inventory control system together with tank testing, or a comparable system or method designed to identify releases in a manner consistent with the protection of human health and the environment;  
(2) requirements for maintaining records of any monitoring or leak detection system or inventory control system or tank testing system;  
(3) requirements for reporting of any releases and corrective action taken in response to a release from an underground storage tank;  
(4) requirements for taking corrective action in response to a release from an underground storage tank;  
(5) requirements for the closure of tanks to prevent future releases of regulated substances into the environment;
requirements for maintaining evidence of financial responsibility for taking corrective action and compensating third parties for bodily injury and property damage caused by sudden and nonsudden accidental releases arising from operating an underground storage tank;
(7) standards of performance for new underground storage tanks;
(8) requirements—
(A) for notifying the appropriate State agency or department (or local agency or department) designated according to section 6991a(b)(1) of this title of the existence of any operational or non-operational underground storage tank; and
(B) for providing the information required on the form issued pursuant to section 6991a(b)(2) of this title; and

(9) State-specific training requirements as required by section 6991i of this title.

(b) Federal standards

(1) A State program approved under this section may be approved only if the requirements under paragraphs (1) through (7) of subsection (a) are no less stringent than the corresponding requirements standards promulgated by the Administrator pursuant to section 6991b(a) of this title.
(2)(A) A State program may be approved without regard to whether or not the requirements referred to in paragraphs (1), (2), (3), and (5) of subsection (a) are less stringent than the corresponding standards under section 6991b(a) of this title during the one-year period commencing on the date of promulgation of regulations under section 6991b(a) of this title if State regulatory action but no State legislative action is required in order to adopt a State program.
(B) If such State legislative action is required, the State program may be approved without regard to whether or not the requirements referred to in paragraphs (1), (2), (3), and (5) of subsection (a) are less stringent than the corresponding standards under section 6991b(a) of this title during the two-year period commencing on the date of promulgation of regulations under section 6991b(a) of this title (and during an additional one-year period after such legislative action if regulations are required to be promulgated by the State pursuant to such legislative action).

(c) Financial responsibility

(1) Corrective action and compensation programs administered by State or local agencies or departments may be submitted for approval under subsection (a)(6) as evidence of financial responsibility.
(2) Financial responsibility required by this subsection may be established in accordance with regulations promulgated by the Administrator by any one, or any combination, of the following: insurance, guarantee, surety bond, letter of credit, qualification as a self-insurer or any other method satisfactory to the Administrator. In promulgating requirements under this subsection, the Administrator is authorized to specify policy or other contractual terms including the amount of coverage required for various classes and categories of underground storage tanks pursuant to section 6991b(d)(5) of this title, conditions, or defenses which are necessary or are unacceptable in establishing such evidence of financial responsibility in order to effectuate the purposes of this subchapter.
(3) In any case where the owner or operator is in bankruptcy, reorganization, or arrangement pursuant to the Federal Bankruptcy Code or where with reasonable diligence jurisdiction in any State court of the Federal courts cannot be obtained over an owner or operator likely to be solvent at the time of judgment, any claim arising from conduct for which evidence of financial responsibility must be provided under this subsection may be asserted directly against the guarantor providing such evidence of financial responsibility. In the case of any action pursuant to this paragraph such guarantor shall be entitled to invoke all rights and defenses which would have been available to the owner or operator if any action had been brought against the owner or operator by the claimant and which would have been available to the guarantor if an action had been brought against the guarantor by the owner or operator.
(4) The total liability of any guarantor shall be limited to the aggregate amount which the guarantor has provided as evidence of financial responsibility to the owner or operator under this section. Nothing in this subsection shall be construed to limit any other State or Federal statutory, contractual or common law liability of a guarantor to its owner or operator including, but not limited to, the liability of such guarantor for bad faith either in negotiating or in failing to negotiate the settlement of any claim. Nothing in this subsection shall be construed to diminish the liability of any person under section 9607 or 9611 of this title or other applicable law.
(5) For the purpose of this subsection, the term "guarantor" means any person, other than the owner or operator, who provides evidence of financial responsibility for an owner or operator under this subsection.
(6) Withdrawal of Approval.—After an opportunity for good faith, collaborative efforts to correct financial deficiencies with a State fund, the Administrator may withdraw approval of any State fund or State assurance program to be used as a financial responsibility mechanism without withdrawing approval of a State underground storage tank program under subsection (a).

(d) EPA determination

(1) Within one hundred and eighty days of the date of receipt of a proposed State program, the Administrator shall, after notice and opportunity for public comment, make a determination whether the State's program complies with the provisions of this section and provides for adequate enforcement of compliance with the requirements and standards adopted pursuant to this section.
(2) If the Administrator determines that a State program complies with the provisions of this section and provides for adequate enforcement of compliance with the requirements and standards adopted pursuant to this section, he shall approve the State program in lieu of the Federal program and the State shall have primary enforcement responsibility with respect to requirements of its program.

(e) Withdrawal of authorization

Whenever the Administrator determines after public hearing that a State is not administering and enforcing a program authorized under this subchapter in accordance with the provisions of this section, he shall so notify the State. If appropriate
action is not taken within a reasonable time, not to exceed one hundred and twenty days after such notification, the Administrator shall withdraw approval of such program and reestablish the Federal program pursuant to this subchapter.

(f) Trust Fund distribution

(1) In general

(A) Amount and permitted uses of distribution

The Administrator shall distribute to States not less than 80 percent of the funds from the Trust Fund that are made available to the Administrator under section 6991m(2)(A) of this title for each fiscal year for use in paying the reasonable costs, incurred under a cooperative agreement with any State for—

(i) corrective actions taken by the State under section 6991b(h)(7)(A) of this title;

(ii) necessary administrative expenses, as determined by the Administrator, that are directly related to State fund or State assurance programs under subsection (c)(1); or

(iii) enforcement, by a State or a local government, of State or local regulations pertaining to underground storage tanks regulated under this subchapter.

(B) Use of funds for enforcement

In addition to the uses of funds authorized under subparagraph (A), the Administrator may use funds from the Trust Fund that are not distributed to States under subparagraph (A) for enforcement of any regulation promulgated by the Administrator under this subchapter.

(C) Prohibited uses

Funds provided to a State by the Administrator under subparagraph (A) shall not be used by the State to provide financial assistance to an owner or operator to meet any requirement relating to underground storage tanks under subparts B, C, D, H, and G of part 280 of title 40, Code of Federal Regulations (as in effect on August 8, 2005).

(2) Allocation

(A) Process

Subject to subparagraphs (B) and (C), in the case of a State with which the Administrator has entered into a cooperative agreement under section 6991b(h)(7)(A) of this title, the Administrator shall distribute funds from the Trust Fund to the State using an allocation process developed by the Administrator.

(B) Diversion of State funds

The Administrator shall not distribute funds under subparagraph (A)(iii) of subsection (f)(1) to any State that has diverted funds from a State fund or State assurance program for purposes other than those related to the regulation of underground storage tanks covered by this subchapter, with the exception of those transfers that had been completed earlier than August 8, 2005.

(C) Revisions to process

The Administrator may revise the allocation process referred to in subparagraph (A) after—

(i) consulting with State agencies responsible for overseeing corrective action for releases from underground storage tanks; and

(ii) taking into consideration, at a minimum, each of the following:

(I) The number of confirmed releases from federally regulated leaking underground storage tanks in the States.

(II) The number of federally regulated underground storage tanks in the States.

(III) The performance of the States in implementing and enforcing the program.

(IV) The financial needs of the States.

(V) The ability of the States to use the funds referred to in subparagraph (A) in any year.

(3) Distributions to State agencies

Distributions from the Trust Fund under this subsection shall be made directly to a State agency that—

(A) enters into a cooperative agreement referred to in paragraph (2)(A); or

(B) is enforcing a State program approved under this section.


EDITORIAL NOTES

REFERENCES IN TEXT

The Federal Bankruptcy Code, referred to in subsec. (c)(3), probably means a reference to Title 11, Bankruptcy.

AMENDMENTS

2005—Subsec. (a). Pub. L. 109–58, §1533(3), substituted "in subparagraph (A) or (B) of section 6991(7)" for "in 6991(2)(A) or (B) or both".

§6991d. Inspections, monitoring, testing, and corrective action

(a) Furnishing information

For the purposes of developing or assisting in the development of any regulation, conducting any study, taking any corrective action, or enforcing the provisions of this subchapter, any owner or operator of an underground storage tank (or any tank subject to study under section 6991h of this title that is used for storing regulated substances) shall, upon request of any officer, employee or representative of the Environmental Protection Agency, duly designated by the Administrator, or upon request of any duly designated officer, employee, or representative of a State acting pursuant to subsection (h)(7) of section 6991b of this title or with an approved program, furnish information relating to such tanks, their associated equipment, their contents, conduct monitoring or testing, report such officer at all reasonable times to have access to, and to copy all records relating to such tanks and permit such officer to have access for corrective action. For the purposes of developing or assisting in the development of any regulation, conducting any study, taking corrective action, or enforcing the provisions of this subchapter, such officers, employees, or representatives are authorized—

(1) to enter at reasonable times any establishment or other place where an underground storage tank is located;
(2) to inspect and obtain samples from any person of any regulated substances contained in such tank;
(3) to conduct monitoring or testing of the tanks, associated equipment, contents, or surrounding soils, air, surface water or ground water; and
(4) to take corrective action.

Each such inspection shall be commenced and completed with reasonable promptness.

(b) Confidentiality

(1) Any records, reports, or information obtained from any persons under this section shall be available to the public, except that upon a showing satisfactory to the Administrator (or the State, as the case may be) by any person that records, reports, or information, or a particular part thereof, to which the Administrator (or the State, as the case may be) or any officer, employee, or representative thereof has access under this section if made public, would divulge information entitled to protection under section 1905 of title 18, such information or particular portion thereof shall be considered confidential in accordance with the purposes of that section, except that such record, report, document, or information may be disclosed to other officers, employees, or authorized representatives of the United States concerned with carrying out this chapter, or when relevant in any proceeding under this chapter.

(2) Any person not subject to the provisions of section 1905 of title 18 who knowingly and willfully divulges or discloses any information entitled to protection under this subsection shall, upon conviction, be subject to a fine of not more than $5,000 or to imprisonment not to exceed one year, or both.

(3) In submitting data under this subchapter, a person required to provide such data may—

(A) designate the data which such person believes is entitled to protection under this subsection, and
(B) submit such designated data separately from other data submitted under this subchapter.

A designation under this paragraph shall be made in writing and in such manner as the Administrator may prescribe.

(4) Notwithstanding any limitation contained in this section or any other provision of law, all information reported to, or otherwise obtained, by the Administrator (or any representative of the Administrator) under this chapter shall be made available, upon written request of any duly authorized committee of the Congress, to such committee (including records, reports, or information obtained by representatives of the Environmental Protection Agency).

(c) Inspection requirements

(1) Uninspected tanks

In the case of underground storage tanks regulated under this subchapter that have not undergone an inspection since December 22, 1998, not later than 2 years after August 8, 2005, the Administrator or a State that receives funding under this subchapter, as appropriate, shall conduct on-site inspections of all such tanks to determine compliance with this subchapter and the regulations under this subchapter (40 CFR 280) or a requirement or standard of a State program developed under section 6991c of this title.

(2) Periodic inspections

After completion of all inspections required under paragraph (1), the Administrator or a State that receives funding under this subchapter, as appropriate, shall conduct on-site inspections of each underground storage tank regulated under this subchapter at least once every 3 years to determine compliance with this subchapter and the regulations under
this subchapter (40 CFR 280) or a requirement or standard of a State program developed under section 6991c of this title. The Administrator may extend for up to one additional year the first 3-year inspection interval under this paragraph if the State demonstrates that it has insufficient resources to complete all such inspections within the first 3-year period.

(3) Inspection authority

Nothing in this section shall be construed to diminish the Administrator's or a State's authorities under subsection (a).


EDITORIAL NOTES

AMENDMENTS


Subsec. (c). Pub. L. 109–58, §1523(a), added subsec. (c).


Subsec. (a). Pub. L. 99–499, §205(f)(1), in first sentence, inserted "taking any corrective action" after "conductor any study", inserted "acting pursuant to subsection (h)(7) of section 6991b of this title or", struck out "and" before "permit such officer", and inserted "and permit such officer to have access for corrective action", and in second sentence, inserted "taking corrective action," after "study,". The amendment directing insertion of "taking any corrective action" after "study" in first sentence was executed by inserting that language after "conductor any study" rather than after "subject to study", as the probable intent of Congress.


§6991e. Federal enforcement

(a) Compliance orders

(1) Except as provided in paragraph (2), whenever on the basis of any information, the Administrator determines that any person is in violation of any requirement of this subchapter, the Administrator may issue an order requiring compliance within a reasonable specified time period or the Administrator may commence a civil action in the United States district court in which the violation occurred for appropriate relief, including a temporary or permanent injunction.

(2) In the case of a violation of any requirement of this subchapter where such violation occurs in a State with a program approved under section 6991c of this title, the Administrator shall give notice to the State in which such violation has occurred prior to issuing an order or commencing a civil action under this section.

(3) If a violator fails to comply with an order under this subsection within the time specified in the order, he shall be liable for a civil penalty of not more than $25,000 for each day of continued noncompliance.

(b) Procedure

Any order issued under this section shall become final unless, no later than thirty days after the order is served, the person or persons named therein request a public hearing. Upon such request the Administrator shall promptly conduct a public hearing. In connection with any proceeding under this section the Administrator may issue subpoenas for the attendance and testimony of witnesses and the production of relevant papers, books, and documents, and may promulgate rules for discovery procedures.

(c) Contents of order

Any order issued under this section shall state with reasonable specificity the nature of the violation, specify a reasonable time for compliance, and assess a penalty, if any, which the Administrator determines is reasonable taking into account the seriousness of the violation and any good faith efforts to comply with the applicable requirements.

(d) Civil penalties

(1) Any owner who knowingly fails to notify or submits false information pursuant to section 6991a(a) of this title shall be subject to a civil penalty not to exceed $10,000 for each tank for which notification is not given or false information is submitted.

(2) Any owner or operator of an underground storage tank who fails to comply with—

(A) any requirement or standard promulgated by the Administrator under section 6991b of this title;

(B) any requirement or standard of a State program approved pursuant to section 6991c of this title;

(C) the provisions of section 6991b(g) of this title (entitled "Interim Prohibition"); or

(D) ² the requirements established in section 6991b(i) of this title; or

(E) the delivery prohibition requirement established by section 6991k of this title,
shall be subject to a civil penalty not to exceed $10,000 for each tank for each day of violation. Any person making or accepting a delivery or deposit of a regulated substance to an underground storage tank at an ineligible facility in violation of section 6991k of this title shall also be subject to the same civil penalty for each day of such violation.

(e) Incentive for performance

Both of the following may be taken into account in determining the terms of a civil penalty under subsection (d):

1. The compliance history of an owner or operator in accordance with this subchapter or a program approved under section 699fc of this title.

2. Any other factor the Administrator considers appropriate.


EDITORIAL NOTES

AMENDMENTS

2005—Subsec. (d)(2). Pub. L. 109–58, §1527(b)(2), inserted at end "Any person making or accepting a delivery or deposit of a regulated substance to an underground storage tank at an ineligible facility in violation of section 6991k of this title shall also be subject to the same civil penalty for each day of such violation."

Subsec. (d)(2)(B). Pub. L. 109–58, §1530(d)(1), which directed amendment of subpar. (B) by striking out "or" at end, could not be executed because "or" did not appear subsequent to amendment by Pub. L. 109–58, §1524(c)(1). See below.

Pub. L. 109–58, §1524(c)(1), struck out "or" at end.


Subsec. (d)(2)(D). Pub. L. 109–58, §1530(d)(3), added subpar. (D) relating to requirements established in section 6991b(i) of this title.

Pub. L. 109–58, §1524(c)(2), added subpar. (D) relating to training requirements established by States pursuant to section 6991 of this title.


STATUTORY NOTES AND RELATED SUBSIDIARIES

EFFECTIVE DATE OF 2005 AMENDMENT

Amendment by section 1530(d) of Pub. L. 109–58 effective 18 months after Aug. 8, 2005, see section 1530(b) of Pub. L. 109–58, set out as a note under section 6991b of this title.

1 So in original. The word "or" probably should not appear.

2 So in original. Two subpars. (D) have been enacted.

3 So in original. The comma probably should be a semicolon.

§6991f. Federal facilities

(a) In general

Each department, agency, and instrumentality of the executive, legislative, and judicial branches of the Federal Government (1) having jurisdiction over any underground storage tank or underground storage tank system, or (2) engaged in any activity resulting, or which may result, in the installation, operation, management, or closure of any underground storage tank, release response activities related thereto, or in the delivery, acceptance, or deposit of any regulated substance to an underground storage tank or underground storage tank system shall be subject to, and comply with, all Federal, State, interstate, and local requirements, both substantive and procedural (including any requirement for permits or reporting or any provisions for injunctive relief and such sanctions as may be imposed by a court to enforce such relief), respecting underground storage tanks in the same manner, and to the same extent, as any person is subject to such requirements, including the payment of reasonable service charges. The Federal, State, interstate, and local substantive and procedural requirements referred to in this subsection include, but are not limited to, all administrative orders and all civil and administrative penalties and fines, regardless of whether such penalties or fines are punitive or coercive in nature or are imposed for isolated, intermittent, or continuing violations. The United States hereby expressly waives any immunity otherwise applicable to the United States with respect to any such substantive or procedural requirement (including, but not limited to, any injunctive relief, administrative order or civil or administrative penalty or fine referred to in the preceding sentence, or reasonable service charge). The reasonable service charges referred to in this subsection include, but are not limited to, fees or charges assessed in connection with the processing and issuance of permits, renewal of permits,
amendments to permits, review of plans, studies, and other documents, and inspection and monitoring of facilities, as well as any other nondiscriminatory charges that are assessed in connection with a Federal, State, interstate, or local underground storage tank regulatory program. Neither the United States, nor any agent, employee, or officer thereof, shall be immune or exempt from any process or sanction of any State or Federal Court with respect to the enforcement of any such injunctive relief. No agent, employee, or officer of the United States shall be personally liable for any civil penalty under any Federal, State, interstate, or local law concerning underground storage tanks with respect to any act or omission within the scope of the official duties of the agent, employee, or officer. An agent, employee, or officer of the United States shall be subject to any criminal sanction (including, but not limited to, any fine or imprisonment) under any Federal or State law concerning underground storage tanks, but no department, agency, or instrumentality of the executive, legislative, or judicial branch of the Federal Government shall be subject to any such sanction. The President may exempt any underground storage tank of any department, agency, or instrumentality in the executive branch from compliance with such a requirement if he determines it to be in the paramount interest of the United States to do so. No such exemption shall be granted due to lack of appropriation unless the President shall have specifically requested such appropriation as a part of the budgetary process and the Congress shall have failed to make available such requested appropriation. Any exemption shall be for a period not in excess of 1 year, but additional exemptions may be granted for periods not to exceed 1 year upon the President's making a new determination. The President shall report each January to the Congress all exemptions from the requirements of this section granted during the preceding calendar year, together with his reason for granting each such exemption.

(b) Review of and report on Federal underground storage tanks

(1) Review

Not later than 12 months after August 8, 2005, each Federal agency that owns or operates one or more underground storage tanks, or that manages land on which one or more underground storage tanks are located, shall submit to the Administrator, the Committee on Energy and Commerce of the United States House of Representatives, and the Committee on the Environment and Public Works of the Senate a compliance strategy report that—

(A) lists the location and owner of each underground storage tank described in this paragraph;

(B) lists all tanks that are not in compliance with this subchapter that are owned or operated by the Federal agency;

(C) specifies the date of the last inspection by a State or Federal inspector of each underground storage tank owned or operated by the agency;

(D) lists each violation of this subchapter respecting any underground storage tank owned or operated by the agency;

(E) describes the operator training that has been provided to the operator and other persons having primary daily on-site management responsibility for the operation and maintenance of underground storage tanks owned or operated by the agency; and

(F) describes the actions that have been and will be taken to ensure compliance for each underground storage tank identified under subparagraph (B).

(2) Not a safe harbor

This subsection does not relieve any person from any obligation or requirement under this subchapter.


EDITORIAL NOTES

AMENDMENTS

2005—Pub. L. 109–58 amended section generally. Prior to amendment, section required each department, agency, and instrumentality of the executive, legislative, and judicial branches of the Federal Government having jurisdiction over any underground storage tank to comply with all Federal, State, interstate, and local requirements, applicable to such tank, both substantive and procedural, in the same manner, and to the same extent, as any other person is subject to such requirements, including payment of reasonable service charges, provided that neither the United States, nor any agent, employee, or officer thereof, was immune or exempt from any process or sanction of any State or Federal court with respect to the enforcement of any such injunctive relief, and authorized the President to exempt any tank from compliance with such requirements upon certain determinations.

§6991g. State authority

Nothing in this subchapter shall preclude or deny any right of any State or political subdivision thereof to adopt or enforce any regulation, requirement, or standard of performance respecting underground storage tanks that is more stringent than a regulation, requirement, or standard of performance in effect under this subchapter or to impose any additional liability with respect to the release of regulated substances within such State or political subdivision.

EDITORIAL NOTES

AMENDMENTS

1986—Pub. L. 99–499 amended section generally. Prior to amendment, section read as follows: "Nothing in this subchapter shall preclude or deny any right of any State or political subdivision thereof to adopt or enforce any regulation, requirement or standard of performance respecting underground storage tanks that is more stringent than a regulation, requirement, or standard of performance in effect under this subchapter."

§6991h. Study of underground storage tanks

(a) Petroleum tanks

Not later than twelve months after November 8, 1984, the Administrator shall complete a study of underground storage tanks used for the storage of regulated substances defined in section 6991(7)(B) of this title.

(b) Other tanks

Not later than thirty-six months after November 8, 1984, the Administrator shall complete a study of all other underground storage tanks.

(c) Elements of studies

The studies under subsections (a) and (b) shall include an assessment of the ages, types (including methods of manufacture, coatings, protection systems, the compatibility of the construction materials and the installation methods) and locations (including the climate of the locations) of such tanks; soil conditions, water tables, and the hydrogeology of tank locations; the relationship between the foregoing factors and the likelihood of releases from underground storage tanks; the effectiveness and costs of inventory systems, tank testing, and leak detection systems; and such other factors as the Administrator deems appropriate.

(d) Farm and heating oil tanks

Not later than thirty-six months after November 8, 1984, the Administrator shall conduct a study regarding the tanks referred to in subparagraphs (A) and (B) of section 6991(10) of this title. Such study shall include estimates of the number and location of such tanks and an analysis of the extent to which there may be releases or threatened releases from such tanks into the environment.

(e) Reports

Upon completion of the studies authorized by this section, the Administrator shall submit reports to the President and to the Congress containing the results of the studies and recommendations respecting whether or not such tanks should be subject to the preceding provisions of this subchapter.

(f) Reimbursement

(1) If any owner or operator (excepting an agency, department, or instrumentality of the United States Government, a State or a political subdivision thereof) shall incur costs, including the loss of business opportunity, due to the closure or interruption of operation of an underground storage tank solely for the purpose of conducting studies authorized by this section, the Administrator shall provide such person fair and equitable reimbursement for such costs.

(2) All claims for reimbursement shall be filed with the Administrator not later than ninety days after the closure or interruption which gives rise to the claim.

(3) Reimbursements made under this section shall be from funds appropriated by the Congress pursuant to the authorization contained in section 6916(g) 1 of this title.

(4) For purposes of judicial review, a determination by the Administrator under this subsection shall be considered final agency action.


EDITORIAL NOTES

REFERENCES IN TEXT

Section 6916(g) of this title, referred to in subsec. (f)(3), probably means section 6916(f) of this title which authorizes appropriations for this subchapter. There is no subsec. (g) of section 6916.

AMENDMENTS


Subsec. (d). Pub. L. 109–58, §1532(b)(3)(B), substituted "subparagraphs (A) and (B) of section 6991(10)" for "section 6991(1)(A) and (B)".

1 See References in Text note below.
§6991i. Operator training

(a) Guidelines

(1) In general
Not later than 2 years after August 8, 2005, in consultation and cooperation with States and after public notice and opportunity for comment, the Administrator shall publish guidelines that specify training requirements for—
(A) persons having primary responsibility for on-site operation and maintenance of underground storage tank systems;
(B) persons having daily on-site responsibility for the operation and maintenance of underground storage tanks systems; and
(C) daily, on-site employees having primary responsibility for addressing emergencies presented by a spill or release from an underground storage tank system.

(2) Considerations
The guidelines described in paragraph (1) shall take into account—
(A) State training programs in existence as of the date of publication of the guidelines;
(B) training programs that are being employed by tank owners and tank operators as of August 8, 2005;
(C) the high turnover rate of tank operators and other personnel;
(D) the frequency of improvement in underground storage tank equipment technology;
(E) the nature of the businesses in which the tank operators are engaged;
(F) the substantial differences in the scope and length of training needed for the different classes of persons described in subparagraphs (A), (B), and (C) of paragraph (1); and
(G) such other factors as the Administrator determines to be necessary to carry out this section.

(b) State programs

(1) In general
Not later than 2 years after the date on which the Administrator publishes the guidelines under subsection (a)(1), each State that receives funding under this subchapter shall develop State-specific training requirements that are consistent with the guidelines developed under subsection (a)(1).

(2) Requirements
State requirements described in paragraph (1) shall—
(A) be consistent with subsection (a);
(B) be developed in cooperation with tank owners and tank operators;
(C) take into consideration training programs implemented by tank owners and tank operators as of August 8, 2005; and
(D) be appropriately communicated to tank owners and operators.

(3) Financial incentive
The Administrator may award to a State that develops and implements requirements described in paragraph (1), in addition to any funds that the State is entitled to receive under this subchapter, not more than $200,000, to be used to carry out the requirements.

(c) Training
All persons that are subject to the operator training requirements of subsection (a) shall—
(1) meet the training requirements developed under subsection (b); and
(2) repeat the applicable requirements developed under subsection (b), if the tank for which they have primary daily on-site management responsibilities is determined to be out of compliance with—
(A) a requirement or standard promulgated by the Administrator under section 6991b of this title; or
(B) a requirement or standard of a State program approved under section 6991c of this title.


EDITORIAL NOTES

REFERENCES IN TEXT

August 8, 2005, referred to in subsec. (b)(2)(C), was in the original "the date of enactment of this section", which was translated as meaning the date of enactment of Pub. L. 109–58, which amended this section generally, to reflect the probable intent of Congress.

AMENDMENTS

2005—Pub. L. 109–58 amended section catchline and text generally. Prior to amendment, text read as follows: "For authorization of appropriations to carry out this subchapter, see section 6916(g) of this title."
§6991j. Use of funds for release prevention and compliance

Funds made available under section 6991m(2)(D) of this title from the Trust Fund may be used to conduct inspections, issue orders, or bring actions under this subchapter—

(1) by a State, in accordance with a grant or cooperative agreement with the Administrator, of State regulations pertaining to underground storage tanks regulated under this subchapter; and

(2) by the Administrator, for tanks regulated under this subchapter (including under a State program approved under section 699 fc of this title).


1 So in original.

§6991k. Delivery prohibition

(a) Requirements

(1) Prohibition of delivery or deposit

Beginning 2 years after August 8, 2005, it shall be unlawful to deliver to, deposit into, or accept a regulated substance into an underground storage tank at a facility which has been identified by the Administrator or a State implementing agency to be ineligible for such delivery, deposit, or acceptance.

(2) Guidance

Within 1 year after August 8, 2005, the Administrator shall, in consultation with the States, underground storage tank owners, and product delivery industries, publish guidelines detailing the specific processes and procedures they will use to implement the provisions of this section. The processes and procedures include, at a minimum—

(A) the criteria for determining which underground storage tank facilities are ineligible for delivery, deposit, or acceptance of a regulated substance;

(B) the mechanisms for identifying which facilities are ineligible for delivery, deposit, or acceptance of a regulated substance to the underground storage tank owning and fuel delivery industries;

(C) the process for reclassifying ineligible facilities as eligible for delivery, deposit, or acceptance of a regulated substance;

(D) one or more processes for providing adequate notice to underground storage tank owners and operators and supplier industries that an underground storage tank has been determined to be ineligible for delivery, deposit, or acceptance of a regulated substance; and

(E) a delineation of, or a process for determining, the specified geographic areas subject to paragraph (4).

(3) Compliance

States that receive funding under this subchapter shall, at a minimum, comply with the processes and procedures published under paragraph (2).

(4) Consideration

(A) Rural and remote areas

Subject to subparagraph (B), the Administrator or a State may consider not treating an underground storage tank as ineligible for delivery, deposit, or acceptance of a regulated substance if such treatment would jeopardize the availability of, or access to, fuel in any rural and remote areas unless an urgent threat to public health, as determined by the Administrator, exists.

(B) Applicability

Subparagraph (A) shall apply only during the 180-day period following the date of a determination by the Administrator or the appropriate State under subparagraph (A).

(b) Effect on State authority

Nothing in this section shall affect or preempt the authority of a State to prohibit the delivery, deposit, or acceptance of a regulated substance to an underground storage tank.

(c) Defense to violation

A person shall not be in violation of subsection (a)(1) if the person has not been provided with notice pursuant to subsection (a)(2)(D) of the ineligibility of a facility for delivery, deposit, or acceptance of a regulated substance as determined by the Administrator or a State, as appropriate, under this section.


EDITORIAL NOTES
AMENDMENTS


§6991l. Tanks on tribal lands

(a) Strategy

The Administrator, in coordination with Indian tribes, shall, not later than 1 year after August 8, 2005, develop and implement a strategy—

(1) giving priority to releases that present the greatest threat to human health or the environment, to take necessary corrective action in response to releases from leaking underground storage tanks located wholly within the boundaries of—

(A) an Indian reservation; or
(B) any other area under the jurisdiction of an Indian tribe; and

(2) to implement and enforce requirements concerning underground storage tanks located wholly within the boundaries of—

(A) an Indian reservation; or
(B) any other area under the jurisdiction of an Indian tribe.

(b) Report

Not later than 2 years after August 8, 2005, the Administrator shall submit to Congress a report that summarizes the status of implementation and enforcement of this subchapter in areas located wholly within—

(1) the boundaries of Indian reservations; and
(2) any other areas under the jurisdiction of an Indian tribe.

The Administrator shall make the report under this subsection available to the public.

(c) Not a safe harbor

This section does not relieve any person from any obligation or requirement under this subchapter.

(d) State authority

Nothing in this section applies to any underground storage tank that is located in an area under the jurisdiction of a State, or that is subject to regulation by a State, as of August 8, 2005.


§6991m. Authorization of appropriations

There are authorized to be appropriated to the Administrator the following amounts:

(1) To carry out this subchapter (except sections 6991b(h), 6991d(c), 6991j, and 6991k of this title) $50,000,000 for each of fiscal years 2006 through 2011.

(2) From the Trust Fund—

(A) to carry out section 6991b(h) of this title (except section 6991b(h)(12) of this title) $200,000,000 for each of fiscal years 2006 through 2011;
(B) to carry out section 6991b(h)(12) of this title, $200,000,000 for each of fiscal years 2006 through 2011;
(C) to carry out sections 6991b(i), 6991c(f), and 6991d(c) of this title $100,000,000 for each of fiscal years 2006 through 2011; and
(D) to carry out sections 6991i, 6991j, 6991k, and 6991l of this title $55,000,000 for each of fiscal years 2006 through 2011.


EDITORIAL NOTES

AMENDMENTS


SUBCHAPTER X—DEMONSTRATION MEDICAL WASTE TRACKING PROGRAM
§6992. Scope of demonstration program for medical waste

(a) Covered States

The States within the demonstration program established under this subchapter for tracking medical wastes shall be New York, New Jersey, Connecticut, the States contiguous to the Great Lakes and any State included in the program through the petition procedure described in subsection (c), except for any of such States in which the Governor notifies the Administrator under subsection (b) that such State shall not be covered by the program.

(b) Opt out

(1) If the Governor of any State covered under subsection (a) which is not contiguous to the Atlantic Ocean notifies the Administrator that such State elects not to participate in the demonstration program, the Administrator shall remove such State from the program.

(2) If the Governor of any other State covered under subsection (a) notifies the Administrator that such State has implemented a medical waste tracking program that is no less stringent than the demonstration program under this subchapter and that such State elects not to participate in the demonstration program, the Administrator shall, if the Administrator determines that such State program is no less stringent than the demonstration program under this subchapter, remove such State from the demonstration program.

(3) Notifications under paragraphs (1) or (2) shall be submitted to the Administrator no later than 30 days after the promulgation of regulations implementing the demonstration program under this subchapter.

c) Petition in

The Governor of any State may petition the Administrator to be included in the demonstration program and the Administrator may, in his discretion, include any such State. Such petition may not be made later than 30 days after promulgation of regulations establishing the demonstration program under this subchapter, and the Administrator shall determine whether to include the State within 30 days after receipt of the State’s petition.

d) Expiration of demonstration program

The demonstration program shall expire on the date 24 months after the effective date of the regulations under this subchapter.

(Pub. L. 89–272, title II, §11001, as added Pub. L. 100–582, §2(a), Nov. 1, 1988, 102 Stat. 2950.)

§6992a. Listing of medical wastes

(a) List

Not later than 6 months after November 1, 1988, the Administrator shall promulgate regulations listing the types of medical waste to be tracked under the demonstration program. Except as provided in subsection (b), such list shall include, but need not be limited to, each of the following types of solid waste:

1. Cultures and stocks of infectious agents and associated biologicals, including cultures from medical and pathological laboratories; cultures and stocks of infectious agents from research and industrial laboratories; wastes from the production of biologicals, discarded live and attenuated vaccines, and culture dishes and devices used to transfer, inoculate, and mix cultures.

2. Pathological wastes, including tissues, organs, and body parts that are removed during surgery or autopsy.

3. Waste human blood and products of blood, including serum, plasma, and other blood components.

4. Sharps that have been used in patient care or in medical, research, or industrial laboratories, including hypodermic needles, syringes, pasteur pipettes, broken glass, and scalpel blades.

5. Contaminated animal carcasses, body parts, and bedding of animals that were exposed to infectious agents during research, production of biologicals, or testing of pharmaceuticals.

6. Wastes from surgery or autopsy that were in contact with infectious agents, including soiled dressings, sponges, drapes, lavender tubes, drainage sets, underpads, and surgical gloves.

7. Laboratory wastes from medical, pathological, pharmaceutical, or other research, commercial, or industrial laboratories that were in contact with infectious agents, including slides and cover slips, disposable gloves, laboratory coats, and aprons.

8. Dialysis wastes that were in contact with the blood of patients undergoing hemodialysis, including contaminated disposable equipment and supplies such as tubing, filters, disposable sheets, towels, gloves, aprons, and laboratory coats.

9. Discarded medical equipment and parts that were in contact with infectious agents.

10. Biological waste and discarded materials contaminated with blood, excretion, exudates or secretion from human beings or animals who are isolated to protect others from communicable diseases.

11. Such other waste material that results from the administration of medical care to a patient by a health care provider and is found by the Administrator to pose a threat to human health or the environment.

(b) Exclusions from list

The Administrator may exclude from the list under this section any categories or items described in paragraphs (6) through (10) of subsection (a) which he determines do not pose a substantial present or potential hazard to human health or the environment when improperly treated, stored, transported, disposed of, or otherwise managed.
§6992b. Tracking of medical waste

(a) Demonstration program

Not later than 6 months after November 1, 1988, the Administrator shall promulgate regulations establishing a program for the tracking of the medical waste listed in section 6992a of this title which is generated in a State subject to the demonstration program. The program shall (1) provide for tracking of the transportation of the waste from the generator to the disposal facility, except that waste that is incinerated need not be tracked after incineration, (2) include a system for providing the generator of the waste with assurance that the waste is received by the disposal facility, (3) use a uniform form for tracking in each of the demonstration States, and (4) include the following requirements:
  
  (A) A requirement for segregation of the waste at the point of generation where practicable.
  
  (B) A requirement for placement of the waste in containers that will protect waste handlers and the public from exposure.
  
  (C) A requirement for appropriate labeling of containers of the waste.

(b) Small quantities

In the program under subsection (a), the Administrator may establish an exemption for generators of small quantities of medical waste listed under section 6992a of this title, except that the Administrator may not exempt from the program any person who, or facility that, generates 50 pounds or more of such waste in any calendar month.

(c) On-site incinerators

Concurrently with the promulgation of regulations under subsection (a), the Administrator shall promulgate a recordkeeping and reporting requirement for any generator in a demonstration State of medical waste listed in section 6992a of this title that (1) incinerates medical waste listed in section 6992a of this title on site and (2) does not track such waste under the regulations promulgated under subsection (a). Such requirement shall require the generator to report to the Administrator on the volume and types of medical waste listed in section 6992a of this title that the generator incinerated on site during the 6 months following the effective date of the requirements of this subsection.

(d) Type of medical waste and types of generators

For each of the requirements of this section, the regulations may vary for different types of medical waste and for different types of medical waste generators.

(Pub. L. 89–272, title II, §11003, as added Pub. L. 100–582, §2(a), Nov. 1, 1988, 102 Stat. 2952.)

§6992c. Inspections

(a) Requirements for access

For purposes of developing or assisting in the development of any regulation or report under this subchapter or enforcing any provision of this subchapter, any person who generates, stores, treats, transports, disposes of, or otherwise handles or has handled medical waste shall, upon request of any officer, employee, or representative of the Environmental Protection Agency duly designated by the Administrator, furnish information relating to such waste, including any tracking forms required to be maintained under section 6992b of this title, conduct monitoring or testing, and permit such person at all reasonable times to have access to, and to copy, all records relating to such waste. For such purposes, such officers, employees, or representatives are authorized to—

  (1) enter at reasonable times any establishment or other place where medical wastes are or have been generated, stored, treated, disposed of, or transported from;
  
  (2) conduct monitoring or testing; and
  
  (3) inspect and obtain samples from any person of any such wastes and samples of any containers or labeling for such wastes.

(b) Procedures

Each inspection under this section shall be commenced and completed with reasonable promptness. If the officer, employee, or representative obtains any samples, prior to leaving the premises he shall give to the owner, operator, or agent in charge a receipt describing the sample obtained and, if requested, a portion of each such sample equal in volume or weight to the portion retained if giving such an equal portion is feasible. If any analysis is made of such samples, a copy of the results of such analysis shall be furnished promptly to the owner, operator, or agent in charge of the premises concerned.

(c) Availability to public

The provisions of section 6927(b) of this title shall apply to records, reports, and information obtained under this section in the same manner and to the same extent as such provisions apply to records, reports, and information obtained under section 6927 of this title.

(Pub. L. 89–272, title II, §11004, as added Pub. L. 100–582, §2(a), Nov. 1, 1988, 102 Stat. 2952.)
§6992d. Enforcement

(a) Compliance orders

(1) Violations

Whenever on the basis of any information the Administrator determines that any person has violated, or is in violation of, any requirement or prohibition in effect under this subchapter (including any requirement or prohibition in effect under regulations under this subchapter) (A) the Administrator may issue an order (i) assessing a civil penalty for any past or current violation, (ii) requiring compliance immediately or within a specified time period, or (iii) both, or (B) the Administrator may commence a civil action in the United States district court in the district in which the violation occurred for appropriate relief, including a temporary or permanent injunction. Any order issued pursuant to this subsection shall state with reasonable specificity the nature of the violation.

(2) Orders assessing penalties

Any penalty assessed in an order under this subsection shall not exceed $25,000 per day of noncompliance for each violation of a requirement or prohibition in effect under this subchapter. In assessing such a penalty, the Administrator shall take into account the seriousness of the violation and any good faith efforts to comply with applicable requirements.

(3) Public hearing

Any order issued under this subsection shall become final unless, not later than 30 days after issuance of the order, the persons named therein request a public hearing. Upon such request, the Administrator shall promptly conduct a public hearing. In connection with any proceeding under this section, the Administrator may issue subpoenas for the production of relevant papers, books, and documents, and may promulgate rules for discovery procedures.

(4) Violation of compliance orders

In the case of an order under this subsection requiring compliance with any requirement of or regulation under this subchapter, if a violator fails to take corrective action within the time specified in an order, the Administrator may assess a civil penalty of not more than $25,000 for each day of continued noncompliance with the order.

(b) Criminal penalties

Any person who—

(1) knowingly violates the requirements of or regulations under this subchapter;
(2) knowingly omits material information or makes any false material statement or representation in any label, record, report, or other document filed, maintained, or used for purposes of compliance with this subchapter or regulations thereunder; or
(3) knowingly generates, stores, treats, transports, disposes of, or otherwise handles any medical waste (whether such activity took place before or takes place after November 1, 1988) and who knowingly destroys, alters, conceals, or fails to file any record, report, or other document required to be maintained or filed for purposes of compliance with this subchapter or regulations thereunder

shall, upon conviction, be subject to a fine of not more than $50,000 for each day of violation, or imprisonment not to exceed 2 years (5 years in the case of a violation of paragraph (1)). If the conviction is for a violation committed after a first conviction of such person under this paragraph, the maximum punishment under the respective paragraph shall be doubled with respect to both fine and imprisonment.

(c) Knowing endangerment

Any person who knowingly violates any provision of subsection (b) who knows at that time that he thereby places another person in imminent danger of death or serious bodily injury, shall upon conviction be subject to a fine of not more than $250,000 or imprisonment for not more than 15 years, or both. A defendant that is an organization shall, upon conviction under this subsection, be subject to a fine of not more than $1,000,000. The terms of this paragraph shall be interpreted in accordance with the rules provided under section 6928(f) of this title.

(d) Civil penalties

Any person who violates any requirement of or regulation under this subchapter shall be liable to the United States for a civil penalty in an amount not to exceed $25,000 for each such violation. Each day of such violation shall, for purposes of this section, constitute a separate violation.

(e) Civil penalty policy

Civil penalties assessed by the United States or by the States under this subchapter shall be assessed in accordance with the Administrator's "RCRA Civil Penalty Policy", as such policy may be amended from time to time.

(Pub. L. 89–272, title II, §11005, as added Pub. L. 100–582, §2(a), Nov. 1, 1988, 102 Stat. 2953.)

§6992e. Federal facilities

(a) In general

Each department, agency, and instrumentality of the executive, legislative, and judicial branches of the Federal Government in a demonstration State (1) having jurisdiction over any solid waste management facility or disposal site at
which medical waste is disposed of or otherwise handled, or (2) engaged in any activity resulting, or which may result, in the disposal, management, or handling of medical waste shall be subject to, and comply with, all Federal, State, interstate, and local requirements, both substantive and procedural (including any requirement for permits or reporting or any provisions for injunctive relief and such sanctions as may be imposed by a court to enforce such relief), respecting control and abatement of medical waste disposal and management in the same manner, and to the same extent, as any person is subject to such requirements, including the payment of reasonable service charges. The Federal, State, interstate, and local substantive and procedural requirements included in this subsection include, but are not limited to, all administrative orders, civil, criminal, and administrative penalties, and other sanctions, including injunctive relief, fines, and imprisonment. Neither the United States, nor any agent, employee, or officer thereof, shall be immune or exempt from any process or sanction of any State or Federal court with respect to the enforcement of any such order, penalty, or other sanction. For purposes of enforcing any such substantive or procedural requirement (including, but not limited to, any injunctive relief, administrative order, or civil, criminal, administrative penalty, or other sanction), against any such department, agency, or instrumentality, the United States hereby expressly waives any immunity otherwise applicable to the United States. The President may exempt any department, agency, or instrumentality in the executive branch from compliance with such a requirement if he determines it to be in the paramount interest of the United States to do so. No such exemption shall be granted due to lack of appropriation unless the President shall have specifically requested such appropriation as a part of the budgetary process and the Congress shall have failed to make available such requested appropriation. Any exemption shall be for a period not in excess of one year, but additional exemptions may be granted for periods not to exceed one year upon the President's making a new determination. The President shall report each January to the Congress all exemptions from the requirements of this section granted during the preceding calendar year, together with his reason for granting each such exemption.

(b) "Person" defined

For purposes of this chapter, the term "person" shall be treated as including each department, agency, and instrumentality of the United States.


STATUTORY NOTES AND RELATED SUBSIDIARIES

TERMINATION OF REPORTING REQUIREMENTS

For termination, effective May 15, 2000, of provisions in subsec. (a) of this section requiring the President to report annually to Congress, see section 3003 of Pub. L. 104–66, as amended, set out as a note under section 1113 of Title 31, Money and Finance, and the 10th item on page 20 of House Document No. 103–7.

§6992f. Relationship to State law

(a) State inspections and enforcement

A State may conduct inspections under 6992c of this title and take enforcement actions under section 6992d of this title against any person, including any person who has imported medical waste into a State in violation of the requirements of, or regulations under, this subchapter, to the same extent as the Administrator. At the time a State initiates an enforcement action under section 6992d of this title against any person, the State shall notify the Administrator in writing.

(b) Retention of State authority

Nothing in this subchapter shall—

(1) preempt any State or local law; or

(2) except as provided in subsection (c), otherwise affect any State or local law or the authority of any State or local government to adopt or enforce any State or local law.

(c) State forms

Any State or local law which requires submission of a tracking form from any person subject to this subchapter shall require that the form be identical in content and format to the form required under section 6992b of this title, except that a State may require the submission of other tracking information which is supplemental to the information required on the form required under section 6992b of this title through additional sheets or such other means as the State deems appropriate.

(Pub. L. 89–272, title II, §11007, as added Pub. L. 100–582, §2(a), Nov. 1, 1988, 102 Stat. 2955.)

\[1\] So in original. Probably should be "under section".


§6992h. Health impacts report
Within 24 months after November 1, 1988, the Administrator of the Agency for Toxic Substances and Disease Registry shall prepare for Congress a report on the health effects of medical waste, including each of the following—
(1) A description of the potential for infection or injury from the segregation, handling, storage, treatment, or disposal of medical wastes.
(2) An estimate of the number of people injured or infected annually by sharps, and the nature and seriousness of those injuries or infections.
(3) An estimate of the number of people infected annually by other means related to waste segregation, handling, storage, treatment, or disposal, and the nature and seriousness of those infections.
(4) For diseases possibly spread by medical waste, including Acquired Immune Deficiency Syndrome and hepatitis B, an estimate of what percentage of the total number of cases nationally may be traceable to medical wastes.


EDITORIAL NOTES

PRIOR PROVISIONS

§6992i. General provisions
(a) Consultation
(1) In promulgating regulations under this subchapter, the Administrator shall consult with the affected States and may consult with other interested parties.
(2) The Administrator shall also consult with the International Joint Commission to determine how to monitor the disposal of medical waste emanating from Canada.

(b) Public comment
In the case of the regulations required by this subchapter to be promulgated within 9 months after November 1, 1988, the Administrator may promulgate such regulations in interim final form without prior opportunity for public comment, but the Administrator shall provide an opportunity for public comment on the interim final rule. The promulgation of such regulations shall not be subject to the Paperwork Reduction Act of 1980.1

(c) Relationship to subchapter III
Nothing in this subchapter shall affect the authority of the Administrator to regulate medical waste, including medical waste listed under section 6992a of this title, under subchapter III of this chapter.


EDITORIAL NOTES

REFERENCES IN TEXT

PRIOR PROVISIONS
A prior section 11009 of Pub. L. 89–272 was renumbered section 11008 and is classified to section 6992h of this title.

1 See References in Text note below.

§6992j. Effective date
The regulations promulgated under this subchapter shall take effect within 90 days after promulgation, except that, at the time of promulgation, the Administrator may provide for a shorter period prior to the effective date if he finds the regulated
community does not need 90 days to come into compliance.

EDITORIAL NOTES

PRIOR PROVISIONS

A prior section 11010 of Pub. L. 89–272 was renumbered section 11009 and is classified to section 6992I of this title.

§6992k. Authorization of appropriations

There are authorized to be appropriated to the Administrator such sums as may be necessary for each of the fiscal years 1989 through 1991 for purposes of carrying out activities under this subchapter.

EDITORIAL NOTES

PRIOR PROVISIONS

A prior section 11011 of Pub. L. 89–272 was renumbered section 11010 and is classified to section 6992J of this title.
49-104. **Powers and duties of the department and director**

A. The department shall:

1. Formulate policies, plans and programs to implement this title to protect the environment.

2. Stimulate and encourage all local, state, regional and federal governmental agencies and all private persons and enterprises that have similar and related objectives and purposes, cooperate with those agencies, persons and enterprises and correlate department plans, programs and operations with those of the agencies, persons and enterprises.

3. Conduct research on its own initiative or at the request of the governor, the legislature or state or local agencies pertaining to any department objectives.

4. Provide information and advice on request of any local, state or federal agencies and private persons and business enterprises on matters within the scope of the department.

5. Consult with and make recommendations to the governor and the legislature on all matters concerning department objectives.

6. Promote and coordinate the management of air resources to ensure their protection, enhancement and balanced utilization consistent with the environmental policy of this state.

7. Promote and coordinate the protection and enhancement of the quality of water resources consistent with the environmental policy of this state.

8. Encourage industrial, commercial, residential and community development that maximizes environmental benefits and minimizes the effects of less desirable environmental conditions.

9. Ensure the preservation and enhancement of natural beauty and man-made scenic qualities.

10. Provide for the prevention and abatement of all water and air pollution including that related to particulates, gases, dust, vapors, noise, radiation, odor, nutrients and heated liquids in accordance with article 3 of this chapter and chapters 2 and 3 of this title.

11. Promote and recommend methods for the recovery, recycling and reuse or, if recycling is not possible, the disposal of solid wastes consistent with sound health, scenic and environmental quality policies. The department shall report annually on its revenues and expenditures relating to the solid and hazardous waste programs overseen or administered by the department.

12. Prevent pollution through the regulation of the storage, handling and transportation of solids, liquids and gases that may cause or contribute to pollution.

13. Promote the restoration and reclamation of degraded or despoiled areas and natural resources.

14. Participate in the state civil defense program and develop the necessary organization and facilities to meet wartime or other disasters.

15. Cooperate with the Arizona-Mexico commission in the governor's office and with researchers at universities in this state to collect data and conduct projects in the United States and Mexico on issues that are within the scope of the department's duties and that relate to quality of life, trade and economic development in this state in a manner that will help the Arizona-Mexico commission to assess and enhance the economic competitiveness of this state and of the Arizona-Mexico region.

16. Unless specifically authorized by the legislature, ensure that state laws, rules, standards, permits, variances and orders are adopted and construed to be consistent with and no more stringent than the corresponding federal law that addresses the same subject matter. This paragraph does not adversely affect standards adopted by an Indian tribe under federal law.
17. Provide administrative and staff support for the oil and gas conservation commission.

B. The department, through the director, shall:

1. Contract for the services of outside advisers, consultants and aides reasonably necessary or desirable to enable the department to adequately perform its duties.

2. Contract and incur obligations reasonably necessary or desirable within the general scope of department activities and operations to enable the department to adequately perform its duties.

3. Utilize any medium of communication, publication and exhibition when disseminating information, advertising and publicity in any field of its purposes, objectives or duties.

4. Adopt procedural rules that are necessary to implement the authority granted under this title, but that are not inconsistent with other provisions of this title.

5. Contract with other agencies, including laboratories, in furthering any department program.

6. Use monies, facilities or services to provide matching contributions under federal or other programs that further the objectives and programs of the department.

7. Accept gifts, grants, matching monies or direct payments from public or private agencies or private persons and enterprises for department services and publications and to conduct programs that are consistent with the general purposes and objectives of this chapter. Monies received pursuant to this paragraph shall be deposited in the department fund corresponding to the service, publication or program provided.

8. Provide for the examination of any premises if the director has reasonable cause to believe that a violation of any environmental law or rule exists or is being committed on the premises. The director shall give the owner or operator the opportunity for its representative to accompany the director on an examination of those premises. Within forty-five days after the date of the examination, the department shall provide to the owner or operator a copy of any report produced as a result of any examination of the premises.

9. Supervise sanitary engineering facilities and projects in this state, authority for which is vested in the department, and own or lease land on which sanitary engineering facilities are located, and operate the facilities, if the director determines that owning, leasing or operating is necessary for the public health, safety or welfare.

10. Adopt and enforce rules relating to approving design documents for constructing, improving and operating sanitary engineering and other facilities for disposing of solid, liquid or gaseous deleterious matter.

11. Define and prescribe reasonably necessary rules regarding the water supply, sewage disposal and garbage collection and disposal for subdivisions. The rules shall:

(a) Provide for minimum sanitary facilities to be installed in the subdivision and may require that water systems plan for future needs and be of adequate size and capacity to deliver specified minimum quantities of drinking water and to treat all sewage.

(b) Provide that the design documents showing or describing the water supply, sewage disposal and garbage collection facilities be submitted with a fee to the department for review and that no lots in any subdivision be offered for sale before compliance with the standards and rules has been demonstrated by approval of the design documents by the department.

12. Prescribe reasonably necessary measures to prevent pollution of water used in public or semipublic swimming pools and bathing places and to prevent deleterious conditions at those places. The rules shall prescribe minimum standards for the design of and for sanitary conditions at any public or semipublic swimming pool or bathing place and provide for abatement as public nuisances of premises and facilities that do not comply with the minimum standards. The rules shall be developed in cooperation with the director of the department of health services and shall be consistent with the rules adopted by the director of the department of health services pursuant to section 36-136, subsection 1, paragraph 10.
13. Prescribe reasonable rules regarding sewage collection, treatment, disposal and reclamation systems to prevent the transmission of sewage borne or insect borne diseases. The rules shall:

(a) Prescribe minimum standards for the design of sewage collection systems and treatment, disposal and reclamation systems and for operating the systems.

(b) Provide for inspecting the premises, systems and installations and for abating as a public nuisance any collection system, process, treatment plant, disposal system or reclamation system that does not comply with the minimum standards.

(c) Require that design documents for all sewage collection systems, sewage collection system extensions, treatment plants, processes, devices, equipment, disposal systems, on-site wastewater treatment facilities and reclamation systems be submitted with a fee for review to the department and may require that the design documents anticipate and provide for future sewage treatment needs.

(d) Require that construction, reconstruction, installation or initiation of any sewage collection system, sewage collection system extension, treatment plant, process, device, equipment, disposal system, on-site wastewater treatment facility or reclamation system conform with applicable requirements.

14. Prescribe reasonably necessary rules regarding excreta storage, handling, treatment, transportation and disposal. The rules may:

(a) Prescribe minimum standards for human excreta storage, handling, treatment, transportation and disposal and shall provide for inspection of premises, processes and vehicles and for abating as public nuisances any premises, processes or vehicles that do not comply with the minimum standards.

(b) Provide that vehicles transporting human excreta from privies, septic tanks, cesspools and other treatment processes shall be licensed by the department subject to compliance with the rules. The department may require payment of a fee as a condition of licensure. The department may establish by rule a fee as a condition of licensure, including a maximum fee. As part of the rulemaking process, there must be public notice and comment and a review of the rule by the joint legislative budget committee. The department shall not increase that fee by rule without specific statutory authority for the increase. The fees shall be deposited, pursuant to sections 35-146 and 35-147, in the solid waste fund established by section 49-881.

15. Perform the responsibilities of implementing and maintaining a data automation management system to support the reporting requirements of title III of the superfund amendments and reauthorization act of 1986 (P.L. 99-499) and article 2 of this chapter.

16. Approve remediation levels pursuant to article 4 of this chapter.

17. Establish or revise fees by rule pursuant to the authority granted under title 44, chapter 9, article 8 and chapters 4 and 5 of this title for the department to adequately perform its duties. All fees shall be fairly assessed and impose the least burden and cost to the parties subject to the fees. In establishing or revising fees, the department shall base the fees on:

(a) The direct and indirect costs of the department's relevant duties, including employee salaries and benefits, professional and outside services, equipment, in-state travel and other necessary operational expenses directly related to issuing licenses as defined in title 41, chapter 6 and enforcing the requirements of the applicable regulatory program.

(b) The availability of other funds for the duties performed.

(c) The impact of the fees on the parties subject to the fees.

(d) The fees charged for similar duties performed by the department, other agencies and the private sector.

18. Appoint a person with a background in oil and gas conservation to act on behalf of the oil and gas conservation commission and administer and enforce the applicable provisions of title 27, chapter 4 relating to the oil and gas
conservation commission.

C. The department may:

1. Charge fees to cover the costs of all permits and inspections it performs to ensure compliance with rules adopted under section 49-203, except that state agencies are exempt from paying those fees that are not associated with the dredge and fill permit program established pursuant to chapter 2, article 3.2 of this title. For services provided under the dredge and fill permit program, a state agency shall pay either:

(a) The fees established by the department under the dredge and fill permit program.

(b) The reasonable cost of services provided by the department pursuant to an interagency service agreement.

2. Monies collected pursuant to this subsection shall be deposited, pursuant to sections 35-146 and 35-147, in the water quality fee fund established by section 49-210.

3. Contract with private consultants for the purposes of assisting the department in reviewing applications for licenses, permits or other authorizations to determine whether an applicant meets the criteria for issuance of the license, permit or other authorization. If the department contracts with a consultant under this paragraph, an applicant may request that the department expedite the application review by requesting that the department use the services of the consultant and by agreeing to pay the department the costs of the consultant's services. Notwithstanding any other law, monies paid by applicants for expedited reviews pursuant to this paragraph are appropriated to the department for use in paying consultants for services.

D. The director may:

1. If the director has reasonable cause to believe that a violation of any environmental law or rule exists or is being committed, inspect any person or property in transit through this state and any vehicle in which the person or property is being transported and detain or disinfect the person, property or vehicle as reasonably necessary to protect the environment if a violation exists.

2. Authorize in writing any qualified officer or employee in the department to perform any act that the director is authorized or required to do by law.
49-203. **Powers and duties of the director and department**

A. The director shall:

1. Adopt, by rule, water quality standards in the form and subject to the considerations prescribed by article 2 of this chapter.

2. Adopt, by rule, a permit program for WOTUS that is consistent with but not more stringent than the requirements of the clean water act for the point source discharge of any pollutant or combination of pollutants into WOTUS. The program and the rules shall be sufficient to enable this state to administer the permit program identified in section 402(b) of the clean water act, including the sewage sludge requirements of section 405 of the clean water act and as prescribed by article 3.1 of this chapter.

3. Apply the program and rules authorized under paragraph 2 of this subsection to point source discharges to non-WOTUS protected surface waters, consistent with section 49-255.04, which establishes the program components and rules that do not apply to non-WOTUS protected surface waters. The following are exempt from the non-WOTUS protected surface waters point source discharge program:

   (a) Discharges to a non-WOTUS protected surface water incidental to a recharge project.

   (b) Established or ongoing farming, ranching and silviculture activities such as plowing, seeding, cultivating, minor drainage or harvesting for the production of food, fiber or forest products or upland soil and water conservation practices.

   (c) Maintenance but not construction of drainage ditches.

   (d) Construction and maintenance of irrigation ditches.

   (e) Maintenance of structures such as dams, dikes and levees.

4. Adopt, by rule, a program to control nonpoint source discharges of any pollutant or combination of pollutants into WOTUS.

5. Adopt, by rule, an aquifer protection permit program to control discharges of any pollutant or combination of pollutants that are reaching or may with a reasonable probability reach an aquifer. The permit program shall be as prescribed by article 3 of this chapter.

6. Adopt, by rule, the permit program for underground injection control described in the safe drinking water act.

7. Adopt, by rule, technical standards for conveyances of reclaimed water and a permit program for the direct reuse of reclaimed water.

8. Adopt, by rule or as permit conditions, discharge limitations, best management practice standards, new source performance standards, toxic and pretreatment standards and other standards and conditions as reasonable and necessary to carry out the permit programs and regulatory duties described in paragraphs 2 through 6 of this subsection.

9. Assess and collect fees to revoke, issue, deny, modify or suspend permits issued pursuant to this chapter and to process permit applications. The director may also assess and collect costs reasonably necessary if the director must conduct sampling or monitoring relating to a facility because the owner or operator of the facility has refused or failed to do so on order by the director. The director shall set fees that are reasonably related to the department's costs of providing the service for which the fee is charged. Monies collected from aquifer protection permit fees and from Arizona pollutant discharge elimination system permit fees shall be deposited, pursuant to sections 35-146 and 35-147, in the water quality fee fund established by section 49-210. Monies from other permit fees shall be deposited, pursuant to sections 35-146 and 35-147, in the water quality fee fund unless otherwise provided by law. Monies paid by an applicant for review by consultants for the department pursuant to section 49-241.02, subsection D shall be deposited, pursuant to sections 35-146 and 35-147, in the water quality fee fund established by section 49-210. State
49-257.01. Underground injection control permit program; permits; prohibitions; rules

A. The department shall establish an underground injection control permit program, including a permitting process.

B. An underground injection is prohibited unless the underground injection is into a well authorized by rule or unless it is authorized by a permit issued pursuant to this article or by a permit issued by the United States environmental protection agency. A person may not construct any well that is required to have a permit until the person is issued the permit or is otherwise authorized under the permit program established pursuant to this article or federal law.

C. Any underground injection activity is prohibited if it is conducted in a manner that allows the movement of fluid containing any contaminant into underground sources of drinking water and if the presence of that contaminant may endanger underground sources of drinking water.

D. The director shall adopt rules for the purposes of establishing and operating the underground injection control permit program pursuant to this article. Rules adopted by the director shall meet the minimum requirements prescribed by 42 United States Code section 300h(b).
date of the installment payment, the Department may suspend
the licensee's authorization to make installment payments and
require the licensee to pay all pending fees.

G. If a licensee fails to submit an installment payment within 30
days after its due date, the Department may initiate action
under A.R.S. § 36-495.09.

Historical Note
Adopted effective August 16, 1985 (Supp. 85–4). Former
Section R9-14-608 repealed, new Section R9-14-608
adopted effective December 20, 1991 (Supp. 91–4). Section
citation corrected in preceding historical note; Section
R9-14-608 renumbered to R9-14-609; new Section
R9-14-608 renumbered from R9-14-607 and amended
effective June 20, 1997 (Supp. 97–2). Former Section R9-
14-609 renumbered to R9-14-610; new Section R9-14-
608 adopted by final rulemaking at 7 A.A.R. 184, effective
December 15, 2000 (Supp. 00–4). Amended by final
rulemaking at 12 A.A.R. 4798, effective December 5,
2006 (Supp. 06–4). Amended by final rulemaking at 22
A.A.R. 2683, effective October 1, 2016 (Supp. 16–3).

R9-14-609. Proficiency Testing
A. At least once in each 12-month period, and more often if
requested by the Department, each licensee or applicant shall
have at least one laboratory analyst participate in proficiency
testing provided by the Department, the EPA, or a proficiency
testing service that:
1. Includes at least one proficiency testing sample for each
parameter for which an initial license or renewal license
has been issued or requested and for which proficiency
testing samples are available;
2. Demonstrates the laboratory analyst's proficiency in compliance testing of:
   a. Applicable drinking water parameters in Table
      6.2.A, if:
      i. The applicant plans to perform compliance testing
         of drinking water parameters, or
      ii. The licensee is approved to perform compliance
testing of drinking water parameters; and
   b. Applicable parameters other than drinking water parameters, if:
      i. The applicant plans to perform compliance testing
         of the parameters, or
      ii. The licensee is approved to perform compliance
testing of the parameters; and
3. If the licensee or applicant has been issued or has requested a license that includes approval for testing an
   analyst by different methods, may use the same proficiency testing sample for each method.

B. To demonstrate proficiency for a parameter, test results reported for the parameter shall be within acceptance limits established for:
1. Drinking water inorganic chemistry parameters by the EPA, as provided in 40 CFR 141.23;
2. Drinking water organic chemistry parameters by the EPA, as provided in 40 CFR 141.24;
3. Lead or copper in drinking water by the EPA, as provided in 40 CFR 141.89;
4. Disinfection byproducts in drinking water by the EPA, as provided in 40 CFR 141.131 and
5. Other parameters by the EPA or the proficiency testing service.

C. A licensee or applicant shall ensure that:
1. Each proficiency testing sample accepted at the licensee's or applicant's laboratory is analyzed at the licensee's or applicant's laboratory;
2. Each proficiency testing sample is tested within the maximum holding times allowed for its parameter, using the
   same procedures and techniques employed for routine sample testing, and calculating the holding time from the
   time the sample seal is broken or as indicated in the instructions accompanying the sample;
3. A proficiency testing service provides proficiency testing results directly to the Department;
4. If proficiency testing is provided by the Department, the licensee or applicant submits to the Department payment
   for the actual costs of the proficiency testing materials; and
5. If proficiency testing is not provided by the Department or the EPA, the licensee or applicant selects a proficiency
   testing service and contracts with and pays the proficiency testing service directly for proficiency testing.

D. The Department may submit blind proficiency testing samples to a licensed laboratory at any time during the license period.

Historical Note
Adopted effective December 20, 1991 (Supp. 91–4). Former
Section R9-14-609 renumbered to R9-14-610; new Section
R9-14-609 renumbered from R9-14-608 and amended
effective June 20, 1997 (Supp. 97–2). Former Section R9-
14-609 renumbered to R9-14-611; new Section
R9-14-609 renumbered from R9-14-607 and amended by final rulemaking at 7 A.A.R. 184, effective
December 15, 2000 (Supp. 00–4). Amended by final
rulemaking at 12 A.A.R. 4798, effective December 5,
2006 (Supp. 06–4). Amended by final rulemaking at 22
A.A.R. 2683, effective October 1, 2016 (Supp. 16–3).

R9-14-610. Approved Methods and References
A. A licensee or applicant shall ensure that compliance testing is performed according to an approved method and may use method alterations approved by the Department under subsection (C).
B. The approved methods listed by parameter in Tables 6.2.A through 6.2.D are found in the following references, which are
   incorporated by reference with the modifications described below; are on file with the Department; include no future editions
   or amendments; and are available as provided below.

Table 1: Key Reference


A3. Technicon Industrial Systems, Industrial Method No. 380-75WE, Fluoride in Water and Wastewater (February 1976), available from Mequon Technology Center, 10520-C North Baehr Road, Mequon, WI 53092 or by calling (262) 241-7900.

(800) 490-9198. Publication numbers for the methods that are listed under this reference are:

1. Method 317.0, Rev 2.0, July 2001, EPA 815-B-01-001
3. Method 326.0, Rev 1.0, June 2000, EPA 815-R-03-007
4. Method 327.0, Rev 1.1, May 2005, EPA 815-R-05-008
5. Method 331.0, Rev 1.0, January 2005, EPA 815-R-05-007
6. Method 515.4, Rev 1.0, April 2000, EPA 800-R-00-016
7. Method S27, Rev 1.0, April 2005, EPA 815-R-05-005
17. Method 1631, Rev E, August 2002, EPA 821-R-02-019
25. Method 1638, April 1995, EPA 821-R-95-031
27. Method 1627, December 2011, Acid Mine Drainage, EPA 821-R-09-002
28. PCBs in Transformer Fluid and Oils, September 1982, EPA 600/4-81-045
29. Asbestos in Bulk Samples, December 1982, EPA 600/ M4-82-020
30. Method 100.1, Asbestos Fibers, September 1993, EPA 600/ M4-83-045
31. Method 100.2, Asbestos Structures over 10m in Length, EPA/600/R-94/134
32. Method 1622, Cryptosporidium in Water, December 2005, EPA 815-R-05-001
33. Method 1623.1, Cryptosporidium and Giardia in Water, January 2012, EPA 815-R-12-001
34. Method 1682, Salmonella in Sewage Sludge, July 2006, EPA 821-R-06-014
36. Method 1604, Total coliforms and E.coli by MF, September 2002, EPA-821-02-024
37. Method 1601, Coliphage, April 2001, EPA 821-R-01-030
38. Method 1602, Coliphage, April 2001, EPA 821-R-01-029
40. Method 537, September 2009, EPA/600/R-08/092
41. Method 302.0, September 2009, EPA-815-B-09-014
42. Method 539, November 2010, EPA 815-B-10-001
43. Method 2187, November 2011, EPA 815-R-11-005
44. Method 334.0, September 2009, EPA 815-B-09-013
45. EPA Pub. No. EPA 815-R-00-014 (815R00014), Volume 1, Methods for the Determination of Organic and Inorganic Compounds in Drinking Water (August 2000), available at http://hepatis.epa.gov/EPA/html/Pubs/pubtitle.html or by calling (800) 490-9198, modified to require the following when testing for bromate using method 321.8: Samples must be preserved at the time of sampling with 50 mg ethylendiamine (EDA) /L of sample and must be analyzed within 28 days. Ion chromatography and post-column reaction or IC/ICP-MS must be used for monitoring of bromate for purposes of demonstrating eligibility of reduced monitoring, as prescribed in 40 CFR 141.132(b)(3)(ii).
49. American Public Health Association et al., Standard Methods for the Examination of Water and Wastewater (22nd edition 2012), available from American Public Health Association, 800 I Street, NW, Washington, DC 20001 or at http://www.standardmethods.org, with the approved method having the same last two digits in the method number as the year in which the method was approved by the Standard Methods Committee, as published for the individual methods in the 22nd edition.


E6 CEM Corporation, Closed Vessel Microwave Digestion of Wastewater Samples for Determination of Metals (April 1992), available from CEM Corporation, P.O. Box 200, 3100 Farm Road, Matthews, NC 28106-0200.

E7 Kelada-01, Kelada Automated Test Methods for Total Cyanide, Acid Dissociable Cyanide, and Thiocyanate, EPA 821–B–01–009, revision 1.2, August 2001, available from NTIS, 5285 Port Royal Road, Springfield, VA 22161 or by calling (800) 490-9198. EPA Note: A 450–W UV lamp may be used in this method instead of the 550–W lamp specified if it provides performance within the quality control acceptance criteria of the method in a given instrument. Similarly, modified flow cell configurations and flow conditions may be used in the method, provided that the quality control acceptance criteria are met.


H National Environmental Laboratory Accreditation Conference, 2009 NELAC, available from the National Environmental Laboratory Accreditation Conference, P.O. Box 2459, Weatherford, TX 76086 or at www.nelac-institute.org.

I ASTM, individual standards available from ASTM International, 100 Barr Harbor Dr., P.O. Box C700, W. Conshohocken, PA 19428-2959 or at www.astm.org.


O1 Compendium of Methods for the Determination of Inorganic Compounds in Ambient Air, Compendium Method IO-3-4.


P3 Charles P. Gerber, University of Arizona, U of A 2000: Ascaris lumbricoides in Water (1999), available from the University of Arizona, Microbial Analytical Laboratory, Building No. 90, Rm. 406, Tucson, AZ 85721.


Y Method OIA-1677-09, Available Cyanide by Ligand Exchange and Flow Injection Analysis (FIA), 2010, available from ALPKEM, a Division of OI Analytical, 151 Graham Road, College Station, TX 77845 or by calling (979) 690-1711.

Z IDEXX Collift*-18 and Quanti-Trap* Test Method for the Detection of Fecal Coliforms in Wastewater, available from IDEXX Laboratories, Inc., One IDEXX Dr., Westbrook, ME 04092 or by calling 1-800-548-6733.


Z6 m-ColiBlue 24 Test, Total Coliforms and E. coli Membrane Filtration Method with m-ColiBlue 24 Broth, Method No. 10029, Revision 2, August 17, 1999, available at Hach Company, P.O. Box 389, Loveland, Colorado 80539-0389 or by calling 1-800-227-4224.

Z7 Colisure Test, IDEXX Laboratories Inc., February 28, 1994, available from IDEXX Laboratories, Inc., One IDEXX Dr., Westbrook, ME 04092 or by calling 1-800-548-6733.


Z9 O1 Analytical/ALPKEM, Nitrogen, Total Kjeldahl, Method PAL-DK01 (Block Digestion, Steam Distillation, Titrimetric
Detection) (rev. December 22, 1994), available from OI Analytical/ALPKEM, P.O. Box 9010, College Station, TX 77842.
Z10 OI Analytical/ALPKEM, Nitrogen, Total Kjeldahl, Method PAI-DK02 (Block Digestion, Steam Distillation, Colorimetric Detection) (rev. December 22, 1994), available from OI Analytical/ALPKEM, P.O. Box 9010, College Station, TX 77842.
Z11 OI Analytical/ALPKEM, Nitrogen, Total Kjeldahl, Method PAI-DK03 (Block Digestion, Automated FIA Gas Diffusion) (rev. December 22, 1994), available from OI Analytical/ALPKEM, P.O. Box 9010, College Station, TX 77842.

C. If an approved method is not available for a particular parameter, or a method or method alteration that is not an approved method is required or authorized to be used for a particular parameter by the EPA, ADEQ, U.S. Food and Drug Administration, or 9 A.A.C. 8, the following information:
1. For an alternate method or method alteration required or authorized by the EPA, ADEQ, U.S. Food and Drug Administration, or 9 A.A.C. 8, the following information:
   a. The name, address, and telephone number of the laboratory for which approval of the alternate method or method alteration is requested;
   b. The name, address, and telephone number of the laboratory for which approval of the alternate method or method alteration is requested;
   c. Identification of the parameter for which approval of the alternate method or method alteration is requested;
   d. Reference to the EPA, ADEQ, U.S. Food and Drug Administration, or 9 A.A.C. 8, requirement or authorization for the use of the alternate method or method alteration for which approval is requested;
2. For an alternate method or method alteration to be used because an approved method is not available for a particular parameter, the following information:
   a. The name, address, and telephone number of the laboratory for which approval of the alternate method or method alteration is requested;
   b. The name, address, and telephone number of the laboratory for which approval of the alternate method or method alteration is requested;
   c. Identification of the parameter for which approval of the alternate method or method alteration is requested;
   d. Written justification for using the alternate method or method alteration for which approval is requested, including the following:
      i. A detailed description of the alternate method or method alteration;
      ii. References to published or other studies confirming the general applicability of the alternate method or method alteration to the parameter for which its use is intended;
      iii. Reference to the EPA, ADEQ, U.S. Food and Drug Administration, or 9 A.A.C. 8, requirement to test the parameter; and
   iv. Data that demonstrate the performance of the alternate method or method alteration in terms of accuracy, precision, reliability, ruggedness, ease of use, and ability to achieve a detection limit appropriate for the proposed use of the alternate method or method alteration; and
3. An alternate method or method alteration approval fee of $50, payable to the Arizona Department of Health Services, in the form of a certified check, business check, money order, or credit card payment.

D. Before approving an alternate method or method alteration that is not required or authorized by the EPA, ADEQ, U.S. Food and Drug Administration, or 9 A.A.C. 8, the Department may require that the alternate method or method alteration be performed by a laboratory designated by the Department to verify that, using the parameter for which its use is intended, the alternate method or method alteration produces data that comply with subsection (C)(2)(d)(iv).

E. The Department may approve an alternate method or method alteration if the Department determines:
1. One of the following:
   a. Use of the alternate method or method alteration is required or authorized by the EPA, ADEQ, U.S. Food and Drug Administration, or 9 A.A.C. 8, or
   b. Use of the alternate method or method alteration is justified as described in subsection (C)(2)(d); and
2. If the alternate method or method alteration pertains to drinking water compliance testing, the EPA concurs that the alternate method or method alteration may be used.

F. The Department may rescind the approval of an alternate method or method alteration approved by the Department according to subsection (E), if, as applicable:
1. For an alternate method or method alteration requested under subsection (C)(1), the alternate method or method alteration is no longer required or authorized by the EPA, ADEQ, U.S. Food and Drug Administration, or 9 A.A.C. 8, or
2. For an alternate method or method alteration requested under subsection (C)(2), an approved method becomes available for the particular parameter.

Historical Note
Adopted effective December 20, 1991 (Supp. 91-4). Former Section R9-14-610 renumbered to R9-14-611; new Section R9-14-610 renumbered from R9-14-609 and amended effective June 20, 1997 (Supp. 97-2). Former Section R9-14-610 renumbered to R9-14-612; new Section R9-14-610 renumbered from R9-14-608 and amended by final rulemaking at 7 A.A.R. 184, effective December 15, 2000 (Supp. 00-4). Amended by final rulemaking at 10 A.A.R. 1687, effective April 6, 2004 (Supp. 04-2). Amended by final rulemaking at 12 A.A.R.
R9-14-611. Compliance Testing for Drinking Water Parameters

A. A licensee for a laboratory at which compliance testing for drinking water parameters is performed, including compliance testing performed according to 9 A.A.C. 8, Article 2, shall ensure that:

1. Except as provided in subsection (B), the laboratory is operated in compliance with the guidelines in Key References D4, D5, and D6, excluding the requirements for laboratory personnel education and experience;

2. Each sample for Arizona drinking water parameter compliance testing is analyzed:
   a. Using an approved method:
      i. Listed in Table 6.2.A; or
      ii. Approved by the Department for compliance testing for drinking water parameters under R9-14-610(E); and
   b. If the approved method is from Key Reference C, following the quality control guidelines in Key Reference C associated with the approved method; and

3. If the license requests approval to perform testing for vinyl chloride, the licensee also obtains approval to perform testing for each of the analytes listed in 40 CFR 141.61(a)(2)-21.

B. If an approved method does not include a specific quality control guideline, a licensee for a laboratory at which compliance testing for drinking water parameters is performed shall ensure that the laboratory is operated in compliance with the guidelines in Key References C4, D7, D9, D10, D11, D12, or D14, as applicable.

Historical Note
Adopted effective December 20, 1991 (Supp. 91-4). Former Section R9-14-611 renumbered to R9-14-612; new Section R9-14-611 renumbered from R9-14-610 and amended effective June 20, 1997 (Supp. 97-2). Former Section R9-14-611 renumbered to R9-14-613; new Section R9-14-611 renumbered from R9-14-609 and amended by final rulemaking at 7 A.A.R. 184, effective December 15, 2000 (Supp. 00-4). Amended by final rulemaking at 12 A.A.R. 4798, effective December 5, 2006 (Supp. 06-4). Amended by final rulemaking at 22 A.A.R. 2683, effective October 1, 2016 (Supp. 16-3).

R9-14-612. Compliance Testing for Wastewater Parameters

A licensee for a laboratory at which compliance testing for wastewater parameters is performed shall ensure that:

1. The laboratory is operated in compliance with the guidelines in Key References C5 and C6; and

2. Each sample for Arizona wastewater parameter compliance testing is analyzed:
   a. Using an approved method:
      i. Listed in Table 6.2.B; or
      ii. Approved by the Department for wastewater parameter compliance testing under R9-14-610(E); and
   b. If the approved method is from Key Reference C, following the quality control guidelines in Key Reference C associated with the approved method.

Historical Note
Adopted effective December 20, 1991 (Supp. 91-4). Former Section R9-14-612 renumbered to R9-14-613; new Section R9-14-612 renumbered from R9-14-611 and amended effective June 20, 1997 (Supp. 97-2). Former Section R9-14-612 renumbered to R9-14-614; new Section R9-14-612 renumbered from R9-14-610 and amended by final rulemaking at 7 A.A.R. 184, effective December 15, 2000 (Supp. 00-4). Amended by final rulemaking at 12 A.A.R. 4798, effective December 5, 2006 (Supp. 06-4). Amended by final rulemaking at 22 A.A.R. 2683, effective October 1, 2016 (Supp. 16-3).

R9-14-613. Compliance Testing for Waste Parameters

A. A licensee for a laboratory at which compliance testing for waste parameters is performed shall ensure that each waste sample for Arizona compliance testing is analyzed using an approved method:

1. Listed in Table 6.2.C; or

2. Approved by the Department for waste compliance testing under R9-14-610(E).

B. A licensee for a laboratory at which compliance testing for waste parameters is performed using an 8000 series method from Key Reference F shall:

1. If the method includes specific quality control requirements, follow the specific quality control requirements in the method;

2. If the method does not include specific quality control requirements, follow all requirements in Key Reference F14; and

3. If the method does not include specific sample extraction procedures, follow the procedures in the following from Key Reference F, as applicable:
   a. Method 3500B,
   b. Method 3600C, or
   c. Method 5000.

C. A licensee for a laboratory at which compliance testing for waste parameters is performed using a non-8000 series method from Key Reference F shall comply with Chapters I through 8 of Update IV, February 2007, of Key Reference F, as applicable, according to the requirements of the specific method.

Historical Note
Adopted effective December 20, 1991 (Supp. 91-4). Former Section R9-14-613 renumbered to R9-14-614; new Section R9-14-613 renumbered from R9-14-612 and amended effective June 20, 1997 (Supp. 97-2). Former Section R9-14-613 renumbered to R9-14-615; new Section R9-14-613 renumbered from R9-14-611 and amended by final rulemaking at 7 A.A.R. 184, effective December 15, 2000 (Supp. 00-4). Amended by final rulemaking at 12 A.A.R. 4798, effective December 5, 2006 (Supp. 06-4). Amended by final rulemaking at 22 A.A.R. 2683, effective October 1, 2016 (Supp. 16-3).

R9-14-614. Compliance Testing for Air and Stack Parameters

A licensee for a laboratory at which compliance testing for air or stack parameters is performed shall ensure that each air or stack sample for Arizona compliance testing is analyzed using an approved method:

1. Listed in Table 6.2.D; or

2. Approved by the Department for compliance testing for air or stack parameters under R9-14-610(E).
DEPARTMENT OF ENVIRONMENTAL QUALITY
Title 18, Chapter 9

Amend: R18-9-103

New Article: Article 6


R18-9-B607, B608, B609, B610, B611, B612, B613, B614, B615

R18-9-C616, C617, C618, C619, C620, C621, C622, C623, C624, C625, C626, C627, C628, C629, C630, C631, C632, C633, C634

R18-9-D635, D636, D637, D638, D639

R18-9-E640, E641, E642

R18-9-F643, F644, F645

R18-9-G646 G647, G648

R18-9-H649

R18-9-I650, I651, I652, I653, I654, I655


New Table: Table 1
This regular rulemaking from the Department of Environmental Quality (Department) relates to rules in Title 18, Chapter 9 regarding Water Pollution Control. In this rulemaking, the Department seeks to add new rules related to the Underground Injection Control (UIC) program.
The Department provides a detailed justification and explanation of the UIC program in the Preamble. The Department indicates that it “proposes a new regulatory framework to articulate compliance expectations, mandate regulatory duties, and identify certain rights of those regulated through the Arizona UIC program.”

The Department received an exception from the rulemaking moratorium to initiate this rulemaking on May 7, 2018 and final approval to submit it to the Council on May 31, 2022.

1. **Are the rules legal, consistent with legislative intent, and within the agency’s statutory authority?**

   Yes. The Department cites both general and specific statutory authority for the rules.

2. **Do the rules establish a new fee or contain a fee increase?**

   Yes. The Department indicates that this rulemaking establishes a new fee. The Department cites applicable state statutory authority for the establishment of the new fee.

3. **Does the preamble disclose a reference to any study relevant to the rules that the agency reviewed and either did or did not rely upon?**

   The Department did not review or rely on a study in conducting this rulemaking.

4. **Summary of the agency’s economic impact analysis:**

   The rulemaking addressed in the Department’s Economic, Small Business, and Consumer Impact Statement (EIS) consists of 72 new sections, as well as amendments to existing sections in 18 A.A.C. 9, Articles 1 and 6, 18 A.A.C. 1, Article 5 and 18 A.A.C. 14, Article 1 in order to adopt the UIC program under the relevant regulation in 40 C.F.R. Parts 144 through 146 within the State of Arizona as required under A.R.S. §§ 49-203(A)(6), 49-257.01. The Arizona statutes mandate that the Department establish the UIC program through regulation. 42 U.S.C. 300h et seq. authorizes Environmental Protection Agency to grant states primary enforcement authority or primacy over the UIC program upon the adoption of the program in rule at the state level (see 40 CFR 145.22(a)(5)).

   The primary costs of this rulemaking will be borne by UIC well permit holders and UIC wells authorized by rule. This includes in-situ copper mines, salt mines, municipal aquifer storage and recharge wells, extraction wells, carbon sequestration wells and a host of other injection wells.

   There will be an increase in permitting costs due to the Department’s fee-for-service model. The fee-for-service model institutes the charging of permittees for a significant portion of the funding needed to support the implementation of the regulatory program. The federal UIC program operates off of a general fund model, where permittees are not required to pay for the cost of regulatory program administration.
charged and the cost of implementation of the regulatory program comes from specific, legislatively approved funds (usually with an origin in government tax revenue). Many of the Department's programs were changed after the 2008 recession from a general fund model to fee-for service model. The difference between the fee-for-service model and the general fund model is the reason the regulatory program within this rulemaking will impose a financial burden upon the permittees.

Despite the increase in permitting fees, such as annual fees, the beneficial impact to the stakeholders include permits and amendments being issued faster and the elimination of duplicative regulation, permitting, and permittee fees as a result of eliminating one of the two applicable regulatory programs for UIC permittees.

5. **Has the agency analyzed the costs and benefits of the rulemaking and determined that the rules impose the least burden and costs to those who are regulated?**

The purpose of this rulemaking is to adopt the SDWA-UIC program in Arizona rule in order to lay the groundwork for state administration of the program as required by the legislature through A.R.S. §§ 49-203(A)(6) and 49-257.01. There are no less intrusive or less costly alternative methods of achieving the purpose of the rulemaking.

6. **What are the economic impacts on stakeholders?**

ADEQ will incur moderate costs as a result of implementing this rulemaking and administering the program. ADEQ, Arizona Department of Water Resources and Arizona Department of Agriculture benefit from the rulemaking due to the rulemaking supporting the environment, the community, and industry.

7. **Are the final rules a substantial change, considered as a whole, from the proposed rules and any supplemental proposals?**

No. As indicated in Item 10 of the Preamble, the Department made several technical and clarifying changes to the rules between the Notice of Proposed Rulemaking and the Notice of Final Rulemaking. These changes do not result in rules that are “substantially different” pursuant to A.R.S. § 41-1025.

8. **Does the agency adequately address the comments on the proposed rules and any supplemental proposals?**

Yes. As indicated in Item 11 of the Preamble, the Department received several comments on this rulemaking. The Department adequately responded to the comments that it received.
9. **Do the rules require a permit or license and, if so, does the agency comply with A.R.S. § 41-1037?**

Yes. The Department indicates that the UIC program requires permits, but the Department is required to issue a specific type of permit pursuant to federal regulations. The Department demonstrates an adequate justification for an exemption from the general permit requirement pursuant to A.R.S. § 41-1037(A)(3).

10. **Are the rules more stringent than corresponding federal law and, if so, is there statutory authority to exceed the requirements of federal law?**

Yes. As the Department indicates in Item 12b of the Preamble, federal law corresponds to these rules. The Department indicates that there is existing state statutory authority for the rules to be more stringent than corresponding federal law.

11. **Conclusion**

In this regular rulemaking, the Department is seeking to establish program rules for the UIC program. The Department is seeking the standard 60-day delayed effective date for this rulemaking. Council staff recommends approval of this rulemaking.
May 17, 2022

Nicole Sornsin, Chair
Governor’s Regulatory Review Council
100 N. 15th Ave., #305
Phoenix, AZ 85007

Re:   Rulemaking for Title 18. Environmental Quality, Chapter 1. Department of Environmental Quality-Administration, Article 5; Title 18. Environmental Quality, Chapter 9. Department of Environmental Quality-Water Pollution Control, Articles 1 and 6; Title 18. Environmental Quality, Chapter 14. Department of Environmental Quality-Permit and Compliance Fees, Article 1.

Dear Chair Sornsin:

The Arizona Department of Environmental Quality (ADEQ) hereby submits three (3) Notices of Final Rulemaking to the Governor’s Regulatory Review Council (GRRC) for its consideration and approval at the Council meeting scheduled for July 6, 2022. This rulemaking supports ADEQ’s primacy pursuit of the Safe Drinking Water Act’s Underground Injection Control program.

The following information is provided for your use in reviewing the enclosed rules for approval pursuant to A.R.S. § 41-1052 and A.A.C. R1-6-201:

I. Information Required by A.A.C. R1-6-201(A)
   a. The public record closed for all rules on February 14, 2022 at 11:59 p.m.
   b. The rulemaking activity does not relate to a five-year review report.
   c. The rulemaking activity does establish a new fee; please see A.R.S. § 49-203(A)(9) for authority.
   d. Fees proposed to be established through this rulemaking have no state precedent. However, the analogous Federally-administered program, unto which ADEQ is pursuing primacy over, did not have fees.
   e. An immediate effective date is not requested.
   f. The Department certifies that the preamble discloses reference to any study relevant to the rule that the agency reviewed and either did or did not rely on in the agency’s evaluation of or justification for the rule.
g. The Department's preparer of the economic, small business, and consumer impact statement will notify the Joint Legislative Budget Committee of the number of new full-time employees necessary to implement and enforce the rule before the rule is approved by the council, pursuant to A.R.S. § 41-1055(B)(3)(a).

h. A list of documents enclosed under A.A.C. R1-6-201(A)(2) through (8), which are enclosed as electronic copies:
   1. This cover letter.
   2. Three Notices of Final Rulemaking (NFRMs), including the preamble, table of contents, and text of each rule. The preambles contain:
      a. an economic, small business, and consumer impact statement that contains the information required by A.R.S. § 41-1055;
      b. comments received by the agency, both written and oral, concerning the proposed rule;
      c. the general and specific statutes authorizing the rule, including relevant statutory definitions;
   3. No analyses were submitted to the agency regarding the rule’s impact on the competitiveness of businesses in this state as compared to the competitiveness of businesses in other states;
   4. No material is incorporated by reference in this rulemaking;
   5. A list of statutes or other rules referred to in the definitions.

Thank you for your timely review and approval. Please contact Jon Rezabek, Legal Specialist, Water Quality Division, 602-771-8219 or rezabek.jon@azdeq.gov, if you have any questions.

Sincerely,

Misael Cabrera, P.E.
Director

Enclosures
NOTICE OF FINAL RULEMAKING

TITLE 18. ENVIRONMENTAL QUALITY

CHAPTER 9. DEPARTMENT OF ENVIRONMENTAL QUALITY
WATER POLLUTION CONTROL

PREAMBLE

1. Article, Part, or Section Affected (as applicable)  Rulemaking Action
   R18-9-103  Amend
   Article 6  New Article
   Part A  New Part
   R18-9-A601  New Section
   R18-9-A602  New Section
   R18-9-A603  New Section
   R18-9-A604  New Section
   R18-9-A605  New Section
   R18-9-A606  New Section
   Part B  New Part
   R18-9-B607  New Section
   R18-9-B608  New Section
   R18-9-B609  New Section
   R18-9-B610  New Section
   R18-9-B611  New Section
   R18-9-B612  New Section
   R18-9-B613  New Section
   R18-9-B614  New Section
   R18-9-B615  New Section
   Part C  New Part
   R18-9-C616  New Section
   R18-9-C617  New Section
   R18-9-C618  New Section
   R18-9-C619  New Section
   R18-9-C620  New Section
   R18-9-C621  New Section
   R18-9-C622  New Section
   R18-9-C623  New Section
   R18-9-C624  New Section
   R18-9-C625  New Section
   R18-9-C626  New Section
   R18-9-C627  New Section
   R18-9-C628  New Section
   R18-9-C629  New Section
   R18-9-C630  New Section
   R18-9-C631  New Section
   R18-9-C632  New Section
   R18-9-C633  New Section
   R18-9-C634  New Section
   Part D  New Part
   R18-9-D635  New Section
   R18-9-D636  New Section
   R18-9-D637  New Section
   R18-9-D638  New Section
   R18-9-D639  New Section
   Part E  New Part
   R18-9-E640  New Section
2. **Citations to the agency’s statutory rulemaking authority to include the authorizing statute (general) and the implementing statute (specific):**

   Authorizing statute: A.R.S. §§ 49-203(A)(6), 49-203(A)(9), 49-104(C)(1)
   Implementing statute: A.R.S. § 49-257.01

3. **The effective date for the rules:**
   [SEC. OF STATE TO FILL IN]

4. **Citations to all related notices published in the Register as specified in R1-1-409(A) that pertain to the record of the final rulemaking package:**

   Notice of Rulemaking Docket Openings: 25 A.A.R. 2491 (September, 27, 2019)
   26 A.A.R. 2003 (September 25, 2020)
   27 A.A.R. 1592 (October 1, 2021)
   Notice of Proposed Rulemaking: 28 A.A.R. 16 (January 7, 2022)

5. **The agency’s contact person who can answer questions about the rulemaking:**
   Name: Jon Rezabek
   Address: Arizona Department of Environmental Quality
6. An agency’s justification and reason why a rule should be made, amended, repealed or renumbered, to include an explanation about the rulemaking:

General Explanation of this Rulemaking:
The Arizona Department of Environmental Quality (ADEQ) is required under A.R.S. §§ 49-203(A)(6) and 49-257.01(A) to adopt a permit program for underground injection control (UIC), as administered under the Safe Drinking Water Act (SDWA; 42 U.S.C. § 300h et seq.). Per the conditional enactment in proposed rule R18-9-A602(A), any UIC rules promulgated by the State of Arizona shall not have the force and effect of law until the U.S. Environmental Protection Agency (EPA) approves the transfer of primary enforcement authority (referred to herein as “Primacy”) through EPA’s publication of a final rule granting ADEQ Primacy in the Federal Register (see 40 CFR § 145.31). ADEQ first attempted this process in the late 1990s; but those efforts ultimately failed due to insufficient statutory and regulatory authority to develop the program. In 2018 Senate Bill 1494 was passed, giving ADEQ the requisite statutory authority to promulgate a state-level UIC program as required to obtain primacy approval.

In this action, ADEQ proposes new regulatory framework to articulate compliance expectations, mandate regulatory duties, and identify certain rights of those regulated through the Arizona UIC program. On May 7, 2018, the Governor’s Office approved an exemption to the rulemaking moratorium in Executive Order 2018-02 so ADEQ can proceed with this rulemaking.

Associated Rulemakings
The Arizona UIC program is a regulatory program with associated fees and licensing time frames (LTF). A.A.C. R1-1-103(D)(4) states, “...[a]n agency shall file only one Chapter per notice for any rulemaking activity.” In adherence to the rule, the fee component of the Arizona UIC program, which amends A.A.C. Title 18, Chapter 14, is a separate Notice of Proposed Rulemaking filed contemporaneously with this rulemaking, which amends A.A.C. Title 18, Chapter 9. Furthermore, the Arizona UIC program amendments to the LTF has also been filed contemporaneously with the program and fee amendments. The LTF Notice of Proposed Rulemaking amends A.A.C. Title 18, Chapter 1.

What is Underground Injection?
An injection well is used to place fluid underground into porous geologic formations. These underground formations may range from deep sandstone or limestone, to a shallow soil layer. Injected fluids may include water, wastewater, brine (salt water), or water mixed with chemicals.

What is a well?
A well is a bored, drilled, or driven shaft whose depth is greater than the largest surface dimension; or a dug hole whose depth is greater than the largest surface dimension; or, an improved sinkhole; or a subsurface fluid distribution system.

What does the Federal UIC program do?
The UIC program protects Underground Sources of Drinking Water (USDW) through the regulation of injection wells. USDWs are:
- aquifers or portions of aquifers that:
  1. supply public water systems; or
  2. contain a sufficient quantity of ground water to supply a public water system; and
     a. currently supply drinking water for human consumption, or
     b. contain fewer than 10,000 mg/l total dissolved solids; and
  3. are not aquifers exempted under the UIC program.
**How does the UIC program protect USDWs?**
The UIC program requires injected fluids stay within the well or the intended injection zone. The program also regulates fluids that are directly or indirectly injected into a USDW by prohibiting the movement of fluid containing any contaminant into USDWs, if the presence of that contaminant may cause a violation of any primary drinking water regulation or may otherwise adversely affect the health of persons.

**What are the different well classifications in the UIC program?**

**Class I**
Class I wells are used to inject hazardous and non-hazardous wastes into deep, isolated rock formations. Class I wells are disposal wells used by the petroleum refining, metal production, chemical production, pharmaceutical production, commercial disposal, food production and municipal wastewater treatment industries (amongst others) to dispose. These deep well injections release fluids into formations below USDWs, usually formations separated by multiple geologic strata from USDWS and often times at depths thousands of feet below the surface.

**Class II**
Class II wells are used exclusively to inject fluids associated with oil and natural gas production. Class II wells fall into one of the following three categories: disposal wells, enhanced recovery wells and hydrocarbon storage wells. Class II fluids are primarily brines (salt water) that are brought to the surface while producing oil and gas. Brines are separated from hydrocarbons at the surface and reinjected into the same or similar underground formations for disposal. Enhanced recovery wells utilize fluids consisting of brine, freshwater, steam, polymers, or carbon dioxide that are injected into oil-bearing formations to recover residual oil and in limited applications, natural gas. Hydrocarbon storage wells inject liquid hydrocarbons into underground formations (such as salt caverns) where they are stored, generally, as part of the U.S. Strategic Petroleum Reserve.

**Class III**
Class III wells are used to inject fluids for the purpose of dissolving and then extracting minerals. Production wells, which bring mining fluids to the surface, are not regulated under the UIC program. Class III wells are used to mine Uranium, Salt, Copper and Sulfur. Class III injection requirements isolate fluids from underground sources of drinking water.

**Class IV**
Class IV wells are used to inject hazardous or radioactive wastes into or above a geologic formation that contains a USDW. In 1984, EPA banned the use of Class IV injection wells. ADEQ will continue this ban upon primacy. These wells may only operate as part of an EPA or state authorized ground water clean-up action. Less than 32 waste clean-up sites with Class IV wells exist in the United States.

**Class V**
Class V wells are used to inject non-hazardous fluids underground. Most Class V wells are used to dispose of wastes into or above USDWs. This disposal can pose a threat to ground water quality if not managed properly. The different types of Class V wells pose various threats. Most Class V wells are shallow disposal systems that depend on gravity to drain fluids directly in the ground. Over 20 well subtypes fall into the Class V category. There are more than 650,000 Class V wells estimated to operate in the United States. Most of these Class V wells are unsophisticated shallow disposal systems such as stormwater drainage wells, septic system leach fields and agricultural drainage wells.

**Class VI**
Class VI wells are used to inject carbon dioxide (CO2) into deep rock formations. This long-term underground storage is called geologic sequestration (GS). Geologic sequestration refers to technologies to reduce CO2 emissions to the atmosphere and mitigate climate change.

**What does a UIC inspection entail?**
Verification of proper well construction, mechanical integrity testing (MIT), no leaks detected from the well into the environment, assurance that monitoring, recordkeeping, and reporting conducted by the operator, as well as, assurance that any required operating conditions are being followed, amongst other check points.
Is the Arizona UIC Program different from the EPA UIC program?

Arizona’s UIC program must meet all of the requirements set forth in the Code of Federal Regulations or 40 CFR Part 145 in order for EPA to grant ADEQ Primacy over the program. The CFR requirements include building the state program up to the standards delineated in 40 CFR 145.1 through 40 CFR 145.14. Generally, Arizona’s UIC program must be at least as stringent as the EPA UIC program. However, A.R.S. § 49-104(16) requires ADEQ rules to be “…no more stringent than the corresponding federal law…” unless specifically authorized by the legislature. The UIC rules do not have a specific authorization to be more or less stringent. Therefore, the content of the proposed rules does not exceed Federal stringency and is largely the same as the rules that comprise the EPA program.

The noteworthy differences are as follows:

- R18-9-A602 is a rule that outlines the scope of applicability for the program. There is no EPA UIC program analog. The rule does not add or subtract regulatory burden on the regulated community. On the contrary, it is meant to clarify the program as a whole.
- R18-9-B609 prohibits Hazardous Waste Injection and Class IV injections. This rule differs from its federal analog at 40 CFR 144.13 in that subsection A was added in order to meet Arizona’s existing prohibition on injecting hazardous waste in A.A.C. R18-8-270(B)(2)(b).
- R18-9-A627 explains the requirements for a final permit decision. This rule differs from its federal analog at 40 CFR 124.15 in that information regarding Arizona state regulatory appeals processes has been added for the clarification of the regulated community. Subsections (C) through (F) were added to explain how issuances, modifications, or revocations and reissuances of permits that necessitate new aquifer exemptions or enlargements of a previously approved aquifer exemption are not effective until confirmed by the Administrator of the EPA.
- R18-9-C631 delineates the requirements for modification, revocation and reissuance of permits. Subsection B was altered from its federal analog at 40 CFR 124.5 in order to accommodate a reasonable request made by a stakeholder to allow for a notice of intent to deny to be issued when a request for a modification or a revocation and reissuance is denied as long as the scope of the request has not been proposed and denied before.
- R18-9-J654 delineates the prohibition of Class V cesspools and motor vehicle waste disposal wells. The rule was altered in order to expand the scope of the prohibition from its federal analog at 40 CFR 144.88. The scope of the prohibition in 40 CFR 144.88 is “large-capacity cesspools”. The scope of the draft language in R18-9-J654 is all “cesspools”. This language was changed in order to align with the more comprehensive prohibition in the APP program at R18-9-A309(A)(4).
- Table 1 is a list of the applicable primary drinking water maximum contamination limits (MCL). These are the standards applicable to the Arizona UIC program. The Arizona UIC program is listing the applicable MCLs where the Federal program simply references 40 CFR 141 and 142.

A comparison of the EPA UIC program and the Arizona UIC program can be made by referencing the following table which shows the analogs:

<table>
<thead>
<tr>
<th>AAC</th>
<th>CFR</th>
<th>AAC</th>
<th>CFR</th>
<th>AAC</th>
<th>CFR</th>
</tr>
</thead>
<tbody>
<tr>
<td>R18-9-A601</td>
<td>40 CFR 144.3; 146.3</td>
<td>R18-9-B610</td>
<td>40 CFR 144.16</td>
<td>R18-9-C621</td>
<td>40 CFR 124.11</td>
</tr>
<tr>
<td>R18-9-A604</td>
<td>40 CFR 144.6; 146.5</td>
<td>R18-9-B613</td>
<td>40 CFR 146.8</td>
<td>R18-9-C624</td>
<td>40 CFR 144.33</td>
</tr>
<tr>
<td>R18-9-A605</td>
<td>40 CFR 144.7</td>
<td>R18-9-B614</td>
<td>40 CFR 146.10</td>
<td>R18-9-C625</td>
<td>40 CFR 144.34</td>
</tr>
<tr>
<td></td>
<td></td>
<td>R18-9-C619</td>
<td>40 CFR 124.8</td>
<td>R18-9-C630</td>
<td>40 CFR 144.38</td>
</tr>
</tbody>
</table>
Can a Class V well be in operation before inventorying?
No. New Class V wells must inventory before operation.

Stakeholder Composition
Arizona currently has five (5) individual EPA UIC program permits operating within the state boundaries (not including Indian lands), all of which are for Class III wells for the purpose of extracting salts and copper. The three companies operating the five permits are Morton Salt, Inc., Excelsior Mining Arizona, Inc. and Florence Copper, Inc.

The UIC program applies to a large number of Class V injection wells through the programs “authorization by rule.” Class V authorization by rule includes initial inventorying, operators meeting a set of criteria, including a general standard to not cause fluids to move in such a way where a USDW would receive a pollutant above the standards in Table 1. Examples of Arizona Class V wells include drywells, aquifer storage recharge wells, septic systems serving greater than 20 people per day or that have a design flow of over 3,000 gallons per day and stimulation injection wells for the purpose of inert gas extraction (See proposed rule R18-9-A604(E) in Section 13 below for more examples of Class V wells). Furthermore, through stakeholder outreach, ADEQ has become aware of Arizona municipalities that are interested in developing Class I municipal wastewater disposal wells.

What has been the stakeholder process thus far for this rulemaking?
Statutory authority for program pursuit was passed into law through Senate Bill 1494 in 2018 at A.R.S. §§ 49-257 and 49-257.01. An exemption memo was received from the Governor’s Office in May of 2018. Since those events, ADEQ has been reaching out to UIC stakeholders throughout the state in a pre-rulemaking process known internally as “informal rulemaking”. Informal rulemaking involves developing and setting internal goals for what the rulemaking should achieve. ADEQ has held nine (9) stakeholder meetings, either presenting to stakeholders, receiving stakeholder input or both. Tribal consultation presentations were conducted three times in May 2019. Tribal correspondence has been addressed throughout the informal rulemaking phase as well.

The nine stakeholder meetings were designed to inform the regulated community of ADEQ’s progress in pursuing Primacy, as well as, explaining and presenting drafts of the state rules being developed for the ultimate purpose of administering the program. In November 2019 and November 2020, stakeholders were given access to drafts of the “program rule”. Afterwards, ADEQ solicited hundreds of comments from the regulated community, addressing and analyzing each one. Some comments led to changes in rule language, while others...
were determined to be inapplicable or unnecessary. All comments received were considered and are appreciated by the Agency. A repository of materials and events can be viewed on ADEQ’s “Stakeholder Materials” page for the UIC rulemaking. That webpage can be found here: https://azdeq.gov/UIC

In the context of stakeholder involvement, it should be noted that this set of rules, internally referred to as the “program rules,” is largely the same in substance as the EPA UIC permit program, which can be viewed in the CFR (see 40 CFR Parts 144 and 146). The substantive similarities were made by design, as EPA requires a primacy applicant’s administering rules to be at least as stringent as the EPA program. Furthermore, in Arizona, a number of statutes (A.R.S. §§ 41-1052(D)(9), 49-104(16) and others) prohibit a rule’s passage if the rule is more stringent than a corresponding federal law unless there is statutory authority to exceed the federal requirements. Due to these limitations on stringency, the language in the EPA program was adopted largely as is. The influence of stakeholder input can be seen in R18-9-A602, R18-9-C627(B) through (F) and R18-9-C631(B).

R18-9-A602(G)(2)
The Oil and Gas Conservation Commission (OGCC) has state statutory authority to permit some injection wells at A.R.S. § 27-516(A)(20). ADEQ responded by delineating R18-9-A602(G)(5), which excludes from the program, “[i]njection wells authorized by OGCC pursuant to regulations approved by EPA, in accordance with 42 U.S.C. 300h et seq.” This language allows the OGCC to issue UIC permits, should they receive primacy for certain injection wells from EPA. ADEQ intends to assist OGCC in their pursuit of primacy.

R18-9-A602(H)
Stakeholder comment was received by ADEQ concerning the exemption of natural gas storage from the program. ADEQ responded by delineating R18-9-A602(H), a subsection entitled the “Safe Drinking Water Act exemptions”. Here, ADEQ decided to make explicit the exemptions from the program that can be found in the United States Code (USC) at 42 USC 300h(d)(1), including the exclusion of “the underground injection of natural gas for purposes of storage” from the UIC definition of “underground injection”.

R18-9-A602(J)
Stakeholder comment was received by ADEQ concerning the preference to make explicit the transfer of existing UIC aquifer exemptions to the state program. This transfer is a requirement of ADEQ attaining primacy from EPA. ADEQ decided to make explicit the transfer as no issues arise in doing so.

R18-9-C627(A) through (F)
Subsection A: Stakeholder comment was received by ADEQ concerning appeals rights in permit, modification and aquifer exemption actions. The Federal analog for this rule is significantly different as the Federal terminology and appeals rights differ from those on the state level. A.R.S. 41-1092.03 was followed in delineating the notice components.
Subsection B addresses what accompanies a permit issuance.
Subsection C addresses how the denial of an aquifer exemption request can be appealed.
Subsection D addresses makes explicit the effectivity of a final permit decision.
Subsection E addresses when a permit in which necessitates an aquifer exemption may be appealed and when the permitting action becomes effective in relation to the formal approval of the EPA Administrator.
Subsection F addresses when a permit in which necessitates an injection depth waiver pursuant to R18-9-J670 may be appealed and when the permitting action becomes effective in relation to the written concurrence of the EPA Administrator.

R18-9-C631(B)
Stakeholder comment was received by ADEQ concerning the preference for a permittee to have the right to a notice of intent to deny if requested from a modification or revocation and reissuance decision. ADEQ found no issue in allowing such a right and proceeded to work with EPA and the stakeholder to develop appropriate language.

Why is Article 1 being amended?

Individually Permitted Class V UIC Wells
Article 1 is being amended in order to avoid a scenario where a UIC Class V individual permittee
would also be required to obtain an individual Aquifer Protection Permit (APP). A.R.S. § 49-250(B)(26) exempts all individual UIC permittees from APP program requirements - except Class V wells as “prescribed by rule”. This leaves Class V wells “prescribed by rule” subject to both UIC and APP regulation. UIC Class V wells are automatically “authorized by rule” unless the Director requires an individual permit. “Authorized by rule” means a well owner need only inventory their well and follow a set of criteria to remain in compliance. “Authorized by rule” Class V wells do not need an individual permit. The reason Class Vs were left out of the exemption from APP is that APP regulation for Class V wells is more protective of human health and the environment than the UIC requirements. However, the “prescribed by rule” language in A.R.S. § 49-250(B)(26) was unintentionally altered in the legislative process from “authorized by rule”. ADEQ is concerned that Class V wells “prescribed by rule” may be interpreted to include Class V wells “authorized by rule” and individually permitted Class V wells, which ADEQ does not believe was the intention of the legislation. If A.R.S. § 49-250(B)(26) is interpreted to require both Class V wells “authorized by rule” and Class V wells individually permitted to be applicable to APP, then individually permitted UIC Class V wells would be required to get a duplicative, individual permit. ADEQ has a goal of eliminating duplicative permitting in the APP and UIC programs, while simultaneously upholding robust protection of human health and the environment. To that end, ADEQ is proposing to add a Class Exemption in Article 1 pertaining to the APP program. Authority to make such an exemption can be found in A.R.S. § 49-250(A). The Class Exemption in the A.A.C. would make Class V wells with individual UIC permits not subject to the APP program.

**Coal Combustion Residuals (CCR) Class Exemption From APP**

Also proposed for amendment in Article 1 is R18-9-103(5). Currently, this language exempts a class of facilities from APP known as Coal Combustion Residuals Units or CCR Units. CCR disposal units are used for the treatment, storage, or disposal of CCR, which can be wet or dry, and is generally composed of fly ash, bottom ash, boiler slag, and flue gas desulfurization materials generated from burning coal for the purpose of generating electricity by electric utilities and independent power producers. Arizona CCR Units are currently regulated under the federal CCR regulations, which are self-implementing rules (see 40 CFR 257, Subpart D). Generally, this approach means that the regulations were not intended to be implemented through direct government oversight, and enforcement is largely left to be performed through citizen lawsuits (see generally Final Rule: Hazardous and Solid Water Management System; Disposal of CCR from Electric Utilities, 80 Fed. Reg. 21,302 (Apr. 17, 2015)). In addition to the self-implementing rules is the opportunity for a state agency to obtain primary enforcement authority (primacy) over the CCR regulatory program in which individual permits are issued (see 42 U.S.C. § 6945(d)(1)). At the time the 2019 rulemaking amended R18-9-103 (see 25 A.A.R. 3060) -- adding the exemption to subsection (5) -- ADEQ presumed that the implementation of the CCR regulatory program would occur within the APP program. APP’s rules are located in A.A.C. Title 18, Chapter 9. Since that time, ADEQ has decided that the CCR regulatory program would be better suited in the agency’s Waste Programs rules. Waste Program’s rules are located in A.A.C. Title 18, Chapter 8. In an effort to effectuate this intention and avoid confusion, ADEQ is proposing legislation to amend A.R.S. § 49-250(B). The proposal would exempt CCR units from APP on the statutory level if the units are:

1. Regulated under 40 CFR 257, Subpart D, or
2. ADEQ receives approval from EPA for a CCR regulatory program in accordance with 42 U.S.C. § 6945(d)(1).

Adjusting the language in R18-9-103(5) through this rulemaking aligns the exemption in rule with the proposed legislative amendment.

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

Not applicable.

**8. A showing of good cause why the rulemaking is necessary to promote a statewide interest if the rulemaking will diminish a previous grant of authority of a political subdivision of this state:**
9. **The economic, small business, and consumer impact statement:**

This Economic, Small Business, and Consumer Impact Statement has been prepared to meet the requirements of A.R.S. § 41-1055.

### A. An identification of the rulemaking:

The rulemaking addressed by this Economic, Small Business, and Consumer Impact Statement (EIS) consists of 72 new sections, as well as amendments to existing sections, made by the Arizona Department of Environmental Quality (ADEQ) to 18 A.A.C. 9, Articles 1 and 6, 18 A.A.C. 1, Article 5 and 18 A.A.C. 14, Article 1 in order to adopt the Federal Safe Drinking Water Act’s (SDWA) Underground Injection Control Program (UIC) under the relevant regulation in 40 C.F.R. Parts 144 through 146 within the State of Arizona as required under A.R.S. §§ 49-203(A)(6), 49-257.01.

Arizona Revised Statutes §§ 49-203(A)(6) and 49-257.01 mandate that ADEQ establishes the UIC Program through rule. Federal statute at 42 United States Code 300h et seq. authorizes EPA to grant states primary enforcement authority or primacy over the UIC program upon the adoption of the program in rule at the state level (see 40 CFR 145.22(a)(5)).

Control of underground injection conducted in the industrial, municipal and residential sectors is necessary in order to protect Arizona’s underground sources of drinking water (USDWs) or aquifers. In Arizona, the UIC program has been administered by the Environmental Protection Agency (EPA) for decades. Currently 5 Federal UIC permits are in effect, along with thousands of UIC Class V wells that are authorized by rule.

Arizona’s program adoption will allow primacy to rest with ADEQ who is entirely focused on, and knowledgeable of, Arizona’s unique geology and climate; and who deeply understand Arizona’s environment, economy, and community. Additionally, program adoption will allow ADEQ to issue better permits, faster, and eliminate duplicative regulation, permitting, and permittee fees between the Federal and state programs. Adoption of this program will supplement Arizona’s already existing groundwater safeguards, taking a place in conjunction with the Aquifer Protection Permit Program.

### B. A summary of the EIS:

#### General Impacts

The primary costs of this rulemaking will be borne by UIC well permit holders and UIC wells authorized by rule. This includes in-situ copper mines, salt mines, municipal aquifer storage and recharge wells, extraction wells, carbon sequestration wells and a host of other injection wells.

There will be an increase in permitting costs due to ADEQ’s fee-for-service model. The fee-for-service model institutes the charging of permittees for a significant portion of the funding needed to support the implementation of the regulatory program. The Federal UIC program operates off of a general fund model, where permittees are not charged and the cost of implementation of the regulatory program comes from specific, legislatively approved funds (usually with an origin in government tax revenue). Many of ADEQ’s programs were changed after the 2008 recession from a general fund model to fee-for service model. The difference between the fee-for-service model and the general fund model is the reason the regulatory program within this rulemaking will impose a financial burden upon the permittees.

Despite the increase in permitting fees, such as annual fees, the beneficial impact to the stakeholders include permits and amendments being issued faster and the elimination of duplicative regulation, permitting, and permittee fees as a result of eliminating one of the two applicable regulatory programs for UIC permittees. ADEQ stands to benefit from this increase in fees by fulfilling a requirement of primacy. The stakeholders and the general public stand to benefit through the assurance provided that high-risk drywells in the state are being physically inspected from time to time, as opposed to rarely, as was the frequency of inspection before the ADEQ UIC program primacy.

A positive impact for all stakeholders is the protection of the environment that the program this rulemaking supports will bring. Individuals with a better understanding of Arizona’s geology and climate will be
developing and maintaining these permits, which will lead to better protection of the environment, which supports the economy, which supports the community.

Specific Impacts
While the three existing UIC permittees in the state of Arizona will see an increase in regulatory cost of conducting their business, they stand to benefit greatly in having the program administered in-state through speedier application review and permit services, the elimination of duplicative regulation between the Federal and state governments and local access to ADEQ expertise, personnel and customer service. Despite the increase in regulatory cost, the existing permittees support ADEQ’s adoption of the program.

Drywell regulation in Arizona will be transitioned from dual regulation between the Federal and state governments to a singular, UIC Class V authorization by rule through a simple inventory. Arizona’s more than 65,000 registered drywells will be transitioned into the UIC Class V well inventory without a charge. The former drywell registration fee of $100 will be increased to $200 per UIC Class V inventory.

The reason for this increase to the Drywell fees is to supplement the funds necessary to support the implementation of the Class V portion of the UIC program. This includes an EPA requirement for ADEQ to assume the inspection of responsibilities for Class V wells in the state.

Stakeholder Process
ADEQ and Arizona’s UIC stakeholders spent many hours negotiating the fees for the UIC program in this rulemaking. The transparent and collaborative process rendered a balanced set of fees, whereupon the needs of all parties were met and the support of the stakeholders in adopting the program was preserved.

C. Identification of the persons who will be directly affected by, bear the costs of, or directly benefit from the rules:
This rulemaking will affect state government agencies, political subdivisions, and privately-owned businesses. Additionally, the rulemaking will impact the general public.

ADEQ has identified the following list of affected persons:

State government agencies
State agencies benefit from the rulemaking due to the rulemaking supporting the environment, the community, and industry.

- ADEQ
- Arizona Department of Water Resources
- Arizona Department of Agriculture

Political subdivisions
Political subdivisions benefit from the rulemaking due to the rulemaking supporting the environment, the community, and industry. Additional benefits include faster, better permits facilitating the installation of Drywells as needed and the development of groundwater treatment facilities to support Arizona’s growing potable water needs. As permittees, political subdivisions will also bear the increased cost of the new permitting fee schedule.

- Counties
- Municipalities
- Domestic Water Improvement Districts

Privately-Owned Businesses
Privately-owned businesses will benefit from faster, better permits reducing the costs of delays to permit issuance. As permittees, political subdivisions will also bear the increased cost of the new permitting fee schedule.
Mines
Mineral Extraction Companies
Businesses which utilize drywells

The General Public
The general public will benefit from the environmental protection of better permits being issued by an agency with expertise specific to the permitting actions occurring in Arizona’s climate and geology. Additional benefits will be derived through the benefits industry derives which in turn supports the community and the general public.

D. Cost/benefit analysis
1. Part I - Cost/Benefit Stakeholder Matrix:

<table>
<thead>
<tr>
<th>Minimal</th>
<th>Moderate</th>
<th>Substantial</th>
<th>Significant</th>
</tr>
</thead>
<tbody>
<tr>
<td>$10,000 or less</td>
<td>$10,001 to $1,000,000</td>
<td>$1,000,001 or more</td>
<td>Cost/Burden cannot be calculated, but the Department expects it to be important to the analysis.</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Description of Affected Groups</th>
<th>Description of Effect</th>
<th>Increased Cost / Decreased Revenue</th>
<th>Decreased Cost / Increased Revenue</th>
</tr>
</thead>
<tbody>
<tr>
<td>A. State and Local Government Agencies</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>ADEQ</td>
<td>Costs of supporting and implementing a new regulatory program</td>
<td>Moderate</td>
<td></td>
</tr>
<tr>
<td></td>
<td>Ensuring underground sources of drinking water supply or aquifers are better protected from pollution.</td>
<td></td>
<td>Significant</td>
</tr>
<tr>
<td></td>
<td>Compliance with state and federal law.</td>
<td></td>
<td>Significant</td>
</tr>
<tr>
<td></td>
<td>Support of ADEQ’s mission to protect and enhance public health and the environment.</td>
<td></td>
<td>Significant</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Political Subdivisions</td>
<td>Tax revenues and indirect benefits of clean underground sources of drinking water supply</td>
<td>Significant</td>
<td></td>
</tr>
<tr>
<td></td>
<td>Regulation of desalination disposal kept local</td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td>Cost savings due to the elimination of duplicative regulatory programs (Federal UIC becomes State UIC, UIC permittees no longer applicable to APP)</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

B. Privately Owned Businesses
<table>
<thead>
<tr>
<th>Private-Owned Business</th>
<th>Cost savings due to elimination of duplicative regulatory programs (Federal UIC becomes State UIC, UIC permittees no longer applicable to APP)</th>
<th>Moderate</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>Permits and Permit Amendments issued faster</td>
<td>Significant</td>
</tr>
<tr>
<td></td>
<td>Localized access to ADEQ’s expertise, personnel and customer service, as well as a streamlined permitting process, and a reduction in cost through the elimination of duplicative regulation between Federal and state programs.</td>
<td>Significant</td>
</tr>
<tr>
<td>General Public</td>
<td>Ensuring underground sources of drinking water supply or aquifers are better protected from pollution.</td>
<td>Significant</td>
</tr>
<tr>
<td></td>
<td>ADEQ employees developing Arizona-specific permits, leading to a better protection of the environment, which supports the economy, which supports the community.</td>
<td>Significant</td>
</tr>
</tbody>
</table>

2. **Part II - Individual Stakeholder Summaries/Calculations:**

This section outlines ADEQ’s analyses of the estimated costs and benefits of this rulemaking, made after consultation with ADEQ staff, as well as knowledgeable individuals in the area of groundwater protection and underground injection control.

**ADEQ**

ADEQ will incur moderate costs as a result of implementing this rulemaking and administering the program. The rulemaking process itself requires staff time for technical review, rule composition, and public input. In order to support the administration of the UIC program, ADEQ plans on hiring 3.2 new full-time employees (FTE). These 3.2 FTEs will be split primarily between permit specialist positions, inspectors and other administrative duties. Funding those positions will incur moderate costs to ADEQ annually which will be offset by permit service fees, annual fees, inventory fees, well fees and an EPA work grant.

This rulemaking will create significant benefit to ADEQ in its fulfillment of the legislative mandates at A.R.S. §§ 49-203(A)(6) and 49-257.01. Given ADEQ’s mission to protect human health and the environment, the Department acknowledges the benefits to stakeholders that will flow from the implementation of this program, including a streamlined permitting process and a reduction in cost through the elimination of duplicative regulation between Federal and state programs. Upon adoption of the program, stakeholders who would have in the past had to file dual applications, comply with dual regulatory programs, file a dual set of ongoing reports and pay for consulting costs for dual permits will see all of those obligations consolidated into one, localized state program and permit. This fact stands to save the regulated community time, money and hardship.

**The Number of New, Full-Time Employees Necessary to Implement and Enforce the Proposed Rule**

3.2

**Political Subdivisions**

Political subdivisions are likely to see minimal costs and minimal benefit from this rulemaking. As mentioned above, municipalities have shown interest in applying for Class I disposal well permits; however, none have been applied for at the time of this rulemaking. Until political subdivisions apply for UIC permits, they will see no costs due to this rulemaking and the UIC program. However, political subdivisions are interested in the disposal of brine from prospective desalination plants. This rulemaking stands to localize brine disposal regulation, which would bring benefit to prospective stakeholders. Municipalities also often own a multitude of dry wells, which are to be regulated under the UIC program’s Class V wells.
The UIC program exists currently, administered by the Federal government, until ADEQ achieves primary enforcement authority over the program. As is stated above, the EPA administered program is funded through an approved budget from a Federal general fund. ADEQ’s funding for UIC program administration will be realized through a fee-for-service model. The fee-for-service model institutes the charging of applicants and permittees for a significant portion of the funding necessary to support the regulatory program and the personnel necessary to staff it. Many of ADEQ’s programs are structured this way. The Federal UIC program does not charge applicants, but rather derives its approved funds from a Federal general fund. The difference between the fee-for-service model and the general fund model is the reason the regulatory program within this rulemaking will impose a potentially minimal financial burden upon political subdivisions.

However, when the political subdivisions choose to engage with the UIC program that is the subject of this rulemaking, the benefits include a streamlined permitting process, and a reduction in cost through the elimination of duplicative regulation between Federal and state programs. Upon adoption of the program stakeholders who would have in the past had to file dual applications, comply with dual regulatory programs, file a dual set of ongoing reports and pay for consulting costs for dual permits will see all of those obligations consolidated into one, localized state program. This fact stands to save the regulated community time, money and hardship.

**Privately-Owned Business**

Privately-owned business is likely to see moderate cost and moderate benefit from this rulemaking. The disparity between EPA’s general fund program model and ADEQ’s fee-for-service model will incur potentially moderate costs to privately-owned businesses, especially the businesses that currently have UIC permits.

However, and as mentioned above, the benefits to privately-owned business include a streamlined permitting process, and a reduction in cost through the elimination of duplicative regulation between Federal and state programs. Upon adoption of the program, stakeholders who would have in the past had to file dual applications, comply with dual regulatory programs, file a dual set of ongoing reports and pay for consulting costs for dual permits will see all of those obligations consolidated into one, localized state program. This fact stands to save the regulated community time, money and hardship.

**General Public**

The general public could see significant benefit from this rulemaking. The UIC program that is the subject of this rulemaking aims to protect underground sources of drinking water supply or aquifers, many of which provide drinking water to Arizonans. The price of treating contaminated water or having to resort to other sources of water for drinking water supply is potentially significant. Furthermore, A positive impact for all stakeholders is the protection of the environment that the program this rulemaking supports will bring. Individuals with a better understanding of Arizona’s geology and climate will be developing and maintaining these permits, which will lead to better protection of the environment, which supports the economy, which supports the community.

E. A general description of the probable impact on private and public employment in business agencies, and political subdivisions of this state directly affected by the rulemaking:

ADEQ estimates that, for the most part, this rulemaking will not have an impact on public or private employment. However, and as mentioned above, all UIC permittees, whether public or private, stand to benefit through the state establishment of a streamlined permitting process, and a reduction in cost through the elimination of duplicative regulation between Federal and state programs. Upon adoption of the program, stakeholders who would have in the past had to file dual applications, comply with dual regulatory programs, file a dual set of ongoing reports and pay for consulting costs for dual permits will see all of those obligations consolidated into one, localized state program. This fact stands to save the regulated community time, money and hardship. Arizona environmental consultants may see a minimal detriment due to the streamlining of environmental compliance for companies using injection wells.

F. A statement of the probable impact of the rules on small business:

In this EIS, ADEQ uses the term “small business” consistent with A.R.S. § 41-1001(21), which defines
a “small business” as a concern, including its affiliates, which is independently owned and operated, which is not dominant in its field and which employs fewer than one hundred full-time employees or which had gross annual receipts of less than four million dollars in its last fiscal year.

1. **An identification of the small business subject to the rules:**
   Among the stakeholders listed above, only a few meet the definition of small business as set forth in A.R.S. § 41-1001(21). For example, ADEQ estimates that all three current UIC permit holders in Arizona are not small businesses. However, ADEQ has recorded with frequency around 1,000 drywell registrations annually. Drywells will be regulated under the Class V UIC program upon primacy. Small businesses will constitute a significant portion of the approximately 1,000 drywell inventories ADEQ expects annually upon primacy. In terms of UIC Class V drywell inventorying, some small businesses will be affected in a minimally negative manner by this rulemaking. However, the rulemaking intends to institute some UIC Class V inspections, including drywells, which could prove minimally beneficial to certain small businesses.

2. **The administrative and other costs required for compliance with the rules:**
   Compliance costs associated with this rulemaking will vary based on the stakeholder involved. ADEQ’s examination of compliance costs for UIC well owners regulated through a permit or an authorization by rule is addressed in the cost benefit analysis above.

3. **A description of the methods that the agency may use to reduce the impact on small businesses, as required in A.R.S. § 41-1035:**
   a. **Establishing less stringent compliance or reporting requirements in the rule for small businesses:**
      Under the SDWA, small businesses are not given special treatment when it comes to compliance or reporting requirements. In order to be eligible for EPA’s transfer of primary enforcement authority of the program from Federal to State, the Federal SDWA-UIC program must be at least as stringent as the Federal program.
   b. **Establishing less stringent schedules or deadlines in the rule for compliance or reporting requirements for small businesses:**
      Under the SDWA, small businesses are not given special treatment when it comes to the stringency of schedules or deadlines for compliance and reporting. Please reference subsection (F)(3)(a) above for more explanation.
   c. **Consolidating or simplifying the rule’s compliance or reporting requirements for small businesses:**
      Under the SDWA, small businesses are not given special treatment when it comes to compliance and reporting requirements. Please reference subsection (F)(3)(a) above for more explanation.
   d. **Establishing performance standards for small businesses to replace design or operational standards in the rule:**
      Under the SDWA, small businesses are not given special treatment when it comes to design or operational standards. Please reference subsection (F)(3)(a) above for more explanation.
   e. **Exempting small businesses from any or all requirements of the law:**
      Under the SDWA, small businesses are not given special treatment when it comes to requirements. Please reference subsection (F)(3)(a) above for more explanation.

4. **The probable costs and benefits to private persons and consumers who are directly affected by the rules:**
   As is stated above in this EIS, the SDWA-UIC program in currently in effect, administered by the Federal government’s EPA. This rulemaking is designed to support the primary enforcement authority or primacy application ADEQ has been mandated to pursue according to A.R.S. §§ 49-203(A)(6) and 49-257.01. The existing regulated parties in Arizona include three UIC Class III permittees and tens of thousands of UIC Class V wells (mostly drywells). Also stated above is the disparity in funding mechanisms between EPA’s current administration of the program and ADEQ’s proposed funding mechanisms in administration (EPA: General Fund based; ADEQ: Fee-For-Service based). Despite the new fees associated with Arizona’s potential primacy, the state’s UIC stakeholders have shown support for
ADEQ’s primacy pursuit. The reason for their support is the consolidation of Federal and state regulatory obligations into one, localized state program. The benefits to these private entities include the elimination of the necessity to file dual applications, to comply with dual regulatory programs, to file a dual set of ongoing reports and to pay for consulting costs for dual permits. Further benefits include the local access to ADEQ’s expertise, personnel and customer service, a streamlined permitting process, and a reduction in cost through the elimination of duplicative regulation between Federal and state programs.

UIC applicants and permittees will be subject to a water quality protection service fee of $145 an hour for application review, permit writing and other, similar services. The maximum fee for a single licensing time frame for UIC Area and Classes I, II, III and V permits are set at $200,000. UIC Area and Classes I, II, III and V permit modification and/or permit renewal are set at a maximum of $150,000. UIC Class VI permits maximum fee proposal is “no max”. The reason why no maximum fee has been proposed for UIC Class VI is because of its complicated and unknown nature. Arizona does not have any Class VI carbon sequestration wells and the entire country only has a few in operation. ADEQ believes there is no basis for proposing a maximum on UIC Class VI wells at this time.

UIC permittees will be subject to Annual and Flat Fees, which were determined by considering the necessary revenue needed to support the administration of the program while putting the least burden possible on the stakeholders. Other factors include input from the APP program, other states’ UIC programs and directly affected stakeholders.

Drywell regulation in Arizona will be transitioned from a state statutorily based regulatory program to regulation under the UIC program’s Class V wells. Arizona’s more than 65,000 registered drywells will be transitioned into the UIC Class V well inventory without a charge. However, there will be a cost increase between new drywell registration fees associated with the state statutory program and new inventory fees in the state-administered UIC program. Registration fees are $100 per registration, where inventory fees will be $200 per inventory. The reason for this increase is to supplement the funds necessary to support the administration of the Class V portion of the UIC program, including the commencement of more regular inspection of high-risk drywells in Arizona. A condition of EPA granting ADEQ primacy to administer the UIC program is the inspection of a small portion of the UIC Class V wells in the state. In order to meet this requirement, ADEQ has increased the fee required to inventory a drywell in the state.

In discussion with UIC stakeholders, it was determined that a review of the revenues collected from the UIC program’s fees should take place once every three years in order to ensure that enough revenue is being collected to properly administer the program and to that the fees are equitable by putting the least amount of burden on the stakeholders. To that end, R18-14-115 is proposed in this rulemaking.

G. A statement of the probable effect on state revenues:
This rulemaking will not result in a significant increase, nor decrease in state revenues. Increased and decreased costs to ADEQ are expected to be minimal, as explained above in the analysis of costs and benefits to ADEQ. Because the UIC permittees in Arizona were permitted through the UIC program as administered by the EPA, ADEQ does not anticipate a significant decrease in business activity in the state or a corresponding loss of state tax revenues.

H. A description of any less intrusive or less costly alternative methods of achieving the purpose of the rulemaking:
The purpose of this rulemaking is to adopt the SDWA-UIC program in Arizona rule in order to lay the groundwork for state administration of the program as required by the legislature through A.R.S. §§ 49-203(A)(6) and 49-257.01. There are no less intrusive or less costly alternative methods of achieving the purpose of the rulemaking.
I. A description of any data on which the rule is based with a detailed explanation of how the data was obtained and why the data is acceptable data:
The SDWA allows states to apply for primary enforcement authority in the administration of the UIC regulatory program (see 42 United States Code 300h et seq.). The Arizona legislature mandated pursuit of the SDWA-UIC program through the passage of the following statutes, A.R.S. §§ 49-203(A)(6) and 49-257.01. In order to achieve primacy, one requirement of a state is to put rules in place for the program to operate through (see 40 Code of Federal Regulations 145.22(a)(5)). These rules must be at least as stringent as the Federal UIC program rules in order for EPA to consider a state’s primacy application. The rules must also be no more stringent than the analogous Federal rule, per Arizona state law (see A.R.S. § 49-104(16)). Given those parameters, the language for the rules in this rulemaking came largely from 40 CFR Parts 144, 145 and 146 and to a lesser extent, 40 CFR Parts 124, 141 and 142. A table showing specific analogous Federal regulations to the rules in this rulemaking can be found in section 6 of the Preamble above.

10. A description of any changes between the proposed rulemaking, including supplemental notices, and the final rulemaking:
R18-9-A601(3)
- To add clarity to the definition, replaced “‘Application’ means the ADEQ prescribed method for applying for a permit, including any additions, revisions or modifications to the forms” with “‘Application’ means the ADEQ prescribed method, such as a form, for applying for a permit, including any additions, revisions or modifications thereof.”
R18-9-A601(22) and (23)
- Switched the definitions of “Emergency permit” and “Environmental Protection Agency” for the purpose of adhering to alphabetization.
R18-9-A601(48)
- Replaced proposed definition language with language more closely following the Federal CFR analog. The proposed language is as follows, “‘Permit means an authorization issued by the Director pursuant to this Article, including an area permit under R18-9-C624 and an emergency permit under R18-9-C625.” It is replaced by this final language, “‘Permit’ means an authorization issued by the Director pursuant to this Article. ‘Permit’ includes an area permit under R18-9-C624 and an emergency permit under R18-9-C625. ‘Permit’ does not include UIC authorization by rule or any permit which has not yet been subject to a final permit decision, such as a ‘draft permit.’”
R18-9-A601(68) and (69)
- Switched the definitions of “Underground Injection Control” and “Underground injection” for the purpose of adhering to alphabetization.
R18-9-A601(74) and (75)
- Switched the definitions of “Well stimulation” and “Well monitoring” for the purpose of adhering to alphabetization.
R18-9-A602(C)
- This edit was made to add clarity to the jurisdictional scope of the program and to restructure the language in a more digestible fashion. The proposed language read,
(C) “Underground injection is prohibited in the State of Arizona unless authorized by permit or rule under this Article or authorized by OGCC pursuant to regulations approved by EPA, in accordance with 42 U.S.C. 300h et seq. Any injection activity authorized by permit or rule under this Article shall prohibit the movement of fluid containing any contaminant into underground sources of drinking water (USDWs), where the presence of that contaminant may cause a violation of this Article or may adversely affect the health of persons.”
The final language reads,
(C) “Underground injection is prohibited in lands under the jurisdiction of the State of Arizona unless:
(1) Authorized by permit or rule under this Article in accordance with 42 U.S.C. 300h et seq., or
(2) Authorized by OGCC pursuant to regulations approved by EPA.
(D) Any injection activity authorized by permit or rule under this Article shall prohibit the movement of fluid containing any contaminant into underground sources of drinking water (USDWs), where the presence of that contaminant may cause a violation of this Article or
may adversely affect the health of persons.”

R18-9-A602(G); previously R18-9-A602(E) in proposed rule

- The edit was made for two reasons; one, to conform the language with the classification rule at R18-9-A604(E)(2)(a); and two, to allow the prohibition of cesspools language at R18-9-A654 to stand alone. The proposed language read,

  (G) “Specific exclusions. The following are not covered by these regulations:
  (1) Individual or single-family residential waste disposal systems such as domestic cesspools or septic systems.
  (2) Non-residential cesspools, septic systems or similar waste disposal systems if such systems:
     (a) Are used solely for the disposal of sanitary waste, and
     (b) Have the capacity to serve fewer than 20 persons a day or a design capacity of less than 3,000 gallons per day.
  (3) Injection wells used for injection of hydrocarbons which are of pipeline quality and are gases at standard temperature and pressure for the purpose of storage.
  (4) Any dug hole, drilled hole, or bored shaft which is not used for the subsurface emplacement of fluids.
  (5) Injection wells authorized by OGCC pursuant to regulations approved by EPA, in accordance with 42 U.S.C. 300h et seq.”

The final language reads,

  (G) “Specific exclusions. The following are not covered by these regulations:
  (1) Septic systems or similar waste disposal systems if such systems:
     (a) Are used solely for the disposal of sanitary waste, and
     (b) Have a design capacity of less than 3,000 gallons per day.
  (2) Injection wells used for injection of hydrocarbons which are of pipeline quality and are gases at standard temperature and pressure for the purpose of storage.
  (3) Any dug hole, drilled hole, or bored shaft which is not used for the subsurface emplacement of fluids.
  (4) Injection wells authorized by OGCC pursuant to regulations approved by EPA, in accordance with 42 U.S.C. 300h et seq.”

R18-9-A602(J); previously R18-9-A602(I) in proposed rule

- Replaced “…upon the date of primacy” with “upon the effective date of the Arizona UIC Program” in order to align with program definitions. See R18-9-A601(21).

R18-9-A604(E)(2)(a)

- Removed “…the capacity to serve fewer than 20 persons a day or…” in order to reduce confusion between the formerly two thresholds, “…20 persons a day…” and “…design capacity … 3,000 gallons per day.”

R18-9-A604(F)

- Replaced “Class VI well are wells that are” with “Class VI wells are” for clarity.

R18-9-A605(B)(4)(a) and (b)

- Removed the “(A)” in references R18-9-A606(A)(2) and R18-9-A606(A)(3) in order to properly cite the structure of the final rule.

R18-9-A606(2)(a)

- Replaced “consider” with “considering” in order to make the sentence grammatically correct.

R18-9-C616(C)(2)

- Added the word “at” at the beginning of the final phrase in order to complete the statement that starts with the language of subsection (C).

R18-9-C616(D)(9)

- Added a new subsection here in order to comply with the agency requirements in the State Historic Preservation Act, specifically A.R.S. § 41-863.

R18-9-C620(D)(1)(e)

- Added a new subsection here because none of the subsections in the proposed rule under R18-9-C620(D)(1)(e) represented the Federal analog at 40 CFR 124.10(c)(1)(ix)(B) and (C).

R18-9-C622(E)

- Added a new subsection here because none of the subsections in the proposed rule under R18-9-C622 represented the Federal analog at 40 CFR 124.12(d).
R18-9-C624(A)(2)
- Removed an extra word, “in”.

R18-9-C627(A)
- The provision of the permit itself and an updated fact sheet was inserted into the first sentence of R18-9-C627(A) from proposed R18-9-C627(C) for language consolidation, clarity and to align UIC permit issuance with permit issuance in similar ADEQ programs. “…of the A.R.S.” was added to the second sentence for clarity.

The proposed language read,

(A) “Issue of a final permit decision by the Director shall be accompanied by a notification to the applicant and each person who has submitted written comments or requested notice of the final permit decision. The notice and hearing procedures are subject to either Title 41, Chapter 6, Article 10, or Title 49, Chapter 2, Article 7.”

The final language reads,

(A) “Issuance of a final permit decision by the Director shall be accompanied by the permit and an updated fact sheet per R18-9-C619, if applicable, and a notification to the applicant and each person who has submitted written comments or requested notice of the final permit decision. The notice and hearing procedures are subject to either Title 41, Chapter 6, Article 10, or Title 49, Chapter 2, Article 7 of the A.R.S.”

R18-9-C627(D); previously R18-9-C627(E) in proposed rule
- The language “…and pursuant to…” was changed to “…unless stayed pursuant to…” in order to more accurately align the section with potential stays through either the Office of Administrative Hearings or the Water Quality Appeals Board. See A.R.S. §§ 41-1092 et seq. and 49-321 et seq., respectively.

The proposed language read,

(E) “The final permit decision shall take effect 30 days after its issuance in accordance with the notification requirements of subsection A of this Section and pursuant to Title 41, Chapter 6, Article 10, or Title 49, Chapter 2, Article 7.”

The final language reads,

(E) “The final permit decision shall take effect 30 days after its issuance in accordance with the notification requirements of subsection A of this Section unless stayed pursuant to Title 41, Chapter 6, Article 10, or Title 49, Chapter 2, Article 7 of the A.R.S.”

R18-9-C631(B)
- The first three sentences were reworked for clarity, but do not adjust the language substantively.

The proposed language read,

(B) “If the Director decides the request is not justified, they shall send the requestor a brief written response giving a reason for the decision. A termination shall be accompanied by a brief written response giving a reason for the decision, but does not require a notice of intent to deny. Denials of modifications (not including minor modifications) or revocation and reissuances do not require a notice of intent to deny unless a request is made by the permittee, and the scope of the request has not previously been requested and denied before. A notice of intent to deny is a type of draft permit which shall follow the same procedures as any draft permit prepared pursuant to R18-9-C618.”

The final language reads,

(B) “If the Director decides a request to modify, revoke and reissue, or terminate is not justified, they shall send the requestor a brief written response giving a reason for the decision. Denial of a request to terminate does not require a notice of intent to deny. Denial of a request for modification or revocation and reissuance requires a notice of intent to deny only when the request is made by the permittee, the scope of the request has not previously been requested and denied and the request is not for a minor modification. A notice of intent to deny is a type of draft permit which shall follow the same procedures as any draft permit prepared pursuant to R18-9-C618.”

R18-9-C631(D)
- The final word “reissued” was changed to “issued” in order to more accurately describe the action the agency would take in this situation.

R18-9-C631(F)
The language “…R18-9-C634 where the permittee objects…” was changed to “…R18-9-C634(A)(1), (2) or (3)…” for two reasons; one, to distinguish between non-requested causes for termination and the requested cause in the subsections of R18-9-C634; and two, ADEQ has chosen to issue a notice of intent to terminate whether the permittee objects or not.

Proposed rule R18-9-C631(G), removed in final rule
- The subsection was removed as the EPA-issued permit transition plan, upon primacy, does not involve the termination of permits.

R18-9-C632(A)
- In the proposed rule, R18-9-C632(A) included what is now in final rule, R18-9-C632(A), (B), (C) and (D). No substantive changes have been made to the remaining first sentence of R18-9-C632(A) in the final rule through the restructuring. However, the proposed rule language at R18-9-C632(A), “…[w]hen a permit is modified, only the conditions subject to modification are reopened…” and “…[i]f a permit is revoked and reissued, the entire permit is reopened and subject to revision and the permit is reissued for a new term…” has been removed from the final rule as it is redundant with final rule R18-9-C631(D).

R18-9-C632(B); part of proposed rule R18-9-C632(A)
- The final rule splits proposed rule R18-9-C632(A) into four subsections, R18-9-C632(A), (B), (C) and (D). In the final rule, Subsection B is the second sentence of proposed rule R18-9-C632(A). No substantive changes have been made to this language.

R18-9-C632(C); part of proposed rule R18-9-C632(A)
- The final rule splits proposed rule R18-9-C632(A) into four subsections, R18-9-C632(A), (B), (C) and (D). In the final rule, Subsection C is the fifth sentence of proposed rule R18-9-C632(A). No substantive changes have been made to this language.

R18-9-C632(D); part of proposed rule R18-9-C632(A)
- The final rule splits proposed rule R18-9-C632(A) into four subsections, R18-9-C632(A), (B), (C) and (D). In the final rule, Subsection D is the sixth and seventh sentences of proposed rule R18-9-C632(A). No substantive changes have been made to this language.

R18-9-C632(E)(3); previously R18-9-C632(B)(3) in proposed rule
- The language “…of new or amended standards…” was replaced with “…of new regulations…” in order to more accurately capture the breadth of rule promulgations that may be cause for revocation and reissuance or modification.

R18-9-C633(8)
- Replace “an” with “and”.

R18-9-C635(16)(b)
- Replace “and” with “an”.

R18-9-C635(17)(b)
- The first reference in the proposed rule to R18-9-B614 should be to R18-9-613. The first reference in the proposed rule to R18-9-B613 should be to R18-9-B614. Both inaccurate references have been updated for the final rule.

R18-9-C636(A)(1)
- The reference in the proposed rule to R18-9-B634 should be to R18-9-633. The inaccurate reference has been updated for the final rule.

R18-9-E640(A)
- The second sentence of subsection A and further subsections 1 through 3 of subsection A in the proposed rule were removed for two reasons; one, because subsections 1 through 3 are not siting requirements; and two, because the removed language is not appropriate for a rule concerning construction requirements. ADEQ believes the language in R18-9-A604(A), classification of wells, suffices.

R18-9-E642(B)(16)
- The language “…R18-9-D636…” was replaced with “…R18-9-D636(A)(6)…” in order to add the appropriate amount of specificity.

R18-9-I650(A)(4); not in proposed rule
- This subsection was added to accommodate a transferability function for UIC Class V wells authorized by rule.

R18-9-I650(B)
- The reference to “…subsection (B)…” was changed to “…subsection (B)(2)…” in order to add the
appropriate amount of specificity.
R18-9-I650(B)(2)
- In order to clarify the language, “…if one of any one…” was changed to “…upon any…”
R18-9-I650(B)(2)(b)
- The language “…pursuant to R18-9-I651…” was added in order to attain the appropriate amount of specificity.
R18-9-I650(B)(3)
- The proposed language for R18-9-I650(B)(3) was replaced with, “[p]rior to abandoning a Class V well, the owner or operator shall meet the plugging requirements in R18-9-B614(C)” because R18-9-I650(B)(3) and R18-9-B614(C) are substantively identical and the removal or redundancy is a goal of the rulemaking.
R18-9-J657(B)(1)
- The language “…R18-9-C616(E)(1) through (6)” was changed to “…R18-9-C616(E)(1) through (9)” in order to accurately reference the rule.
R18-9-J657(B)(21), not in proposed rule
- Added a new subsection here in order to comply with the agency requirements in the State Historic Preservation Act, specifically A.R.S. § 41-863.

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

Comment 1: Drywell Owners – UIC Drywell Regulation
How will the UIC program rulemaking affect drywell regulation in Arizona? Will the existing registrations be rolled into the new UIC program? If rolled into the new UIC program, will the regulations look the same/similar as they are now for the Class V wells? Upon primacy, will drywell owners with registrations under A.R.S. § 49-332 need to inventory under the UIC program? Are Dry Wells included in a Class? If so, which Class are they included in? Under the UIC program, will drywells be assessed an annual fee or a one-time fee?

ADEQ Response 1:
ADEQ appreciates the comment. Currently, drywells in Arizona are regulated primarily through a statutorily-based program that can be found at A.R.S. Title 49, Chapter 2, Article 8. This program requires registration of new drywells. There are a few special circumstances where drywells are required to register and apply for an Aquifer Protection Permit (APP) (see A.A.C. Title 18, Chapter 9, Article 3, Part C. Type 2 General Permits – specifically R18-9-C301, C303 & C304).
In 2022, the Arizona State Legislature passed a bill (signed by the Governor) which repeals the state statutory drywell program. The repealed state statutory drywell program leaves drywell regulation in Arizona to the UIC program. The UIC program regulates drywells as part of its Class V wells. Upon primacy over the UIC program (projected for early 2023), ADEQ would take administrial control from EPA over the program and the drywell regulation therein. Until primacy, the Environmental Protection Agency (EPA) will continue to administer the UIC program in Arizona (including drywells which are encompassed in the Class V wells).
ADEQ is currently developing the UIC program and aims to transfer all state drywell registrations into the UIC program inventory in the process (free of charge). More information on this process will be made public as program development continues.
Class V regulations in the UIC program that are currently in effect and administered by EPA out of the Code of Federal Regulations (CFR) are nearly identical to the Class V regulation in this rulemaking. Similar to the regulation in A.R.S. Title 49, Chapter 2, Article 8, the Class V regulation wherein drywells apply requires an inventory of new wells. Class V regulation also requires drywells to adhere to the prohibition of movement standard in rule R18-9-B608(A). This rule prohibits any injection activity in a manner that allows the movement of fluid containing any contaminant into an underground source of drinking water. The Class V-specific regulation can be found at R18-9-I650 et seq. Under the Arizona UIC program, drywells and Class V wells are charged a one-time fee, per inventory, of $200. Class V wells, authorized by rule, will also be charged $100 upon transfer of the well to a new owner.

Comment 2: Drywell Industry Member – UIC Drywell Regulation
Will this proposed regulation impact the existing required registration of the typical parking lot drywell with ADEQ?

ADEQ Response 2:

Comment 3: Environmental Protection Agency (EPA) – UIC Drywell Regulation
Will the UIC program rulemaking affect drywell regulation in Arizona? Will the existing registrations be rolled into the new UIC program? If rolled into the new UIC program, will the regulations look the same/similar as they are now for the Class V wells? Upon primacy, will drywell owners with registrations under A.R.S. § 49-332 need to inventory under the UIC program? Are Dry Wells included in a Class? If so, which Class are they included in? Under the UIC program, will drywells be assessed an annual fee or a one-time fee?

ADEQ Response 3:
ADEQ appreciates the comment. Currently, drywells in Arizona are regulated primarily through a statutorily-based program that can be found at A.R.S. Title 49, Chapter 2, Article 8. This program requires registration of new drywells. There are a few special circumstances where drywells are required to register and apply for an Aquifer Protection Permit (APP) (see A.A.C. Title 18, Chapter 9, Article 3, Part C. Type 2 General Permits – specifically R18-9-C301, C303 & C304).
In 2022, the Arizona State Legislature passed a bill (signed by the Governor) which repeals the state statutory drywell program. The repealed state statutory drywell program leaves drywell regulation in Arizona to the UIC program. The UIC program regulates drywells as part of its Class V wells. Upon primacy over the UIC program (projected for early 2023), ADEQ would take administrial control from EPA over the program and the drywell regulation therein. Until primacy, the Environmental Protection Agency (EPA) will continue to administer the UIC program in Arizona (including drywells which are encompassed in the Class V wells).
ADEQ is currently developing the UIC program and aims to transfer all state drywell registrations into the UIC program inventory in the process (free of charge). More information on this process will be made public as program development continues.
Class V regulations in the UIC program that are currently in effect and administered by EPA out of the Code of Federal Regulations (CFR) are nearly identical to the Class V regulation in this rulemaking. Similar to the regulation in A.R.S. Title 49, Chapter 2, Article 8, the Class V regulation wherein drywells apply requires an inventory of new wells. Class V regulation also requires drywells to adhere to the prohibition of movement standard in rule R18-9-B608(A). This rule prohibits any injection activity in a manner that allows the movement of fluid containing any contaminant into an underground source of drinking water. The Class V-specific regulation can be found at R18-9-I650 et seq. Under the Arizona UIC program, drywells and Class V wells are charged a one-time fee, per inventory, of $200. Class V wells, authorized by rule, will also be charged $100 upon transfer of the well to a new owner.

Comment 4: Environmental Protection Agency (EPA) – UIC Drywell Regulation
Will the UIC program rulemaking affect drywell regulation in Arizona? Will the existing registrations be rolled into the new UIC program? If rolled into the new UIC program, will the regulations look the same/similar as they are now for the Class V wells? Upon primacy, will drywell owners with registrations under A.R.S. § 49-332 need to inventory under the UIC program? Are Dry Wells included in a Class? If so, which Class are they included in? Under the UIC program, will drywells be assessed an annual fee or a one-time fee?

ADEQ Response 4:
ADEQ appreciates the comment. Currently, drywells in Arizona are regulated primarily through a statutorily-based program that can be found at A.R.S. Title 49, Chapter 2, Article 8. This program requires registration of new drywells. There are a few special circumstances where drywells are required to register and apply for an Aquifer Protection Permit (APP) (see A.A.C. Title 18, Chapter 9, Article 3, Part C. Type 2 General Permits – specifically R18-9-C301, C303 & C304).
In 2022, the Arizona State Legislature passed a bill (signed by the Governor) which repeals the state statutory drywell program. The repealed state statutory drywell program leaves drywell regulation in Arizona to the UIC program. The UIC program regulates drywells as part of its Class V wells. Upon primacy over the UIC program (projected for early 2023), ADEQ would take administrial control from EPA over the program and the drywell regulation therein. Until primacy, the Environmental Protection Agency (EPA) will continue to administer the UIC program in Arizona (including drywells which are encompassed in the Class V wells).
ADEQ is currently developing the UIC program and aims to transfer all state drywell registrations into the UIC program inventory in the process (free of charge). More information on this process will be made public as program development continues.
Class V regulations in the UIC program that are currently in effect and administered by EPA out of the Code of Federal Regulations (CFR) are nearly identical to the Class V regulation in this rulemaking. Similar to the regulation in A.R.S. Title 49, Chapter 2, Article 8, the Class V regulation wherein drywells apply requires an inventory of new wells. Class V regulation also requires drywells to adhere to the prohibition of movement standard in rule R18-9-B608(A). This rule prohibits any injection activity in a manner that allows the movement of fluid containing any contaminant into an underground source of drinking water. The Class V-specific regulation can be found at R18-9-I650 et seq. Under the Arizona UIC program, drywells and Class V wells are charged a one-time fee, per inventory, of $200. Class V wells, authorized by rule, will also be charged $100 upon transfer of the well to a new owner.
ADEQ Response 2:
ADEQ appreciates the comment. If EPA grants ADEQ primary enforcement authority of the SDWA-UIC program and a person wanted to install a typical drywell draining a parking lot and comply with the prospective regulatory scheme for drywells in Arizona (projected for 2023), they would have to inventory the new drywell with ADEQ through the SDWA-UIC program (the old state dry well program would no longer exist). It should be noted that Arizona drywells are required to be inventoried under the SDWA-UIC program through the Federal EPA program before primacy. In the inventory process, it is possible that the drywell described in the question above would additionally be subject to the Aquifer Protection Permits (APP) if:

- the drywell drained an area where hazardous substances are used, stored, loaded or treated (see Arizona Administrative Code R18-9-C301), or if
- the drywell drained a motor fuel dispensing facility where motor fuels are used, stored or loaded (see Arizona Administrative Code R18-9-C304).

Please note that this potential, additional APP requirement exists now and will remain unaffected by the legislation referred to above.

Comment 3: Drywell Industry Member – UIC Drywell Regulation
As far as moving the UIC EPA program to Arizona, I am concerned that we will lose access to obtaining drywell lists that are important to conducting Phase I Environmental Site Assessments. How is ADEQ going to maintain the ADEQ database for Drywells?

ADEQ Response 3:
ADEQ appreciates the comment. Similar to the EPA Online Inventory Form, ADEQ plans to provide online inventorying and reporting for all Class V wells (including drywells) through myDEQ, which is designed to be an easy-to-use, online interface for stakeholders. The existing drywell registrations will be migrated to the myDEQ Class V inventory database. This means both past registrations and future inventories will be accessible to the public. ADEQ is currently developing the UIC program and will take this comment into consideration as development continues. More information on this process will be made public as program development continues.

Comment 4: Injection Well Industry Member – UIC Underground Storage Facility Regulation
We provide professional services to various entities that operate Underground Storage Facilities (USF) that recharge (inject by gravity) treated effluent or potable water into drinking water aquifers in the state. Unless these facilities recharge only CAP water they require an APP. Can you please clarify which USFs, if any, would also require a UIC Class V permit under the proposed ADEQ UIC regulation R18-9-A604(E)(f), or any other provision of the proposed rule?

ADEQ Response 4:
ADEQ appreciates the comment. USFs are considered Class V wells for the purposes of the UIC program (see proposed UIC rule R18-9-A604(E)(1)(f)). All USFs (including facilities that inject only CAP water) are required to inventory with the UIC program pursuant to R18-9-I652. Each individual well requires an inventory.

Comment 5: Local Government – Class V Septic Regulation
AAC R18-9-A604(E)(2) Class V wells do not include: Single-family residential septic system wells or non-residential septic system wells used solely for the disposal of sanitary waste with the capacity to serve fewer than 20 persons a day or a design capacity of less than 3,000 gallons per day.

The proposed language in AAC R18-9-A604(E)(2) above can be interpreted to include all of the following to be within the scope of UIC Class V regulation:

- Any non-residential septic system that comingles industrial or commercial waste with their sanitary waste, regardless of volume.
- Any non-residential septic system receiving sanitary waste serving 20 or more people a day, regardless of volume.

This can include an office building for 20 or more employees (20 gpd x 20 employees = 400 gpd design flow).

This can include facilities open to the public. An example could be a convenience mart with 3 employees a day and a men’s and a women’s bathroom (20 gpd x 3 employees = 60 gpd; 200 gpd x 2 public toilets = 400 gpd; total design flow of 460 gpd).
● This can include theaters, strip malls, park restrooms, arenas, or other businesses discharging only sanitary waste.
● Any non-residential septic system with design capacity 3,000 gpd or more.

Because it states “single-family residential septic system wells or”, it can be assumed the passage after “non-residential septic system wells” applies to the first part as well. It would read “Class V wells do not include: Single-family residential septic system wells used solely for the disposal of sanitary waste with the capacity to serve fewer than 20 persons a day or a design capacity of less than 3,000 gallons per day”. If so, the following would also apply.

● Any single-family residence septic system with a design capacity of 3,000 gallons per day or more.
● Any single-family residence septic system that comingles industrial or commercial waste with their sanitary waste, regardless of volume. This can occur with home businesses.
● Any single-family residence septic system receiving sanitary waste serving 20 or more people a day, regardless of volume. This can occur with home businesses.

ADEQ Response 5:
ADEQ appreciates the comment and recognizes the issues illustrated above. In response, ADEQ has decided to amend A.A.C. R18-9-A604(E)(2). The new language is as follows,

Class V wells do not include single-family residential septic system wells or non-residential septic system wells used solely for the disposal of sanitary waste with a design capacity of less than 3,000 gallons per day.

Eliminating the first of the previously two standards should address the stakeholder’s concerns above. The language removed was “with the capacity to serve fewer than 20 persons a day.”

Taking the amended language above along with all of the classification language in proposed rule R18-9-A604, the following list of wells would be considered Class V wells:

● Non-residential septic systems receiving only sanitary waste with a design capacity of 3,000 gallons per day or more.
● Single-family residential septic systems with a design capacity of 3,000 gallons per day or more.

Taking the amended language above along with all of the classification language in proposed rule R18-9-A604, the following list of wells would not be considered Class V wells:

● Non-residential septic systems that comingle industrial or commercial waste with their sanitary waste.
● Single-family residential septic systems that comingle industrial or commercial waste with their sanitary waste.

Comment 6: Local Government – UIC / APP Septic Regulation Interface
AAC R18-9-A604(E)(2) does not directly correlate with the Aquifer Protection General Permits, Type 4.23. APP Type 4.23 General Permits include cumulative flows on a property. This means it could be one septic system or multiple septic systems on the property. Nowhere in the UIC proposed regulations does it suggest that one consider the flow for the entire site or multiple septic systems for application of the UIC regulations when considering design capacity of 3000 gpd or more. One could avoid this regulation by installing multiple smaller septic systems that serve only sanitary waste with design capacities of less than 3000 gpd for each one. This would allow for example six 2500 gpd septic systems to be placed on a property without classifying as a Class V Injection Well.

ADEQ Response 6:
ADEQ appreciates the comment. For the purpose of calculating design flow for an APP Type 4.23 General Permit, all septic systems on a property are counted cumulatively. Therefore, an RV Park with three 1,100 gallon per day septic systems (totaling 3,300 gallons per day in cumulative design flow) would require an APP Type 4.23 General Permit. However, the UIC program takes the opposite approach for the purpose of determining applicability to Class V regulation. Under the UIC program, each septic system’s design flow (even if on the same property) is viewed independently of the other. Therefore, due to AAC R18-9-A604(E)(2) requirement of 3,000 gallons per day or more for Class V applicability, each of the 1,100 gallon per day septic systems in the hypothetical above would not be applicable to the UIC program. Taking the regulation of both the APP and UIC programs together, the six 2500 gallon per day septic systems from the commenter’s example above would not be applicable to UIC Class V regulation (not counted cumulatively), but would be applicable to APP General Permit regulation (counted cumulatively). ADEQ drafted the rules here carefully in order to make sure any septic systems with design flows below 3,000 gallons per day would be subject to the APP program and septic systems with design flows at or
above 3,000 gallons per day would be subject to, at least, the UIC Class V regulation. However, it should be noted that onsite wastewater treatment facilities of a cumulative design flow of between 3,000 and 24,000 gallons per day are subject to an APP General Permit (see A.A.C. R18-9-E323). If the facility is singular and falls between 3,000 and 24,000 gallons per day in design flow, then the UIC Class V regulation would apply in addition to the APP regulation.

**Comment 7: Local Government – Class V Septic Regulation**

**AAC R18-9-A604(E)(1)(i) - Class V wells include but are not limited to septic system wells used to inject the waste or effluent from a multiple dwelling, business establishment, community or regional business establishment septic tank.**

This section suggests that regardless of flow volume or flow type (sanitary, commercial, or industrial), multiple family and business septic systems are Class V Injection Wells.

ADEQ Response 7:
ADEQ appreciates the comment. It should be noted that the proposed rules are based on the Federal analog. This is dictated by the fact that EPA requires ADEQ’s rules to be at least as stringent as the Federal rule. Also, Arizona law dictates that the regulations be no more stringent than the corresponding Federal rule (see A.R.S. § 49-104(16)).

With that said, ADEQ understands UIC Class V regulation to include septic system wells used to inject effluent from a multiple dwelling, business establishment, community or regional business establishment septic tank, regardless of flow volume. Flow volume is considered only for single-family residential septic system wells or non-residential septic system wells used solely for the disposal of sanitary waste with a design capacity of less than 3,000 gallons per day. In other words, R18-9-A604(E)(2) is carved out of the broader, R18-9-A604(E)(1)(i). For example, a non-residential small business building septic system would initially be applicable to UIC Class V regulation. However, the same septic system w/a design flow below 3,000 gallons per day would fall out of UIC Class V applicability under R18-9-A604(E)(2).

**Comment 8: Local Government – UIC Class V / APP Regulation Interface**

Concerning UIC Class V regulation at AAC R18-9-A604(E)(1), air conditioning return flows, storm wells, and some of the other identified inclusions may include APP Type 1 and Type 2 General Permits or other permits within the AAC.

ADEQ Response 8:
ADEQ appreciates the comment. Per A.R.S. § 49-250(B)(26), UIC Class V is the only UIC well class in which wells are additionally subject to the APP program. This statute preserves ADEQ’s robust APP program while taking into consideration that UIC Class V regulation requires (almost always) only an inventory instead of a permit. However, it should be noted that under proposed UIC rule R18-9-I651, the Director has the authority to require a permit of a Class V well that was previously subject to an “authorization by rule”. Even in this rare situation, the language proposed in R18-9-103(6) would exempt a Class V well which has been issued a UIC permit from APP applicability. The statute and rule language relevant to this question was designed to eliminate duplicative permitting.

**Comment 9: Local Government – Cesspools**

**AAC R18-9-A604(E)(1)(b) - Class V wells include but are not limited to cesspools including multiple dwelling, community or regional cesspools, or other devices that receive wastes which have an open bottom and sometimes have perforated sides. The UIC requirements do not apply to single family residential cesspools nor to non-residential cesspools which receive solely sanitary wastes and have the capacity to serve fewer than 20 persons a day.**

Cesspools are prohibited by AAC R18-9-A309(A)(4).

ADEQ Response 9:
ADEQ appreciates the comment. The rule cited by the stakeholder above applies to the APP program, not the UIC program. However, proposed UIC rule R18-9-I654 likewise prohibits cesspools from the UIC program. The rule cited by the stakeholder above characterizes the wells. Therefore, UIC Class V regulation does apply to cesspools, amongst other injection wells. However, R18-9-I654 prohibits them nonetheless.

**Comment 10: Local Government – Aquifer Storage Recharge Wells**

We recommend allowing Class V wells authorized by rule to be exempt from requiring an individual APP if the source water injected into the aquifer is already regulated by an AZPDES/NPDES permit, or the SDWA. We feel it too burdensome on the utility to also obtain APP coverage for ASR wells when the source water being injected into the aquifer is already regulated by existing rules or regulations. This would align with the UIC program exempting Class V wells having individual UIC permit coverage exempt from
requiring an APP permit to avoid duplicative permitting. The EPA UIC program allows Class V wells to be authorized by rule if both the owner or operator submits the well information and the well injection does not endanger a USDW. If being authorized by rule is indicative that the injectate will not endanger the USDW, we recommend the establishment of a regulatory avenue for owners and operators to further demonstrate that their injectate will not endanger the USDW and allow an exemption from the individual APP requirement. If the UIC program standards are based on the National Primary Drinking Water Standards like the State’s APP program then in cases where the injectate is potable water then a process to submit for exemption would be preferred rather than having to obtain another permit.

ADEQ Response 10:
ADEQ appreciates the comment. ASR facilities are applicable to UIC, but exempt from APP under A.R.S. § 49-250(B)(12), (13), (14) or (24), unless the facility is using reclaimed water. Under the UIC program ASRs are considered Class V wells, which require an inventory to become authorized by rule. The AZPDES Program (per ARS 49-255.01) regulates discharges to surface water bodies under the Clean Water Act, which does not align with the requirements of the UIC Program (under the SDWA) or APP that explicitly regulates discharges to groundwater. Additionally, the surface water quality standards under the AZPDES Program at Title 18, Chapter 11 of the A.A.C. differ from the Aquifer Water Quality Standards which are used in the APP Program (see A.A.C. R18-11-406).

Comment 11: Resource Extraction Industry Member – Class VI Primacy Authority
Are legislative changes required in order to apply for Class VI primacy?

ADEQ Response 11:
ADEQ appreciates the comment. Legislative changes are not required. Arizona Revised Statute 49-203(A)(6) and 49-257.01 gives ADEQ authority to pursue all injection well classes under the UIC program, including Class VI.

Comment 12: Local Government – Applicable Standards
Will National Primary Drinking Water Regulations take priority over existing Aquifer Water Quality Standards, where they pertain to underground injection activities?

ADEQ Response 12:
ADEQ appreciates the comment. All UIC facilities must protect to the primary MCL’s. The Aquifer Protection Program will continue to use the Aquifer Water Quality Standards.

Comment 13: Local Government – Underground Storage Facility / Central Arizona Project
Will an Underground Storage Facility (USF) permitted by ADWR, using water other than effluent, need an APP permit under the UIC program? Unless it is Central Arizona Project (CAP) water?

ADEQ Response 13:
ADEQ appreciates the comment. Generally, USF facilities are exempt from APP under A.R.S. § 49-250(B)(12), (13), (14) or (24), unless injecting reclaimed water. The proposed UIC rule at R18-9-A604(E)(1)(f) lists “[r]echarge wells used to replenish water in an aquifer…” as a part of the scope of UIC Class V authorized by rule regulation. This descriptor encompasses USF facilities. In plain terms, USF facilities are subject to UIC Class V regulation which requires an inventory under proposed rule R18-9-1652.

Specifically, USFs permitted by ADWR under A.R.S. title 45, chapter 3.1 and using water other than reclaimed water are exempt from APP under A.R.S. § 49-250(B)(12), but are applicable to UIC Class V authorization by rule regulation under proposed rule R18-9-A604(E)(1)(f). USFs permitted by ADWR under A.R.S. title 45, chapter 3.1, article 6 and using CAP water are exempt from APP under A.R.S. § 49-250(B)(13), but are applicable to UIC Class V authorization by rule regulation under proposed rule R18-9-A604(E)(1)(f).

ADEQ would be happy to meet with any potential applicants to ensure they comply with all applicable environmental programs.

Comment 14: Local Government – Aquifer Storage Recharge Wells
Are dry and Aquifer Storage Recharge (ASR) wells considered class V wells, authorized by rule, for the purposes of the UIC program? Do such wells need to get an individual permit under the UIC program?

ADEQ Response 14:
ADEQ appreciates the comment. Both drywells and ASR wells are subject to UIC Class V regulation, authorized by rule. Generally, ASR facilities are exempt from APP under A.R.S. § 49-250(B)(12), (13), (14) or (24), unless injecting reclaimed water. ADEQ would be happy to meet with any potential applicants to ensure they comply with all applicable environmental programs.
Comment 15: Local Government
Our ASR wells have USF permits issued by ADWR. These will now require an individual APP under the UIC program, correct? So, these wells will have a USF permit, APP permit and UIC inventory required by rule?

ADEQ Response 15:
ADEQ appreciates the comment. ASR wells will not be required to apply for an individual APP under the UIC program. The APP and UIC programs are separate regulatory programs. Both currently (under the EPA administration) and upon primacy (prospective ADEQ administration), ASR wells in Arizona must:
- inventory under the UIC Class V program (authorized by rule), and
- have an Underground Storage Facility permit.

Also, ASRs may be applicable to APP, depending on whether the operation is exempt from APP under A.R.S. § 49-250(B)(12), (13), (14) or (24). For example, if an ASR well is injecting CAP water, then it is exempt from the APP program per ARS 49-250(B)(13) unless the storage water is blended with reclaimed water. Also of not, Class V wells (other than ASR and geothermal wells) are likely not subject to the APP program.

Comment 16: Law Firm – Tribal Lands
Does EPA retain authority to issue UIC permits on tribal lands?

ADEQ Response 16:
ADEQ appreciates the comment. Arizona’s UIC primacy authority will not extend to tribal lands within the state. UIC authority on tribal lands resides with the tribal nation or community (if that tribal nation or community has primacy) or is retained by the EPA otherwise.

Comment 17: Law Firm – Definition of Permit
The federal UIC program's definition of "permit" specifically states that the term does not include Class V wells authorized by rule,

40 CFR 144.3
"Permit means an authorization, license, or equivalent control document issued by EPA or an approved State to implement the requirements of this part, parts 145, 146 and 124. 'Permit' includes an area permit (§ 144.33) and an emergency permit (§ 144.34). Permit does not include UIC authorization by rule (§ 144.21), or any permit which has not yet been the subject of final agency action, such as a 'draft permit.'"

ADEQ's proposed definition does not include this language. Is there a reason for that (i.e., does ADEQ intend any different interpretation of the term "permit")?

R18-9-A601(48)
"'Permit' means an authorization issued by the Director pursuant to this Article, including an area permit under R18-9-C624 and an emergency permit under R18-9-C625."

ADEQ Response 17:
ADEQ appreciates the comment. A.R.S. § 49-201(32) provides the statutory definition for programs authorized within Title 49, Chapter 2 of the Arizona Revised Statutes, unless the context otherwise requires. Article 3.3 of Title 49, Chapter 2 contains the authority to establish a UIC permit program. Therefore, A.R.S. § 49-201(32) applies to the UIC program unless otherwise stated.

A.R.S. § 49-201(32)
"'Permit' means a written authorization issued by the director or prescribed by this chapter or in a rule adopted under this chapter stating the conditions and restrictions governing a discharge or governing the construction, operation or modification of a facility..."

A.A.C. R18-9-A601(48) was crafted to conform with A.R.S. § 49-201(32). ADEQ did not intend a different interpretation of the definition of permit for the purposes of the UIC program than that of the Federal analog at 40 CFR 144.3. In response to this comment, ADEQ has adjusted the language to better conform with 40 CFR 144.3 for the final rule.

R18-9-A601(48)
"Permit" means an authorization issued by the Director pursuant to this Article. ‘Permit’ includes an area permit under R18-9-C624 and an emergency permit under R18-9-C625. ‘Permit’ does not include UIC authorization by rule or any permit which has not yet been subject to a final permit decision, such as a ‘draft permit.’"

Comment 18: Government Agency – Regulatory Differences
The following proposed regulations differ from the federal UIC regulations at 40 CFR Parts 124, 144, and 146:
R18-9-A601.37 (Definitions)
R18-9-A603.A (Confidentiality of Information)
R19-9-C616 (Individual Permits; Application for Individual Permits)
R18-9-C620.D (Public Notice of Permit Actions and Public Comment Period)
R18-9-C622 (Public Hearing)
R18-9-C631.B (Modification; Revocation and Reissuance; or Termination of Permits
R18-9-D635.17.b. (Conditions Applicable to All Permits)
R18-9-D636.A.1 (Establishing Permit Conditions)

The entity suggests that ADEQ review the proposed regulations identified above and revise as necessary to ensure that the program is at least as stringent as the federal UIC program.

ADEQ Response 18:
ADEQ appreciates the comment.

R18-9-A601(37) (Definitions)
Proposed rule R18-9-A601(37) is the definition of “hazardous waste”, in which language differs from the analogous federal definition at 40 CFR 261.3. Despite the difference in language, the proposed rule incorporates the Federal rule by reference in the following manner; R18-9-A601(37) incorporates A.R.S. § 49-921(5) by reference, which incorporates “…any waste identified as hazardous pursuant to section 49-922…” by reference, which incorporates A.A.C. R18-8-261(A) by reference, which incorporates “…[a]ll of 40 CFR 261…” by reference. Therefore, despite the difference in language between R18-9-A601(37) and 40 CFR 261.3, the proposed rule is exactly as stringent as its federal analog due to its incorporation by reference.

R18-9-A603(A) (Confidentiality of Information)
40 CFR 145.11(a) lists the required permitting language a state program must have legal authority to implement in their rule in order for EPA to consider their application for primacy. 40 CFR 145.11(a)(1) requires the Federal language from 40 CFR 144.5(b), but not subsection (a), to be used in a state rule concerning confidential information. Arizona UIC proposed rule, R18-9-A603(B) contains language identical to 40 CFR 144.5(b) while deliberately missing language from 40 CFR 144.5(a). Therefore, even though the language in R18-9-A603(A) differs from 40 CFR 144.5, the fact that the language from 40 CFR 144.5(b) is included in R18-9-A603(B) suffices. Also, R18-9-A603(A) is crafted to meet the state confidentiality requirements in A.R.S. § 49-205.

R18-9-C616 (Individual Permits; Application for Individual Permits)
40 CFR 144.31(d) is the federal rule for application for a permit or authorization by permit. Subsection (d) of 40 CFR 144.31 is entitled “completeness”. This subsection is not included in the proposed Arizona UIC rule analog at R18-9-C616 because application completeness is prescribed elsewhere in the Arizona Administrative Code. Due to the requirements in statute for Arizona agencies who issue licenses to develop licensing time frames (LTF), ADEQ already has an application completeness review rule that would be applicable to the UIC program upon primacy in place (see A.A.C. R18-1-503(A)). 40 CFR 144.31(d) was not included in the proposed UIC rule for this purpose.

R18-9-C620(D) (Public Notice of Permit Actions and Public Comment Period)
40 CFR 124.10(c)(1) is the federal rule for recipients of a public notice. Arizona’s UIC rule analog at R18-9-C620(D) does not use the federal rule language verbatim. However, 40 CFR 124.10(c)(1)(viii) & (x) are covered under R18-9-C620(D)(1)(b). Also, 40 CFR 124.10(c)(1)(ix)(B) & (C) are covered under the new R18-9-C620(D)(1) list item, C620(D)(1)(e). R18-9-C620(D)(1)(e) was added to meet stringency between the proposed rule submitted and the final rule.

R18-9-C622 (Public Hearing)
40 CFR 124.12 is the federal rule for public hearings. Arizona’s proposed UIC rule analog at R18-9-C622 did not use the federal rule language verbatim. A
subsection (E) has been added in order to meet stringency requirements for 40 CFR 124.12(d).

R18-9-C631(B)  
(Modification; Revocation and Reissue; or Termination of Permits)
40 CFR 124.5 is the federal rule for modification, revocation and reissuance, or termination of permits. Arizona’s proposed UIC rule analog at R18-9-C631 does not use the federal rule language verbatim. The language in R18-9-C631(B) was designed to accommodate a stakeholder’s request to be issued a notice of intent to deny when the Director denies a request for a modification or revocation and reissuance. While this language is not mirrored in the federal analog, its inclusion in the proposed UIC rule does not make the rule more or less stringent. The language creates a reasonable right for an applicant whose request for a modification or revocation and reissuance has been denied by the Director.

R18-9-D635(17)(b)  
(Conditions Applicable to All Permits)
A stakeholder made ADEQ aware of a pair of incorrect references in R18-9-D635(17)(b). Specifically, in the first sentence, the reference to R18-9-B614 should have been to R18-9-B613. In the third sentence, the reference to R18-9-B613 should have been R18-9-B614. Both corrections have been made in the final rule and are otherwise the same as the analogous Federal rule.

R18-9-D636(A)(1)  
(Establishing Permit Conditions)
A stakeholder made ADEQ aware of an incorrect reference in R18-9-D636(A)(1). Specifically, in the fifth sentence, the reference to R18-9-B634 should have been to R18-9-B633. The correction has been made in the final rule and are otherwise the same as the analogous Federal rule.

Comment 19: Interest Group
We understand that ADEQ intends to adopt administration of the USEPA’s UIC program. Because this is a State implementation of a Federal program, the State’s implementation requires compliance with Federal laws and regulations, including consideration of the effects on historic properties afforded under Section 106 of the National Historic Preservation Act as implemented in 36 C.F.R. Part 800. Compliance with the State’s equivalent statute, the Arizona State Historic Preservation Act (A.R.S. 41-861 to 865) would be a reasonable implementation of the intent of Federal law and regulation.

We applaud ADEQ for including the provision of notification of permit actions to the Arizona State Historic Preservation Officer (SHPO) (R18-9-C620.D.1.c), which adequately complies with A.R.S. 41-864 (Review of agency plans), however the proposed rulemaking is not consistent with A.R.S. 41-862 and A.R.S. 41-863, which also would require ADEQ to locate and inventory historic properties affected by agency actions and initiate measures to ensure that historic properties are avoided or mitigated prior to being affected by the state action. We request that the proposed rules be amended to require the permittee to retain a cultural resources (archaeological) consultant to inventory the proposed permit area and submit a report of findings to the SHPO, and that the SHPO be afforded an opportunity to review and respond prior to ADEQ approval of the permit.

ADEQ Response 19:
ADEQ appreciates the comment. ADEQ is required by statute at A.R.S. §§ 49-203(A)(6) and 49-257.01 to adopt, by rule, the Safe Drinking Water Act’s Underground Injection Control permit program. The process of transferring administrative authority from EPA to a state is known as primary enforcement authority or primacy. Despite the fact that, upon primacy, ADEQ would administer a program that has its origin in Federal law, ADEQ’s permitting actions in administering the UIC program thereafter would not be considered a “federal action”. Many Federal laws and regulations are applicable only when a “federal action” is taken, as is the case with Section 106 of the National Historic Preservation Act as implemented in 36 C.F.R. Part 800 (see 40 CFR 800.1(a)).

Concerning the State Historic Preservation Act, A.R.S. § 41-863 requires each state agency to, “...initiate measures, in consultation with the state historic preservation officer, to assure that if, as a result of state action or assistance given by the agency, historic property is to be substantially altered or demolished, timely steps are taken to make appropriate documentary recordation in accordance with standards which the state historic preservation officer establishes...”
The notice provided to SHPO at R18-9-C620(D)(1)(c) fulfills the obligation to “initiate measures” in A.R.S. § 41-863. Providing such a notice allows SHPO to review a draft permit and determine whether the proposed state action would substantially alter or demolish historic property. If the proposed state action is determined to be an issue, SHPO and ADEQ would consult and develop the appropriate steps necessary to comply with the documentary recordation requirement.

In addition, ADEQ has added a required application component at R18-9-C616(D)(9) and R18-9-J657(B)(21) that reads as follows,

R18-9-C616(D)(9)

“All applicants ... shall provide the following information to the Director, using the application form provided by the Director ... [a] listing of any historic property or potential historic property as defined by R12-8-301.”

R18-9-J657(B)(21)

“Prior to the issuance of a permit for the construction of a new Class VI well ... the Director shall consider the following ... [a] listing of any historic property or potential historic property as defined by R12-8-301.”

ADEQ will consult with SHPO if historic property is identified by the applicant or by SHPO.

Comment 20: Tribal Interest Group
ADEQ must engage in direct government-to-government Tribal consultation with all Arizona Tribes since the proposed UIC program will likely have different and specific impacts on the treaty rights, water resources and traditional, religious, and cultural practices of each tribal nation or community depending on their unique circumstances.

ADEQ Response 20:
ADEQ appreciates the comment. The Agency agrees and is willing to engage in Tribal consultation as requested by each Tribal Nation or Community. ADEQ’s Tribal Consultation Policy outlines the actions that the Agency will take to engage with Tribal Nations and commits to collaborating with each Tribe to develop a consultation procedure that will meet its unique needs:

http://www.azdeq.gov/substantivepolicy?page=0%2C0

When ADEQ began pursuing primacy, the agency notified all 22 federally recognized Tribal Nations or Communities about our efforts, offering Tribal consultation. ADEQ held three tribal listening sessions to discuss the UIC program and the agency’s primacy efforts on May 10, 14 and 16th of 2019. The agency also informed at least 7 Tribal leaders about the UIC primacy efforts during other in-person Tribal consultations. Since then, ADEQ has responded to a number of inquiries from Arizona tribes concerning primacy of the UIC program, including the Ak-Chin Indian Community, San Carlos Apache Tribe and the Yavapai-Prescott Indian Tribe, among others.

ADEQ’s proposed rule at R18-9-C620(D)(1)(b) requires the Department to provide public notice to any affected tribal agency or council of government when a draft permit has been prepared or when a hearing has been scheduled. As ADEQ understands ancestral lands to be widespread throughout Arizona, ADEQ plans to implement R18-9-C620(D)(1)(b) by sending each public notice out to all 22 Federally-recognized Tribal Nations or Communities.

ADEQ has also developed a “Permits in Process” (PIP) online web page where the public can view water quality permit applications and their status in application review and permit development in real time. ADEQ anticipates adding the UIC program to the PIP web page.

Lastly, when EPA authorizes ADEQ’s Underground Injection Control program, the program will not apply on tribal land. ADEQ’s UIC program would apply only on lands under the jurisdiction of the State of Arizona.

Comment 21: Tribal Interest Group
The proposed UIC program rules lack needed requirements for engagement and coordination with tribes, the State Historic Preservation Office, and wildlife managers. R18-9-C620(A), R18-9-C620(D)(1)(b) & R18-9-C620(D)(1)(c) represent the extent of relevant notice requirements.

ADEQ Response 21:
ADEQ appreciates the comment. Please see response 20 for reference.

Comment 22: Tribal Interest Group
Waiting until after ADEQ and an applicant have fully negotiated the terms of a UIC permit – which is a process that can take some time – to provide notice to affected Tribes, the SHPO, jurisdictions, and affected wildlife managers deprives ADEQ of real time information that might be in the possession of Tribes, SHPO, jurisdictions, and wildlife managers regarding (1) existing conditions that might be relevant to
ADEQ’s consideration of the application and its development of the draft permit; (2) potential adverse impacts that the issuance of a UIC permit might have on cultural resources, the affected environment, wildlife, and the water resources. Certainly, relevant information known to Tribes, the SHPO, local jurisdictions, and wildlife managers should be considered before the draft UIC permit is negotiated and drafted, not after.

ADEQ Response 22:
ADEQ appreciates the comment. Please see response 20 for reference.

Comment 23: Tribal Interest Group
The proposed rules are completely silent as to how ADEQ intends to determine which Tribal governments are or will be “affected” by the issuance of the proposed UIC permit.

ADEQ Response 23:
ADEQ appreciates the comment and understands ancestral lands to be widespread throughout Arizona. With that in mind, ADEQ plans to implement R18-9-C620(D)(1)(b) by sending each public notice out to all 22 Federally-recognized Tribal Nations or Communities.

Comment 24: Tribal Interest Group
An appropriate Tribal Consultation Policy would be the first step towards setting forth a clear standard for how ADEQ might work with Tribes to identify geographic and other areas of interest in Arizona, where the issuance of permits, like a UIC permit, could correspondingly “affect” the interests of a Tribe. Such a policy could also assist ADEQ in its engagement efforts with the SHPO.

ADEQ Response 24:
ADEQ appreciates the comment. Please see responses 20 and 44 for reference.

Comment 25: Tribal Interest Group
Requiring that Tribal notice take place only after both events at R18-9-C620(A) have occurred – and the proverbial “what’s done has been done” – and not before, simply treats affected tribal governments like other interested members of the public and ignores the sovereign nature of Tribes and the government-to-government relationship between Arizona’s 22 federally recognized Tribes and ADEQ as an agency of the State of Arizona. This is inappropriate.

ADEQ Response 25:
ADEQ appreciates the comment. Please see responses 20 and 44 for reference.

Comment 26: Tribal Interest Group
SHPO is only mentioned at one point in the proposed rulemaking, that is, in the requirement for “public notice” found in R18-9-C620(D)(1)(c). Indeed, ADEQ has no obligation under the proposed rule to coordinate with the SHPO at any point during its application and permit review process to ensure that the UIC permit will comply with Arizona’s historic preservation laws. This is in stark contrast to ADEQ’s UIC Program Outline, which boldly promises that the SHPO “would be involved in reviewing applications that indicate a threat to historic or archaeological sites.” At minimum, this promise should be reflected in the final rulemaking.

ADEQ Response 26:
ADEQ appreciates the comment. Please see responses 19 & 20 above for reference.

Comment 27: Tribal Interest Group
The transfer of UIC Primacy to the State of Arizona could sever the federal nexus for numerous environmental and cultural resource laws that Arizona Tribes rely upon to ensure that Tribal interests and concerns are considered, and Tribal resources are protected. EPA Primacy can sever the United States’ trust responsibility to Indian tribes, limit the application of Executive Order No. 13175 and related consultation authorities, remove important requirements under Section 106 of the National Historic Preservation Act (NHPA) – including with regard to the resolution of adverse effects, and limit or cut off obligations under the National Environmental Policy Act (NEPA), and the Endangered Species Act (ESA). This is a matter of particular concern in Arizona, since the state of Arizona does not have any laws (or state programs) that are remotely comparable to Section 106 of the NHPA, NEPA or ESA. Even Arizona’s existing historic preservation laws are limited at best, since they do not include an adequate review process, do not require the resolution of adverse effects, and do not provide the SHPO with authority comparable to the authority of the Advisory Council on Historic Preservation.

ADEQ Response 27:
ADEQ appreciates the comment. NEPA, ESA, NHPA, and the other federal statutes impose procedural requirements on actions taken by federal agencies. The procedural requirements do not apply to state actions if there is no federal involvement (such as federal funding). Substantive requirements of the ESA
still apply, including the requirements of permittees (i.e. Section 9 of the ESA prohibits take of threatened and endangered species; the prohibition is not limited to federal agencies). Generally, please see responses 19 and 20 above for reference.

Concerning NEPA, 40 C.F.R. § 124.9(b)(6) provides in pertinent part that,

“all RCRA, UIC and PSD permits are not subject to the environmental impact statement provisions of section 102(2)(C) of the National Environmental Policy Act. 42 U.S.C. 4321.”

This regulation was adopted in response to case law holding that the UIC permitting process is functionally equivalent to NEPA's environmental impact statement requirements.

Comment 28: Tribal Interest Group
Regarding ESA compliance, the ADEQ UIC Program Outline also asserts that “State UIC permittees would have to comply with the ESA” and that “the Arizona UIC program has developed procedures in its permit process to adhere to the duties required in this law.” UIC Program Outline at 7. This promise is also not reflected in the proposed rulemaking.

ADEQ Response 28:
ADEQ appreciates the comment. Please see response 27 for reference.

Comment 29: Tribal Interest Group
The proposed Licensing Time Frame rules do not explain what is meant by “significantly complicated” versus “not significantly complicated” or how this determination was reached.

ADEQ Response 29:
ADEQ appreciates the comment. The UIC program regulates six classes of injection wells which are based on the characteristics of the fluids injected and the placement of the injectate in relation to Underground Sources of Drinking Water (USDW). Well construction, injection depth, design requirements, and operating techniques vary among well classes. Some wells are used to inject fluids into formations below USDWs, while others involve injection into or above USDWs. The proposed rules set out specific permitting and performance standards for each class of wells. In determining the licensing time frames for the prospective UIC applications, these factors were considered.

ADEQ categorized the prospective UIC applications by class into two categories, “significantly complicated” and “not significantly complicated”. Area, Class I, and Class VI wells are categorized as “significantly complicated”, while Class II, Class III, and Class V were determined to be “not significantly complicated”. The following facts were relied upon in distinguishing “significantly complicated” prospective UIC applications from the “not significantly complicated”:

1. Area Permits
   a. Comprised of multiple injection wells.
   b. Increased aquifer stresses induced by multiple injection wells.
   c. Delineation of the Area of Review and zone of endangering influence due to the induced aquifer stress.
   d. Area Class III solution mining wells require hydraulic capture of lixiviant and pregnant leachate solution to prevent migration into USDWs.
   e. Monitoring networks are often a function of the Area of Review and complexity of the hydrogeology.
   f. Class III Area Permits may require an Aquifer Exemption and subsequent aquifer restoration for closure. This closure strategy will require sophisticated geochemical modeling and long-term closure and post closure monitoring.

2. Class I wells are typically deep wells that inject waste into formations below a USDW.
   a. Class I wells allow injection far below the lowermost USDW (injection zones typically range from 1,700 to more than 10,000 feet in depth).
   b. The well design for injection is complex due to the depth of the injection, high injection pressures, and often complex geochemical reactions associated with the injectate and formation water.
   c. In Arizona, Class I wells are authorized to inject non-hazardous industrial waste, municipal wastewater, and radioactive waste. Hazardous waste injection is prohibited in Arizona.
   d. A Class I well requires a multilayered well design to prevent fluids from entering USDWs.
d. Operation, monitoring, and testing is critical for ensuring that injected wastewater is fully confined. These functions become more complex at greater well depths.

e. Seismic hazards must be thoroughly evaluated due to the deeper injection zone.

2. Class VI wells are used to sequester carbon in deep geologic formations.

a. Although CO2 is initially captured as a gas, it is compressed into a supercritical fluid (a relatively dense fluid intermediate to a gas and a liquid) before injection and remains in that state due to high pressures in the underground formation.

b. The CO2 is injected through specially designed wells into geologic formations, typically a half a mile or more below the Earth's surface.

c. CO2 can be physically trapped in the pore space, trapped through a chemical reaction of the CO2 with rock and water, dissolved into the existing fluid within the formation, or absorbed onto organic material or go through other chemical transformations. Geologic sequestration may take place over hundreds of years after injection, ultimately resulting in permanent storage of the CO2.

d. Mechanical integrity testing must be performed routinely to verify long-term well stability and operations.

e. Complex reservoir modeling must be conducted to determine the long-term storage capacity of a given geologic formation.

f. Groundwater monitoring can also be complex due to the longevity of the sequestration operations and area of influence of the injectate.

Comment 30: Tribal Interest Group
Arizona law requires strict compliance with LTFs and issues penalties for exceedances. Additionally, EPA's current guidance (see EPA's informational webpage on Class V wells; see also 40 C.F.R. § 146.5(e); see also 40 C.F.R. 144.81) notes that by regulation, Class V wells can actually be complex under certain circumstances. This should be reflected in ADEQ’s UIC Program as well.

ADEQ Response 30:
ADEQ appreciates the comment. Arizona law requires state agencies that issue licenses to comply with licensing time frames (LTFs) (see A.R.S. § 41-1072 et seq.). While there may be complex Class V permits, ADEQ does not feel the additional time that comes with the "complex" category is needed.

Comment 31: Tribal Interest Group
The proposed rules fail to describe the criteria for determining which permit applications would and would not warrant a public hearing for any UIC permit. This is a critical component of the program for stakeholders, permit holders, and the public to understand. This is separate from the provision allowing for the public to request a hearing at a later date, if there is "a significant degree of public interest" (see R18-9-C622).

ADEQ Response 31:
ADEQ appreciates the comment. UIC proposed rule R18-9-C622 provides the requirements of a UIC program public hearing. R18-9-C622 closely follows the federal UIC program rule at 40 CFR 124.12. Subsections A and B of R18-9-C622 require the Director to hold a public hearing whenever they find, on the basis of a request, a significant degree of public interest in a draft permit(s). Furthermore, the rule allows the Director to hold a public hearing at their discretion such as when a hearing might clarify one or more issues involved in the permit decision. Subsection A gives the Director discretion as to when a significant degree of public interest exists based on a public hearing request. ADEQ does not believe further criteria in determining whether a public hearing is necessary or not is needed.

Comment 32: Tribal Interest Group
ADEQ has stated that it intends for the UIC Program to be almost entirely funded through collected permit fees. For many years, ADEQ has suffered from deficient state funding. ADEQ should not be pursuing UIC Program primacy without asking for sufficient funding from the Arizona Legislature. This is critical, as sufficient funding and adequate ADEQ workforce expertise must be present for ADEQ to fulfill its obligations under this Program, as well as its obligations to Arizona tribes.

ADEQ Response 32:
ADEQ appreciates the comment. The Arizona UIC program is proposed to operate on a fee-for-service model that derives funding from diverse sources of revenue, which includes fixed annual fees, well installation fees, an hourly fee for application and technical review, and an annual work grant from EPA. The Annual Fees (listed in the UIC Licensing Time Frame proposed rules at Tables 3.1 and 3.2, R18-14-104) and the UIC Flat Fees (listed in proposed rule R18-14-111) were determined by considering the necessary revenue needed to support the administration of the program. Projected revenue will be augmented by an increase in the hourly rate for a UIC water quality protection service associated with a UIC permit, which has been set at $145 an hour in proposed rule R18-14-102(B). Furthermore, ADEQ has proposed in the Fee rulemaking the periodic review of the revenues collected from the UIC program every three years (see proposed rule R18-14-115). The reviews will ensure that enough revenue is being collected to properly administer the program. The reviews will also ensure that the fees are equitable and not overly burdensome to the stakeholders.

Comment 33: Tribal Interest Group
The rulemakings analysis of economic, small business, and consumer impacts (p.18) focuses heavily on alleviating financial burdens to stakeholders. While this may be an important aspect of an ADEQ UIC Program, ADEQ must also consider its obligations to protect the public health and the environment, and the economic costs of failing to do so, which can be catastrophic.

ADEQ Response 33:
ADEQ appreciates the comment. While alleviating financial burdens to stakeholders is an important attribute of primacy over the UIC program, ADEQ’s mission to protect human health and the environment remains priority number one. The UIC program is a robust regulatory program that compliments Arizona’s Aquifer Protection Permit program in its focus on injection wells.

Comment 34: Tribal Interest Group - Class V Wells / APP
Through the UIC Program, ADEQ proposes to regulate several types of injection wells across the state of Arizona (Class I through Class VI). Of these, ADEQ notes there are reportedly “many tens of thousands” of Class V injections in Arizona (a closer approximation was not provided). The rulemaking acknowledges further that most of these Class V wells “are used to dispose of wastes into or above” underground sources of drinking water. Indeed, ADEQ acknowledges that “[m]any” of these Class V wells require an Aquifer Protection Permit (APP). However, ADEQ intends to no longer require APP permits if a UIC permit has been issued.

ADEQ Response 34:
ADEQ appreciates the comment. A.R.S. § 49-250(B)(26) exempts all injection wells from the APP program if the facility has been issued an UIC permit. UIC Class V wells are not issued permits under normal circumstances. Such wells are “authorized by rule” under R18-9-I650 et seq. This means that a Class V well will not be exempt from the Aquifer Protection Program. Class V wells “authorized by rule” must inventory under R18-9-I652 and follow a set of criteria to become and remain authorized. These Class V wells are also subject to the APP program, if the well type is applicable. For example, APP regulates specific drywells that are special or pose a significant threat to groundwater (draining hazardous substance loading areas, tracer studies and draining a motor fueling area) (see R18-9-C301, R18-9-C303 and R18-9-C304). These drywells would also require authorization by rule under UIC.

Comment 35: Tribal Interest Group - APP vs. UIC
The UIC Program requires injected fluids to stay within a well or injection zone, and prohibits injection activity “that allows” movement of fluid containing any contaminant into an underground source of drinking water, if it may cause a violation (see proposed R18-9-B608). A complex formula is then proposed with certain assumptions for computing a zone of endangering influence (see proposed R18-9-B612). However, Arizona’s APP program goes further than this and provides an additional layer of coverage over underground water resources by addressing discharge more broadly (defined at A.R.S. § 49-201(12) as “the direct or indirect addition of any pollutant to the waters of the state from a facility. For purposes of the aquifer protection permit program prescribed by article 3 of this chapter, discharge means the addition of a pollutant from a facility either directly to an aquifer or to the land surface or the vadose zone in such a manner that there is a reasonable probability that the pollutant will reach an aquifer.” The UIC Program, as proposed, does not appear to contemplate the possibility of indirect contamination, or require consideration of the reasonable probability that a pollutant will reach an aquifer. Removal of the APP requirement from UIC activities without incorporating the protections provided by APP into the program does not remove duplicate regulations, as ADEQ suggests. Given the high number of Class V wells already located across Arizona that would be affected by this rule change, it reduces protections to Arizona’s precious
underground waters and has the potential to impact Tribal water sources and harm the cultural resources and ancestral lands of Arizona tribes.

ADEQ Response 35:
ADEQ appreciates the comment. ADEQ’s efforts to obtain primacy over the UIC program does not include revising the UIC program. ADEQ’s statutory authority is to obtain primacy without being more stringent than the federal program. Therefore, concerns about the UIC program considering indirect contamination are not applicable to obtaining primacy over the UIC program. ADEQ notes that many activities and facilities currently regulated by APP will continue to be regulated upon UIC primacy as those activities and facilities will not be regulated under the UIC program. For example, a facility that requires a UIC permit for Class III injection wells, may also require an APP permit for impoundments or other discharging facilities.

In 2021, the Arizona Legislature passed A.R.S. § 49-250(B)(26)) which exempts certain UIC wells from APP regulation. The language specifically leaves UIC Class V wells out of the exemption from APP (meaning UIC Class V wells are still applicable to regulation under APP).

Comment 36: Tribal Interest Group - Waiver of Permit Conditions
We are concerned with the wide latitude vested in the ADEQ Director to issue a UIC Permit with less stringent requirements to the extent the Director finds that a “reduction in requirements will not result in an increased risk of movement of fluids” into a USDW. While there may be instances where a waiver of this type might be appropriate, the proposed rulemaking should carefully and specifically outline criteria for the Director to apply when deciding to exercise this authority under the Program. It should not be a broad exemption over all other permit program requirements where a permittee may seek and easily obtain reduced requirements of many critical aspects such as “area of review, construction, mechanical integrity, operation, monitoring, and reporting.” (see proposed R18-9-B610)

ADEQ Response 36:
ADEQ appreciates the comment. The Arizona legislature mandated pursuit of the SDWA-UIC program through the passage of the following statutes, A.R.S. §§ 49-203(A)(6) and 49-257.01. In order to achieve primacy, one requirement of a state is to put rules in place for the program to operate through (see 40 Code of Federal Regulations 145.22(a)(5)). These rules must be at least as stringent as the Federal UIC program rules in the SDWA in order for EPA to consider a state’s primacy application. The rules must also be no more stringent than the analogous Federal rule, per Arizona state law (see A.R.S. § 49-104(16)). In the case of proposed rule R18-9-B608, ADEQ has used the analogous Federal language at 40 CFR 144.12, verbatim. ADEQ has no ability to develop further criteria for this rule and stay within the parameters of state and Federal law.

Comment 37: Tribal Interest Group - Groundwater Modeling
UIC Permits should not be considered in a vacuum. If insufficient or no information exists about the underground nature of the area, the UIC Program rulemaking may specify circumstances under which a groundwater model would be required. This is not contemplated for any class of well.

ADEQ Response 37:
ADEQ appreciates the comment. Proposed rule R18-9-B612 specifies the methods and, if appropriate, the calculations used to determine the area of review (AOR). This determination includes:

1. The zone of endangering influence based on physical measurements;
2. The zone of endangering influence computation based on the modified Theis equation (analytical groundwater model);
3. A fixed radius not less than 1/4 mile, from the injection well for an individual well permit or for an area permit; or
4. A mathematical (groundwater) model.
   * Annotation in parenthesis above added for clarification.

Comment 38: Tribal Interest Group - Area of Review
Restricting review to the “applicable area of review” (see R18-9-B612) may be self-limiting. Impacts to features and aquifers beyond this area may not be detected, because they have already been omitted from review.

ADEQ Response 38:
ADEQ appreciates the comment. The Arizona legislature mandated pursuit of the SDWA-UIC program through the passage of the following statutes, A.R.S. §§ 49-203(A)(6) and 49-257.01. In order to achieve primacy, one requirement of a state is to put rules in place for the program to operate through (see 40 Code of Federal Regulations 145.22(a)(5)). These rules must be at least as stringent as the Federal UIC program
rules in the SDWA in order for EPA to consider a state’s primacy application. The rules must also be no more stringent than the analogous Federal rule, per Arizona state law (see A.R.S. § 49-104(16)). In the case of proposed rule R18-9-B612, ADEQ chose to use the analogous Federal language at 40 CFR 144.16, verbatim.

Comment 39: Law Firm - Prohibition on Movement
Change the first phrase in Arizona UIC Proposed Rule R18-9-B608(A) from:

“No owner or operator shall construct, operate, maintain, convert, plug, abandon, or conduct any other injection activity in a manner that allows the movement of fluid containing any contaminant into USDWs…”

-- to --

“No owner or operator shall construct, operate, maintain, convert, plug, abandon, or conduct any other injection activity in a manner that allows or causes the movement of fluid containing any contaminant into USDWs…”

For the following reasons:
1. Account for the possibility that fluids introduced by the injection activity will cause a migration of contaminant-containing fluid already present in the groundwater in the vicinity of the injection activity as a result of previous injection activities or other causes;
2. Correlate to the Arizona statutes that require the Arizona Department of Water Resources (“ADWR”) to rely on ADEQ for determinations of whether ADWR’s grant of a permit would cause or exacerbate migration of contaminated groundwater, see, e.g., A.R.S. § 45-811.01(C)(5); and
3. On its face, not make the rule more stringent than the federal UIC rules (alternatively, the modification suggested above would not be inappropriate under A.R.S. §§ 41-1052(D)(9) and 49-104(A)(16), given the operation of A.R.S. § 45-811.01(C)(5)).

ADEQ Response 39:
ADEQ appreciates the comment. The Arizona legislature mandated pursuit of the SDWA-UIC program through the passage of the following statutes, A.R.S. §§ 49-203(A)(6) and 49-257.01. In order to achieve primacy, one requirement of a state is to put rules in place for the program to operate through (see 40 Code of Federal Regulations 145.22(a)(5)). These rules must be at least as stringent as the Federal UIC program rules in the SDWA in order for EPA to consider a state’s primacy application. The rules must also be no more stringent than the analogous Federal rule, per Arizona state law (see A.R.S. § 49-104(16)). In the case of proposed rule R18-9-B608, ADEQ chose to use the analogous Federal language at 40 CFR 144.12, verbatim. ADEQ has no ability to revise the rule and stay within the parameters of state and Federal law.

Comment 40: Law Firm - Duplicative Regulation
The aquifer protection permit class exemption for UIC Class V wells with an individual UIC permit (proposed A.A.C. R18-9-103(6)) makes sense and should be retained. Requiring both an individual APP and individual UIC permit for a Class V well would be unnecessary and largely duplicative. Arguably, this exemption duplicates the statutory exemption found at A.R.S. § 49-250(B)(26), but the language of that exemption is less clear than it might be, so including the proposed new class exemption in the APP rules serves to clarify any uncertainty. It also is consistent with the mandate in A.R.S. § 49-203(D) to eliminate duplication and dual permitting to the maximum extent practicable.

ADEQ Response 40:
ADEQ appreciates the comment and agrees with the stakeholder’s statement.

Comment 41: Law Firm - Tribal Lands
ADEQ clarified at the public hearing that the state UIC program will not apply on tribal lands, and that EPA would still issue UIC permits for injection wells located on those lands. It may be prudent to specify that in the rule. As it stands, proposed A.A.C. R18-9-A602(C) states that injection in the state of Arizona is prohibited unless authorized by ADEQ (or OGCC, if it adopts an approved program), which suggests that only ADEQ or OGCC can issue UIC permits in the state.

ADEQ Response 41:
ADEQ appreciates the comment and has addressed the issue accordingly.

The proposed rule at A.A.C. R18-9-A602(C) is as follows,

Underground injection is prohibited in the State of Arizona unless authorized by permit or rule under this Article or authorized by OGCC pursuant to regulations approved by EPA, in accordance with 42 U.S.C. 300h et seq. Any injection activity authorized by permit or rule under this Article shall prohibit the movement of fluid containing any contaminant into underground
sources of drinking water (USDWs), where the presence of that contaminant may cause a violation of this Article or may adversely affect the health of persons.

In this proposed final rulemaking, ADEQ has amended the language in A.A.C. R18-9-A602(C) and (D) as follows,

(C) Underground injection is prohibited in lands under the jurisdiction of the State of Arizona unless:
   1. Authorized by permit or rule under this Article in accordance with 42 U.S.C. 300h et seq.,
   2. Authorized by OGCC pursuant to regulations approved by EPA.

(D) Any injection activity authorized by permit or rule under this Article shall prohibit the movement of fluid containing any contaminant into underground sources of drinking water (USDWs), where the presence of that contaminant may cause a violation of this Article or may adversely affect the health of persons.

The restructuring of A.A.C. R18-9-A602(C) and (D) above distinguishes between lands under the jurisdiction of the State of Arizona and lands that are not (I.E. - Tribal Land).

Due to the restructuring of R18-9-A602(C), what was proposed to be R18-9-A602(D) has become R18-9-A602(E) and so on throughout the subsections.

Comment 42: Law Firm

The definition of “permit” (proposed A.A.C. R18-9-A601(48)) should be clarified to state that it does not include authorization by rule. This is clearly implied by the definition and the wording of other proposed rules, but it should be made explicit to avoid any potential for confusion. The comparable definition of “permit” in the federal UIC regulations (40 C.F.R. § 144.3) specifically states: “Permit does not include UIC authorization by rule . . . .” Given that ADEQ clarified at the public hearing that it intended no different interpretation of the term than exists under the federal program, ADEQ should add language tracking the federal definition to the final state definition of “permit.”

ADEQ Response 42:
ADEQ appreciates the comment. Please see response 17 above.

Comment 43: Law Firm

Is the last sentence of proposed A.A.C. R18-9-B608(B) needed? It does not appear in the analogous EPA regulation (40 C.F.R. § 144.12(b)). The sentence refers readers to the section of the proposed rules relating to Class V permits authorized by rule, but proposed A.A.C. R18-9-A608(C) and (D) also seem to apply to all Class V wells, including those authorized by rule. Does the cross-reference to the specific Class V rules add anything that is not encompassed within subsections C and D, especially given that the most pertinent provision of the Class V rules simply refers right back to proposed A.A.C. R18-9-B608 (see A.A.C. R18-9-I650(B)(2)(a))?

ADEQ Response 43:
ADEQ appreciates the comment. ADEQ added the cross references specifically to mirror federal law. The final sentence in proposed rule A.A.C. R18-9-B608(B) is as follows,

“In the case of Class V wells authorized by rule see R18-9-I650 through R18-9-I655 in Part I of this Article.”

The final two sentences of the federal analog at 40 CFR 144.12(b) are as follows,

In the case of wells authorized by rule, see §§ 144.21 through 144.24. For EPA administered programs, such enforcement action shall be taken in accordance with appropriate sections of the SDWA.

The final sentence in 40 CFR 144.12(b) is inapplicable to ADEQ’s prospective state UIC program, given the preface of the sentence, “[f]or EPA administered program...” EPA requires ADEQ to adopt a rule that is at least as stringent as the federal analog. In the case of 40 CFR 144.12(b), the second to last sentence is the last sentence that is required to be in the proposed rule.

Comment 44: Law Firm - Public Notice

With respect to the public notice requirements for permits (proposed A.A.C. R18-9-C620(D)(1)(b)), what constitutes an “affected” federal, state, tribal, or local agency or council of government? Is it simply the government with jurisdiction over the land where the injection occurs? If so, the word “tribal” should be
removed, since ADEQ does not have authority to issue UIC permits on tribal lands. If the notification is intended to be broader, as suggested by the reference to agencies and COGs, ADEQ should provide some explanation of how it will identify the “affected” agencies or governments that will receive notification.

ADEQ Response 44:
ADEQ appreciates the comment. The federal rule unto which A.A.C. R18-9-C620(D)(1)(b) is based on includes the following as a listed recipient of public notice at 40 CFR 124.10(c)(1)(iii), “...including any affected States (Indian Tribes). (For purposes of this paragraph, and in the context of the Underground Injection Control Program only, the term State includes Indian Tribes treated as States.)”

EPA requires ADEQ to adopt a rule that is at least as stringent as the federal rule equivalent. Therefore, ADEQ effectively adopted the language from the CFR.

Please refer to response 20 as well.

Comment 45: Law Firm
Also in the public notice section (proposed A.A.C. R18-9-C620(D)(1)(c)), notification regarding individual permits must be provided to SHPO and to state and federal agencies with jurisdiction over fish, shellfish and wildlife resources (presumably, AGFD and FWS). ADEQ should make clear in the preamble to the final rules that this notification does not stem from any mandatory consultation requirements that apply to the agency. Consultation requirements under the ESA and NHPA apply only to federal agencies, not state agencies, and the UIC delegation regulations do not require states to adopt requirements associated with the ESA or NHPA.

ADEQ Response 45:
ADEQ appreciates the comment. Please see responses 19 and 27 above.

Comment 46: Law Firm
Proposed A.A.C. R18-9-C629(A)(1) provides that an expiring permit continues in force and effect if a “timely application that is a complete application” for a new permit is submitted. This tracks language in EPA's UIC regulations for EPA-issued permits (40 C.F.R. § 144.37(a)(1)), but it is not clear what exactly this would require under the state program. Specifically:
- **Timely:** When will an application need to be submitted in order to be considered “timely”? Is simply submitting the application before the current permit expires timely? If not, how long before an existing permit expires must submission be made in order to be considered timely?
- **Complete:** ADEQ should clarify that an application will be considered “complete” for purposes of this provision if the application contains the requirements necessary to find administrative completeness (i.e., it contains the information listed in proposed A.A.C. R18-9-C616(D) or, for Class VI wells, the information listed in proposed A.A.C. R18-9-667(B)). Later requests for additional technical information or analysis made during the substantive review phase should not result in a conclusion that the application was not complete when submitted.

ADEQ Response 46:
ADEQ appreciates the comment and reiterates that the proposed rule A.A.C. R18-9-C629(A)(1) follows the analogous Federal rule at 40 CFR 144.37(a)(1). Under a state UIC program, the term “Timely”, for the purposes of proposed rule R18-9-C629(A), is within a reasonable amount of time before the expiration of the permit term occurs. ADEQ notes CAA & CWA programs define “timely” as 6 to 18 months prior to permit expiration. Also “Complete”, for the purposes of proposed rule R18-9-C629(A), is commensurate with “Administrative completeness” as defined in A.A.C. R18-1-501(1).

Comment 47: Law Firm
For new Class V wells (i.e., those created after the state begins implementing the UIC program), presumably it will be sufficient if the inventory form information specified in proposed A.A.C. R18-9-1652(B) is submitted prior to commencing injection. If that is correct, then ADEQ should so state in the preamble to the final rules.

ADEQ Response 47:
ADEQ appreciates the comment. Submitting an inventory pursuant to R18-9-1652 is a prerequisite to injection. The information has been added to the Preamble for the final rules.

Comment 48: Law Firm
There appears to be an incorrect cross-reference in proposed A.A.C. R18-9-1650(B)(1). That section begins: “With certain exceptions listed in subsection (B) of this Section . . . .” The reference presumably should instead be to subsection “(2)” of the section.

ADEQ Response 48:
ADEQ appreciates the comment and the identification of an incorrect cross-reference. The reference in A.A.C. R18-9-I650(B)(1) to subsection (B) has been adjusted to read (B)(2).

Comment 49: Law Firm
ADEQ’s authority to require a permit for a Class V well (proposed A.A.C. R18-9-I650(B)(2)(b)) should specifically cross-reference proposed A.A.C. R18-9-I651, which sets out the circumstances in which the Department can require a permit to be obtained. The first sentence of that subsection should read: “The Director specifically requires a Class V permit for the well to operate pursuant to A.A.C. R18-9-I651.”

ADEQ Response 49:
ADEQ appreciates the comment and agrees with the stakeholder’s concern and suggested revision. The first sentence of A.A.C. R18-9-I650(B)(2)(b) has been amended to align with the language suggested above for the purposes of the final rule.

Comment 50: Law Firm
To avoid ADEQ having unfettered discretion to require Class V wells to obtain an individual permit, the three grounds listed in proposed A.A.C. R18-9-I651 should be identified as the only three grounds for requiring an individual permit. Rather than saying that the grounds for such a decision “include” the three listed, which arguably suggests that there could be additional unlisted grounds, the final rule should indicate that the three listed grounds represent the only bases for requiring an individual permit. For these reasons, proposed A.A.C. R18-9-I651(A) should be modified to read: “The Director may require the owner or operator of any Class V injection well authorized by rule under this Article to apply for and obtain an individual or area UIC permit in any of the following circumstances. Cases where individual or area UIC permits may be required include:

● In the alternative, and recognizing that the analogous EPA regulation (40 C.F.R. § 144.25(A)) also uses the word “include,” ADEQ should clarify in the preamble that use of the word “include” in this rule is intended to identify the full universe of grounds for requiring a permit (i.e., it is distinct from the phrase “include but is not limited to,” which is used at least once elsewhere in the proposed rules, see proposed A.A.C. R18-9-A604(E)(1)).

ADEQ Response 50:
ADEQ appreciates the comment.

The stakeholder’s suggested language would curtail the Director’s authority to require a Class V well to obtain an individual permit. Narrowing the breadth of discretion in the rule would also make it less stringent than the federal analog. ADEQ respectfully declines to implement this suggested language in the final rule.

Comment 51: Law Firm
Proposed A.A.C. R18-9-I650(B)(2) states that a Class V well authorized by rule may instead be required to get a permit “if one of any one of the following:” There is clearly excess verbiage in this phrase. The requirement would be more clearly stated if it instead said something like “in the following circumstances.”

ADEQ Response 51:
ADEQ appreciates the comment and agrees with the stakeholder’s concern. The language has been amended for the final rule and reads as follows,

“A Class V well requires a permit and shall no longer be authorized by rule upon any of the following...”

Comment 52: Law Firm
When Class V wells are plugged and abandoned, the proposed rules require proper disposal of soil, gravel, sludge, liquids or other materials removed from “or adjacent to” the well (proposed A.A.C. R18-9-I650(B)(3)(b) and proposed A.A.C. R18-9-B614(C)). This tracks language in EPA’s UIC rules at 40 C.F.R. § 144.82(b). This requirement should not apply to materials that are unrelated to the well but merely happen to be located adjacent to it at the time of well closure. If this interpretation is correct, then ADEQ should so indicate in the preamble. If this interpretation is not correct, then ADEQ should explain in the preamble the intended scope of the requirement.

ADEQ Response 52:
ADEQ appreciates the comment. As stated by the stakeholder, both 40 C.F.R. § 144.82(b) and A.A.C. R18-9-I650(B)(3)(b) contain similar language to the following,

“...you must dispose or otherwise manage any soil, gravel, sludge, liquids, or other materials removed from or adjacent to your well in accordance with all applicable Federal, State, and local regulations and requirements.”
ADEQ believes the request to make a distinction between materials that are unrelated to the well but merely happen to be located adjacent to the well at the time of well closure and materials that are related to the well is unnecessary. Furthermore, implementing the requested distinction could affect the stringency of ADEQ’s proposed rule versus the Federal analog. ADEQ’s rules must remain as stringent as EPA’s analog rule in the CFR in order for ADEQ to be eligible for primacy.

Comment 53: Law Firm
The language in proposed A.A.C. R18-9-B614(C) and proposed A.A.C. R18-9-I650(B)(3) is virtually identical. This is not inherently problematic, but it is unusual to see the same language repeated twice in a rule package. Are both sections needed? Would a cross-reference in one location suffice?

ADEQ Response 53:
ADEQ appreciates the comment. ADEQ agrees that R18-9-B614(C) and R18-9-I650(B)(3) are quite similar. ADEQ has decided to amend the rules by leaving R18-9-B614(C) as is and changing R18-9-I650(B)(3) to read as follows,

“Prior to abandoning a Class V well, the owner or operator shall meet the plugging requirements in R18-9-B614(C).”

The former R18-9-I650(B)(3)(a) and (b) have been removed.

Comment 54: Law Firm
The proposed rules provide that a discharger may appeal to the Water Quality Appeals Board ADEQ’s determination that a permit is needed for a Class V well (proposed A.A.C. R18-9-I651(B)(5)). The proposal also states that authorization by rule for a Class V well ceases if an application for a permit is not submitted as specified by ADEQ, or when a permit is denied (proposed A.A.C. R18-9-I650(B)(2)(b)). To avoid the scenario where a discharger must apply for (and possibly even obtain) a permit that it is challenging the need for, this latter provision should be modified to state that if ADEQ’s decision to require a permit for a Class V well is appealed, then authorization by rule continues until that appeal is resolved. This could be accomplished by amending proposed A.A.C. R18-9-I650(B)(2)(b) to read that authorization by rule ceases upon the later of: (1) failure to submit an application in a timely manner as specified in a notice from ADEQ; (2) the effective date of permit denial; or (3) the date of a final administrative decision or other resolution of an appeal filed challenging the Department’s decision that a permit is required.

ADEQ Response 54:
ADEQ appreciates the comment and request to amend the rule language, but respectfully declines. ADEQ believes that the rule sufficiently provides the applicant’s right to appeal the individual permit requirement in proposed rule R18-9-I651. Proposed rule R18-9-I651 references the Water Quality Appeals Board statutes at Arizona Revised Statutes, Title 49, Chapter 2, Article 7. ADEQ prefers to allow those statutes to delineate any appeals rights an applicant may have upon the Director’s decision including any potential stay pending appeal.

Comment 55: Resource Extraction Industry Member
Proposed A601 defines "appropriate Act and regulations" even though that terminology is not employed anywhere else in the proposed rules. ADEQ may wish to delete that definition accordingly.

ADEQ Response 55:
ADEQ appreciates the comment. “Appropriate Act and regulations” can be found in the analogous Federal rule at 40 CFR 144.3. ADEQ will keep the definition in the regulations as the term is used elsewhere in the UIC primacy application, such as the Memorandum of Agreement.

Comment 56: Resource Extraction Industry Member
Proposed A602(A) provides that, "upon the date of the Environmental Protection Agency's approval of the Arizona UIC program," ADEQ shall administer and enforce any UIC permit that "has been previously authorized or issued" in Arizona under the federal UIC program. This leaves unclear the continuing status of legal instruments ancillary to the permit, the implementation of which was and continues to be a condition of EPA's issuance of the permit. In order to address this issue, a sentence should be added at the end of A602(A) more or less as follows:

In addition, the Arizona UIC Memorandum of Agreement shall, under terms and conditions agreed to by the Director and Administrator, provide for the continued force, effect and administration of legal instruments ancillary to such permits, the implementation of which was and continues to be a condition of the Administrator's authorization and issuance of the permit, such as, without limitation, an agreement relating to the permit that was executed and is being implemented pursuant to Section 106 of the National Historic Preservation Act and its implementing regulations, 36 C.F.R. Part 800.
ADEQ Response 56:
ADEQ appreciates the comment, but respectfully declines to add the language suggested. The ancillary matters referred to above and those matters of a like kind will be addressed in the permits themselves and or other documents, like the Memorandum of Agreement.

Comment 57: Resource Extraction Industry Member
Proposed A602(J) should be revised to replace the words "upon the date of primacy" with the words "upon the date of the Environmental Protection Agency's approval of the Arizona UIC program." This change would make A602(J) consistent with proposed A602(A).

ADEQ Response 57:
ADEQ appreciates the comment and will update the final rule to align with the definition in final rule R18-9-A601(21).

Comment 58: Resource Extraction Industry Member
Proposed A605(B)(4) concerning exemption of aquifers makes cross-references to "A606(A)(2)" and "A606(A)(3)." These cross-references appear to be incorrect. Based on the analogous provisions of 40 C.F.R. § 144.7, ADEQ should change these to "A605(B)(2)" and "A605(B)(3)."

ADEQ Response 58:
ADEQ appreciates the comment. After review of the specified cross references above, it was determined that they are correct.

Comment 59: Resource Extraction Industry Member
In proposed A606(2)(a), the word "consider" should be changed to "considering". This change would make (2)(a) consistent with 40 C.F.R. § 146.4(b)(1).

ADEQ Response 59:
ADEQ appreciates the comment and will align the final rule with the recommended language above.

Comment 60: Resource Extraction Industry Member
In proposed C626(A), Class II and III wells are excepted when describing the effect of compliance with a UIC permit. Although this exception language is found in EPA UIC regulations, it is unclear why there is a distinction between different classes of wells and why compliance with a permit for Class II and III wells is not considered compliance with the UIC regulations or the Safe Drinking Water Act. If there is not a satisfactory explanation, we recommend that this language be dropped after appropriate discussions with EPA.

ADEQ Response 60:
ADEQ appreciates the comment. UIC Class II & III wells are excepted from C626(A) because such permits are for the life of the operating facility. Therefore, compliance with a permit goes beyond the "term" and extends to the life of the facility in the case of Classes II & III. Please reference C628(A).

Comment 61: Local Government
The UIC rules require submittal of highly technical information. Will ADEQ have the staff available to review the applications and technical details? All business sectors are experiencing staff shortages. Unless ADEQ is offering competitive salaries, it may be difficult to attract candidates with the necessary expertise.

ADEQ Response 61:
ADEQ appreciates the comment. ADEQ has and will continue to develop the educational background and relevant experience to manage and administer the UIC Program. Upon primacy, ADEQ will utilize existing expertise within the Groundwater Protection Section to manage and administer the UIC program. It should also be noted that the Arizona Legislature appropriated funding for 3.2 full-time-equivalent positions specifically for the UIC program. ADEQ plans on hiring additional qualified staff based on capacity and workload needs. ADEQ salary structure and benefits package is attractive and should not be prohibitive in attracting qualified personnel.

Comment 62: Local Government
How will the Underground Injection Control Program interface with the Aquifer Protection Permit Program?

ADEQ Response 62:
ADEQ appreciates the comment. The UIC program and the APP program will complement each other in the fabric of groundwater protection regulation in Arizona. A.R.S. § 49-250(B)(26) exempts UIC wells from APP regulation for Classes I, II, III, IV and VI. However, Class V wells that are “authorized by rule” (as opposed to being individually permitted) will potentially be applicable to both UIC and APP regulation if the specific type of UIC Class V well is subject to APP. For example, a drywell that drains a motor
fueling area would be required to inventory under UIC Class V regulation and would be required to apply for an APP Type 2.04 General Permit (see R18-9-C304).

Comment 63: Local Government
Typo. Preamble. Subheading: Why is Article 1 being amended? Sentence: Individually Permitted Class V UIC Wells Omit the second "not" in the sentence "ADEQ is concerned that Class V wells "prescribed by rule" may be interpreted to include Class V wells "authorized by rule" and individually permitted Class V wells, which ADEQ does not believe was not the intention of the legislation."

ADEQ Response 63:
ADEQ appreciates the comment and will amend the language in the Preamble in the Notice of Final Rulemaking

Comment 64: Local Government
Will the National Primary Drinking Water Regulations in Table 1 supersede existing Arizona Aquifer Water Quality Standards?
ADEQ Response 64:
ADEQ appreciates the comment. The applicable primary drinking water maximum contaminant levels (MCLs) will be the standards used for the UIC program. EPA requires ADEQ use these standards in order to achieve the stringency in the rule required for EPA to grant ADEQ primacy. Arizona Aquifer Water Quality Standards will still apply for the APP.

Comment 65: Local Government
At R18-9-C616(C)(2), what is a reasonable timeframe? There should be a limitation on time, to ensure expediency.
ADEQ Response 65:
ADEQ appreciates the comment. The language in R18-9-C616(C)(2) makes it incumbent upon a permittee to submit a permit application prior to construction of an injection well. ADEQ recommends using the LTF framework in A.A.C. Title 18, Chapter 1, Article 5 as guidance for project planning and scheduling. The agency works hard to provide quick decisions on permit applications.

Comment 66: Local Government
● At R18-9-C616(C)(1), add ", but not to exceed L {i.e. 60) days]" after "practicable".
● At R18-9-C624(A)(2), strike the extraneous word "in".
● At R18-9-C633(A)(8), add "d" after "an".
● At R18-9-D635(A)(16)(b), strike the "d" in "and".
● At R18-9-F645(B)(2), 3rd sentence, change "suspended" to "suspected".

ADEQ Response 66:
ADEQ appreciates the comments. See response 65 for reference to Bullet 1. Bullets 2 through 5 have been implemented in the final proposed rule.

Comment 67: Federally-Recognized Arizona Tribal Nation or Community
The proposed rule should require ADEQ to fully implement and enforce the provisions of EPA permits transferred to ADEQ. The EPA, in administering any UIC permit (or indeed, undertaking any major action) must comply with a number of statutory requirements that protect Tribal interests, including Section 106 of the National Historic Preservation Act (NHPA). Through the NHPA, EPA consults with Tribes to protect cultural resources and frequently enters into a Programmatic Agreement or Memorandum of Agreement as a condition of permit issuance. These agreements typically impose conditions and requirements that protect Tribal lands, resources, and areas of cultural significance. Here, ADEQ's Proposed Rule is silent regarding the continued implementation and enforcement of such Programmatic Agreements and Memoranda of Agreements associated with EPA-issued permits. For transferred permits, ADEQ's Proposed Rule should include language ensuring that ADEQ implement and enforce the requirements and conditions, under laws such as NHPA, that EPA has imposed on its permittees.

ADEQ Response 67:
ADEQ appreciates the comment. Upon primacy, EPA will transfer the Federal permits to ADEQ for administration. All of the terms in the permit, including NHPA terms, will continue to be enforced jointly between EPA and ADEQ. The joint enforcement will be memorialized in the EPA | ADEQ Memorandum of Agreement (see A.R.S. § 49-203(B)(5)).

Comment 68: Federally-Recognized Arizona Tribal Nation or Community
The proposed rule does not include any requirements for ADEQ to analyze historic and cultural resources as part of UIC permit decision-making. The Community is concerned that the Proposed Rule does not require specific historic and cultural resource considerations in making UIC permitting decisions. Given
the prevalence of Tribal communities within Arizona, including a historic and cultural resource review requirement prior to issuance of any UIC permit is particularly critical to protect and preserve these resources. In addition to considering historic and cultural resources as a prerequisite to issuing any UIC permit under ADEQ’s proposed program, ADEQ should require that an applicant demonstrate that avoidance, minimization, and mitigation measures regarding impacts to historic and cultural resources have been demonstrated to ensure maximum protection for these resources.

ADEQ Response 68:
ADEQ appreciates the comment. Please see response 19 for reference.

Comment 69: Federally-Recognized Arizona Tribal Nation or Community
The proposed rule requires clarity around whether and when ADEQ will notify a tribe about permit-related actions. As currently drafted, the Proposed Rule states that public notice of activities, including draft permits and public hearings, shall be delivered to “[a]ny affected federal, state, tribal, or local agency, or council of government.” The Proposed Rule, however, lacks any parameters around what “affected” means in this context, thus providing no certainty that Tribal Governments whose resources or environments may be affected by a UIC permit will receive notice. Further, without proper notice to Tribal Governments, ADEQ may not realize the extent to which a proposed permit action could impact Tribal communities, their environment, and cultural and historic resources during the decision-making process. To clarify this vague language in the Proposed Rule, we recommend defining “affected” based upon objective criteria, such as when a permitted activity may be located in the same watershed or aquifer where a Tribe is located, located within a set radius of Tribal lands, or could impact cultural resources.

ADEQ Response 69:
ADEQ appreciates the comment. Please see responses 20 and 44 for reference.

Comment 70: Federally-Recognized Arizona Tribal Nation or Community
The proposed rule requires that the State Historic Preservation Office (SHPO) be notified regarding permit-related actions but lacks such notification requirements for Tribal Historic Preservation Offices (THPOS). ADEQ’s Proposed Rule requires notification to the SHPO for permit-related actions but does not include the same requirement for any THPO. Because UIC permit activities, regardless of the proximity to a particular Tribe’s lands, could impact cultural resources, the Proposed Rule should include requirements to notify THPOs in appropriate circumstances.

ADEQ Response 70:
ADEQ appreciates the comment. Please see responses 19 and 20 for reference.

Comment 71: Federally-Recognized Arizona Tribal Nation or Community
The commenter believes that there will be a number of other issues that ADEQ and EPA must address—in ADEQ’s UIC Program regulations and/or in the Arizona UIC Memorandum of Agreement—to protect Tribal interests and the environment. These include: (i) the requirement for ADEQ to engage in meaningful consultations with Tribes regarding proposed UIC permits; (ii) confirmation of ADEQ’s authority to consider and impose conditions to protect historic and cultural resources in ADEQ’s UIC Program permit decision-making; and (iii) the adequacy of ADEQ resources, staff, and budgets to implement the UIC Program.

ADEQ Response 71:
ADEQ appreciates the comment. Please see responses 19 and 20 for reference.

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

The following statutes contain therein prescribed matters applicable to the rules in this rulemaking: A.R.S. §§ 49-203(A)(6) and (9); 49-257; 49-257.01.

a. Whether the rule requires a permit, whether a general permit is used and if not, the reasons why a general permit is not used:
The UIC program will require permits. General permits are not used because issuance of a general permit would not meet the applicable statutory requirements to adopt a permit program for underground injection control required in 40 CFR Part 145. 40 CFR Part 145 requires states to adopt the UIC program through primacy, meeting a stringency level that is at least as stringent as the federal program. Any deviation in the individual permits that are issued for most UIC wells would result in a less stringent program. EPA would not approve primacy if ADEQ proposed a set of rules that used general permits in place of individual
permits. However, the one exception is that the UIC Class V wells are regulated in a manner similar to general permits in that they are “authorized by rule.” This means that such UIC wells are automatically authorized under the program as long as such wells are inventoried and follow a delineated set of criteria.

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

Federal law is applicable to UIC. UIC is a program authorized under the SDWA (see 42 U.S.C. § 300h et seq.), originally administered by EPA. The UIC program administration can be transferred from EPA to a state through a delineated process known as Primacy (see 42 U.S.C. § 300h-1).

The rule is more stringent than Federal law in two circumstances in order to align with the following, existing state law:

- R18-9-B609(A) – Prohibition of hazardous waste injection, and

R18-9-B609(A)

R18-9-B609(A) reflects Arizona’s prohibition on hazardous waste injection in the Hazardous Waste Permit Program rules at A.A.C. R18-8-270(B)(2)(b). Statutory authority for the R18-9-B609(A) prohibition is found in A.R.S. § 49-203(A)(8), which states that the ADEQ Director shall adopt by rule standards and conditions as reasonable and necessary to carry out the permit programs and regulatory duties described in paragraphs 2 through 5 of this subsection. Paragraphs 5 and 6 of the subsection (A.R.S. § 49-203(A)) concern the adoption of the APP program and the UIC program. ADEQ interprets A.R.S. § 49-203(A)(8) to allow the Director to adopt a UIC rule and standard for the prohibition of hazardous waste injection because adopting the rule or standard is reasonable and necessary in order to carry out the APP program and the regulatory duties to protect groundwater in the APP and UIC programs. Adopting this prohibition also aligns the UIC program with the existing prohibition in the Hazardous Waste Permit Program at A.A.C. R18-8-270(B)(2)(b).

R18-9-I654

R18-9-I654 reflects the prohibition on cesspools found in the Aquifer Protection Permits program at A.A.C. R18-9-A309(A)(4). Statutory authority for this prohibition is found in A.R.S. § 49-104(B)(13) which mandates the ADEQ Director to prescribe reasonable rules regarding sewage disposal. Statutory authority can also be found in A.R.S. § 49-104(B)(14), which mandates the ADEQ Director to prescribe reasonably necessary rules regarding excreta disposal.

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

No comparative analyses were submitted.

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

No material was incorporated by reference in this rulemaking under A.R.S. § 41-1028, nor otherwise.

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

Not applicable.

15. The full text of the rules follows:

TITLE 18. ENVIRONMENTAL QUALITY

CHAPTER 9. DEPARTMENT OF ENVIRONMENTAL QUALITY
WATER POLLUTION CONTROL

ARTICLE 1. AQUIFER PROTECTION PERMITS – GENERAL PROVISIONS

Section

R18-9-103. Class Exemptions
ARTICLE 6. REPEALED UNDERGROUND INJECTION CONTROL

PART A. GENERAL PROVISIONS

Section
R18-9-A601. Definitions
R18-9-A602. Applicability
R18-9-A603. Confidentiality of Information
R18-9-A604. Classification of Wells
R18-9-A605. Identification of Underground Sources of Drinking Water and Exempt Aquifers
R18-9-A606. Criteria for Exempted Aquifers

PART B. GENERAL PROGRAM REQUIREMENTS

Section
R18-9-B607. Prohibition of Unauthorized Injection
R18-9-B608. Prohibition of Movement of Fluid into Underground Sources of Drinking Water
R18-9-B609. Prohibition of Hazardous Waste Injection and Class IV Wells
R18-9-B610. Waiver of Requirement by Director
R18-9-B611. Records
R18-9-B612. Area of Review
R18-9-B613. Mechanical Integrity
R18-9-B614. Plugging and Abandoning Class I, II, III, IV, and V Wells
R18-9-B615. Transitioning from Class II to Class VI Injection Well

PART C. AUTHORIZATION BY PERMIT FOR UNDERGROUND INJECTION

Section
R18-9-C616. Individual Permits; Application for Individual Permits
R18-9-C617. Signatories
R18-9-C618. Draft Permits
R18-9-C619. Fact Sheet
R18-9-C620. Public Notice of Permit Actions and Public Comment Period
R18-9-C621. Public Comments and Requests for Public Hearings
R18-9-C622. Public Hearings
R18-9-C623. Response to Comments
R18-9-C624. Area Permits
R18-9-C625. Emergency Permits
R18-9-C626. Effect of a Permit
R18-9-C627. Final Permit Decision and Notification
R18-9-C628. Permit Duration
R18-9-C629. Continuation of Expiring Permits
R18-9-C630. Permit Transfer
R18-9-C631. Modification; Revocation and Reissuance; or Termination of Permits
R18-9-C632. Modification; Revocation and Reissuance of Permits
R18-9-C633. Minor Modifications of Permits
R18-9-C634. Termination of Permits

PART D. PERMIT CONDITIONS FOR UNDERGROUND INJECTION

Section
R18-9-D635. Conditions Applicable to All Permits
R18-9-D636. Establishing Permit Conditions
R18-9-D637. Compliance Schedule
R18-9-D638. Requirements for Recording and Reporting Monitoring Results
R18-9-D639. Corrective Action

PART E. CLASS I INJECTION WELL REQUIREMENTS

Section
R18-9-E640. Class I; Construction Requirements
PART F. CLASS II INJECTION WELL REQUIREMENTS

Section
R18-9-F643. Class II; Construction Requirement
R18-9-F644. Class II; Operating, Monitoring, and Reporting Requirements
R18-9-F645. Class II; Information to be Considered by the Director

PART G. CLASS III INJECTION WELL REQUIREMENTS

Section
R18-9-G646. Class III; Construction Requirements
R18-9-G647. Class III; Operating, Monitoring, and Reporting Requirements
R18-9-G648. Class III; Information to be Considered by the Director

PART H. CLASS IV INJECTION WELL REQUIREMENTS

Section
R18-9-H649. Class IV; Closure Requirements and Remediation

PART I. CLASS V INJECTION WELL REQUIREMENTS

Section
R18-9-I650. Class V; General Requirements
R18-9-I651. Class V; Requiring a Permit
R18-9-I652. Class V; Inventory Requirements for Class V Wells Authorized by Rule
R18-9-I653. Class V; Requiring Other Information
R18-9-I654. Class V; Prohibition of Class V Cesspools and Motor Vehicle Waste Disposal Wells
R18-9-I655. Class V; Prohibition of Non-Experimental Class V Wells for Geologic Sequestration

PART J. CLASS VI INJECTION WELL REQUIREMENTS

Section
R18-9-J656. Class VI; Applicability
R18-9-J657. Class VI; Required Permit Information
R18-9-J658. Class VI; Minimum Criteria for Siting
R18-9-J659. Class VI; Area of Review and Corrective Action
R18-9-J660. Class VI; Financial Responsibility
R18-9-J661. Class VI; Injection Well Construction Requirements
R18-9-J662. Class VI; Logging, Sampling, and Testing Prior to Well Operation
R18-9-J663. Class VI; Injection Well Operating Requirements
R18-9-J664. Class VI; Mechanical Integrity
R18-9-J665. Class VI; Testing and Monitoring Requirements
R18-9-J666. Class VI; Reporting Requirements
R18-9-J667. Class VI; Injection Well Plugging
R18-9-J668. Class VI; Post-Injection Site Care and Site Closure
R18-9-J669. Class VI; Emergency and Remedial Response
R18-9-J670. Class VI; Injection Depth Waiver Requirements

Table 1. Applicable Standards National Primary Drinking Water Regulations
ARTICLE 1. AQUIFER PROTECTION PERMITS – GENERAL PROVISIONS

R18-9-103. Class Exemptions
Class exemptions. In addition to the classes or categories of facilities listed in A.R.S. § 49-250(B), the following classes or categories of facilities are exempt from the Aquifer Protection Permit requirements in Articles 1, 2, and 3 of this Chapter:

1. Facilities that treat, store, or dispose of hazardous waste and have been issued a permit or have interim status, under the Resource Conservation and Recovery Act (P.L. 94-580; 90 Stat. 2796; 42 U.S.C. 6901 et seq., as amended), or have been issued a permit according to the hazardous waste management rules adopted under 18 A.A.C. 8, Article 2;
2. Underground storage tanks that contain a regulated substance as defined in A.R.S. § 49-1001;
3. Facilities for the disposal of solid waste, as defined in A.R.S. § 49-701.01, that are located in unincorporated areas and receive solid waste from four or fewer households;
4. Land application of biosolids in compliance with 18 A.A.C. 9, Articles 9 and 10;
5. CCR Units regulated by 40 C.F.R. 257, Subpart D or by a permit in effect under a Department program approved by the United States Environmental Protection Agency in accordance with 42 U.S.C. § 6945(d)(1). Units that were in existence as of January 1, 2019, and which are governed by 40 C.F.R. Part 257, Subpart D. This exemption for CCR Units shall only extend until such time as both of the following are met, as applicable to a given CCR Unit:
   a. Regulations are approved by the U.S. Environmental Protection Agency, in accordance with 42 U.S.C. § 6945(d)(1), for the issuance of permits governing CCR Units, and
   b. The Director issues a permit to a given CCR Unit, which incorporates terms at least as protective as 40 C.F.R. Part 257, Subpart D.
6. Underground Injection Control Class V injection wells regulated under an area or individual permit per 18 A.A.C. 9, Article 6, Part I.

ARTICLE 6. UNDERGROUND INJECTION CONTROL

PART A. GENERAL PROVISIONS

R18-9-A601. Definitions
The following terms apply to this Article:

1. “Abandoned well” means a well whose use has been permanently discontinued or which is in a state of disrepair such that it cannot be used for its intended purpose or for observation purposes.
2. “Administrator” means the Administrator of the United States Environmental Protection Agency (EPA), or an authorized representative.
3. “Application” means the ADEQ prescribed method, such as a form, for applying for a permit, including any additions, revisions or modifications thereof.
4. “Appropriate Act and regulations” means the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act (RCRA); or Safe Drinking Water Act (SDWA), whichever is applicable; and applicable regulations promulgated under those statutes.
5. “Aquifer” means a geological formation, group of formations, or part of a formation that is capable of yielding a significant amount of water to a well or spring.
6. “Area of review” means the area surrounding an injection well described according to the criteria set forth in R18-9-B612 or in the case of an area permit, the project area plus a circumscribing area the width of which is either 1/4 of a mile or a number calculated according to the criteria set forth in R18-9-B612.
7. “Arizona UIC Memorandum of Agreement” means the agreement between the Administrator and the Director that coordinates EPA and ADEQ activities, responsibilities, and programs under the Arizona UIC Program.
8. “Arizona UIC Program” means the UIC program administered by the Director and approved by EPA according to 42 U.S.C. § 300h-1.
9. “Casing” means a pipe or tubing of appropriate material, of varying diameter and weight, lowered into a borehole during or after drilling to support the sides of the hole and prevent the walls from caving; to prevent loss of drilling mud into porous ground; or to prevent water, gas, or other fluid from entering or leaving the hole.
10. “Catastrophic collapse” means the sudden and utter failure of overlaying strata caused by removal of underlying materials.
11. “Cementing” means the operation whereby a cement slurry is pumped into a drilled hole and/or forced behind the casing.
12. “Cesspool” means a drywell that receives untreated sanitary waste containing human excreta, and which sometimes has an open bottom and/or perforated sides.
13. “Confining zone” means a geological formation, group of formations, or parts of a formation that is capable of limiting fluid movement above an injection zone.
14. “Contaminant” means any physical, chemical, biological, or radiological substance or matter in water.
15. “Conventional mine” means an open pit or underground excavation for the production of minerals.
16. “Director” means the Director of the Arizona Department of Environmental Quality or the Director’s designee.
17. “Disposal well” means a well that is used for the disposal of waste into a subsurface stratum.
18. “Draft permit” means a document prepared under R18-9-C618 indicating the Director's tentative decision to issue, renew, modify, revoke and reissue, or terminate a permit. A notice of intent to terminate a permit, and a notice of intent to deny a permit, as discussed in R18-9-C631 are types of draft permits. A denial of a request for modification, revocation and reissuance, or termination, of a permit is not a draft permit, except as discussed in R18-9-C631(B).
19. “Drilling mud” means a heavy suspension used in drilling an injection well, introduced down the drill pipe and through the drill bit.
20. “Drywell” means a well, other than an improved sinkhole or subsurface fluid distribution system, completed above the water table so that its bottom and sides are typically dry except when receiving fluids.
21. “Effective date of the Arizona UIC Program” means the date that the Arizona UIC Program is approved or established by the Administrator.
23. “Environmental Protection Agency” or “EPA” means the United States Environmental Protection Agency.
24. “Exempted aquifer” means an aquifer or its portion that meets the criteria in the definition of underground source of drinking water (USDW) but has been exempted according to the procedures in R18-9-A605.
25. “Existing injection well” means an injection well other than a new injection well.
26. “Experimental technology” means a technology which has not been proven feasible under the conditions in which it is being tested.
27. “Facility” or “activity” means any UIC injection well subject to regulation under this Article.
28. “Fault” means a surface or zone of rock fracture along which there has been displacement.
29. “Final permit decision” means the Director’s decision to issue, renew, modify, revoke and reissue, deny or terminate a permit as described in R18-9-C627.
30. “Flow rate” means the volume per time unit given the flow of gases or other fluid substance which emerges from an orifice, pump, turbine, or passes along a conduit or channel.
31. “Fluid” means any material or substance which flows or moves whether in a semisolid, liquid, sludge, gas, or any other form or state.
32. “Formation” means a body of consolidated or unconsolidated rock characterized by a degree of lithologic homogeneity which is prevailing, but not necessarily, tabular and is mappable on the earth's surface or traceable in the subsurface.
33. “Formation fluid” means fluid present in a formation under natural conditions as opposed to introduced fluids, such as drilling mud.
34. “Generator” means any person, by site location, whose act or process produces hazardous waste identified or listed in A.A.C. Title 18, Chapter 8 (Hazardous Waste Management).
35. “Geologic sequestration” means the long-term containment of a gaseous, liquid, or supercritical carbon dioxide stream in subsurface geologic formations. This term does not apply to carbon dioxide capture or transport.
36. “Ground water” means water below the land surface in a zone of saturation.
37. “Hazardous waste” means a hazardous waste as defined in A.R.S. § 49-921.
38. “Improved sinkhole” means a naturally occurring karst depression or other natural crevice found in volcanic terrain and other geologic settings which have been modified by man for the purpose of directing and emplacing fluids into the subsurface.
40. “Indian Tribe” means any Indian Tribe having a Federally recognized governing body carrying out substantial governmental duties and powers over a defined area.
41. “Injection well” means a well into which fluids are being injected.
42. “Injection zone” means a geological formation group of formations, or part of a formation receiving fluids through a well.
43. “Lithology” means the description of rocks on the basis of their physical and chemical characteristics.
44. “Major facility” means any UIC facility or activity classified as such by the Administrator in conjunction with the Director.
45. “New injection wells” means an injection well which began injection after the effective date of the Arizona UIC Program.
46. “Owner” or “operator” means the owner or operator of any facility or activity subject to regulation under the Arizona UIC program.
47. “Packer” means a device lowered into a well to produce a fluid-tight seal.
48. “Permit” means an authorization issued by the Director pursuant to this Article. ‘Permit’ includes an area permit under R18-9-C624 and an emergency permit under R18-9-C625. ‘Permit’ does not include UIC authorization by rule or any permit which has not yet been subject to a final permit decision, such as a ‘draft permit.’
49. “Person” means an individual, employee, officer, managing body, trust, firm, joint-stock company, consortium, public or private corporation, Partnership, association or state, a political subdivision of this state, a commission, the United States government or any federal facility, interstate body, Tribal agency, or other entity.
50. “Plugging” means the act or process of stopping the flow of water, oil or gas into or out of a formation through a borehole or well penetrating that formation.
51. “Plugging record” means a systematic listing of permanent or temporary abandonment of water, oil, gas, test, exploration and waste injection wells, and may contain a well log, description of amounts and types of plugging material used, the method employed for plugging, a description of formations which are sealed and a graphic log of the well showing formation location, formation thickness, and location of plugging structures.
52. “Pressure” means the total load or force per unit area acting on a surface.
53. “Project” means a group of wells in a single operation.
54. “Radioactive Waste” means any waste which contains radioactive material in concentrations which exceed those listed in 10 CFR part 20, appendix B, table II column 2.
56. “Sanitary waste” means liquid or solid wastes originating solely from humans and human activities, such as wastes collected from toilets, showers, wash basins, sinks used for cleaning domestic areas, sinks used for food preparation, clothes washing operations, and sinks or washing machines where food and beverage serving dishes, glasses, and utensils are cleaned. Sources of these wastes may include single or multiple residences, hotels and motels, restaurants, bunkhouses, schools, ranger stations, crew quarters, guard stations, campgrounds, picnic grounds, day-use recreation areas, other commercial facilities, and industrial facilities provided the waste is not mixed with industrial waste.
57. “Schedule of compliance” means a schedule of remedial measures included in a permit including an enforceable sequence of interim requirements leading to compliance with this Article.
58. “SDWA” or “Safe Drinking Water Act” means the Safe Drinking Water Act (Pub. L. 93-523, as amended; 42 U.S.C. 300f et seq.).
59. “Septic system” means a well that is used to emplace sanitary waste below the surface and is typically comprised of a septic tank and subsurface fluid distribution system or disposal system.
60. “Site” means the land or water area where any facility or activity is physically located or conducted, including adjacent land used in connection with the facility or activity.
61. “Stratum” means a single sedimentary bed or layer, or series of layers that consists of generally the same kind of rock material regardless of thickness. The plural of stratum is strata.
62. “Subsidence” means the lowering of the natural land surface in response to earth movements; lowering fluid pressures; removal of underlying support material by mining or solution of solids, either artificially or from natural causes; compaction due to wetting; oxidation of organic matter in soils; or added load on the land surface.
63. “Subsurface fluid distribution system” means an assemblage of perforated pipes, drain tiles, or other similar mechanisms intended to distribute fluids below the surface of the ground.
64. “Surface casing” means the first string of well casing to be installed in the well.
“Total dissolved solids” or “TDS” means the total dissolved (filterable) solids as determined by use of the method specified in A.A.C. R9-14-610 or R9-14-611.

“Transferee” means the owner or operator receiving ownership and/or operational control of the well.

“Transferor” means the owner or operator transferring ownership and/or operational control of the well.

“Underground injection” means a well injection; which excludes the underground injection of natural gas for purposes of storage and the underground injection of fluids or propping agents (other than diesel fuels) pursuant to hydraulic fracturing operations related to oil, gas, or geothermal production activities.

“Underground Injection Control” or “UIC” means the Underground Injection Control program under Part C of the Safe Drinking Water Act, including the Arizona UIC Program.

“USDW,” “USDWs,” or “Underground source of drinking water” means an aquifer(s) or its portion that:
   a. Supplies any public water system; or
   b. Contains a sufficient quantity of ground water to supply a public water system; and
      i. Currently supplies drinking water for human consumption; or
      ii. Contains fewer than 10,000 mg/l total dissolved solids; and
   c. Is not an exempted aquifer.

“Well” means a bored, drilled, or driven shaft whose depth is greater than the largest surface dimension; or a dug hole whose depth is greater than the largest surface dimension; or, an improved sinkhole; or a subsurface fluid distribution system.

“Well injection” means the subsurface emplacement of fluids through a well.

“Well plug” means a watertight and gastight seal installed in a borehole or well to prevent movement of fluids.

“Well monitoring” means the measurement, by on-site instruments or laboratory methods, of the quality of water in a well.

“Well stimulation” means several processes used to clean the well bore, enlarge channels and increase pore space in the interval to be injected thus making it possible for wastewater to move more readily into the formation and includes surging, jetting, blasting, acidizing, or hydraulic fracturing.

R18-9-A602. Applicability
A. This Article becomes effective upon the date of the Environmental Protection Agency’s approval of the Arizona UIC Program. Upon that date, the Department shall, under A.R.S. Title 49, Chapter 2, Articles 3.3, 4 and Article 6 of this Chapter, administer and enforce any permit which has been previously authorized or issued in this state under the Federal UIC program.

B. This Article and 40 CFR Part 145, Subpart C provide the minimum requirements of the State of Arizona’s Underground Injection Control (UIC) program under A.R.S. Title 49, Chapter 2, Article 3.3 (Underground Injection Control Permit Program) and pursuant to Part C of the Safe Drinking Water Act (SDWA) (Pub. L. 93-523, as amended; 42 U.S.C. 300h et seq.).

C. Underground injection is prohibited in lands under the jurisdiction of the State of Arizona unless:
   1. Authorized by permit or rule under this Article in accordance with 42 U.S.C. 300h et seq., or
   2. Authorized by OGCC pursuant to regulations approved by EPA.

D. Any injection activity authorized by permit or rule under this Article shall prohibit the movement of fluid containing any contaminant into underground sources of drinking water (USDWs), where the presence of that contaminant may cause a violation of this Article or may adversely affect the health of persons.

E. Injection wells regulated under this Article are categorized into six classes based on characteristics of the injection well activity. Owners or operators of injection wells regulated under all six classes must be authorized by permit (all classes) or rule (Class V only if no permit is required) pursuant to the requirements of this Article.

F. Specific inclusions. The following wells are included among those types of injection activities which are covered by the UIC regulations in this Article. (This list is not intended to be exclusive but is for clarification only.)
   1. Any injection well located on a drilling platform inside the State's territorial waters.
   2. Any dug hole or well that is deeper than its largest surface dimension, where the principal function of the hole is emplacement of fluids.
   3. Any well used by generators of hazardous waste, or by owners or operators of hazardous waste management facilities, to dispose of fluids containing hazardous waste. This includes the disposal of hazardous waste into what would otherwise be septic systems and cesspools, regardless of their capacity.
4. Any septic tank, cesspool, or other well used by a multiple dwelling, or community, or other large system for the injection of wastes.

G. Specific exclusions. The following are not covered by these regulations:
   1. Septic systems or similar waste disposal systems if such systems:
      a. Are used solely for the disposal of sanitary waste, and
      b. Have a design capacity of less than 3,000 gallons per day.
   2. Injection wells used for injection of hydrocarbons which are of pipeline quality and are gases at standard temperature and pressure for the purpose of storage.
   3. Any dug hole, drilled hole, or bored shaft which is not used for the subsurface emplacement of fluids.
   4. Injection wells authorized by OGCC pursuant to regulations approved by EPA, in accordance with 42 U.S.C. 300h et seq.

H. Safe Drinking Water Act exemptions.
   1. The following activities are exempt from the Arizona UIC Program:
      a. The underground injection of natural gas for purposes of storage.
      b. The underground injection of fluids or propping agents (other than diesel fuels) pursuant to hydraulic fracturing operations related to oil, gas, or geothermal production activities.

I. The Director may identify aquifers and portions of aquifers which are actual or potential sources of drinking water, to assist in carrying out the Director’s duty pursuant to this Article. Any aquifer meeting the criteria under R18-9-A601(70) shall be protected as an USDW, even if it has not been explicitly identified pursuant to this Section.

J. The Director may also designate aquifers or portions of aquifers as exempt from the program using the criteria in R18-9-A605 and R18-9-A606, subject to EPA approval. Any aquifer or portion thereof within the State that has previously been designated exempt by EPA pursuant to 40 CFR § 144.7 shall be part of the Arizona UIC program upon the effective date of the Arizona UIC program.

R18-9-A603. Confidentiality of Information
A. In accordance with A.R.S. § 49-205, any information submitted to the Director pursuant to these regulations may be claimed as confidential by the submitter. Any such claim must be asserted at the time of submission in the manner prescribed on the application form or instructions or, in the case of other submissions, by stamping the words "confidential business information" on each page containing such information. If no claim is made at the time of submission, the Director may make the information available to the public without further notice. If a claim is asserted, the information will be treated in accordance with the procedures in A.R.S. § 49-205 (Availability of information to the public).

B. Claims of confidentiality for the following information will be denied:
   1. The name and address of any permit applicant or permittee.
   2. Information which deals with the existence, absence, or level of contaminants in drinking water.

R18-9-A604. Classification of Wells
A. Class I wells are:
   1. Wells used by generators of hazardous waste or owners or operators of hazardous waste management facilities to inject hazardous waste beneath the lowermost formation that contains, within one-quarter mile of the well bore, an USDW.
   2. Other industrial and municipal disposal wells which inject fluids beneath the lowermost formation that contains, within one-quarter mile of the well bore, an USDW.
   3. Radioactive waste disposal wells which inject fluids beneath the lowermost formation that contains, within one-quarter mile of the well bore, an USDW.

B. Class II wells are injection wells that inject fluids:
   1. That are brought to the surface in connection with natural gas storage operations, or conventional oil or natural gas production and may be commingled with waste waters from gas plants which are an integral part of production operations, unless those waters are classified as a hazardous waste at the time of injection.
   2. For enhanced recovery of oil or natural gas.
   3. For storage of hydrocarbons which are liquid at standard temperatures and pressure.

C. Class III wells are injection wells used for the extraction of minerals, including:
   1. Sulfur mining by the Frasch process.
2. In-situ production of uranium or other metals from those ore bodies not conventionally mined. Solution mining of conventional mines such as stopes leaching is included in Class V.
3. Solution mining of salts or potash.

D. Class IV wells are injection wells that either:
   1. Inject hazardous or radioactive wastes into or above a formation with an USDW located within one-quarter mile of the well bore, or
   2. Inject hazardous wastes and cannot be classified under subsection (A)(1), or (D)(1) (e.g., wells used to dispose of hazardous wastes into or above a formation which contains an aquifer which has been previously exempted or exempted pursuant to R18-9-A606).

E. Class V wells are injection wells not included in Class I, II, III, IV, or VI.
   1. Class V wells include but are not limited to:
      a. Air conditioning return flow wells used to return to the supply aquifer the water used for heating or cooling in a heat pump.
      b. Cesspools including multiple dwelling, community or regional cesspools, or other devices that receive wastes which have an open bottom and sometimes have perforated sides. The UIC requirements do not apply to single family residential cesspools not to non-residential cesspools which receive solely sanitary wastes and have the capacity to serve fewer than 20 persons a day.
      c. Cooling water return flow wells used to inject water previously used for cooling.
      d. Drainage wells used to drain surface fluid, primarily storm runoff, into a subsurface formation.
      e. Dry wells used for the injection of wastes into a subsurface formation.
      f. Recharge wells used to replenish the water in an aquifer.
      g. Salt water intrusion barrier wells used to inject water into a fresh water aquifer to prevent the intrusion of salt water into the fresh water.
      h. Sand backfill and other backfill wells used to inject a mixture of water and sand, mill tailings or other solids into mined out portions of subsurface mines, except for radioactive wastes.
      i. Septic system wells used to inject the waste or effluent from a multiple dwelling, business establishment, community or regional business establishment septic tank.
      j. Subsidence control wells, other than those used in oil or natural gas production, that inject fluids into a non-oil or gas producing zone to reduce or eliminate subsidence associated with freshwater overdraft.
      k. Injection wells associated with the recovery of geothermal energy for heating, aquaculture, and production of electric power.
      l. Wells used for solution mining of conventional mines such as stopes leaching.
      m. Wells used to inject spent brine into the same formation from which it was withdrawn after extraction of halogens or their salts.
      n. Injection wells used in experimental technologies.
      o. Injection wells used for in situ recovery of lignite, coal, tar sands, and oil shale.
   2. Class V wells do not include:
      a. Single-family residential septic system wells or non-residential septic system wells used solely for the disposal of sanitary waste with a design capacity of less than 3,000 gallons per day.

F. Class VI wells are:
   1. Not experimental in nature that are used for geologic sequestration of carbon dioxide beneath the lowermost formation containing a USDW;
   2. Wells used for geologic sequestration of carbon dioxide that have been granted a waiver of the injection depth requirements pursuant to requirements at R18-9-J670; or
   3. Wells used for geologic sequestration of carbon dioxide that have received an expansion to the areal extent of an existing Class II enhanced oil recovery or enhanced gas recovery aquifer exemption pursuant to R18-9-A605 of this Chapter and R18-9-A604.

R18-9-A605. Identification of Underground Sources of Drinking Water and Exempt Aquifers
A. The Director may identify, by narrative description, illustration, maps, or other means, and shall protect as USDWs, all aquifers and parts of aquifers that meet the definition of USDW in R18-9-A601(70) except to the extent there is an applicable aquifer exemption under subsection (B) of this Section or an expansion to the areal extent of an existing Class II enhanced oil recovery or enhanced gas recovery aquifer exemption for the exclusive purpose of Class VI injection for geologic sequestration under subsection (D) of this Section. Other than EPA-approved aquifer exemption expansions that meet the criteria set forth in R18-9-A606(4), new aquifer
exemptions shall not be issued for Class VI injection wells. Even if an aquifer has not been specifically identified by the Director, it is an USDW if it meets the definition in R18-9-A601(70).

B. Aquifer exemptions procedure:

1. The Director may identify, by narrative description, illustrations, maps, or other means, and describe in geographic and/or geometric terms, such as vertical and lateral limits and gradient, that are clear and definite, all aquifers or parts thereof that the Director proposes to designate as exempted aquifers using the criteria in R18-9-A606.

2. No designation of an exempted aquifer submitted as part of Arizona’s UIC program shall be final until approved by EPA as part of the Arizona UIC Program. No designation of an expansion to the areal extent of a Class II enhanced oil recovery or enhanced gas recovery aquifer exemption for the exclusive purpose of Class VI injection for geologic sequestration shall be final until approved by the EPA as a substantial revision of the Arizona UIC Program in accordance with 40 CFR 145.32.

3. Subsequent to the program approval or promulgation, the Director may, after notice and opportunity for public hearing, identify additional exempted aquifers.

4. Exemption of aquifers identified:

a. Under R18-9-A606(2) shall be treated as a program revision under 40 CFR 145.32;
b. Under R18-9-A606(3) shall become final if the Director submits the exemption in writing to the Administrator and the Administrator has not disapproved the designation within 45 days.

C. Additional aquifer exemption requirements:

1. For Class III wells, the Director shall require an applicant for a permit which necessitates an aquifer exemption under R18-9-A606(2)(a) to furnish the data necessary to demonstrate that the aquifer is expected to be mineral or hydrocarbon producing. Information contained in the mining plan for the proposed project, such as a map and general description of the mining zone, general information on the mineralogy and geochemistry of the mining zone, analysis of the amenability of the mining zone to the proposed mining method, and a time-table of planned development of the mining zone shall be considered by the Director in addition to the information required by R18-9-C616(D).

2. For Class II wells, a demonstration of commercial producibility shall be made as follows:

a. For a Class II well to be used for enhanced oil recovery processes in a field or project containing aquifers from which hydrocarbons were previously produced, commercial producibility shall be presumed by the Director upon a demonstration by the applicant of historical production having occurred in the project area or field.

b. For Class II wells not located in a field or project containing aquifers from which hydrocarbons were previously produced, information such as logs, core data, formation description, formation depth, formation thickness and formation parameters such as permeability and porosity shall be considered by the Director, to the extent such information is available.

D. Owners or operators of Class II enhanced oil recovery or enhanced gas recovery wells may request that the Director approve an expansion to the areal extent of an aquifer exemption already in place for a Class II enhanced oil recovery or enhanced gas recovery well for the exclusive purpose of Class VI injection for geologic sequestration. Such requests must be treated as a substantial program revision to the Arizona UIC program under 40 CFR 145.32 and will not be final until approved by EPA.

1. The owner or operator of a Class II enhanced oil recovery or enhanced gas recovery well that requests an expansion of the areal extent of an existing aquifer exemption for the exclusive purpose of Class VI injection for geologic sequestration must define, by narrative description, illustrations, maps or other means, and describe in geographic and/or geometric terms, such as vertical and lateral limits and gradient, that are clear and definite, all aquifers or parts thereof that are requested to be designated as exempted using the criteria in R18-9-A606.

2. In evaluating a request to expand the areal extent of an aquifer exemption of a Class II enhanced oil recovery or enhanced gas recovery well for the purpose of Class VI injection, the Director must determine that the request meets the criteria for exemptions in R18-9-A606. In making the determination, the Director shall consider:

a. Current and potential future use of the USDWs to be exempted as drinking water resources;
b. The predicted extent of the injected carbon dioxide plume, and any mobilized fluids that may result in degradation of water quality, over the lifetime of the geologic sequestration project, as informed by computational modeling performed pursuant to R18-9-J659(1), in order to ensure that the proposed injection operation will not at any time endanger USDWs including non-exempted portions of the injection formation.
c. Whether the areal extent of the expanded aquifer exemption is of sufficient size to account for any possible revisions to the computational model during reevaluation of the area of review, pursuant to R18-9-J659(E) and
d. Any information submitted to support a waiver request made by the owner or operator under R18-9-J670 if appropriate.

R18-9-A606. Criteria for Exempted Aquifers
An aquifer or a portion thereof which meets the criteria for an “USDW” in R18-9-A601(70) may be determined under R18-9-A605 to be an “exempted aquifer” for Class I-V wells if it meets the criteria in subsections (A)(1) through (A)(3) of this Section. Class VI wells must meet the criteria under subsection (A)(4) of this Section.

1. It does not currently serve as a source of drinking water; and
2. It cannot now and will not in the future serve as a source of drinking water because:
   a. It is mineral hydrocarbon or geothermal energy producing, or can be demonstrated by a permit applicant as part of a permit application for a Class II or Class III operation to contain minerals or hydrocarbons that considering their quantity and location are expected to be commercially producible;
   b. It is situated at a depth or location which makes recovery of water for drinking water purposes economically or technically impractical;
   c. It is so contaminated that it would be economically or technologically impractical to render that water fit for human consumption; or
   d. It is located over a Class III well mining area subject to subsidence or catastrophic collapse; or
3. The total dissolved solids content of the ground water is more than 3,000 and less than 10,000 mg/l and it is not reasonably expected to supply a public water system.
4. The areal extent of an aquifer exemption for a Class II enhanced oil recovery or enhanced gas recovery well may be expanded for the exclusive purpose of Class VI injection for geologic sequestration under R18-9-A605(D) if it meets the following criteria:
   a. It does not currently serve as a source of drinking water; and
   b. The total dissolved solids content of the ground water is more than 3,000 mg/l and less than 10,000 mg/l; and
   c. It is not reasonably expected to supply a public water system.

PART A. GENERAL PROGRAM REQUIREMENTS

R18-9-B607. Prohibition of Unauthorized Injection
Any underground injection, except into a well authorized by rule or authorized by permit under the Arizona UIC program, is prohibited. The construction of any well required to have a permit is prohibited until the permit has been issued.

R18-9-B608. Prohibition of Movement of Fluid into Underground Sources of Drinking Water
A. No owner or operator shall construct, operate, maintain, convert, plug, abandon, or conduct any other injection activity in a manner that allows the movement of fluid containing any contaminant into USDWs, if the presence of that contaminant may cause a violation of any primary drinking water regulation under this Article, as shown in Table 1, or may otherwise adversely affect the health of persons. The applicant for a permit shall have the burden of showing that the requirements of this subsection are met.
B. For Class I, II, III, and VI wells, if any water quality monitoring of an USDW indicates the movement of any contaminant into the USDW, except as authorized under this Article, the Director shall prescribe such additional requirements for construction, corrective action, operation, monitoring, or reporting (including closure of the injection well) as are necessary to prevent such movement. In the case of wells authorized by permit, these additional requirements shall be imposed by modifying the permit in accordance with R18-9-C632 or the permit may be terminated under R18-9-C634 if cause exists, or appropriate enforcement action may be taken if the permit has been violated. In the case of Class V wells authorized by rule see R18-9-I650 through R18-9-I655 in Part I of this Article.
C. For Class V wells, if at any time the Director learns that a Class V well may cause a violation of primary drinking water regulations under this Article, they shall:
   1. Require the injector to obtain an individual permit;
   2. Order the injector to take such actions (including, where required, closure of the injection well) as may be necessary to prevent the violation; or
3. **Take enforcement action.**

D. Whenever the Director learns that a Class V well may be otherwise adversely affecting the health of persons, they may prescribe such actions as may be necessary to prevent the adverse effect, including any action authorized under subsection (C) of this Section.

E. Notwithstanding any other provision of this Section, the Director may take emergency action upon receipt of information that a contaminant which is present in or likely to enter a public water system or USDW may present an imminent and substantial endangerment to the health of persons.


A. **Hazardous Waste Injection.**

1. The following are prohibited, except as provided in subsection (B)(3):
   a. The construction of any well for the purpose of hazardous waste injection.
   b. The operation of any well for the purpose of hazardous waste injection.

2. The owner or operator of a well for the purpose of hazardous waste injection shall close the well in accordance with this subsection.

3. The owner or operator of a well for the purpose of hazardous waste injection shall comply with the following requirements regarding closure of the well:
   a. Prior to abandoning any well for the purpose of hazardous waste injection, the owner or operator shall plug or otherwise close the well in a manner acceptable to the Director.
   b. The owner or operator of a well for the purpose of hazardous waste injection must notify the Director of intent to abandon the well at least 30 days prior to abandonment.

B. **Class IV.**

1. The following are prohibited, except as provided in subsection (B)(3) of this Section:
   a. The construction of any Class IV well.
   b. The operation or maintenance of any Class IV well.

2. The owner or operator of a Class IV well shall comply with the requirements of R18-9-H649 regarding closure of Class IV wells.

3. Wells used to inject contaminated groundwater that has been treated and is being re injected into the same formation that it was drawn are not prohibited by this Section if such injection is approved by the Administrator or the Director pursuant to subsections (a), (b) or (c) below:
   a. Provisions for cleanup of releases under CERCLA, or
   b. The requirements and provisions under RCRA, or
   c. The requirements and provisions under other applicable state laws for corrective and remedial action.

**R18-9-B610. Waiver of Requirement by Director**

A. When injection does not occur into, through, or above an USDW, the Director may authorize a well or project with less stringent requirements for area of review, construction, mechanical integrity, operation, monitoring, and reporting than required under this Article or R18-9-D636 to the extent that reduction in requirements will not result in an increased risk of movement of fluids into an USDW.

B. When injection occurs through or above an USDW, but the radius of endangering influence when computed under R18-9-B612(A) is smaller or equal to the radius of the well, the Director may authorize a well or project with less stringent requirements for operation, monitoring, and reporting than required under R18-9-D636 to the extent that a reduction in requirements will not result in an increased risk of movement of fluids into an USDW.

C. When reducing requirements under this Section, the Director shall prepare a fact sheet under R18-9-C619 explaining the reasons for the action.

**R18-9-B611. Records**

The Director may require, by written notice on a selective well-by-well basis, an owner or operator of an injection well to establish and maintain records, make reports, conduct monitoring, and provide other information as is deemed necessary to determine whether the owner or operator has acted or is acting in compliance with this Article and Part C of the SDWA or its implementing regulations.

**R18-9-B612. Area of Review**

A. The area of review for each injection well or each field, project or area of the State shall be determined according to this Section. The Director may solicit input from the owners or operators of injection wells within the State as to which method is most appropriate for each geographic area or field.

B. Where the area of review is determined according to the zone of endangering influence:
1. The zone of endangering influence shall be:
   a. In the case of application(s) for well permit(s) under R18-9-C616 that area the radius of which is the lateral distance in which the pressures in the injection zone may cause the migration of the injection and/or formation fluid into an USDW; or
   b. In the case of an application for an area permit under R18-9-C624, the project area plus a circumscribing area the width of which is the lateral distance from the perimeter of the project area, in which the pressures in the injection zone may cause the migration of the injection and/or formation fluid into an USDW.

2. Computation of the zone of endangering influence may be based upon the parameters listed below and should be calculated for an injection time period equal to the expected life of the injection well or pattern. The following modified Theis equation illustrates one form which the mathematical model may take:

   \[
   r = \left( \frac{2.25KHt}{S^{10}} \right)^{1/2}
   \]

   where:

   \[
   X = \frac{4nKH(h_o - h_w \times S \times G_b)}{2.3Q}
   \]

   - \( r \) = Radius of endangering influence from injection well (length)
   - \( K \) = Hydraulic conductivity of the injection zone (length/time)
   - \( H \) = Thickness of the injection zone (length)
   - \( t \) = Time of injection (time)
   - \( S \) = Storage coefficient (dimensionless)
   - \( Q \) = Injection rate (volume/time)
   - \( h_o \) = Observed original hydrostatic head of injection zone (length) measured from the base of the lowermost USDW
   - \( h_w \) = Hydrostatic head of USDW (length) measured from the base of the lowest USDW
   - \( S \times G_b \) = Specific gravity of fluid in the injection zone (dimensionless)
   - \( \pi = 3.142 \) (dimensionless)

   The above equation is based on the following assumptions:

   1. The injection zone is homogenous and isotropic;
   2. The injection zone has infinite area extent;
   3. The injection well penetrates the entire thickness of the injection zone;
   4. The well diameter is infinitesimal compared to "\( r \)" when injection time is longer than a few minutes; and
   5. The emplacement of fluid into the injection zone creates instantaneous increase in pressure.

C. Where Fixed Radius is used, the following shall apply:

1. In the case of application(s) for well permit(s) under R18-9-C616 a fixed radius around the well of not less than one-quarter mile may be used.
2. In the case of an application for an area permit under R18-9-C624, a fixed radius width of not less than one-quarter mile for circumscribing area may be used.
3. In determining the fixed radius, the following factors shall be taken into consideration: Chemistry of injected and formation fluids; hydrogeology; population and ground-water use and dependence; and historical practices in the area.

D. If the area of review is determined by a mathematical model pursuant to subsections (B) of this Section, the permissible radius is the result of such calculation even if it is less than one-fourth mile.

R18-9-B613. Mechanical Integrity

A. An injection well has mechanical integrity if:

1. There is no significant leak in the casing, tubing or packer; and
2. There is no significant fluid movement into an USDW through vertical channels adjacent to the injection well bore.

B. One of the following methods must be used to evaluate the absence of significant leaks under subsection (A)(1) of this Section:
1. Following an initial pressure test, monitoring of the tubing-casing annulus pressure with sufficient frequency to be representative, as determined by the Director, while maintaining an annulus pressure different from atmospheric pressure measured at the surface;

2. Pressure test with liquid or gas; or

3. Records of monitoring showing the absence of significant changes in the relationship between injection pressure and injection flow rate for the following Class II enhanced recovery wells:
   a. Existing wells completed without a packer provided that a pressure test has been performed and the data is available and provided further that one pressure test shall be performed at a time when the well is shut down and if the running of such a test will not cause further loss of significant amounts of oil or gas; or
   b. Existing wells constructed without a long string casing, but with surface casing which terminates at the base of fresh water provided that local geological and hydrological features allow such construction and provided further that the annular space shall be visually inspected. For these wells, the Director shall prescribe a monitoring program which will verify the absence of significant fluid movement from the injection zone into an USDW.

C. One of the following methods must be used to determine the absence of significant fluid movement under subsection (A)(2) of this Section:
   1. The results of a temperature or noise log;
   2. For Class II only, cementing records demonstrating the presence of adequate cement to prevent such migration;
   3. For Class III wells where the nature of the casing precludes the use of the logging techniques prescribed at subsection (C)(1) of this Section, cementing records demonstrating the presence of adequate cement to prevent such migration; or
   4. For Class III wells where the Director elects to rely on cementing records to demonstrate the absence of significant fluid movement, the monitoring program prescribed by R18-9-G647(B) shall be designed to verify the absence of significant fluid movement.

D. The Director may allow the use of a test to demonstrate mechanical integrity other than those listed in subsections (B) and (C)(2) of this Section with the written approval of the Administrator.

E. In conducting and evaluating the tests enumerated in this Section or others to be allowed by the Director, the owner or operator and the Director shall apply methods and standards generally accepted in the industry. When the owner or operator reports the results of mechanical integrity tests to the Director, they shall include a description of the test(s) and the method(s) used. In making the evaluation, the Director shall review monitoring and other test data submitted since the previous evaluation.

F. The Director may require additional or alternative tests if the results presented by the owner or operator under subsection (E) of this Section are not satisfactory to the Director to demonstrate that there is no movement of fluid into or between USDWs resulting from the injection activity.

R18-9-B614. Plugging and Abandoning Class I, II, III, IV, and V Wells

A. Requirements for Class I, II and III wells.
   1. Prior to abandoning Class I, II and III wells, the well shall be plugged with cement in a manner which will not allow the movement of fluids either into or between USDWs. The Director may allow Class III wells to use other plugging materials if the Director is satisfied that such materials will prevent movement of fluids into or between USDWs.

2. Placement of the cement plugs shall be accomplished by one of the following:
   a. The Balance method;
   b. The Dump Bailer method;
   c. The Two-Plug method; or
   d. An alternative method approved by the Director, which will reliably provide a comparable level of protection to USDWs.

3. The well to be abandoned shall be in a state of static equilibrium with the mud weight equalized top to bottom, either by circulating the mud in the well at least once or by a comparable method prescribed by the Director, prior to the placement of the cement plug(s).

4. The plugging and abandonment plan required under R18-9-D635(15) and R18-9-D636(A)(5) shall, in the case of a Class III project which underlies or is in an aquifer which has been exempted under R18-9-A606, also demonstrate adequate protection of USDWs. The Director shall prescribe aquifer cleanup and monitoring where it is deemed necessary and feasible to insure adequate protection of USDWs.

55
B. Requirements for Class IV wells. Prior to abandoning a Class IV well, the owner or operator shall close the well in accordance with R18-9-H649.

C. Requirements for Class V wells.
   1. Prior to abandoning a Class V well, the owner or operator shall close the well in a manner that prevents the movement of fluid containing any contaminant into an USDW, if the presence of that contaminant may cause a violation of any primary drinking water regulation under Table 1 of this Article or may otherwise adversely affect the health of persons.
   2. The owner or operator shall dispose of or otherwise manage any soil, gravel, sludge, liquids, or other materials removed from or adjacent to the well in accordance with all applicable Federal, State, and local regulations and requirements.

R18-9-B615. Transitioning from Class II to Class VI Injection Well

A. Owners and operators that are injecting carbon dioxide for the primary purpose of long-term storage into an oil and gas reservoir must apply for and obtain a Class VI geologic sequestration permit when there is an increased risk to the USDWs compared to Class II operations. In determining if there is an increased risk to USDWs, the owner or operator must consider the factors specified in subsection (B) of this Section.

B. The Director shall determine when there is an increased risk to USDWs compared to Class II operations and a Class VI permit is required. In order to make this determination the Director shall consider the following:
   1. Increase in reservoir pressure within the injection zone(s);
   2. Increase in carbon dioxide injection rates;
   3. Decrease in reservoir production rates;
   4. Distance between the injection zone(s) and USDWs;
   5. Suitability of the Class II area of review delineation;
   6. Quality of abandoned well plugs within the area of review;
   7. The owner’s or operator’s plan for recovery of carbon dioxide at the cessation of injection;
   8. The source and properties of injected carbon dioxide; and
   9. Any additional site-specific factors as determined by the Director.

PART C. AUTHORIZATION BY PERMIT FOR UNDERGROUND INJECTION

R18-9-C616. Individual Permits; Application for Individual Permits

A. Unless an underground injection well is authorized by rule under R18-9-I650, all injection activities including construction of an injection well are prohibited until the owner or operator is authorized by permit. Authorization by rule for a well or project that has submitted a permit application terminates for the well or project upon the effective date of the permit. Procedures for applications, issuance, and administration of emergency permits are found exclusively under R18-9-C625.

B. When a facility or activity is owned by one person but is operated by another person, it is the operator’s duty to obtain a permit.

C. Any person who performs or proposes an underground injection for which a permit is or will be required shall submit an application to the Director in accordance with the Arizona UIC program as follows:
   1. For existing wells, as expeditiously as practicable.
   2. For new injection wells, except new wells authorized by an existing area permit under R18-9-C624(C), at a reasonable time before construction is expected to begin.

D. All applicants for Class I, II, III, and V permits shall provide the following information to the Director, using the application form provided by the Director. Applicants for Class VI permits shall follow the criteria provided in R18-9-J657.
   1. Activities conducted by the applicant which require a permit;
   2. Name, mailing address, and location of the facility for which the application is submitted;
   3. Up to four NAICS codes which best reflect the principal products or services provided by the facility;
   4. The operator’s name, address, telephone number, ownership status, and status as Federal, State, private, public, or other entity;
   5. A listing of all state and federal environmental permits or construction approvals received or applied for and other relevant environmental permits;
   6. A topographic map (or other map if a topographic map is unavailable) extending one mile beyond the property boundaries of the source depicting the facility and each of its intake and discharge structures; each of its hazardous waste treatment, storage, or disposal facilities; each well where fluids from the
facility are injected underground; and those wells, springs, and other surface water bodies, and drinking water wells listed in public records or otherwise known to the applicant within a quarter mile of the facility property boundary;
7. A brief description of the nature of the business;
8. A plugging and abandonment plan that meets the requirements of R18-9-B614 and is acceptable to the Director;
9. A listing of any historic property or potential historic property as defined by R12-8-301.

E. Applicants shall keep records of all data used to complete permit applications and any supplemental information submitted under this Section for a period of at least three years from the date the application is signed.

R18-9-C617. Signatories
A. All permit applications, except those submitted for Class II wells, shall be signed as follows:
   1. For a corporation: by a responsible corporate officer. For the purpose of this Section, a responsible corporate officer means:
      a. A president, secretary, treasurer, or vice president of the corporation in charge of a principal business function, or any other person who performs similar policy- or decision-making functions for the corporation; or
      b. The manager of one or more manufacturing, production, or operating facilities employing more than 250 persons or having gross annual sales or expenditures exceeding $25 million, if authority to sign documents has been assigned or delegated to the manager in accordance with corporate procedures.
   2. For a Partnership or sole proprietorship: by a general Partner or the proprietor, respectively; or
   3. For a municipality, State, Federal, or other public agency: by either a principal executive officer or ranking elected official. For purposes of this Section, a principal executive officer of a Federal agency includes:
      a. The chief executive officer of the agency; or
      b. A senior executive officer having responsibility for the overall operations of a principal geographic unit of the agency.
B. All reports required by permits, other information requested by the Director, and all permit applications submitted for Class II wells under R18-9-C616 shall be signed by a person described in subsection (A) of this Section, or by a duly authorized representative of that person. A person is a duly authorized representative only if:
   1. The authorization is made in writing by a person described in subsection (A) of this Section;
   2. The authorization specifies either an individual or a position having responsibility for the overall operation of the regulated facility or activity, such as the position of plant manager, operator of a well or a well field, superintendent, or position of equivalent responsibility; and
   3. The written authorization is submitted to the Director.
C. If an authorization under subsection (B) of this Section is no longer accurate because a different individual or position has responsibility for the overall operation of the facility, a new authorization satisfying the requirements of subsection (B) of this Section must be submitted to the Director prior to or together with any reports, information, or applications to be signed by an authorized representative.
D. Any person signing a document under subsection (A) or (B) of this Section shall make the following certification:

I certify under penalty of law that this document and all attachments were prepared under my direction or supervision in accordance with a system designed to assure that qualified personnel properly gather and evaluate the information submitted. Based on my inquiry of the person or persons who manage the system, or those persons directly responsible for gathering the information, the information submitted is, to the best of my knowledge and belief, true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations.

R18-9-C618. Draft Permits
A. Once an application is complete, the Director shall tentatively decide whether to prepare a draft permit or to deny the application.
B. If the Director tentatively decides to deny the permit application, they shall issue a notice of intent to deny. A notice of intent to deny the permit application is a type of draft permit which follows the same procedures as any draft permit prepared under this section. If the Director's final decision is that the tentative decision to deny
the permit application was incorrect, they shall withdraw the notice of intent to deny and proceed to prepare a draft permit under subsection (D) of this section.

C. If the Director decides to prepare a draft permit, it shall contain the following information, to the extent applicable:
   1. All conditions under R18-9-D635;
   2. All compliance schedules under R18-9-D637;
   3. All monitoring requirements under R18-9-D638; and
   4. Permit conditions under R18-9-D636.

D. All draft permits prepared under this Section shall be accompanied by a brief summary of the basis for the draft permit conditions or the intent to deny, including references to applicable statutory or regulatory provisions and a fact sheet pursuant to R18-9-C619. The Director shall provide the applicant with the draft permit and the fact sheet and allow reasonable time for informal comment by the applicant prior to publicly noticing the draft permit and fact sheet. The Director shall give notice of opportunity for a public hearing and public comment, issue a final permit decision, and respond to comments.

R18-9-C619. Fact Sheet
A. A fact sheet shall be prepared for every draft permit for a UIC facility or activity. The fact sheet shall briefly set forth the principal facts and the significant factual, legal, methodological, and policy questions considered in preparing the draft permit. The Director shall send the fact sheet to the applicant and, on request, to any other person.

B. The fact sheet shall include, when applicable:
   1. A brief description of the type of facility or activity that is the subject of the draft permit.
   2. The type and quantity of wastes, fluids, or pollutants that are proposed to be or are being injected.
   3. A brief summary of the basis for the draft permit conditions including references to applicable statutory or regulatory provisions and appropriate supporting references to the administrative record.
   4. Reasons why any requested variance or alternatives to required standards do or do not appear justified.
   5. A description of the procedures for reaching a final decision on the draft permit, including:
      a. The beginning and ending dates of the comment period under R18-9-C620 and the address where comments will be received;
      b. Procedures for requesting a hearing and the nature of that hearing; and
      c. Any other procedures by which the public may Participate in the final decision.
   6. The name and telephone number of a person to contact for additional information.

R18-9-C620. Public Notice of Permit Actions and Public Comment Period
A. The Director shall give public notice that the following actions have occurred:
   1. A draft permit that has been prepared under R18-9-C618 and
   2. A hearing has been scheduled under R18-9-C622.

B. Public notices may describe more than one permit or permit action.

C. Public notice of the preparation of a draft permit required under subsection (A) of this Section:
   1. Shall allow at least 30 days for public comment; and
   2. Shall be given at least 30 days before the hearing date.

D. Public notice of activities described in subsection (A) of this Section shall be given by the following methods:
   1. Delivery of a copy of the notice to:
      a. The applicant;
      b. Any affected federal, state, tribal, or local agency, or council of government;
      c. Federal and state agencies with jurisdiction over fish, shellfish, and wildlife resources, and the State Historic Preservation Office;
      d. Any person who requested, in writing, notification of the activity;
      e. Any persons on a contact list developed from past permit proceedings and public outreach; and
      f. For Class VI injection well UIC permits, mailing or e-mailing a notice to State and local oil and gas regulatory agencies and State agencies regulating mineral exploration and recovery and all agencies that oversee injection wells in the State.
   2. For Major Facilities only, newspaper publication in accordance with A.A.C. R18-1-401(A)(1).

E. All public notices issued under this Part shall contain the following information:
   1. Name and address of the Department;
2. Name and address of the permittee or permit applicant and, if different, of the facility or activity regulated by the permit;
3. A brief description of the business conducted at the facility or activity described in the permit application or the draft permit;
4. Name, address, and telephone number of a person from whom interested persons may obtain further information, including copies of the draft permit or draft general permit, as the case may be, fact sheet, and the application;
5. A brief description of the comment procedures, the time and place of any hearing, including a statement of procedures to request a hearing, unless a hearing has already been scheduled, and other procedures that the public may use to participate in the final permit decision; and
6. Any additional information considered necessary to the permit decision.

F. In addition to the general public notice described in subsection (E) of this Section, the public notice of hearing under R18-9-C622 shall contain the following information:
1. Reference to the date of previous public notices relating to the permit;
2. Date, time, and place of the hearing; and
3. A brief description of the nature and purpose of the hearing, including the applicable rules and procedures.

G. In addition to the general public notice described in subsection (E) of this Section, the Director shall deliver a copy of the fact sheet, permit application, and draft permit to all persons identified in subsections (D)(1)(a), (D)(1)(b), and (D)(1)(c).

**R18-9-C621. Public Comments and Requests for Public Hearings**

During the public comment period provided under R18-9-C620, any interested person may submit written comments on the draft permit and may request a public hearing, if no hearing has already been scheduled. A request for a public hearing shall be in writing and shall state the nature of the issues proposed to be raised in the hearing. All comments shall be considered in making the final decision and shall be answered as provided in R18-9-C623.

**R18-9-C622. Public Hearings**

A. The Director shall hold a public hearing whenever they find, on the basis of a request, a significant degree of public interest in a draft permit(s).

B. The Director may also hold a public hearing at their discretion such as when a hearing might clarify one or more issues involved in the permit decision. The Director may designate a presiding officer if a hearing is held.

C. Public notice of the hearing shall be given as specified in R18-9-C620.

D. Any person may submit oral or written statements and data concerning the draft permit. Reasonable limits may be set upon the time allowed for oral statements, and the submission of statements in writing may be required. The public comment period under R18-9-C620 shall automatically be extended to the close of any public hearing under this Section. The hearing officer may also extend the comment period by so stating at the hearing.

E. An audio recording or written transcript of the hearing shall be made available to the public upon request.

**R18-9-C623. Response to Comments**

A. At the time that any final permit is issued under R18-9-C627, the Director shall issue a response to comments. This response shall:
1. Specify which provisions, if any, of the draft permit have been changed in the final permit decision, and the reasons for the change; and
2. Briefly describe and respond to all significant comments on the draft permit raised during the public comment period, or during any hearing.

B. The response to comments shall be available to the public.

**R18-9-C624. Area Permits**

A. The Director may issue a permit on an area basis, rather than for each well individually, provided that the permit is for injection wells:
1. Described and identified by location in permit application(s) if they are existing wells, except that the Director may accept a single description of wells with substantially the same characteristics;
2. Within the same well field, facility site, reservoir, project, or similar unit located in Arizona;
3. Operated by a single owner or operator;
4. Used to inject fluids other than hazardous waste; and
5. Other than Class VI wells.
B. Area permits shall specify:
   1. The area within which underground injections are authorized; and
   2. The requirements for construction, monitoring, reporting, operation, and abandonment, for all wells
      authorized by the permit.
C. The area permit may authorize the permittee to construct and operate, convert, or plug and abandon wells within
   the permit area provided:
   1. The permittee notifies the Director at such time as the permit requires;
   2. The additional well satisfies the criteria in subsection (A) of this Section and meets the requirements
      specified in the permit under subsection (B) of this Section; and
   3. The cumulative effects of drilling and operation of additional injection wells are considered by the
      Director during evaluation of the area permit application and are acceptable to the Director.
D. If the Director determines any well that is constructed pursuant to subsection (C) of this Section does not satisfy
   any of the requirements of subsections (C)(1) and (2) of this Section the Director may modify the permit under
   R18-9-C632, terminate under R18-9-C634, or take enforcement action. If the Director determines that
   cumulative effects are unacceptable, the permit may be modified under R18-9-C632.

R18-9-C625. Emergency Permits
A. Notwithstanding any other provision of this Article, the Director may temporarily permit a specific underground
   injection if:
   1. An imminent and substantial endangerment to the health of persons will result unless a temporary
      emergency permit is granted; or
   2. A substantial and irretrievable loss of oil or gas resources will occur unless a temporary emergency permit
      is granted to a Class II well; and
      a. Timely application for a permit could not practicably have been made; and
      b. The injection will not result in the movement of fluids into USDWs; or
   3. A substantial delay in production of oil or gas resources will occur unless a temporary emergency permit is
      granted to a new Class II well and the temporary authorization will not result in the movement of fluids
      into an USDW.
B. Requirements for issuance.
   1. Any temporary permit under subsection (A)(1) of this Section shall be for no longer term than required to
      prevent the hazard.
   2. Any temporary permit under subsection (A)(2) of this Section shall be for no longer than 90 days, except
      that if a permit application has been submitted prior to the expiration of the 90-day period, the Director
      may extend the temporary permit until final action on the application.
   3. Any temporary permit under subsection (A)(3) of this Section shall be issued only after a complete permit
      application has been submitted and shall be effective until final action on the application.
   4. Notice of any temporary permit under this Section shall be published in accordance with R18-9-C621
      within ten days of the issuance of the permit.
   5. The temporary permit under this Section may be either oral or written. If oral, it must be followed within
      five calendar days by a written temporary emergency permit.
   6. The Director shall condition the temporary permit in any manner they determine is necessary to ensure
      that the injection will not result in the movement of fluids into an USDW.

R18-9-C626. Effect of a Permit
A. Except for Class II and III wells, compliance with a permit during its term constitutes compliance, for purposes
   of enforcement, with this Article and Part C of the SDWA. However, a permit may be modified, revoked and
   reissued, or terminated during its term for cause as set forth in R18-9-C632 and R18-9-C634.
B. The issuance of a permit does not convey any property rights of any sort, or any exclusive privilege.
C. The issuance of a permit does not authorize any injury to persons or property or invasion of other private rights,
   or any infringement of State or local law or regulations.

R18-9-C627. Final Permit Decision and Notification
A. Issuance of a final permit decision by the Director shall be accompanied by the permit and an updated fact sheet
   per R18-9-C619, if applicable, and a notification to the applicant and each person who has submitted written
   comments or requested notice of the final permit decision. The notice and hearing procedures are subject to
   either Title 41, Chapter 6, Article 10, or Title 49, Chapter 2, Article 7 of the A.R.S.
B. The notice shall include:
1. If applicable, the reasons for the denial, revocation or termination, including reference to the statutes or rules on which the decision is based.
2. A description of the party’s right to request a hearing and a reference to the procedures for appealing the final permit decision, including the number of days within which an appeal may be filed and the name and telephone number of the Department contact person who can answer questions regarding the appeals process.
3. A reference to the applicant’s right to request an informal settlement conference under A.R.S. § 41-1092.06.

C. If the final permit decision is based on a determination by the Director that the applicable criteria under R18-9-A606 are not satisfied, then that determination may be included as part of the appeal.

D. The final permit decision shall take effect 30 days after its issuance in accordance with the notification requirements of subsection A of this Section unless stayed pursuant to Title 41, Chapter 6, Article 10, or Title 49, Chapter 2, Article 7 of the A.R.S.

E. If, under this Article, the issuance, modification, or revocation and reissuance of a permit necessitates a new aquifer exemption or enlargement of a previously approved aquifer exemption, then the issuance, modification, or revocation and reissuance of the permit is appealable, but shall not become effective unless the new aquifer exemption or enlargement of the previously approved aquifer exemption has been approved by the Administrator.

F. If, under this Article, the issuance, modification, or revocation and reissuance of a permit necessitates an injection depth waiver pursuant to R18-9-J670 of this Article then the issuance, modification, or revocation and reissuance of the permit is appealable, but shall not become effective until the Director is in receipt of written concurrence from the Administrator.

R18-9-C628. Permit Duration
A. Permits for Class I and Class V wells shall be effective for a fixed term not to exceed ten years. UIC permits for Class II and III wells shall be issued for a period up to the operating life of the facility. UIC permits for Class VI wells shall be issued for the operating life of the facility and the post-injection site care period. The Director shall review each issued Class II, III, and VI well UIC permit at least once every five years to determine whether it should be modified, revoked and reissued, terminated, or a minor modification made as provided in R18-9-C632.

B. Except as provided in R18-9-C629, the term of a permit shall not be extended by modification beyond the maximum duration specified in this Section.

C. The Director may issue any permit for a duration that is less than the full allowable term under this Section.

R18-9-C629. Continuation of Expiring Permits
A. The conditions of an expiring permit continue in force under A.R.S. § 41-1092.11(A) until the effective date of a new permit if:
1. The permittee has submitted a timely application that is a complete application for a new permit; and
2. The Director, through no fault of the permittee, does not issue a new permit with an effective date on or before the expiration date of the prior permit.

B. Permits continued under this Section remain fully effective and enforceable.

C. When the permittee is not in compliance with the conditions of the expiring or expired permits the Director may choose to do any or all of the following:
1. Initiate enforcement action based upon the permit that has been continued;
2. Issue a notice of intent to deny the new permit. If the permit is denied, the owner or operator would then be required to cease the activities authorized by the continued permit or be subject to enforcement action for operating without a permit;
3. Issue a new permit under this Article with appropriate conditions; or
4. Take other action as authorized under this Article.

D. Upon the effective date of EPA’s approval of Arizona’s UIC program, the Department shall administer any permit authorized or issued under the EPA UIC program in the state of Arizona, excluding Indian lands. The Director may continue expired or expiring EPA-issued UIC permits until the effective date of a new state-issued UIC permit.
R18-9-C630. Permit Transfer
A. Except as provided in subsection (B) of this Section, a permit may be transferred by the permittee to a new owner or operator only if the permit has been modified or revoked and reissued under R18-9-C632(F)(2), or a minor modification made under R18-9-C633(4), to identify the new permittee and incorporate such other requirements as may be necessary under this Article the Safe Drinking Water Act.
B. As an alternative to transfers under subsection (A) of this Section, any UIC permit for a well not injecting hazardous waste or injecting carbon dioxide for geological sequestration may be automatically transferred to a new permittee if:
   1. The current permittee notifies the Director at least 30 days in advance of the proposed transfer date referred to in subsection (B)(2) of this Section;
   2. The notice includes a written agreement between the existing and new permittees containing a specific date for transfer or permit responsibility, coverage, and liability between them, and the notice demonstrates that the financial responsibility requirements of R18-9-D636(A)(6) will be met by the new permittee; and
   3. The Director does not notify the existing permittee and the proposed new permittee of the Director’s intent to modify or revoke and reissue the permit. A modification under this Section may also be a minor modification under R18-9-C633. If this notice is not received, the transfer is effective on the date specified in the agreement mentioned in subsection (B)(2) of this Section.

R18-9-C631. Modification; Revocation and Reissuance; or Termination of Permits
A. Permits may only be modified or revoked and reissued pursuant to R18-9-C632 or terminated pursuant to R18-9-C634 either at the request of any interested person, including the permittee, or upon the Director’s initiative. All requests shall be made in writing and shall contain facts or reasons supporting the request.
B. If the Director decides a request to modify, revoke and reissue, or terminate is not justified, they shall send the requestor a brief written response giving a reason for the decision. Denial of a request to terminate does not require a notice of intent to deny. Denial of a request for modification or revocation and reissuance requires a notice of intent to deny only when the request is made by the permittee, the scope of the request has not previously been requested and denied and the request is not for a minor modification. A notice of intent to deny is a type of draft permit which shall follow the same procedures as any draft permit prepared pursuant to R18-9-C618.
C. If the Director preliminarily decides to modify or revoke and reissue a permit under R18-9-C632, they shall prepare a draft permit under R18-9-C618 incorporating the proposed changes and notify the permittee in writing of the reason for the preliminary decision to modify or revoke and reissue a permit with reference to the statute or rule on which the decision is based. The Director may request additional information and, in the case of a modified permit, may require the submission of an updated application. The Director shall require the submission of a new application in the case of revoked and reissued permits.
D. In a permit modification under this Section, only those conditions to be modified shall be reopened when a new draft permit is prepared. All other aspects of the existing permit shall remain in effect for the duration of the unmodified permit. When a permit is revoked and reissued under this Section, the entire permit is reopened just as if the permit had expired and was being reissued. During any modification or revocation and reissuance proceeding the permittee shall comply with all conditions of the existing permit until a new final permit is issued.
E. Minor modifications pursuant to R18-9-C633 are not subject to the requirements of this Section.
F. If the Director preliminarily decides to terminate under R18-9-C634(A)(1), (2) or (3), the Director shall issue a notice of intent to terminate that identifies the reason for the preliminary decision to terminate with reference to the statute or rule on which the decision is based. A notice of intent to terminate is not required when a permittee requests termination under R18-9-C634(A)(4). A notice of intent to terminate is a type of draft permit which shall follow the same procedures as any draft permit prepared pursuant to R18-9-C618.

R18-9-C632. Modification; Revocation and Reissuance of Permits
A. When the Director receives any information (for example, inspects the facility, receives information submitted by the permittee as required in the permit, receives a request for modification or revocation and reissuance under R18-9-C631, or conducts a review of the permit file) they may determine whether or not one or more of the causes listed in subsections (E) and (F) of this Section for modification or revocation and reissuance or both exist.
B. If cause exists, the Director may modify or revoke and reissue the permit accordingly, subject to the limitations of subsection (G) of this Section, and may request an updated application if necessary.
C. If cause does not exist under this Section or R18-9-C633, the Director shall not modify or revoke and reissue the permit.

D. If a permit modification satisfies the criteria in R18-9-C633 for “minor modifications” the permit may be modified without a draft permit or public review. Otherwise, a draft permit must be prepared and other procedures under this Article must be followed.

E. For Class II, Class III or Class VI wells the following may be causes for revocation and reissuance as well as modification; and for all other wells the following may be cause for revocation or reissuance as well as modification when the permittee requests or agrees:

1. There are material and substantial alterations or additions to the permitted facility or activity which occurred after permit issuance which justify the application of permit conditions that are different or absent in the existing permit.

2. Permits other than for Class II and III wells may be modified during their terms for this cause only if the information was not available at the time of permit issuance, other than revised regulations, guidance, or test methods, and would have justified the application of different permit conditions at the time of issuance. For UIC area permits under R18-9-C624, this cause shall include any information indicating that cumulative effects on the environment are unacceptable.

3. The standards or regulations on which the permit was based have been changed by promulgation of new regulations or by judicial decision after the permit was issued. Permits other than those for Class II, Class III or Class VI wells may be modified during their permit terms for this cause only as follows:
   a. For promulgation of amended standards or regulations, when:
      i. The permit condition requested to be modified was based on a regulation promulgated under this Article;
      ii. ADEQ has revised, withdrawn, or modified that portion of the regulation on which the permit condition was based, and
      iii. A permittee requests modification in accordance with R18-9-C631 within 90 days after Arizona Administrative Register notice of the ADEQ action on which the request is based.
   b. For judicial decisions, a court of competent jurisdiction has remanded and stayed ADEQ promulgated regulations if the remand and stay concern that portion of the regulations on which the permit condition was based and a request is filed by the permittee in accordance with R18-9-C631 within 90 days of judicial remand.

4. The Director determines if good cause exists for modification of a compliance schedule. Good cause includes unforeseen circumstances, like a strike, a flood, a materials shortage or other events over which the permittee has little or no control and for which there is no reasonably available remedy. See also R18-9-C633 (minor modifications).

5. Additionally, for Class VI wells, whenever the Director determines that permit changes are necessary based on:
   a. Area of review reevaluations under R18-9-J659(E)(1);
   b. Any amendments to the testing and monitoring plan under R18-9-J665(10);
   c. Any amendments to the injection well plugging plan under R18-9-J667(C);
   d. Any amendments to the post-injection site care and site closure plan under R18-9-J668(A)(3);
   e. Any amendments to the emergency and remedial response plan under R18-9-J669(D); or
   f. A review of monitoring and/or testing results conducted in accordance with permit requirements.

F. The following are causes to modify or, alternatively, revoke and reissue a permit:

1. Cause exists for termination under R18-9-C634, and the Director determines that modification or revocation and reissuance is appropriate.

2. The Director has received notification of a proposed transfer of the permit. A permit also may be modified to reflect a transfer after the effective date of an automatic transfer under R18-9-C630(B) but will not be revoked and reissued after the effective date of the transfer except upon the request of the new permittee.

3. A determination that the waste being injected is a hazardous waste as defined in A.R.S. § 49-921 either because the definition has been revised, or because a previous determination has been changed.

G. Suitability of the facility location will not be considered at the time of permit modification or revocation and reissuance unless new information or standards indicate that a threat to human health or the environment exists which was unknown at the time of permit issuance.
R18-9-C633. Minor Modifications of Permits
Upon the consent of the permittee, the Director may modify a permit to make the corrections or allowances for changes in the permitted activity listed in this Section, without following the procedures of this Article. Any permit modification not processed as a minor modification under this Section must be made for cause and with a draft permit and public notice as required by R18-9-C632. Minor modifications may only:

1. Correct typographical errors;
2. Require more frequent monitoring or reporting by the permittee;
3. Change an interim compliance date in a schedule of compliance, provided the new date is not more than 120 days after the date specified in the existing permit and does not interfere with attainment of the final compliance date requirement;
4. Allow for a change in ownership or operational control of a facility where the Director determines that no other change in the permit is necessary, provided that a written agreement containing a specific date for transfer of permit responsibility, coverage, and liability between the current and new permittees has been submitted to the Director;
5. Change quantities or types of fluids injected which are within the capacity of the facility as permitted and, in the judgment of the Director, would not interfere with the operation of the facility or its ability to meet conditions described in the permit and would not change its classification;
6. Change construction requirements approved by the Director pursuant to R18-9-D636(A)(1), provided that any such alteration shall comply with the requirements of this Article;
7. Amend a plugging and abandonment plan that has been updated under R18-9-D636(A)(5); or
8. Amend a Class VI injection well testing and monitoring plan, plugging plan, post-injection site care and site closure plan, or emergency and remedial response plan where the modifications merely clarify or correct the plan, as determined by the Director.

R18-9-C634. Termination of Permits
A. The Director may terminate a permit during its term, or deny a permit renewal application for the following causes:
   1. Noncompliance by the permittee with any condition of the permit;
   2. The permittee's failure in the application or during the permit issuance process to disclose fully all relevant facts, or the permittee's misrepresentation of any relevant facts at any time; or
   3. A determination that the permitted activity endangers human health or the environment and can only be regulated to acceptable levels by permit modification or termination; or
   4. The permittee has requested termination of their permit due to the completion of the terms and conditions therein, including proper abandonment or plugging pursuant to R18-9-B614.
B. The Director shall follow the applicable procedures as required under R18-9-C631(F) in terminating any permit under this Section.

PART D: PERMIT CONDITIONS FOR UNDERGROUND INJECTION

R18-9-D635. Conditions Applicable to All Permits
The following conditions apply to all UIC permits. All conditions applicable to all permits shall be incorporated into the permits issued under this Article, either expressly or referenced by specific citation. If incorporated by reference, a specific citation to this Section must be given in the permit.

1. The permittee must comply with all conditions of any permit issued under this Article. Any permit noncompliance constitutes a violation of this Article and is grounds for enforcement action; for permit modification, revocation and reissuance, or termination; or for denial of a permit renewal application unless otherwise authorized in an emergency permit under R18-9-C625.
2. If the permittee wishes to continue any activity regulated by permit under this Article after the expiration date of this permit, the permittee must apply for and obtain a new permit.
3. It shall not be a defense for a permittee in an enforcement action that it would have been necessary to halt or reduce the permitted activity in order to maintain compliance with the conditions of this permit.
4. The permittee shall take all reasonable steps to minimize or correct any adverse impact on the environment resulting from noncompliance with this permit.
5. The permittee shall at all times properly operate and maintain all facilities and systems of treatment and control, and related appurtenances, that are installed or used by the permittee to achieve compliance with the conditions of this permit. Proper operation and maintenance includes effective performance, adequate
funding, adequate operator staffing and training, and adequate laboratory and process controls, including appropriate quality assurance procedures. This provision requires the operation of back-up or auxiliary facilities or similar systems only when necessary to achieve compliance with the conditions of the permit.

6. This permit may be modified, revoked and reissued, or terminated for cause. The filing of a request by the permittee for a permit modification, revocation and reissuance, or termination, or a notification of planned changes or anticipated noncompliance, does not stay any permit condition.

7. This permit does not convey property rights of any sort, or any exclusive privilege.

8. The permittee shall furnish to the Director, within a time specified, any information which the Director may request to determine whether cause exists for modifying, revoking and reissuing, or terminating this permit, or to determine compliance with this permit. The permittee shall also furnish to the Director, upon request, copies of records required to be kept by this permit.

9. The permittee shall allow the Director, or an authorized representative, upon the presentation of credentials and other documents as may be required by law, to:
   a. Enter upon the permittee's premises where a regulated facility or activity is located or conducted, or where records must be kept under the conditions of this permit;
   b. Have access to and copy, at reasonable times, any records that must be kept under the conditions of this permit;
   c. Inspect at reasonable times any facilities, equipment (including monitoring and control equipment), practices, or operations regulated or required under this permit; and
   d. Sample or monitor at reasonable times, for the purposes of assuring permit compliance or as otherwise authorized by this Article the SDWA, any substances or parameters at any location.

10. Monitoring and records.
    a. Samples and measurements taken for the purpose of monitoring shall be representative of the monitored activity.
    b. The permittee shall retain records of all monitoring information, including the following:
       i. Calibration and maintenance records and all original strip-chart recordings for continuous monitoring instrumentation, copies of all reports required by this permit, and records of all data used to complete the application for this permit, for a period of at least three years from the date of the sample, measurement, report, or application. This period may be extended by request of the Director at any time; and
       ii. The nature and composition of all injected fluids until three years after the completion of any plugging and abandonment procedures specified under R18-9-D636(A)(5), or under this Article as appropriate. The Director may require the owner or operator to deliver the records to the Director at the conclusion of the retention period.
    c. Records of monitoring information shall include:
       i. The date, exact place, and time of sampling or measurements;
       ii. The individual(s) who performed the sampling or measurements;
       iii. The date(s) analyses were performed;
       iv. The individual(s) who performed the analyses;
       v. The analytical techniques or methods used; and
       vi. The results of such analyses.
    d. Owners or operators of Class VI wells shall retain records as specified in Part J of this Article, including R18-9-J659(G), R18-9-J666(6), R18-9-J667(D), R18-9-J668(F), and R18-9-J668(H).

11. All applications, reports, or information submitted to the Director shall be signed and certified as required under R18-9-C617.

12. Reporting requirements.
    a. The permittee shall give notice to the Director as soon as possible of any planned physical alterations or additions to the permitted facility.
    b. The permittee shall give advance notice to the Director of any planned changes in the permitted facility or activity that may result in noncompliance with permit requirements.
    c. This permit is not transferable to any person except after notice to the Director. The Director may require modification or revocation and reissuance of the permit to change the name of the permittee and incorporate such other requirements as may be necessary under this Article.
    d. Monitoring results shall be reported at the intervals specified in this permit.
e. Reports of compliance or noncompliance with, or any progress reports on, interim and final requirements contained in any compliance schedule of this permit shall be submitted no later than 30 days following each schedule date.

f. The permittee shall report any noncompliance that may endanger health or the environment within 24 hours, including:
   i. Any monitoring or other information that indicates any contaminant may cause an endangerment to a USDW; or
   ii. Any noncompliance with a permit condition or malfunction of the injection system that may cause fluid migration into or between USDWs. Any information shall be provided orally within 24 hours from the time the permittee becomes aware of the circumstances. A written submission shall also be provided within five days of the time the permittee becomes aware of the circumstances. The written submission shall contain a description of the noncompliance and its cause, the period of noncompliance, including exact dates and times, and if the noncompliance has not been corrected, the anticipated time it is expected to continue; and steps taken or planned to reduce, eliminate, and prevent reoccurrence of the noncompliance.

   g. The permittee shall report all instances of noncompliance not reported under subsections (A)(12)(a), (A)(12)(d), (A)(12)(e), and (A)(12)(f) of this Section, at the time monitoring reports are submitted. The reports shall contain the information listed in subsection (A)(12)(f) of this Section.

h. Where the permittee becomes aware that it failed to submit any relevant facts in a permit application, or submitted incorrect information in a permit application or in any report to the Director, it shall promptly submit such facts or information.

13. Except for all new wells authorized by an area permit under R18-9-C624(C), a new injection well may not commence injection until construction is complete; and:
   a. The permittee has submitted notice of completion of construction to the Director; and
   b. Either of the following apply:
      i. The Director has inspected or otherwise reviewed the new injection well and finds it is in compliance with the conditions of the permit; or
      ii. The permittee has not received notice from the Director of the intent to inspect or otherwise review the new injection well within 13 days of the date of the notice under subsection (A)(13)(a) of this Section, in which case prior inspection or review is waived and the permittee may commence injection. The Director shall include in the notice a reasonable time period in which the well shall be inspected.

14. The permittee shall notify the Director at such times as the permit requires before conversion or abandonment of the well or in the case of area permits before closure of the project.

15. A Class I, II, or III permit shall include, and a Class V permit may include, conditions that meet the requirements of R18-9-B614 to ensure that plugging and abandonment of the well will not allow the movement of fluids into or between USDWs. Where the plan meets the requirements of R18-9-B614, the Director shall incorporate the plan into the permit as a permit condition. Where the Director's review of an application indicates that the permittee's plan is inadequate, the Director may require the applicant to revise the plan, prescribe conditions meeting the requirements of this subsection, or deny the permit. A Class VI permit shall include conditions that meet the requirements set forth in R18-9-J667. Where the plan meets the requirements of R18-9-J667, the Director shall incorporate it into the permit as a permit condition. For purposes of this subsection, temporary or intermittent cessation of injection operations is not abandonment.

16. Within 60 days after plugging a well or at the time of the next quarterly report, whichever is less, the owner or operator shall submit a report to the Director. If the quarterly report is due less than 15 days before completion of plugging, then the report shall be submitted within 60 days. The report shall be certified as accurate by the person who performed the plugging operation. Such report shall consist of either:
   a. A statement that the well was plugged in accordance with the plan previously submitted to the Director; or
   b. Where actual plugging differed from the plan previously submitted, an updated version of the plan on the form supplied by the Director, specifying the differences.

17. Duty to establish and maintain mechanical integrity.
a. The owner or operator of a Class I, II, III or VI well permitted under this Article shall establish mechanical integrity prior to commencing injection or on a schedule determined by the Director. Thereafter the owner or operator of Class I, II, and III wells must maintain mechanical integrity as defined in R18-9-B613 and the owner or operator of Class VI wells must maintain mechanical integrity as defined in R18-9-J664.

b. When the Director determines that a Class I, II, III or VI well lacks mechanical integrity pursuant to R18-9-B613 or R18-9-J664 for Class VI, written notice of the determination will be given to the owner or operator. Unless the Director requires immediate cessation, the owner or operator shall cease injection into the well within 48 hours of receipt of the Director's determination. The Director may allow plugging of the well pursuant to the requirements of R18-9-B614 or require the permittee to perform such additional construction, operation, monitoring, reporting, and corrective action as is necessary to prevent the movement of fluid into or between USDWs caused by the lack of mechanical integrity. The owner or operator may resume injection upon written notification from the Director that the owner or operator has demonstrated mechanical integrity pursuant to R18-9-B613.

c. The Director may allow the owner or operator of a well that lacks mechanical integrity pursuant to R18-9-B613(A)(1) to continue or resume injection, if the owner or operator has made a satisfactory demonstration that there is no movement of fluid into or between USDWs.

R18-9-D636. Establishing Permit Conditions
A. In addition to conditions required in R18-9-D635, the Director shall establish conditions, as required on a case-by-case basis under R18-9-C628 (Permit Duration), R18-9-D637 (Schedules of Compliance), and R18-9-D638 (Requirements for Recording and Reporting Monitoring Results). Permits for owners or operators of Class VI injection wells shall include conditions meeting the requirements of Part J of this Article. Permits for other wells shall contain the following requirements, when applicable.

1. Construction requirements as set forth in this Article. Existing wells shall achieve compliance with such requirements according to a compliance schedule established as a permit condition. The owner or operator of a proposed new injection well shall submit plans for testing, drilling, and construction as part of the permit application. Except as authorized by an area permit, no construction may commence until a permit has been issued containing construction requirements. New wells shall be in compliance with these requirements prior to commencing injection operations. Changes in construction plans during construction may be approved by the Director as minor modifications as defined under R18-9-C633. No such changes may be physically incorporated into construction of the well prior to approval of the modification by the Director.


3. Operation requirements as set forth in this Article; the permit shall establish any maximum injection volumes and/or pressures necessary to assure that fractures are not initiated in the confining zone, that injected fluids do not migrate into any USDW, that formation fluids are not displaced into any USDW, and to assure compliance with the operating requirements under this Article.

4. Monitoring and reporting requirements as set forth in this Article. The permittee shall be required to identify types of tests and methods used to generate the monitoring data. Monitoring of the nature of injected fluids shall comply with an analytical method prescribed in A.A.C. R9-14-610, or an alternative analytical method approved under A.A.C. R9-14-610(C), or as approved by the Director. A test result from a sample taken to determine compliance with a national primary drinking water standard is valid only if the sample is analyzed by a laboratory that is licensed by the Arizona Department of Health Services, an out-of-state laboratory licensed under A.R.S. § 36-495.14, or a laboratory exempted under A.R.S. § 36-495.02, for the analysis performed.

5. After a cessation of operations for two years the owner or operator shall plug and abandon the well in accordance with the plan unless they:
   a. Provide notice to the Director; and
   b. Describe actions or procedures, satisfactory to the Director, that the owner or operator will take to ensure that the well will not endanger USDWs during the period of temporary abandonment. These actions and procedures shall include compliance with the technical requirements applicable to active injection wells unless waived by the Director.

a. The permittee, including the transferor of a permit, is required to demonstrate and maintain financial responsibility and resources to close, plug, and abandon the underground injection operation in a manner prescribed by the Director until:
   i. The well has been plugged and abandoned in accordance with an approved plugging and abandonment plan pursuant to R18-9-D635(15), R18-9-B614, and R18-9-J667, and submitted a plugging and abandonment report pursuant to R18-9-D635(16); or
   ii. The well has been converted in compliance with the requirements of R18-9-D635(14); or
   iii. The transferor of a permit has received notice from the Director that the owner or operator receiving transfer of the permit, the new permittee, has demonstrated financial responsibility for the well.

b. The permittee shall show evidence of such financial responsibility to the Director by the submission of a surety bond, or other adequate assurance, such as a financial statement or other materials acceptable to the Director. For Class VI wells, the permittee shall show evidence of such financial responsibility to the Director by the submission of a qualifying instrument, such as a financial statement or other materials acceptable to the Director. The owner or operator of a Class VI well must comply with the financial responsibility requirements set forth in R18-9-J660.

7. A permit for any Class I, II, III or VI well or injection project that lacks mechanical integrity shall include, and for any Class V well may include, a condition prohibiting injection operations until the permittee shows to the satisfaction of the Director under R18-9-B613 or R18-9-J664 of this Chapter for Class VI, that the well has mechanical integrity.

8. The Director shall impose on a case-by-case basis such additional conditions as are necessary to prevent the migration of fluids into USDWs.

B. In addition to conditions required in all permits, the Director shall establish conditions in permits as required on a case-by-case basis, to provide for and assure compliance with all applicable requirements of this Article.

1. Applicable requirements include, but are not limited to:
   a. State statutory or regulatory requirements in effect prior to final administrative disposition of a permit; or
   b. Any requirement in effect prior to the modification or revocation and reissuance of a permit, to the extent allowed under R18-9-C632.

C. New or reissued permits, and to the extent allowed under R18-9-C632 modified or revoked and reissued permits, shall incorporate each of the applicable requirements referenced in this Section.

D. All permit conditions shall be incorporated either expressly or by reference. If incorporated by reference, a specific citation to the applicable regulations or requirements must be given in the permit.

E. Permits shall provide language on duration, expiration and termination.

R18-9-D637. Compliance Schedule

A. A permit may, when appropriate, specify a schedule for compliance with this Article.

1. Any compliance schedules shall require compliance as soon as possible, and in no case later than three years after the effective date of the permit.

2. Except as provided in subsection (B)(1)(b) of this Section, if a permit establishes a compliance schedule that exceeds one year from the date of permit issuance, the schedule shall set forth interim requirements and the dates for their achievement.
   a. The time between interim dates shall not exceed one year.
   b. If the time necessary for completion of any interim requirement is more than one year and is not readily divisible into stages for completion, the permit shall specify interim dates for the submission of reports of progress toward completion of the interim requirements and indicate a projected completion date.

3. The permit shall be written to require that if subsection (A)(1) of this Section is applicable, progress reports be submitted no later than 30 days following each interim date and the final date of compliance.

B. A permit applicant or permittee may cease conducting regulated activities at a given time by plugging and abandonment rather than continue to operate and meet permit requirements as follows:

1. If the permittee decides to cease conducting regulated activities at a given time within the term of a permit which has already been issued:
   a. The permit may be modified to contain a new or additional schedule leading to timely cessation of activities; or
b. The permittee shall cease conducting permitted activities before noncompliance with any interim or final compliance schedule requirement already specified in the permit.

2. If the decision to cease conducting regulated activities is made before issuance of a permit whose term will include the termination date, the permit shall contain a schedule leading to termination that will ensure timely compliance with the applicable requirements.

3. If the permittee is undecided whether to cease conducting regulated activities, the Director may issue or modify a permit to contain two schedules as follows:
   a. Both schedules shall contain an identical interim deadline requiring a final decision on whether to cease conducting regulated activities no later than a date that ensures sufficient time to comply with applicable requirements in a timely manner if the decision is to continue conducting regulated activities;
   b. One schedule shall lead to timely compliance with applicable requirements;
   c. The second schedule shall lead to cessation of the regulated activities by a date that ensures timely compliance with applicable requirements; and
   d. Each permit containing two schedules shall include a requirement that after the permittee has made a final decision under subsection (B)(3)(a) of this Section it shall follow the schedule leading to compliance if the decision is to continue conducting the regulated activities, and follow the schedule leading to termination if the decision is to cease conducting regulated activities.

4. The applicant’s or permittee’s decision to cease conducting regulated activities shall be evidenced by a firm public commitment satisfactory to the Director, such as a resolution of the board of Directors of a corporation.

R18-9-D638. Requirements for Recording and Reporting Monitoring Results
All permits shall specify:
1. Requirements concerning the proper use, maintenance, and installation, when appropriate, of monitoring equipment or methods, including biological monitoring methods when appropriate;
2. Required monitoring including type, intervals, and frequency sufficient to yield data that are representative of the monitored activity including when appropriate, continuous monitoring; and
3. Applicable reporting requirements based upon the impact of the regulated activity and as specified under this Article. Reporting shall be no less frequent than specified in the above regulations.

R18-9-D639. Corrective Action
A. Applicants for Class I, II, or III injection well permits shall identify the location of all known wells within the injection well’s area of review that penetrates the injection zone, or in the case of Class II wells operating over the fracture pressure of the injection formation, all known wells within the area of review penetrating formations affected by the increase in pressure. For such wells that are improperly sealed, completed, or abandoned, the applicant shall also submit a plan consisting of such steps or modifications as are necessary to prevent movement of fluid into USDWs. Where the plan is adequate, the Director shall incorporate it into the permit as a condition. Where the Director’s review of an application indicates that the permittee’s plan is inadequate, the Director shall require the applicant to revise the plan, prescribe a plan for corrective action as a condition of the permit under subsection (B) through (E) of this Section, or deny the application. The Director may disregard the provisions of R18-9-B612 and this Section when reviewing an application to permit an existing Class II well.

B. Any permit issued for an existing injection well, other than Class II wells, requiring corrective action shall include a compliance schedule requiring any corrective action accepted or prescribed under subsection (A) of this Section to be completed as soon as possible.

C. No owner or operator of a new injection well may begin injection until all required corrective action has been taken.

D. The Director may require as a permit condition that injection pressure be so limited that pressure in the injection zone does not exceed hydrostatic pressure at the site of any improperly completed or abandoned well within the area of review. This pressure limitation shall satisfy the corrective action requirement. Alternatively, such injection pressure limitation can be part of a compliance schedule and last until all other required corrective action has been taken.

E. When setting corrective action requirements for Class III wells, the Director shall consider the overall effect of the project on the hydraulic gradient in potentially affected USDWs, and the corresponding changes in potentiometric surface(s) and flow direction(s) rather than the discrete effect of each well. If a decision is made
that corrective action is not necessary based on the determinations above, the monitoring program required in R18-9-G647(B) shall be designed to verify the validity of such determinations.

F. In determining the adequacy of corrective action proposed by the applicant under this Section and in determining the additional steps needed to prevent fluid movement into USDWs, the following criteria and factors shall be considered by the Director:

1. Nature and volume of injected fluid;
2. Nature of native fluids or by-products of injection;
3. Potentially affected population;
4. Geology;
5. Hydrology;
6. History of the injection operation;
7. Completion and plugging records;
8. Abandonment procedures in effect at the time the well was abandoned; and
9. Hydraulic connections with USDWs.

PART E: CLASS I INJECTION WELL REQUIREMENTS

R18-9-E640. Class I; Construction Requirements

A. All Class I wells shall be sited in such a fashion that they inject into a formation which is beneath the lowermost formation containing, within one-quarter mile of the well bore, an USDW.

B. All Class I wells shall be cased and cemented to prevent the movement of fluids into or between USDWs. The casing and cement used in the construction of each newly drilled well shall be designed for the life expectancy of the well. In determining and specifying casing and cementing requirements, the following factors shall be considered:

1. Depth to the injection zone;
2. Injection pressure, external pressure, internal pressure, and axial loading;
3. Hole size;
4. Size and grade of all casing strings, such as wall thickness, diameter, nominal weight, length, joint Specification, and construction material;
5. Corrosiveness of injected fluid, formation fluids, and temperatures;
6. Lithology of injection and confining intervals; and
7. Type or grade of cement.

C. All Class I injection wells, except those municipal wells injecting non-corrosive wastes, shall inject fluids through tubing with a packer set immediately above the injection zone, or tubing with an approved fluid seal as an alternative. The tubing, packer, and fluid seal shall be designed for the expected service.

1. The use of other alternatives to a packer may be allowed with the written approval of the Director. To obtain approval, the operator shall submit a written request to the Director, which shall set forth the proposed alternative and all technical data supporting its use. The Director shall approve the request if the alternative method will reliably provide a comparable level of protection to USDWs. The Director may approve an alternative method solely for an individual well or for general use.
2. In determining and specifying requirements for tubing, packer, or alternatives the following factors shall be considered:
   a. Depth of setting;
   b. Characteristics of injection fluid such as chemical content, corrosiveness, and density;
   c. Injection pressure;
   d. Annular pressure;
   e. Rate, temperature and volume of injected fluid; and
   f. Size of casing.

D. Appropriate logs and other tests shall be conducted during the drilling and construction of new Class I wells. A descriptive report interpreting the results of such logs and tests shall be prepared by a knowledgeable log analyst and submitted to the Director. At a minimum, such logs and tests shall include:

1. Deviation checks on all holes constructed by first drilling a pilot hole, and then enlarging the pilot hole by reaming or another method. Such checks shall be at sufficiently frequent intervals to assure that vertical avenues for fluid migration in the form of diverging holes are not created during drilling.
2. Such other logs and tests as may be needed after taking into account the availability of similar data in the area of the drilling site, the construction plan, and the need for additional information that may arise from
time to time as the construction of the well progresses. In determining which logs and tests shall be required, the following logs shall be considered for use in the following situations:

a. For surface casing intended to protect USDWs:
   i. Resistivity, spontaneous potential, and caliper logs before the casing is installed; and
   ii. A cement bond, temperature, or density log after the casing is set and cemented.

b. For intermediate and long strings of casing intended to facilitate injection:
   i. Resistivity, spontaneous potential, porosity, and gamma ray logs before the casing is installed;
   ii. Fracture finder logs; and
   iii. A cement bond, temperature, or density log after the casing is set and cemented.

E. At a minimum, the following information concerning the injection formation shall be determined or calculated for new Class I wells:
   1. Fluid pressure;
   2. Temperature;
   3. Fracture pressure;
   4. Other physical and chemical characteristics of the injection matrix; and
   5. Physical and chemical characteristics of the formation fluids.

R18-9-E641. Class I: Operating, Monitoring, and Reporting Requirements

A. Operating requirements shall, at a minimum, specify that:
   1. Except during stimulation injection pressure at the wellhead shall not exceed a maximum which shall be calculated so as to assure that the pressure in the injection zone during injection does not initiate new fractures or propagate existing fractures in the injection zone. In no case shall injection pressure initiate fractures in the confining zone or cause the movement of injection or formation fluids into an USDW.
   2. Injection between the outermost casing protecting USDWs and the well bore is prohibited.
   3. Unless an alternative to a packer has been approved under R18-9-E640(C), the annulus between the tubing and the long string of casings shall be filled with a fluid approved by the Director and a pressure, also approved by the Director, shall be maintained on the annulus.

B. Monitoring requirements shall, at a minimum, include:
   1. The analysis of the injected fluids with sufficient frequency to yield representative data of their characteristics;
   2. Installation and use of continuous recording devices to monitor injection pressure, flow rate and volume, and the pressure on the annulus between the tubing and the long string of casing;
   3. A demonstration of mechanical integrity pursuant to R18-9-B613 at least once every five years during the life of the well; and
   4. The type, number and location of wells within the area of review to be used to monitor any migration of fluids into and pressure in the USDWs, the parameters to be measured and the frequency of monitoring.

C. Reporting requirements shall, at a minimum, include:
   1. Quarterly reports to the Director on:
      a. The physical, chemical and other relevant characteristics of injection fluids;
      b. Monthly average, maximum and minimum values for injection pressure, flow rate and volume, and annular pressure; and
      c. The results of monitoring prescribed under subsection (B)(4) of this Section.
   2. Reporting the results, with the first quarterly report after the completion, of:
      a. Periodic tests of mechanical integrity;
      b. Any other test of the injection well conducted by the permittee if required by the Director; and
      c. Any well work over.

D. Ambient monitoring.
   1. Based on a site-specific assessment of the potential for fluid movement from the well or injection zone and on the potential value of monitoring wells to detect such movement, the Director shall require the owner or operator to develop a monitoring program. At a minimum, the Director shall require monitoring of the pressure buildup in the injection zone annually, including at a minimum, a shut down of the well for a time sufficient to conduct a valid observation of the pressure fall-off curve.
   2. When prescribing a monitoring system the Director may also require:
      a. Continuous monitoring for pressure changes in the first aquifer overlying the confining zone. When such a well is installed, the owner or operator shall, on a quarterly basis, sample the aquifer and analyze for constituents specified by the Director;
b. The use of indirect, geophysical techniques to determine the position of the waste front, the water quality in a formation designated by the Director, or to provide other site specific data;
c. Periodic monitoring of the ground water quality in the first aquifer overlying the injection zone;
d. Periodic monitoring of the ground water quality in the lowermost USDW; and
e. Any additional monitoring necessary to determine whether fluids are moving into or between USDWs.

R18-9-E642. Class I: Information to be Considered by the Director

A. This Section sets forth the information which must be considered by the Director in authorizing Class I wells.

1. For an existing or converted new Class I well the Director may rely on the existing permit file for those items of information listed in subsections (B), (C) & (D) which are current and accurate in the file.

2. For a newly drilled Class I well, the Director shall require the submission of all the information listed in subsections (B), (C) & (D) which are current and accurate in the file.

3. For both existing and new Class I wells certain maps, cross sections, tabulations of wells within the area of review and other data may be included in the application by reference provided they are current, readily available to the Director and sufficiently identified to be retrieved.

B. Prior to the issuance of a permit for an existing Class I well to operate or the construction or conversion of a new Class I well the Director shall consider the following:

1. Information required in R18-9-C616;
2. A map showing the injection well(s) for which a permit is sought and the applicable area of review. Within the area of review, the map must show the number, or name, and location of all producing wells, injection wells, abandoned wells, dry holes, surface bodies of water, springs, mines, quarries, water wells and other pertinent surface features including residences and roads. The map should also show faults, if known or suspected. Only information of public record is required to be included on this map;
3. A tabulation of data on all wells within the area of review which penetrate into the proposed injection zone. Such data shall include a description of each well’s type, construction, date drilled, location, depth, record of plugging and/or completion, and any additional information the Director may require;
4. Maps and cross sections indicating the general vertical and lateral limits of all USDWs within the area of review, their position relative to the injection formation and the direction of water movement, where known, in each USDW which may be affected by the proposed injection;
5. Maps and cross sections detailing the geologic structure of the local area;
6. Generalized maps and cross sections illustrating the regional geologic setting;
7. Proposed operating data:
   a. Average and maximum daily rate and volume of the fluid to be injected;
   b. Average and maximum injection pressure; and
   c. Source and an analysis of the chemical, physical, radiological and biological characteristics of injection fluids;
8. Proposed formation testing program to obtain an analysis of the chemical, physical and radiological characteristics of and other information on the receiving formation;
9. Proposed stimulation program;
10. Proposed injection procedure;
11. Schematic or other appropriate drawings of the surface and subsurface construction details of the well;
12. Contingency plans to cope with all shut-ins or well failures so as to prevent migration of fluids into any USDW;
13. Plans, including maps, for meeting the monitoring requirements in R18-9-E641(B);
14. For wells within the area of review which penetrate the injection zone but are not properly completed or plugged, the corrective action proposed to be taken under R18-9-D639;
15. Construction procedures including a cementing and casing program, logging procedures, deviation checks, and a drilling, testing, and coring program; and
16. A certificate that the applicant has assured, through a performance bond or other appropriate means, the resources necessary to close, plug or abandon the well as required by R18-9-D636(A)(6).

C. Prior to granting approval for the operation of a Class I well the Director shall consider the following information:

1. All available logging and testing program data on the well;
2. A demonstration of mechanical integrity pursuant to R18-9-B613;
3. The anticipated maximum pressure and flow rate at which the permittee will operate;
4. The results of the formation testing program;  
5. The actual injection procedure;  
6. The compatibility of injected waste with fluids in the injection zone and minerals in both the injection zone and the confining zone; and  
7. The status of corrective action on defective wells in the area of review.

D. Prior to granting approval for the plugging and abandonment of a Class I well the Director shall consider the following information:
   1. The type and number of plugs to be used;  
   2. The placement of each plug including the elevation of the top and bottom;  
   3. The type and grade and quantity of cement to be used;  
   4. The method for placement of the plugs; and  
   5. The procedure to be used to meet the requirements of R18-9-B614(C).

PART F: CLASS II INJECTION WELL REQUIREMENTS

R18-9-F643. Class II; Construction Requirements

A. All new Class II wells shall be sited in such a fashion that they inject into a formation which is separated from any USDW by a confining zone that is free of known open faults or fractures within the area of review.

B. All Class II injection wells:
   1. Shall be cased and cemented to prevent movement of fluids into or between USDWs. The casing and cement used in the construction of each newly drilled well shall be designed for the life expectancy of the well. In determining and specifying casing and cementing requirements, the following factors shall be considered:
      a. Depth to the injection zone;  
      b. Depth to the bottom of all USDWs; and  
      c. Estimated maximum and average injection pressures.
   2. In addition the Director may consider information on:
      a. Nature of formation fluids;  
      b. Lithology of injection and confining zones;  
      c. External pressure, internal pressure, and axial loading;  
      d. Hole size;  
      e. Size and grade of all casing strings; and  
      f. Class of cement.

C. The requirements in subsection (B) of this Section need not apply to existing or newly converted Class II wells located in existing fields if:
   1. Regulatory controls for casing and cementing existed for those wells at the time of drilling and those wells are in compliance with those controls; and  
   2. Well injection will not result in the movement of fluids into an USDW so as to create a significant risk to the health of persons.

D. The requirements in subsection (B) of this Section need not apply to newly drilled wells in existing fields if:
   1. They meet the requirements of the State for casing and cementing applicable to that field at the time of submission of the State program to the Administrator; and  
   2. Well injection will not result in the movement of fluids into an USDW so as to create a significant risk to the health of persons.

E. Appropriate logs and other tests shall be conducted during the drilling and construction of new Class II wells. A descriptive report interpreting the results of that portion of those logs and tests which specifically relate to (1) an USDW and the confining zone adjacent to it, and (2) the injection and adjacent formations shall be prepared by a knowledgeable log analyst and submitted to the Director. At a minimum, these logs and tests shall include:
   1. Deviation checks on all holes constructed by first drilling a pilot hole and then enlarging the pilot hole, by reaming or another method. Such checks shall be at sufficiently frequent intervals to assure that vertical avenues for fluid movement in the form of diverging holes are not created during drilling.
   2. Such other logs and tests as may be needed after taking into account the availability of similar data in the area of the drilling site, the construction plan, and the need for additional information that may arise from time to time as the construction of the well progresses. In determining which logs and tests shall be required the following shall be considered by the Director in setting logging and testing requirements:
      a. For surface casing intended to protect USDWs in areas where the lithology has not been determined:
i. Electric and caliper logs before casing is installed; and
ii. A cement bond, temperature, or density log after the casing is set and cemented.

b. For intermediate and long strings of casing intended to facilitate injection:
   i. Electric, porosity and gamma ray logs before the casing is installed;
   ii. Fracture finder logs; and
   iii. A cement bond, temperature, or density log after the casing is set and cemented.

F. At a minimum, the following information concerning the injection formation shall be determined or calculated for new Class II wells or projects:
   1. Fluid pressure;
   2. Estimated fracture pressure; and
   3. Physical and chemical characteristics of the injection zone.

R18-9-F644. Class II; Operating, Monitoring, and Reporting Requirements

A. Operating requirements shall, at a minimum, specify that:
   1. Injection pressure at the wellhead shall not exceed a maximum which shall be calculated so as to assure that the pressure during injection does not initiate new fractures or propagate existing fractures in the confining zone adjacent to the USDWs. In no case shall injection pressure cause the movement of injection or formation fluids into an USDW.
   2. Injection between the outermost casing protecting USDWs and the well bore shall be prohibited.

B. Monitoring requirements shall, at a minimum, include:
   1. Monitoring of the nature of injected fluids at time intervals sufficiently frequent to yield data representative of their characteristics;
   2. Observation of injection pressure, flow rate, and cumulative volume at least with the following frequencies:
      a. Weekly for produced fluid disposal operations;
      b. Monthly for enhanced recovery operations;
      c. Daily during the injection of liquid hydrocarbons and injection for withdrawal of stored hydrocarbons; and
      d. Daily during the injection phase of cyclic steam operations; and
      e. Record one observation of injection pressure, flow rate and cumulative volume at reasonable intervals no greater than 30 days;
   3. A demonstration of mechanical integrity pursuant to R18-9-B613 at least once every five years during the life of the injection well;
   4. Maintenance of the results of all monitoring until the next permit review; and
   5. Hydrocarbon storage and enhanced recovery may be monitored on a field or project basis rather than on an individual well basis by manifold monitoring. Manifold monitoring may be used in cases of facilities consisting of more than one injection well, operating with a common manifold. Separate monitoring systems for each well are not required provided the owner/operator demonstrates that manifold monitoring is comparable to individual well monitoring.

C. Reporting requirements.
   1. Reporting requirements shall at a minimum include an annual report to the Director summarizing the results of monitoring required under subsection (B) of this Section. Such summary shall include monthly records of injected fluids, and any major changes in characteristics or sources of injected fluid. Previously submitted information may be included by reference.
   2. Owners or operators of hydrocarbon storage and enhanced recovery projects may report on a field or project basis rather than an individual well basis where manifold monitoring is used.

R18-9-F645. Class II; Information to be Considered by the Director

A. This Section sets forth the information which must be considered by the Director in authorizing Class II wells. Certain maps, cross sections, tabulations of wells within the area of review, and other data may be included in the application by reference provided they are current, readily available to the Director and sufficiently identified to be retrieved.

B. Prior to the issuance of a permit for an existing Class II well to operate or the construction or conversion of a new Class II well the Director shall consider the following:
   1. Information required in R18-9-C616.
2. A map showing the injection well or project area for which a permit is sought and the applicable area of review. Within the area of review, the map must show the number or name and location of all existing producing wells, injection wells, abandoned wells, dry holes, and water wells. The map may also show surface bodies of waters, mines (surface and subsurface), quarries and other pertinent surface features including residences and roads, and faults if known or suspended. Only information of public record and pertinent information known to the applicant is required to be included on this map. This requirement does not apply to existing Class II wells.

3. A tabulation of data reasonably available from public records or otherwise known to the applicant on all wells within the area of review included on the map required under subsection (B)(2) of this Section which penetrate the proposed injection zone or, in the case of Class II wells operating over the fracture pressure of the injection formation, all known wells within the area of review which penetrate formations affected by the increase in pressure. Such data shall include a description of each well's type, construction, date drilled, location, depth, record of plugging and completion, and any additional information the Director may require. In cases where the information would be repetitive and the wells are of similar age, type, and construction the Director may elect to only require data on a representative number of wells. This requirement does not apply to existing Class II wells.

4. Proposed operating data:
   a. Average and maximum daily rate and volume of fluids to be injected;
   b. Average and maximum injection pressure; and
   c. Source and an appropriate analysis of the chemical and physical characteristics of the injection fluid.

5. Appropriate geological data on the injection zone and confining zone including lithologic description, geologic name, thickness and depth.

6. Geologic name and depth to bottom of all USDWs which may be affected by the injection.

7. Schematic or other appropriate drawings of the surface and subsurface construction details of the well.

8. In the case of new injection wells the corrective action proposed to be taken by the applicant under R18-9-D639.

9. A certificate that the applicant has assured through a performance bond or other appropriate means, the resources necessary to close, plug or abandon the well as required by R18-9-D636(A)(6).

C. In addition the Director may consider the following:
   1. Proposed formation testing program to obtain the information required by R18-9-F643(F);
   2. Proposed stimulation program;
   3. Proposed injection procedure;
   4. Proposed contingency plans, if any, to cope with well failures so as to prevent migration of contaminating fluids into an USDW;
   5. Plans for meeting the monitoring requirements of R18-9-F644(B).

D. Prior to granting approval for the operation of a Class II well the Director shall consider the following information:
   1. All available logging and testing program data on the well;
   2. A demonstration of mechanical integrity pursuant to R18-9-B613;
   3. The anticipated maximum pressure and flow rate at which the permittee will operate;
   4. The results of the formation testing program;
   5. The actual injection procedure; and
   6. For new wells the status of corrective action on defective wells in the area of review.

E. Prior to granting approval for the plugging and abandonment of a Class II well the Director shall consider the following information:
   1. The type, and number of plugs to be used;
   2. The placement of each plug including the elevation of top and bottom;
   3. The type, grade, and quantity of cement to be used;
   4. The method of placement of the plugs; and
   5. The procedure to be used to meet the requirements of R18-9-B614(A).

PART G: CLASS III INJECTION WELL REQUIREMENTS

R18-9-G646. Class III: Construction Requirements
A. All new Class III wells shall be cased and cemented to prevent the migration of fluids into or between USDWs. The Director may waive the cementing requirement for new wells in existing projects or portions of existing
projects where they have substantial evidence that no contamination of USDWs would result. The casing and cement used in the construction of each newly drilled well shall be designed for the life expectancy of the well. In determining and specifying casing and cementing requirements, the following factors shall be considered:

1. Depth to the injection zone;
2. Injection pressure, external pressure, internal pressure, axial loading, etc.;
3. Hole size;
4. Size and grade of all casing strings, such as wall thickness, diameter, nominal weight, length, joint specification, and construction material;
5. Corrosiveness of injected fluids and formation fluids;
6. Lithology of injection and confining zones; and
7. Type and grade of cement.

B. Appropriate logs and other tests shall be conducted during the drilling and construction of new Class III wells. A descriptive report interpreting the results of such logs and tests shall be prepared by a knowledgeable log analyst and submitted to the Director. The logs and tests appropriate to each type of Class III well shall be determined based on the intended function, depth, construction and other characteristics of the well, availability of similar data in the area of the drilling site and the need for additional information that may arise from time to time as the construction of the well progresses. Deviation checks shall be conducted on all holes where pilot holes and reaming are used, unless the hole will be cased and cemented by circulating cement to the surface. Where deviation checks are necessary they shall be conducted at sufficiently frequent intervals to assure that vertical avenues for fluid migration in the form of diverging holes are not created during drilling.

C. Where the injection zone is a formation which is naturally water-bearing the following information concerning the injection zone shall be determined or calculated for new Class III wells or projects:

1. Fluid pressure;
2. Fracture pressure; and
3. Physical and chemical characteristics of the formation fluids.

D. Where the injection formation is not a water-bearing formation, the information in subsection (C)(2) of this Section must be submitted.

E. Where injection is into a formation which contains water with less than 10,000 mg/l TDS monitoring wells shall be completed into the injection zone and into any USDWs above the injection zone which could be affected by the mining operation. These wells shall be located in such a fashion as to detect any excursion of injection fluids, process by-products, or formation fluids outside the mining area or zone. If the operation may be affected by subsidence or catastrophic collapse the monitoring wells shall be located so that they will not be physically affected.

F. Where injection is into a formation which does not contain water with less than 10,000 mg/l TDS, no monitoring wells are necessary in the injection stratum.

G. Where the injection wells penetrate an USDW in an area subject to subsidence or catastrophic collapse an adequate number of monitoring wells shall be completed into the USDW to detect any movement of injected fluids, process by-products or formation fluids into the USDW. The monitoring wells shall be located outside the physical influence of the subsidence or catastrophic collapse.

H. In determining the number, location, construction and frequency of monitoring of the monitoring wells the following criteria shall be considered:

1. The population relying on the USDW affected or potentially affected by the injection operation;
2. The proximity of the injection operation to points of withdrawal of drinking water;
3. The local geology and hydrology;
4. The operating pressures and whether a negative pressure gradient is being maintained;
5. The nature and volume of the injected fluid, the formation water, and the process by-products; and
6. The injection well density.

R18-9-G647. Class III; Operating, Monitoring, and Reporting Requirements

A. Operating requirements prescribed shall, at a minimum, specify that:

1. Except during well stimulation, injection pressure at the wellhead shall be calculated so as to assure that the pressure in the injection zone during injection does not initiate new fractures or propagate existing fractures in the injection zone. In no case, shall injection pressure initiate fractures in the confining zone or cause the migration of injection or formation fluids into an USDW.
2. Injection between the outermost casing protecting USDWs and the well bore is prohibited.

B. Monitoring requirements shall, at a minimum, specify:
1. Monitoring of the nature of injected fluids with sufficient frequency to yield representative data on its characteristics. Whenever the injection fluid is modified to the extent that the analysis required by R18-9-G648(B)(7)(c) is incorrect or incomplete, a new analysis as required by R18-9-G648(B)(7)(c) shall be provided to the Director.

2. Monitoring of injection pressure and either flow rate or volume semi-monthly, or metering and daily recording of injected and produced fluid volumes as appropriate.

3. Demonstration of mechanical integrity pursuant to R18-9-B613 at least once every five years during the life of the well for salt solution mining.

4. Monitoring of the fluid level in the injection zone semi-monthly, where appropriate and monitoring of the parameters chosen to measure water quality in the monitoring wells required by R18-9-G646(E), semi-monthly.

5. Quarterly monitoring of wells required by R18-9-G646(G).

6. All Class III wells may be monitored on a field or project basis rather than an individual well basis by manifold monitoring. Manifold monitoring may be used in cases of facilities consisting of more than one injection well, operating with a common manifold. Separate monitoring systems for each well are not required provided the owner/operator demonstrates that manifold monitoring is comparable to individual well monitoring.

C. Reporting requirements shall, at a minimum, include:

1. Quarterly reporting to the Director on required monitoring;

2. Results of mechanical integrity and any other periodic test required by the Director reported with the first regular quarterly report after the completion of the test; and

3. Monitoring may be reported on a project or field basis rather than individual well basis where manifold monitoring is used.

R18-9-G648. Class III; Information to be Considered by the Director

A. This Section sets forth the information which must be considered by the Director in authorizing Class III wells. Certain maps, cross sections, tabulations of wells within the area of review, and other data may be included in the application by reference provided they are current, readily available to the Director and sufficiently identified to be retrieved.

B. Prior to the issuance of a permit for an existing Class III well or area to operate or the construction of a new Class III well the Director shall consider the following:

1. Information required in R18-9-C616.

2. A map showing the injection well or project area for which a permit is sought and the applicable area of review. Within the area of review, the map must show the number or name and location of all existing producing wells, injection wells, abandoned wells, dry holes, public water systems and water wells. The map may also show surface bodies of waters, mines (surface and subsurface) quarries and other pertinent surface features including residences and roads, and faults if known or suspected. Only information of public record and pertinent information known to the applicant is required to be included on this map.

3. A tabulation of data reasonably available from public records or otherwise known to the applicant on wells within the area of review included on the map required under subsection (B)(2) of this Section which penetrate the proposed injection zone. Such data shall include a description of each well's type, construction, date drilled, location, depth, record of plugging and completion, and any additional information the Director may require. In cases where the information would be repetitive and the wells are of similar age, type, and construction the Director may elect to only require data on a representative number of wells.

4. Maps and cross sections indicating the vertical limits of all USDWs within the area of review, their position relative to the injection formation, and the direction of water movement, where known, in every USDW which may be affected by the proposed injection.

5. Maps and cross sections detailing the geologic structure of the local area;

6. Generalized map and cross sections illustrating the regional geologic setting;

7. Proposed operating data:

   a. Average and maximum daily rate and volume of fluid to be injected;

   b. Average and maximum injection pressure; and

   c. Qualitative analysis and ranges in concentrations of all constituents of injected fluids. If the information is confidential pursuant to R18-9-A603 an applicant may, in lieu of the ranges in concentrations, choose to submit maximum concentrations which shall not be exceeded. In such a
case the applicant shall retain records of the undisclosed concentrations and provide them upon request to the Director as part of any enforcement investigation.

8. Proposed formation testing program to obtain the information required by R18-9-G646(C).
9. Proposed stimulation program;
10. Proposed injection procedure;
11. Schematic or other appropriate drawings of the surface and subsurface construction details of the well;
12. Plans (including maps) for meeting the monitoring requirements of R18-9-G647(B);
13. Expected changes in pressure, native fluid displacement, direction of movement of injection fluid;
14. Contingency plans to cope with all shut-ins or well failures so as to prevent the migration of contaminating fluids into USDWs;
15. A certificate that the applicant has assured, through a performance bond, or other appropriate means, the resources necessary to close, plug, or abandon the well as required by R18-9-D636(A)(5); and
16. The corrective action proposed to be taken under R18-9-D639.

C. Prior to granting approval for the operation of a Class III well the Director shall consider the following information:
1. All available logging and testing data on the well;
2. A satisfactory demonstration of mechanical integrity for all new wells and for all existing salt solution wells pursuant to R18-9-B613;
3. The anticipated maximum pressure and flow rate at which the permittee will operate;
4. The results of the formation testing program;
5. The actual injection procedures; and
6. The status of corrective action on defective wells in the area of review.

D. Prior to granting approval for the plugging and abandonment of a Class III well the Director shall consider the following information:
1. The type and number of plugs to be used;
2. The placement of each plug including the elevation of the top and bottom;
3. The type, grade and quantity of cement to be used;
4. The method of placement of the plugs; and
5. The procedure to be used to meet the requirements of R18-9-B614(A).

PART H: CLASS IV INJECTION WELL REQUIREMENTS

R18-9-H649. Class IV; Closure Requirements and Remediation

A. Closure.
1. Prior to abandoning any Class IV well, the owner or operator shall plug or otherwise close the well in a manner acceptable to the Director.
2. The owner or operator of a Class IV well must notify the Director of intent to abandon the well at least 30 days prior to abandonment.

B. Remediation.
1. Injection wells used to inject contaminated groundwater that has been treated and is being injected into the same formation from which it was drawn are authorized by rule for the life of the well if such subsurface emplacement of fluids is approved by the Administrator or the Director pursuant to subsections (a), (b) or (c) below:
   a. Provisions for cleanup of releases under CERCLA, or
   b. The requirements and provisions under RCRA, or
   c. The requirements and provisions under other applicable state laws for corrective and remedial action.

PART I: CLASS V INJECTION WELL REQUIREMENTS

R18-9-I650. Class V: General Requirements

A. The following requirements apply to Class V Wells authorized by rule:
1. A Class V Injection well is authorized by rule subject to the conditions under this Section.
2. Well authorization under this Section expires upon the effective date of a permit issued pursuant to R18-9-I651, R18-9-C616, R18-9-C624, R18-9-C625, or upon proper closure of the well.
3. An owner or operator of a well that is authorized by rule pursuant to this Section is prohibited from injecting into the well:
   a. Upon the effective date of an applicable permit denial;
   b. Upon failure to submit a permit application in a timely manner pursuant to R18-9-I651 or R18-9-C616;
   c. Upon failure to submit inventory information in a timely manner pursuant to R18-9-I652; or
   d. Upon failure to comply with a request for information in a timely manner pursuant to R18-9-I653.

4. Submission of the following is required in order to transfer ownership of a well that is authorized by rule pursuant to this Section:
   a. An inventory, and
   b. A Class V authorized by rule transfer fee pursuant to R18-14-111(3).

B. The following requirements apply for all Class V Wells:

1. With certain exceptions listed in subsection (B)(2) of this Section, Class V injection activity is “authorized by rule,” meaning owners and operators must comply with all the requirements of this Article but do not have to get an individual permit. Well authorization expires once the injection well has been properly closed.

2. A Class V well requires a permit and shall no longer be authorized by rule upon any of the following:
   a. Failure to comply with the prohibition of movement standard in R18-9-B608(A).
   b. The Director specifically requires a Class V permit for the well to operate pursuant to R18-9-I651. In which case rule authorization expires upon the effective date of the permit issued, or you are prohibited from injecting into your well upon:
      i. Failure to submit a permit application in a timely manner as specified in a notice from the Director; or
      ii. Upon the effective date of permit denial.
   c. Failure to submit inventory information as required under R18-9-I652.
   d. Failure to comply with the Director’s request for additional information under R18-9-I653 in a timely manner.

3. Prior to abandoning a Class V well, the owner or operator shall meet the plugging requirements in R18-9-B614(C).

4. In limited cases, the Director may authorize the conversion (reclassification) of a motor vehicle waste disposal well to another type of Class V well. Motor vehicle wells may only be converted if: all motor vehicle fluids are segregated by physical barriers and are not allowed to enter the well; and, injection of motor vehicle waste is unlikely based on a facility's compliance history and records showing proper waste disposal. The use of a semi-permanent plug as the means to segregate waste is not sufficient to convert a motor vehicle waste disposal well to another type of Class V well.

R18-9-I651. Class V: Requiring a Permit

A. The Director may require the owner or operator of any Class V injection well authorized by rule under this Article to apply for and obtain an individual or area UIC permit. Cases where individual or area UIC permits may be required include:
   1. The injection well is not in compliance with any requirement under this Article or A.R.S. Title 49, Chapter 2, Article 3.3;
   2. The injection well is not or no longer is within the category of wells and types of well operations authorized in the rule; or
   3. The protection of USDWs requires that the injection operation be regulated by requirements, such as for corrective action, monitoring and reporting, or operation, which are not contained in the rule.

B. If an individual or area UIC permit is required, the Director shall notify the discharger in writing of the decision. The notice shall include:
   1. A brief statement of the reasons for the decision,
   2. An application form,
   3. A statement setting a deadline to file the application,
   4. A statement that on the effective date of issuance or denial of the individual or area UIC permit, coverage by rule will automatically terminate,
   5. The applicant’s right to appeal the individual permit requirement under A.R.S. § 49-323 and the name and telephone number of the Department contact person who can answer questions regarding the appeals process.
C. An owner or operator of a well authorized by rule may request to be excluded from the coverage of this Section by applying for an individual or area UIC permit. The owner or operator shall submit an application under R18-9-C616 with reasons supporting the request to the Director. The Director may grant any such requests.

R18-9-I652. Class V; Inventory Requirements for Class V Wells Authorized by Rule
A. The owner or operator of an injection well authorized by rule under R18-9-I650 shall submit inventory information to the Director. Such an owner or operator is prohibited from injecting into the well upon failure to submit inventory information for the well within the timeframe specified in subsection (D) of this Section.
B. As part of the inventory, the Director shall require and the owner/operator shall provide at least the following information:
1. Facility name and location;
2. Name and address of legal contact;
3. Ownership of facility;
4. Nature and type of injection well; and
5. Operating status of injection well.
C. Upon approval of the Arizona UIC Program, the Director shall notify all known owners or operators of injection wells of their duty to submit inventory information in the manner specified by the Director.
D. The owner or operator of an injection well shall submit inventory information no later than one year after the effective date of the Arizona UIC program. The Director need not require inventory information from any facility with interim status under RCRA.

R18-9-I653. Class V; Requiring Other Information
A. In addition to the inventory requirements under R18-9-I652, the Director may require the owner or operator of any well authorized by rule under this Article to submit information as deemed necessary by the Director to determine whether a well may be endangering an USDW in violation of R18-9-B608 of this Part.
B. Such information requirements may include, but are not limited to:
1. Performance of ground-water monitoring and the periodic submission of reports of such monitoring;
2. An analysis of injected fluids, including periodic submission of such analyses; and
3. A description of the geologic strata through and into which injection is taking place.
C. Any request for information under this Section shall be made in writing, and include a brief statement of the reasons for requiring the information. An owner and operator shall submit the information within the time period(s) provided in the notice.
D. An owner or operator of an injection well authorized by rule under this Part is prohibited from injecting into the well upon failure of the owner or operator to comply with a request for information within the time period(s) specified by the Director pursuant to subsection (C) of this Section. An owner or operator of a well prohibited from injection under this Section shall not resume injection except under a permit issued pursuant to R18-9-I651; R18-9-C616, R18-9-C624, or R18-9-C625.

R18-9-I654. Class V; Prohibition of Class V Cesspools and Motor Vehicle Waste Disposal Wells
The construction and operation of cesspools and motor vehicle waste disposal wells are prohibited.

R18-9-I655. Class V; Prohibition of Non-Experimental Class V Wells for Geologic Sequestration
The construction, operation or maintenance of any non-experimental Class V geologic sequestration well is prohibited.

PART J: CLASS VI INJECTION WELL REQUIREMENTS

R18-9-J656. Class VI: Applicability
A. This Part establishes criteria and standards for underground injection control programs to regulate any Class VI carbon dioxide geologic sequestration injection wells.
B. This Part applies to any well used to inject carbon dioxide specifically for the purpose of geologic sequestration.
C. This Part also applies to owners or operators of permit- or rule-authorized Class V experimental carbon dioxide injection projects who seek to apply for Class VI geologic sequestration permit for their well or wells. Owners or operators seeking to convert existing Class I, Class II, or Class V experimental wells to Class VI geologic sequestration wells must demonstrate to the Director that the wells were engineered and constructed to meet the requirements of R18-9-J661 and ensure protection of USDWs. In lieu of requirements at R18-9-J661 and R18-9-J662, a converted well must still meet all other requirements under Part F of this Article.
D. The following definitions apply to this Part and govern for Class VI wells to the extent that these definitions conflict with those in R18-9-A601:

1. “Area of review” means the region surrounding the geologic sequestration project where USDWs may be endangered by the injection activity. The area of review is delineated using computational modeling that accounts for the physical and chemical properties of all phases of the injected carbon dioxide stream and displaced fluids, and is based on available site characterization, monitoring, and operational data as set forth in R18-9-J659.

2. “Carbon dioxide plume” means the extent underground, in three dimensions, of an injected carbon dioxide stream.

3. “Carbon dioxide stream” means carbon dioxide that has been captured from an emission source, plus incidental associated substances derived from the source materials and the capture process, and any substances added to the stream to enable or improve the injection process. This Part does not apply to any carbon dioxide stream that meets the definition of a hazardous waste under A.R.S. § 49-921.

4. “Confining zone” means a geologic formation, group of formations, or part of a formation stratigraphically overlying the injection zone(s) that acts as barrier to fluid movement. For Class VI wells operating under an injection depth waiver, confining zone means a geologic formation, group of formations, or part of a formation stratigraphically overlying and underlying the injection zone(s).

5. “Corrective action” means the use of Director-approved methods to ensure that wells within the area of review do not serve as conduits for the movement of fluids into USDWs.

6. “Geologic sequestration” means the long-term containment of a gaseous, liquid, or supercritical carbon dioxide stream in subsurface geologic formations. This term does not apply to carbon dioxide capture or transport.

7. “Geologic sequestration project” means an injection well or wells used to emplace a carbon dioxide stream beneath the lowermost formation containing a USDW or, wells used for geologic sequestration of carbon dioxide that have been granted a waiver of the injection depth requirements pursuant to requirements at R18-9-J670; or, wells used for geologic sequestration of carbon dioxide that have received an expansion to the areal extent of an existing Class II enhanced oil recovery or enhanced gas recovery aquifer exemption pursuant to R18-9-A605 and R18-9-A606. It includes the subsurface three-dimensional extent of the carbon dioxide plume, associated area of elevated pressure, and displaced fluids, as well as the surface area above that delineated region.

8. “Injection zone” means a geologic formation, group of formations, or part of a formation that is of sufficient areal extent, thickness, porosity, and permeability to receive carbon dioxide through a well or wells associated with a geologic sequestration project.

9. “Post-injection site care” means appropriate monitoring and other actions, including corrective action, needed following cessation of injection to ensure that USDWs are not endangered, as required under R18-9-J668.

10. “Pressure front” means the zone of elevated pressure that is created by the injection of carbon dioxide into the subsurface. For the purposes of this Part, the pressure front of a carbon dioxide plume refers to a zone where there is a pressure differential sufficient to cause the movement of injected fluids or formation fluids into a USDW.

11. “Site closure” means the point/time, as determined by the Director following the requirements under R18-9-J668, at which the owner or operator of a geologic sequestration site is released from post-injection site care responsibilities.

12. “Transmissive fault” or “fracture” means a fault or fracture that has sufficient permeability and vertical extent to allow fluids to move between formations.

R18-9-J657. Class VI: Required Permit Information

A. This Section sets forth the information which must be considered by the Director in authorizing Class VI wells. For converted Class I, Class II, or Class V experimental wells, certain maps, cross sections, tabulations of wells within the area of review and other data may be included in the application by reference provided they are current, readily available to the Director, and sufficiently identified to be retrieved.

B. Prior to the issuance of a permit for the construction of a new Class VI well or the conversion of an existing Class I, Class II, or Class V well to a Class VI well, the owner or operator shall submit, pursuant to R18-9-J666, and the Director shall consider the following:

1. Information required in R18-9-C616(D)(1) through (9):
2. A map showing the injection well for which a permit is sought and the applicable area of review consistent with R18-9-J659. Within the area of review, the map must show the number or name, and location of all injection wells, producing wells, abandoned wells, plugged wells or dry holes, deep stratigraphic boreholes, State- or EPA-approved subsurface cleanup sites, surface bodies of water, springs, mines (surface and subsurface), quarries, water wells, other pertinent surface features including structures intended for human occupancy, State, Tribal, and Territory boundaries, and roads. The map should also show faults, if known or suspected. Only information of public record is required to be included on this map.

3. Information on the geologic structure and hydrogeologic properties of the proposed storage site and overlying formations, including:
   a. Maps and cross sections of the area of review;
   b. The location, orientation, and properties of known or suspected faults and fractures that may transect the confining zone(s) in the area of review and a determination that they would not interfere with containment;
   c. Data on the depth, areal extent, thickness, mineralogy, porosity, permeability, and capillary pressure of the injection and confining zone(s); including geology/facies changes based on field data which may include geologic cores, outcrop data, seismic surveys, well logs, and names and lithologic descriptions;
   d. Geomechanical information on fractures, stress, ductility, rock strength, and in situ fluid pressures within the confining zone(s);
   e. Information on the seismic history including the presence and depth of seismic sources and a determination that the seismicity would not interfere with containment; and
   f. Geologic and topographic maps and cross sections illustrating regional geology, hydrogeology, and the geologic structure of the local area.

4. A tabulation of all wells within the area of review which penetrate the injection or confining zone(s). Such data must include a description of each well's type, construction, date drilled, location, depth, record of plugging and/or completion, and any additional information the Director may require.

5. Maps and stratigraphic cross sections indicating the general vertical and lateral limits of all USDWs, water wells and springs within the area of review, their positions relative to the injection zone(s), and the direction of water movement, where known.

6. Baseline geochemical data on subsurface formations, including all USDWs in the area of review.

7. Proposed operating data for the proposed geologic sequestration site:
   a. Average and maximum daily rate and volume and/or mass and total anticipated volume and/or mass of the carbon dioxide stream;
   b. Average and maximum injection pressure;
   c. The source(s) of the carbon dioxide stream; and
   d. An analysis of the chemical and physical characteristics of the carbon dioxide stream.

8. Proposed pre-operational formation testing program to obtain an analysis of the chemical and physical characteristics of the injection zone(s) and confining zone(s) and that meets the requirements at R18-9-J662.

9. Proposed stimulation program, a description of stimulation fluids to be used and a determination that stimulation will not interfere with containment;

10. Proposed procedure to outline steps necessary to conduct injection operation;

11. Schematics or other appropriate drawings of the surface and subsurface construction details of the well;

12. Injection well construction procedures that meet the requirements of R18-9-J661;

13. Proposed area of review and corrective action plan that meets the requirements under R18-9-J659;

14. A demonstration, satisfactory to the Director, that the applicant has met the financial responsibility requirements under R18-9-J660;

15. Proposed testing and monitoring plan required by R18-9-J665;

16. Proposed injection well plugging plan required by R18-9-J667(B);

17. Proposed post-injection site care and site closure plan required by R18-9-J668(A);

18. At the Director's discretion, a demonstration of an alternative post-injection site care timeframe required by R18-9-J668(C);

20. A list of contacts, submitted to the Director, for those States, Tribes, and Territories identified to be within the area of review of the Class VI project based on information provided in subsection (B)(2) of this Section;
21. A listing of any historic property or potential historic property as defined by R12-8-301, and
22. Any other information requested by the Director.

C. The Director shall notify, in writing, any States, Tribes, or Territories within the area of review of the Class VI project based on information provided in subsections (B)(2) and (B)(20) of this Section of the permit application.

D. Prior to granting approval for the operation of a Class VI well, the Director shall consider the following information:
   1. The final area of review based on modeling, using data obtained during logging and testing of the well and the formation as required by subsections (D)(2), (3), (4), (6), (7), and (10) of this Section;
   2. Any relevant updates, based on data obtained during logging and testing of the well and the formation as required by subsections (D)(3), (4), (6), (7), and (10) of this Section, to the information on the geologic structure and hydrogeologic properties of the proposed storage site and overlying formations, submitted to satisfy the requirements of subsection (B)(3) of this Section;
   3. Information on the compatibility of the carbon dioxide stream with fluids in the injection zone(s) and minerals in both the injection and the confining zone(s), based on the results of the formation testing program, and with the materials used to construct the well;
   4. The results of the formation testing program required at subsection (B)(8) of this Section;
   5. Final injection well construction procedures that meet the requirements of R18-9-J661;
   6. The status of corrective action on wells in the area of review;
   7. All available logging and testing program data on the well required by R18-9-J662;
   8. A demonstration of mechanical integrity pursuant to R18-9-J664;
   9. Any updates to the proposed area of review and corrective action plan, testing and monitoring plan, injection well plugging plan, post-injection site care and site closure plan, or the emergency and remedial response plan submitted under subsection (B) of this Section, which are necessary to address new information collected during logging and testing of the well and the formation as required by all subsections of this Section, and any updates to the alternative post-injection site care timeframe demonstration submitted under subsection (B) of this Section, which are necessary to address new information collected during the logging and testing of the well and the formation as required by all subsections of this Section; and
   10. Any other information requested by the Director.

E. Owners or operators seeking a waiver of the requirement to inject below the lowermost USDW must also refer to R18-9-J670 and submit a supplemental report, as required at R18-9-J670. The supplemental report is not part of the permit application.

R18-9-J658. Class VI; Minimum Criteria for Siting
A. Owners or operators of Class VI wells must demonstrate to the satisfaction of the Director that the wells will be sited in areas with a suitable geologic system. The owners or operators must demonstrate that the geologic system comprises:
   1. An injection zone(s) of sufficient areal extent, thickness, porosity, and permeability to receive the total anticipated volume of the carbon dioxide stream;
   2. Confining zone(s) free of transmissive faults or fractures and of sufficient areal extent and integrity to contain the injected carbon dioxide stream and displaced formation fluids and allow injection at proposed maximum pressures and volumes without initiating or propagating fractures in the confining zone(s).

B. The Director may require owners or operators of Class VI wells to identify and characterize additional zones that will impede vertical fluid movement, are free of faults and fractures that may interfere with containment, allow for pressure dissipation, and provide additional opportunities for monitoring, mitigation, and remediation.

R18-9-J659. Class VI; Area of Review and Corrective Action
A. The area of review is the region surrounding the geologic sequestration project where USDWs may be endangered by the injection activity. The area of review is delineated using computational modeling that accounts for the physical and chemical properties of all phases of the injected carbon dioxide stream and is based on available site characterization, monitoring, and operational data.
B. The owner or operator of a Class VI well must prepare, maintain, and comply with a plan to delineate the area of review for a proposed geologic sequestration project, periodically reevaluate the delineation, and perform corrective action that meets the requirements of this Section and is acceptable to the Director. The requirement to maintain and implement an approved plan is directly enforceable regardless of whether the requirement is a condition of the permit. As a part of the permit application for approval by the Director, the owner or operator must submit an area of review and corrective action plan that includes the following information:

1. The method for delineating the area of review that meets the requirements of subsection (C) of this Section, including the model to be used, assumptions that will be made, and the site characterization data on which the model will be based.

2. A description of:
   a. The minimum fixed frequency, not to exceed five years, at which the owner or operator proposes to reevaluate the area of review;
   b. The monitoring and operational conditions that would warrant a reevaluation of the area of review prior to the next scheduled reevaluation as determined by the minimum fixed frequency established in subsection (B)(2)(a) of this Section;
   c. How monitoring and operational data will be used to inform an area of review reevaluation; and
   d. How corrective action will be conducted to meet the requirements of subsection (D) of this Section, including what corrective action will be performed prior to injection and what, if any, portions of the area of review will have corrective action addressed on a phased basis and how the phasing will be determined; how corrective action will be adjusted if there are changes in the area of review; and how site access will be guaranteed for future corrective action.

C. Owners or operators of Class VI wells must perform the following actions to delineate the area of review and identify all wells that require corrective action:

1. Predict, using existing site characterization, monitoring and operational data, and computational modeling, the projected lateral and vertical migration of the carbon dioxide plume and formation fluids in the subsurface from the commencement of injection activities until the plume movement ceases, until pressure differentials sufficient to cause the movement of injected fluids or formation fluids into a USDW are no longer present, or until the end of a fixed time period as determined by the Director. The model must:
   a. Be based on detailed geologic data collected to characterize the injection zone(s), confining zone(s) and any additional zones; and anticipated operating data, including injection pressures, rates, and total volumes over the proposed life of the geologic sequestration project;
   b. Take into account any geologic heterogeneities, other discontinuities, data quality, and their possible impact on model predictions; and
   c. Consider potential migration through faults, fractures, and artificial penetrations.

2. Using methods approved by the Director, identify all penetrations, including active and abandoned wells and underground mines, in the area of review that may penetrate the confining zone(s). Provide a description of each well's type, construction, date drilled, location, depth, record of plugging and/or completion, and any additional information the Director may require; and

3. Determine which abandoned wells in the area of review have been plugged in a manner that prevents the movement of carbon dioxide or other fluids that may endanger USDWs, including use of materials compatible with the carbon dioxide stream.

D. Owners or operators of Class VI wells must perform corrective action on all wells in the area of review that are determined to need corrective action, using methods designed to prevent the movement of fluid into or between USDWs, including use of materials compatible with the carbon dioxide stream, where appropriate.

E. At the minimum fixed frequency, not to exceed five years, as specified in the area of review and corrective action plan, or when monitoring and operational conditions warrant, owners or operators must:

1. Reevaluate the area of review in the same manner specified in subsection (C)(1) of this Section;

2. Identify all wells in the reevaluated area of review that require corrective action in the same manner specified in subsection (C) of this Section;

3. Perform corrective action on wells requiring corrective action in the reevaluated area of review in the same manner specified in subsection (C) of this Section; and

4. Submit an amended area of review and corrective action plan or demonstrate to the Director through monitoring data and modeling results that no amendment to the area of review and corrective action plan is needed. Any amendments to the area of review and corrective action plan must be approved by the Director, must be incorporated into the permit, and are subject to the permit modification requirements under R18-9-C632 or R18-9-C633, as appropriate.
The emergency and remedial response plan and the demonstration of financial responsibility must account for
the area of review delineated as specified in subsection (C)(1) of this Section or the most recently evaluated area
of review delineated under subsection (E) of this Section, regardless of whether or not corrective action in the
area of review is phased.

All modeling inputs and data used to support area of review reevaluations under subsection (E) of this Section
shall be retained for ten years.

**R18-9-J660. Class VI; Financial Responsibility**

A. The owner or operator must demonstrate and maintain financial responsibility as determined by the Director
that meets the following conditions:

1. The financial responsibility instrument(s) used must be from the following list of qualifying instruments:
   a. Trust Funds.
   b. Surety Bonds.
   c. Letter of Credit.
   d. Insurance.
   e. Self Insurance (i.e., Financial Test and Corporate Guarantee).
   f. Escrow Account.
   g. Any other instrument(s) satisfactory to the Director.

2. The qualifying instrument(s) must be sufficient to cover the cost of:
   a. Corrective action under R18-9-J659;
   b. Injection well plugging under R18-9-J667;
   c. Post injection site care and site closure under R18-9-J668; and

3. The financial responsibility instrument(s) must be sufficient to address endangerment of USDWs.

4. The qualifying financial responsibility instrument(s) must comprise protective conditions of coverage,
   a. Protective conditions of coverage must include at a minimum cancellation, renewal, and continuation
      provisions, specifications on when the provider becomes liable following a notice of cancellation if
      there is a failure to renew with a new qualifying financial instrument, and requirements for the
      provider to meet a minimum rating, minimum capitalization, and ability to pass the bond rating when
      applicable.
      i. Cancellation--for purposes of this Part, an owner or operator must provide that their financial
         mechanism may not cancel, terminate or fail to renew except for failure to pay such financial
         instrument. If there is a failure to pay the financial instrument, the financial institution may elect
to cancel, terminate, or fail to renew the instrument by sending notice by certified mail to the
owner or operator and the Director. The cancellation must not be final for 120 days after receipt
of cancellation notice. The owner or operator must provide an alternate financial responsibility
demonstration within 60 days of notice of cancellation, and if an alternate financial
responsibility demonstration is not acceptable (or possible), any funds from the instrument being
cancelled must be released within 60 days of notification by the Director.
      ii. Renewal--for purposes of this Part, owners or operators must renew all financial instruments, if
an instrument expires, for the entire term of the geologic sequestration project. The instrument
may be automatically renewed as long as the owner or operator has the option of renewal at the
face amount of the expiring instrument. The automatic renewal of the instrument must, at a
minimum, provide the holder with the option of renewal at the face amount of the expiring
financial instrument.
      iii. Cancellation, termination, or failure to renew may not occur and the financial instrument will
remain in full force and effect in the event that on or before the date of expiration: The Director
deems the facility abandoned; or the permit is terminated or revoked or a new permit is denied;
or closure is ordered by the Director or a U.S. district court or other court of competent
jurisdiction; or the owner or operator is named as debtor in a voluntary or involuntary
proceeding under Title 11 (Bankruptcy), U.S. Code; or the amount due is paid.

5. The qualifying financial responsibility instrument(s) must be approved by the Director.
   a. The Director shall consider and approve the financial responsibility demonstration for all the phases
of the geologic sequestration project prior to issue a Class VI permit under R18-9-J657.
   b. The owner or operator must provide any updated information related to their financial responsibility
instrument(s) on an annual basis and if there are any changes, the Director must evaluate, within a
reasonable time, the financial responsibility demonstration to confirm that the instrument(s) used remain adequate for use. The owner or operator must maintain financial responsibility requirements regardless of the status of the Director's review of the financial responsibility demonstration.

c. The Director may disapprove the use of a financial instrument if they determine that it is not sufficient to meet the requirements of this Section.

6. The owner or operator may demonstrate financial responsibility by using one or multiple qualifying financial instruments for specific phases of the geologic sequestration project.

a. In the event that the owner or operator combines more than one instrument for a specific geologic sequestration phase such combination must be limited to instruments that are not based on financial strength or performance, for example trust funds, surety bonds guaranteeing payment into a trust fund, letters of credit, escrow account, and insurance. In this case, it is the combination of mechanisms, rather than the single mechanism, which must provide financial responsibility for an amount at least equal to the current cost estimate.

b. When using a third-party instrument to demonstrate financial responsibility, the owner or operator must provide a proof that the third-party providers either have passed financial strength requirements based on credit ratings; or has met a minimum rating, minimum capitalization, and ability to pass the bond rating when applicable.

c. An owner or operator using certain types of third-party instruments must establish a standby trust to enable ADEQ to be party to the financial responsibility agreement without ADEQ being the beneficiary of any funds. The standby trust fund must be used along with other financial responsibility instruments (e.g., surety bonds, letters of credit, or escrow accounts) to provide a location to place funds if needed.

d. An owner or operator may deposit money to an escrow account to cover financial responsibility requirements; this account must segregate funds sufficient to cover estimated costs for Class VI (geologic sequestration) financial responsibility from other accounts and uses.

e. An owner or operator or its guarantor may use self insurance to demonstrate financial responsibility for geologic sequestration projects. In order to satisfy this requirement the owner or operator must meet a Tangible Net Worth of an amount approved by the Director, have a Net working capital and tangible net worth each at least six times the sum of the current well plugging, post injection site care and site closure cost, have assets located in the United States amounting to at least 90 percent of total assets or at least six times the sum of the current well plugging, post injection site care and site closure cost, and must submit a report of its bond rating and financial information annually. In addition the owner or operator must either: Have a bond rating test of AAA, AA, A, or BBB as issued by Standard & Poor's or Aaa, Aa, A, or Baa as issued by Moody's; or meet all of the following five financial ratio thresholds: A ratio of total liabilities to net worth less than 2.0; a ratio of current assets to current liabilities greater than 1.5; a ratio of the sum of net income plus depreciation, depletion, and amortization to total liabilities greater than 0.1; A ratio of current assets minus current liabilities to total assets greater than -0.1; and a net profit (revenues minus expenses) greater than 0.

f. An owner or operator who is not able to meet corporate financial test criteria may arrange a corporate guarantee by demonstrating that its corporate parent meets the financial test requirements on its behalf. The parent's demonstration that it meets the financial test requirement is insufficient if it has not also guaranteed to fulfill the obligations for the owner or operator.

g. An owner or operator may obtain an insurance policy to cover the estimated costs of geologic sequestration activities requiring financial responsibility. This insurance policy must be obtained from a third party provider.

B. The requirement to maintain adequate financial responsibility and resources is directly enforceable regardless of whether the requirement is a condition of the permit.

1. The owner or operator must maintain financial responsibility and resources until:

a. The Director receives and approves the completed post-injection site care and site closure plan; and
b. The Director approves site closure.

2. The owner or operator may be released from a financial instrument in the following circumstances:

a. The owner or operator has completed the phase of the geologic sequestration project for which the financial instrument was required and has fulfilled all its financial obligations as determined by the Director, including obtaining financial responsibility for the next phase of the geologic sequestration project, if required; or
b. The owner or operator has submitted a replacement financial instrument and received written approval from the Director accepting the new financial instrument and releasing the owner or operator from the previous financial instrument.

C. The owner or operator must have a detailed written estimate, in current dollars, of the cost of performing corrective action on wells in the area of review, plugging the injection well(s), post-injection site care and site closure, and emergency and remedial response.

1. The cost estimate must be performed for each phase separately and must be based on the costs to the regulatory agency of hiring a third party to perform the required activities. A third party is a party who is not within the corporate structure of the owner or operator.

2. During the active life of the geologic sequestration project, the owner or operator must adjust the cost estimate for inflation within 60 days prior to the anniversary date of the establishment of the financial instrument(s) used to comply with subsection (A) of this Section and provide this adjustment to the Director. The owner or operator must also provide to the Director written updates of adjustments to the cost estimate within 60 days of any amendments to the area of review and corrective action plan as required under R18-9-J659, the injection well plugging plan under R18-9-J667, the post-injection site care and site closure plan as required under R18-9-J668, and the emergency and remedial response plan as required under R18-9-J669.

3. The Director must approve any decrease or increase to the initial cost estimate. During the active life of the geologic sequestration project, the owner or operator must revise the cost estimate no later than 60 days after the Director has approved the request to modify the area of review and corrective action plan as required under R18-9-J659, the injection well plugging plan under R18-9-J667, the post-injection site care and site closure plan as required under R18-9-J668, and the emergency and response plan as required under R18-9-J669, if the change in the plan increases the cost. If the change to the plans decreases the cost, any withdrawal of funds must be approved by the Director. Any decrease to the value of the financial assurance instrument must first be approved by the Director. The revised cost estimate must be adjusted for inflation as specified at subsection (C)(2) of this Section.

4. Whenever the current cost estimate increases to an amount greater than the face amount of a financial instrument currently in use, the owner or operator, within 60 days after the increase, must either cause the face amount to be increased to an amount at least equal to the current cost estimate and submit evidence of such increase to the Director, or obtain other financial responsibility instruments to cover the increase. Whenever the current cost estimate decreases, the face amount of the financial assurance instrument may be reduced to the amount of the current cost estimate only after the owner or operator has received written approval from the Director.

D. The owner or operator must notify the Director by certified mail of adverse financial conditions such as bankruptcy that may affect the ability to carry out injection well plugging and post-injection site care and site closure.

1. In the event that the owner or operator or the third party provider of a financial responsibility instrument is going through a bankruptcy, the owner or operator must notify the Director by certified mail of the commencement of a voluntary or involuntary proceeding under Title 11 (Bankruptcy), U.S. Code, naming the owner or operator as debtor, within ten days after commencement of the proceeding.

2. A guarantor of a corporate guarantee must make such a notification to the Director if they are named as debtor, as required under the terms of the corporate guarantee.

3. An owner or operator who fulfills the requirements of subsection (A) of this Section by obtaining a trust fund, surety bond, letter of credit, escrow account, or insurance policy will be deemed to be without the required financial assurance in the event of bankruptcy of the trustee or issuing institution, or a suspension or revocation of the authority of the trustee institution to act as trustee of the institution issuing the trust fund, surety bond, letter of credit, escrow account, or insurance policy. The owner or operator must establish other financial assurance within 60 days after such an event.

E. The owner or operator must provide an adjustment of the cost estimate to the Director within 60 days of notification by the Director, if the Director determines during the annual evaluation of the qualifying financial responsibility instrument(s) that the most recent demonstration is no longer adequate to cover the cost of corrective action as required under R18-9-J659, injection well plugging under R18-9-J667, post-injection site care and site closure as required under R18-9-J668, and emergency and remedial response as required under R18-9-J669.

F. The Director must approve the use and length of pay-in-periods for trust funds or escrow accounts.
R18-9-J661. Class VI Injection Well Construction Requirements

A. The owner or operator must ensure that all Class VI wells are constructed and completed to:
   1. Prevent the movement of fluids into or between USDWs or into any unauthorized zones;
   2. Permit the use of appropriate testing devices and workover tools; and
   3. Permit continuous monitoring of the annulus space between the injection tubing and long string casing.

B. Casing and Cementing of Class VI Wells.
   1. Casing and cement or other materials used in the construction of each Class VI well must have sufficient structural strength and be designed for the life of the geologic sequestration project. All well materials must be compatible with fluids with which the materials may be expected to come into contact and must meet or exceed standards developed for such materials by the American Petroleum Institute, ASTM International, or comparable standards acceptable to the Director. The casing and cementing program must be designed to prevent the movement of fluids into or between USDWs. In order to allow the Director to determine and specify casing and cementing requirements, the owner or operator must provide the following information:
      a. Depth to the injection zone(s);
      b. Injection pressure, external pressure, internal pressure, and axial loading;
      c. Hole size;
      d. Size and grade of all casing strings (wall thickness, external diameter, nominal weight, length, joint specification, and construction material);
      e. Corrosiveness of the carbon dioxide stream and formation fluids;
      f. Down-hole temperatures;
      g. Lithology of injection and confining zone(s); and
      h. Type or grade of cement and cement additives; and
      i. Quantity, chemical composition, and temperature of the carbon dioxide stream.
   2. Surface casing must extend through the base of the lowermost USDW and be cemented to the surface through the use of a single or multiple strings of casing and cement.
   3. At least one long string casing, using a sufficient number of centralizers, must extend to the injection zone and must be cemented by circulating cement to the surface in one or more stages.
   4. Circulation of cement may be accomplished by staging. The Director may approve an alternative method of cementing in cases where the cement cannot be recirculated to the surface, provided the owner or operator can demonstrate by using logs that the cement does not allow fluid movement behind the well bore.
   5. Cement and cement additives must be compatible with the carbon dioxide stream and formation fluids and of sufficient quality and quantity to maintain integrity over the design life of the geologic sequestration project. The integrity and location of the cement shall be verified using technology capable of evaluating cement quality radially and identifying the location of channels to ensure that USDWs are not endangered.

C. Tubing and packer.
   1. Tubing and packer materials used in the construction of each Class VI well must be compatible with fluids with which the materials may be expected to come into contact and must meet or exceed standards developed for such materials by the American Petroleum Institute, ASTM International, or comparable standards acceptable to the Director.
   2. All owners or operators of Class VI wells must inject fluids through tubing with a packer set at a depth opposite a cemented interval at the location approved by the Director.
   3. In order for the Director to determine and specify requirements for tubing and packer, the owner or operator must submit the following information:
      a. Depth of setting;
      b. Characteristics of the carbon dioxide stream (chemical content, corrosiveness, temperature, and density) and formation fluids;
      c. Maximum proposed injection pressure;
      d. Maximum proposed annular pressure;
      e. Proposed injection rate (intermittent or continuous) and volume and/or mass of the carbon dioxide stream;
      f. Size of tubing and casing; and
      g. Tubing tensile, burst, and collapse strengths.
R18-9-J662. Class VI; Logging, Sampling, and Testing Prior to Well Operation

A. During the drilling and construction of a Class VI injection well, the owner or operator must run appropriate logs, surveys and tests to determine or verify the depth, thickness, porosity, permeability, and lithology of, and the salinity of any formation fluids in all relevant geologic formations to ensure conformance with the injection well construction requirements under R18-9-J661 and to establish accurate baseline data against which future measurements may be compared. The owner or operator must submit to the Director a descriptive report prepared by a knowledgeable log analyst that includes an interpretation of the results of such logs and tests. At a minimum, such logs and tests must include:

1. Deviation checks during drilling on all holes constructed by drilling a pilot hole which is enlarged by reaming or another method. Such checks must be at sufficiently frequent intervals to determine the location of the borehole and to ensure that vertical avenues for fluid movement in the form of diverging holes are not created during drilling; and

2. Before and upon installation of the surface casing:
   a. Resistivity, spontaneous potential, and caliper logs before the casing is installed; and
   b. A cement bond and variable density log to evaluate cement quality radially, and a temperature log after the casing is set and cemented.

3. Before and upon installation of the long string casing:
   a. Resistivity, spontaneous potential, porosity, caliper, gamma ray, fracture finder logs, and any other logs the Director requires for the given geology before the casing is installed; and
   b. A cement bond and variable density log, and a temperature log after the casing is set and cemented.

4. A series of tests designed to demonstrate the internal and external mechanical integrity of injection wells, which may include:
   a. A pressure test with liquid or gas;
   b. A tracer survey such as oxygen-activation logging;
   c. A temperature or noise log;
   d. A casing inspection log; and

5. Any alternative methods that provide equivalent or better information and that are required by and/or approved of by the Director.

B. The owner or operator must take whole cores or sidewall cores of the injection zone and confining system and formation fluid samples from the injection zone(s), and must submit to the Director a detailed report prepared by a log analyst that includes: Well log analyses (including well logs), core analyses, and formation fluid sample information. The Director may accept information on cores from nearby wells if the owner or operator can demonstrate that core retrieval is not possible and that such cores are representative of conditions at the well. The Director may require the owner or operator to core other formations in the borehole.

C. The owner or operator must record the fluid temperature, pH, conductivity, reservoir pressure, and static fluid level of the injection zone(s).

D. At a minimum, the owner or operator must determine or calculate the following information concerning the injection and confining zone(s):

1. Fracture pressure;

2. Other physical and chemical characteristics of the injection and confining zone(s); and

3. Physical and chemical characteristics of the formation fluids in the injection zone(s).

E. Upon completion, but prior to operation, the owner or operator must conduct the following tests to verify hydrogeologic characteristics of the injection zone(s):

1. A pressure fall-off test; and,

2. A pump test; or

3. Injectivity tests.

F. The owner or operator must provide the Director with the opportunity to witness all logging and testing by this Part. The owner or operator must submit a schedule of such activities to the Director 30 days prior to conducting the first test and submit any changes to the schedule 30 days prior to the next scheduled test.

R18-9-J663. Class VI; Injection Well Operating Requirements

A. Except during stimulation, the owner or operator must ensure that injection pressure does not exceed 90 percent of the fracture pressure of the injection zone(s) so as to ensure that the injection does not initiate new fractures or propagate existing fractures in the injection zone(s). In no case may injection pressure initiate fractures in the confining zone(s) or cause the movement of injection or formation fluids that endangers a USDW. Pursuant to
requirements at R18-9-J657(B)(9), all stimulation programs must be approved by the Director as part of the permit application and incorporated into the permit.

B. Injection between the outermost casing protecting USDWs and the well bore is prohibited.

C. The owner or operator must fill the annulus between the tubing and the long string casing with a non-corrosive fluid approved by the Director. The owner or operator must maintain on the annulus a pressure that exceeds the operating injection pressure, unless the Director determines that such requirement might harm the integrity of the well or endanger USDWs.

D. Other than during periods of well workover (maintenance) approved by the Director in which the sealed tubing-casing annulus is disassembled for maintenance or corrective procedures, the owner or operator must maintain mechanical integrity of the injection well at all times.

E. The owner or operator must install and use:
   1. Continuous recording devices to monitor: The injection pressure; the rate, volume and/or mass, and temperature of the carbon dioxide stream; and the pressure on the annulus between the tubing and the long string casing and annulus fluid volume; and
   2. Alarms and automatic surface shut-off systems or, at the discretion of the Director, down-hole shut-off systems for onshore wells or, other mechanical devices that provide equivalent protection.

F. If a shutdown (such as down-hole or at the surface) is triggered or a loss of mechanical integrity is discovered, the owner or operator must immediately investigate and identify as expeditiously as possible the cause of the shut off. If, upon such investigation, the well appears to be lacking mechanical integrity, or if monitoring required under subsection (E) of this Section otherwise indicates that the well may be lacking mechanical integrity, the owner or operator must:
   1. Immediately cease injection;
   2. Take all steps reasonably necessary to determine whether there may have been a release of the injected carbon dioxide stream or formation fluids into any unauthorized zone;
   3. Notify the Director within 24 hours;
   4. Restore and demonstrate mechanical integrity to the satisfaction of the Director prior to resuming injection; and
   5. Notify the Director when injection can be expected to resume.

R18-9-J664. Class VI; Mechanical Integrity

A. A Class VI well has mechanical integrity if:
   1. There is no significant leak in the casing, tubing, or packer; and
   2. There is no significant fluid movement into a USDW through channels adjacent to the injection well bore.

B. To evaluate the absence of significant leaks under subsection (A)(1) of this Section, owners or operators must, following an initial annulus pressure test, continuously monitor injection pressure, rate, injected volumes; pressure on the annulus between tubing and long-string casing; and annulus fluid volume as specified in R18-9-J663;

C. At least once per year, the owner or operator must use one of the following methods to determine the absence of significant fluid movement under subsection (A)(2) of this Section:
   1. An approved tracer survey such as an oxygen-activation log; or
   2. A temperature or noise log.

D. If required by the Director, at a frequency specified in the testing and monitoring plan required at R18-9-J665, the owner or operator must run a casing inspection log to determine the presence or absence of corrosion in the long-string casing.

E. The Director may require any other test to evaluate mechanical integrity under subsections (A)(1) or (A)(2) of this Section. Also, the Director may allow the use of a test to demonstrate mechanical integrity other than those listed above with the written approval of the Administrator. To obtain approval for a new mechanical integrity test, the Director must submit a written request to the Administrator setting forth the proposed test and all technical data supporting its use.

F. In conducting and evaluating the tests enumerated in this Section or others to be allowed by the Director, the owner or operator and the Director must apply methods and standards generally accepted in the industry. When the owner or operator reports the results of mechanical integrity tests to the Director, they shall include a description of the test(s) and the method(s) used. In making his/her evaluation, the Director must review monitoring and other test data submitted since the previous evaluation.

G. The Director may require additional or alternative tests if the results presented by the owner or operator under subsections (A) through (F) of this Section are not satisfactory to the Director to demonstrate that there is no
significant leak in the casing, tubing, or packer, or to demonstrate that there is no significant movement of fluid into a USDW resulting from the injection activity as stated in subsections (A)(1) and (A)(2) of this Section.

R18-9-J665. Class VI: Testing and Monitoring Requirements

The owner or operator of a Class VI well must prepare, maintain, and comply with a testing and monitoring plan to verify that the geologic sequestration project is operating as permitted and is not endangering USDWs. The requirement to maintain and implement an approved plan is directly enforceable regardless of whether the requirement is a condition of the permit. The testing and monitoring plan must be submitted with the permit application, for Director approval, and must include a description of how the owner or operator will meet the requirements of this Section, including accessing sites for all necessary monitoring and testing during the life of the project. Testing and monitoring associated with geologic sequestration projects must, at a minimum, include:

1. Analysis of the carbon dioxide stream with sufficient frequency to yield data representative of its chemical and physical characteristics;
2. Installation and use, except during well workovers as defined in R18-9-J663, of continuous recording devices to monitor injection pressure, rate, and volume; the pressure on the annulus between the tubing and the long string casing; and the annulus fluid volume added;
3. Corrosion monitoring of the well materials for loss of mass, thickness, cracking, pitting, and other signs of corrosion, which must be performed on a quarterly basis to ensure that the well components meet the minimum standards for material strength and performance set forth in R18-9-J661, by:
   a. Analyzing coupons of the well construction materials placed in contact with the carbon dioxide stream; or
   b. Routing the carbon dioxide stream through a loop constructed with the material used in the well and inspecting the materials in the loop; or
   c. Using an alternative method approved by the Director;
4. Periodic monitoring of the ground water quality and geochemical changes above the confining zone(s) that may be a result of carbon dioxide movement through the confining zone(s) or additional identified zones, including:
   a. The location and number of monitoring wells based on specific information about the geologic sequestration project, including injection rate and volume, geology, the presence of artificial penetrations, and other factors; and
   b. The monitoring frequency and spatial distribution of monitoring wells based on baseline geochemical data that has been collected under R18-9-J657 and on any modeling results in the area of review evaluation required by R18-9-J659(C);
5. A demonstration of external mechanical integrity pursuant to R18-9-J664(C) at least once per year until the injection well is plugged; and, if required by the Director, a casing inspection log pursuant to requirements under R18-9-J664(D) at a frequency established in the testing and monitoring plan;
6. A pressure fall-off test at least once every five years unless more frequent testing is required by the Director based on site-specific information;
7. Testing and monitoring to track the extent of the carbon dioxide plume and the presence or absence of elevated pressure (e.g., the pressure front) by using:
   a. Direct methods in the injection zone(s); and,
   b. Indirect methods (e.g., seismic, electrical, gravity, or electromagnetic surveys and/or down-hole carbon dioxide detection tools), unless the Director determines, based on site-specific geology, that such methods are not appropriate;
8. The Director may require surface air monitoring and/or soil gas monitoring to detect movement of carbon dioxide that could endanger a USDW.
   a. Design of Class VI surface air and/or soil gas monitoring must be based on potential risks to USDWs within the area of review;
   b. The monitoring frequency and spatial distribution of surface air monitoring and/or soil gas monitoring must be decided using baseline data, and the monitoring plan must describe how the proposed monitoring will yield useful information on the area of review delineation and/or compliance with standards under R18-9-B608;
   c. If an owner or operator demonstrates that monitoring employed under 40 CFR §§ 98.440 to 98.449 (Clean Air Act, 42 U.S.C. 7401 et seq.) accomplishes the goals of subsections (A)(8)(a) and (b) of this Section, and meets the requirements pursuant to R18-9-J666(3)(e), a Director that requires surface

91
air/soil gas monitoring must approve the use of monitoring employed under 40 CFR §§ 98.440 to 98.449. Compliance with 40 CFR §§ 98.440 to 98.449 pursuant to this provision is considered a condition of the Class VI permit;

9. Any additional monitoring, as required by the Director, necessary to support, upgrade, and improve computational modeling of the area of review evaluation required under R18-9-J659(C) and to determine compliance with standards under R18-9-B608;

10. The owner or operator shall periodically review the testing and monitoring plan to incorporate monitoring data collected under this Part, operational data collected under R18-9-J663, and the most recent area of review reevaluation performed under R18-9-J659(E). In no case shall the owner or operator review the testing and monitoring plan less often than once every five years. Based on this review, the owner or operator shall submit an amended testing and monitoring plan or demonstrate to the Director that no amendment to the testing and monitoring plan is needed. Any amendments to the testing and monitoring plan must be approved by the Director, must be incorporated into the permit, and are subject to the permit modification requirements under R18-9-C632 or R18-9-C633, as appropriate. Amended plans or demonstrations shall be submitted to the Director as follows:
   a. Within one year of an area of review reevaluation;
   b. Following any significant changes to the facility, such as addition of monitoring wells or newly permitted injection wells within the area of review, on a schedule determined by the Director; or
   c. When required by the Director.

11. A quality assurance and surveillance plan for all testing and monitoring requirements.

R18-9-J666. Class VI; Reporting Requirements
The owner or operator must provide at a minimum, the following reports to the Director, and as specified in subsection (5) of this Section to EPA, for each permitted Class VI well:

1. Semi-annual reports containing:
   a. Any changes to the physical, chemical, and other relevant characteristics of the carbon dioxide stream from the proposed operating data;
   b. Monthly average, maximum, and minimum values for injection pressure, flow rate and volume, and annular pressure;
   c. A description of any event that exceeds operating parameters for annulus pressure or injection pressure specified in the permit;
   d. A description of any event which triggers a shut-off device required pursuant to R18-9-J663(E) and the response taken;
   e. The monthly volume and/or mass of the carbon dioxide stream injected over the reporting period and the volume injected cumulatively over the life of the project;
   f. Monthly annulus fluid volume added; and
   g. The results of monitoring prescribed under R18-9-J665.

2. Report, within 30 days, the results of:
   a. Periodic tests of mechanical integrity;
   b. Any well workover; and
   c. Any other test of the injection well conducted by the permittee if required by the Director.

3. Report, within 24 hours:
   a. Any evidence that the injected carbon dioxide stream or associated pressure front may cause an endangerment to a USDW;
   b. Any noncompliance with a permit condition, or malfunction of the injection system, which may cause fluid migration into or between USDWs;
   c. Any triggering of a shut-off system (i.e., down-hole or at the surface);
   d. Any failure to maintain mechanical integrity; or
   e. Pursuant to compliance with the requirement at R18-9-J665(8) for surface air/soil gas monitoring or other monitoring technologies, if required by the Director, any release of carbon dioxide to the atmosphere or biosphere.

4. Owners or operators must notify the Director in writing 30 days in advance of:
   a. Any planned well workover;
   b. Any planned stimulation activities, other than stimulation for formation testing conducted under R18-9-J657; and
   c. Any other planned test of the injection well conducted by the permittee.
5. Owners or operators must submit all required reports, submittals, and notifications under Part J of this Article to EPA in an electronic format approved by EPA.

6. Records shall be retained by the owner or operator as follows:
   a. All data collected under R18-9-J657 for Class VI permit applications shall be retained throughout the life of the geologic sequestration project and for ten years following site closure.
   b. Data on the nature and composition of all injected fluids collected pursuant to R18-9-J665(1) shall be retained until ten years after site closure. The Director may require the owner or operator to deliver the records to the Director at the conclusion of the retention period.
   c. Monitoring data collected pursuant to R18-9-J665(2) through (9) shall be retained for ten years after it is collected.
   d. Well plugging reports, post-injection site care data, including, if appropriate, data and information used to develop the demonstration of the alternative post-injection site care timeframe, and the site closure report collected pursuant to requirements at R18-9-J668(F) and (H) shall be retained for ten years following site closure.
   e. The Director has authority to require the owner or operator to retain any records required in this Part for longer than ten years after site closure.

R18-9-J667. Class VI; Injection Well Plugging

A. Prior to the well plugging, the owner or operator must flush each Class VI injection well with a buffer fluid, determine bottomhole reservoir pressure, and perform a final external mechanical integrity test.

B. The owner or operator of a Class VI well must prepare, maintain, and comply with a plan that is acceptable to the Director. The requirement to maintain and implement an approved plan is directly enforceable regardless of whether the requirement is a condition of the permit. The well plugging plan must be submitted as part of the permit application and must include the following information:
   1. Appropriate tests or measures for determining bottomhole reservoir pressure;
   2. Appropriate testing methods to ensure external mechanical integrity as specified in R18-9-J664;
   3. The type and number of plugs to be used;
   4. The placement of each plug, including the elevation of the top and bottom of each plug;
   5. The type, grade, and quantity of material to be used in plugging. The material must be compatible with the carbon dioxide stream; and
   6. The method of placement of the plugs.

C. The owner or operator must notify the Director in writing pursuant to R18-9-J666(5), at least 60 days before plugging of a well. At this time, if any changes have been made to the original well plugging plan, the owner or operator must also provide the revised well plugging plan. The Director may allow for a shorter notice period. Any amendments to the injection well plugging plan must be approved by the Director, must be incorporated into the permit, and are subject to the permit modification requirements at R18-9-C632 or R18-9-C633, as appropriate.

D. Within 60 days after plugging, the owner or operator must submit, pursuant to R18-9-J666(5), a plugging report to the Director. The report must be certified as accurate by the owner or operator and by the person who performed the plugging operation, if other than the owner or operator. The owner or operator shall retain the well plugging report for ten years following site closure.

R18-9-J668. Class VI; Post-Injection Site Care and Site Closure

A. The owner or operator of a Class VI well must prepare, maintain, and comply with a plan for post-injection site care and site closure that meets the requirements of subsection (A)(2) of this Section and is acceptable to the Director. The requirement to maintain and implement an approved plan is directly enforceable regardless of whether the requirement is a condition of the permit.
   1. The owner or operator must submit the post-injection site care and site closure plan as a part of the permit application to be approved by the Director.
   2. The post-injection site care and site closure plan must include the following information:
      a. The pressure differential between pre-injection and predicted post-injection pressures in the injection zone(s);
      b. The predicted position of the carbon dioxide plume and associated pressure front at site closure as demonstrated in the area of review evaluation required under R18-9-J659(C)(1);
      c. A description of post-injection monitoring location, methods, and proposed frequency;
d. A proposed schedule for submitting post-injection site care monitoring results to the Director pursuant to R18-9-J666(5); and
e. The duration of the post-injection site care timeframe and, if approved by the Director, the demonstration of the alternative post-injection site care timeframe that ensures non-endangerment of USDWs.

3. Upon cessation of injection, owners or operators of Class VI wells must either submit an amended post-injection site care and site closure plan or demonstrate to the Director through monitoring data and modeling results that no amendment to the plan is needed. Any amendments to the post-injection site care and site closure plan must be approved by the Director, be incorporated into the permit, and are subject to the permit modification requirements at R18-9-C632 or R18-9-C633, as appropriate.

4. At any time during the life of the geologic sequestration project, the owner or operator may modify and resubmit the post-injection site care and site closure plan for the Director's approval within 30 days of such change.

B. The owner or operator shall monitor the site following the cessation of injection to show the position of the carbon dioxide plume and pressure front and demonstrate that USDWs are not being endangered.

1. Following the cessation of injection, the owner or operator shall continue to conduct monitoring as specified in the Director-approved post-injection site care and site closure plan for at least 50 years or for the duration of the alternative timeframe approved by the Director pursuant to requirements in subsection (C) of this Section, unless they make a demonstration under subsection (B)(2) of this Section. The monitoring must continue until the geologic sequestration project no longer poses an endangerment to USDWs and the demonstration under subsection (B)(2) of this Section is submitted and approved by the Director.

2. If the owner or operator can demonstrate to the satisfaction of the Director before 50 years or prior to the end of the approved alternative timeframe based on monitoring and other site-specific data, that the geologic sequestration project no longer poses an endangerment to USDWs, the Director may approve an amendment to the post-injection site care and site closure plan to reduce the frequency of monitoring or may authorize site closure before the end of the 50-year period or prior to the end of the approved alternative timeframe, where they have substantial evidence that the geologic sequestration project no longer poses a risk of endangerment to USDWs.

3. Prior to authorization for site closure, the owner or operator must submit to the Director for review and approval a demonstration, based on monitoring and other site-specific data, that no additional monitoring is needed to ensure that the geologic sequestration project does not pose an endangerment to USDWs.

4. If the demonstration in subsection (B)(3) of this Section cannot be made at the end of the 50-year period or at the end of the approved alternative timeframe, or if the Director does not approve the demonstration, the owner or operator must submit to the Director a plan to continue post-injection site care until a demonstration can be made and approved by the Director.

C. At the Director's discretion, the Director may approve, in consultation with EPA, an alternative post-injection site care timeframe other than the 50-year default, if an owner or operator can demonstrate during the permitting process that an alternative post-injection site care timeframe is appropriate and ensures non-endangerment of USDWs. The demonstration must be based on significant, site-specific data and information including all data and information collected pursuant to R18-9-J657 or R18-9-J658, and must contain substantial evidence that the geologic sequestration project will no longer pose a risk of endangerment to USDWs at the end of the alternative post-injection site care timeframe.

1. A demonstration of an alternative post-injection site care timeframe must include consideration and documentation of:
   a. The results of computational modeling performed pursuant to delineation of the area of review under R18-9-J659;
   b. The predicted timeframe for pressure decline within the injection zone, and any other zones, such that formation fluids may not be forced into any USDWs; and/or the timeframe for pressure decline to pre-injection pressures;
   c. The predicted rate of carbon dioxide plume migration within the injection zone, and the predicted timeframe for the cessation of migration;
   d. A description of the site-specific processes that will result in carbon dioxide trapping including immobilization by capillary trapping, dissolution, and mineralization at the site;
   e. The predicted rate of carbon dioxide trapping in the immobile capillary phase, dissolved phase, and/or mineral phase;
f. The results of laboratory analyses, research studies, and/or field or site-specific studies to verify the information required in subsection (C)(1)(d) and (C)(1)(e) of this Section;
g. A characterization of the confining zone(s) including a demonstration that it is free of transmissive faults, fractures, and micro-fractures and of appropriate thickness, permeability, and integrity to impede fluid movement, such as carbon dioxide and formation fluids;
h. The presence of potential conduits for fluid movement including planned injection wells and project monitoring wells associated with the proposed geologic sequestration project or any other projects in proximity to the predicted/modelled, final extent of the carbon dioxide plume and area of elevated pressure;
i. A description of the well construction and an assessment of the quality of plugs of all abandoned wells within the area of review;
j. The distance between the injection zone and the nearest USDWs above and/or below the injection zone; and
k. Any additional site-specific factors required by the Director.

2. Information submitted to support the demonstration in subsection (C)(1) of this Section must meet the following criteria:
   a. All analyses and tests performed to support the demonstration must be accurate, reproducible, and performed in accordance with the established quality assurance standards;
   b. Estimation techniques must be appropriate and EPA-certified test protocols must be used where available;
   c. Predictive models must be appropriate and tailored to the site conditions, composition of the carbon dioxide stream and injection and site conditions over the life of the geologic sequestration project;
   d. Predictive models must be calibrated using existing information where sufficient data are available;
   e. Reasonably conservative values and modeling assumptions must be used and disclosed to the Director whenever values are estimated on the basis of known, historical information instead of site-specific measurements;
   f. An analysis must be performed to identify and assess aspects of the alternative post-injection site care timeframe demonstration that contribute significantly to uncertainty. The owner or operator must conduct sensitivity analyses to determine the effect that significant uncertainty may contribute to the modeling demonstration;
   g. An approved quality assurance and quality control plan must address all aspects of the demonstration;
   h. Any additional criteria required by the Director.

D. The owner or operator must notify the Director in writing at least 120 days before site closure. At this time, if any changes have been made to the original post-injection site care and site closure plan, the owner or operator must also provide the revised plan. The Director may allow for a shorter notice period.

E. After the Director has authorized site closure, the owner or operator must plug all monitoring wells in a manner which will not allow movement of injection or formation fluids that endangers a USDW.

F. The owner or operator must submit a site closure report to the Director within 90 days of site closure, which must thereafter be retained at a location designated by the Director for ten years. The report must include:
   1. Documentation of appropriate injection and monitoring well plugging as specified in R18-9-J667 and subsection (E) of this Section. The owner or operator must provide a copy of a survey plat which has been submitted to the local zoning authority designated by the Director. The plat must indicate the location of the injection well relative to permanently surveyed benchmarks. The owner or operator must also submit a copy of the plat to the Administrator of EPA Region 9;
   2. Documentation of appropriate notification and information to such State, local and Tribal authorities that have authority over drilling activities to enable such State, local, and Tribal authorities to impose appropriate conditions on subsequent drilling activities that may penetrate the injection and confining zone(s); and
   3. Records reflecting the nature, composition, and volume of the carbon dioxide stream.

G. Each owner or operator of a Class VI injection well must record a notation on the deed to the facility property or any other document that is normally examined during Title search that will in perpetuity provide any potential purchaser of the property the following information:
   1. The fact that land has been used to sequester carbon dioxide;
   2. The name of the State agency, local authority, and/or Tribe with which the survey plat was filed, as well as the address of the Environmental Protection Agency Regional Office to which it was submitted; and
3. The volume of fluid injected, the injection zone or zones into which it was injected, and the period over which injection occurred.

H. The owner or operator must retain for ten years following site closure, records collected during the post-injection site care period. The owner or operator must deliver the records to the Director at the conclusion of the retention period, and the records must thereafter be retained at a location designated by the Director for that purpose.

R18-9-J669. Class VI; Emergency and Remedial Response

A. As part of the permit application, the owner or operator must provide the Director with an emergency and remedial response plan that describes actions the owner or operator must take to address movement of the injection or formation fluids that may cause an endangerment to a USDW during construction, operation, and post-injection site care periods. The requirement to maintain and implement an approved plan is directly enforceable regardless of whether the requirement is a condition of the permit.

B. If the owner or operator obtains evidence that the injected carbon dioxide stream and associated pressure front may cause an endangerment to a USDW, the owner or operator must:
   1. Immediately cease injection;
   2. Take all steps reasonably necessary to identify and characterize any release;
   3. Notify the Director within 24 hours; and
   4. Implement the emergency and remedial response plan approved by the Director.

C. The Director may allow the operator to resume injection prior to remediation if the owner or operator demonstrates that the injection operation will not endanger USDWs.

D. The owner or operator shall periodically review the emergency and remedial response plan developed under subsection (A) of this Section. In no case shall the owner or operator review the emergency and remedial response plan less often than once every five years. Based on this review, the owner or operator shall submit an amended emergency and remedial response plan or demonstrate to the Director that no amendment to the emergency and remedial response plan is needed. Any amendments to the emergency and remedial response plan must be approved by the Director, must be incorporated into the permit, and are subject to the permit modification requirements at R18-9-C632 or R18-9-C633, as appropriate. Amended plans or demonstrations shall be submitted to the Director as follows:
   1. Within one year of an area of review reevaluation;
   2. Following any significant changes to the facility, such as addition of injection or monitoring wells, on a schedule determined by the Director; or
   3. When required by the Director.

R18-9-J670. Class VI; Injection Depth Waiver Requirements

A. This Section sets forth information which an owner or operator seeking a waiver of the Class VI injection depth requirements must submit to the Director; information the Director must consider in consultation with all affected Public Water System Supervision Directors; the procedure for Director-Administrator communication and waiver issuance; and the additional requirements that apply to owners or operators of Class VI wells granted a waiver of the injection depth requirements.

B. In seeking a waiver of the requirement to inject below the lowermost USDW, the owner or operator must submit a supplemental report concurrent with permit application. The supplemental report must include the following:
   1. A demonstration that the injection zone(s) is/are laterally continuous, is not a USDW, and is not hydraulically connected to USDWs; does not outcrop; has adequate injectivity, volume, and sufficient porosity to safely contain the injected carbon dioxide and formation fluids; and has appropriate geochemistry.
   2. A demonstration that the injection zone(s) is/are bounded by laterally continuous, impermeable confining units above and below the injection zone(s) adequate to prevent fluid movement and pressure buildup outside of the injection zone(s); and that the confining unit(s) is/are free of transmissive faults and fractures. The report shall further characterize the regional fracture properties and contain a demonstration that such fractures will not interfere with injection, serve as conduits, or endanger USDWs.
   3. A demonstration, using computational modeling, that USDWs above and below the injection zone will not be endangered as a result of fluid movement. This modeling should be conducted in conjunction with the area of review determination, as described in R18-9-J659, and is subject to requirements, as described in R18-9-J659(C), and periodic reevaluation, as described in R18-9-J659(E).
4. A demonstration that well design and construction, in conjunction with the waiver, will ensure isolation of the injectate in lieu of requirements at R18-9-J661(A)(1) and will meet well construction requirements in subsection (G) of this Section.

5. A description of how the monitoring and testing and any additional plans will be tailored to the geologic sequestration project to ensure protection of USDWs above and below the injection zone(s), if a waiver is granted.

6. Information on the location of all the public water supplies affected, reasonably likely to be affected, or served by USDWs in the area of review.

7. Any other information requested by the Director to inform the Administrator's decision to issue a waiver.

C. To inform the Administrator's decision on whether to grant a waiver of the injection depth requirements at R18-9-A604 and R18-9-J661(A)(1), the Director must submit, to the Administrator, documentation of the following:

1. An evaluation of the following information as it relates to siting, construction, and operation of a geologic sequestration project with a waiver:
   a. The integrity of the upper and lower confining units;
   b. The suitability of the injection zone(s), such as lateral continuity, lack of transmissive faults and fractures, knowledge of current or planned artificial penetrations into the injection zone(s), or formations below the injection zone;
   c. The potential capacity of the geologic formation(s) to sequester carbon dioxide, accounting for the availability of alternative injection sites;
   d. All other site characterization data, the proposed emergency and remedial response plan, and a demonstration of financial responsibility;
   e. Community needs, demands, and supply from drinking water resources;
   f. Planned needs, potential and/or future use of USDWs and non-USDWs in the area;
   g. Planned or permitted water, hydrocarbon, or mineral resource exploitation potential of the proposed injection formation(s) and other formations both above and below the injection zone to determine if there are any plans to drill through the formation to access resources in or beneath the proposed injection zone(s)/formation(s);
   h. The proposed plan for securing alternative resources or treating USDW formation waters in the event of contamination related to the Class VI injection activity and;
   i. Any other applicable considerations or information requested by the Director.

2. Consultation with the Public Water System Supervision Directors of all States and Tribes having jurisdiction over lands within the area of review of a well for which a waiver is sought.

3. Any written waiver-related information submitted by the Public Water System Supervision Director(s) to the (UIC) Director.

D. Pursuant to requirements at R18-9-C620 and concurrent with the Class VI permit application notice process, the Director shall give public notice that a waiver application has been submitted. The notice shall clearly state:

1. The depth of the proposed injection zone(s);
2. The location of the injection well(s);
3. The name and depth of all USDWs within the area of review;
4. A map of the area of review;
5. The names of any public water supplies affected, reasonably likely to be affected, or served by USDWs in the area of review and;
6. The results of UIC-Public Water System Supervision consultation required under subsection (C)(2) of this Section.

E. Following public notice, the Director shall provide all information received through the waiver application process to the Administrator. Based on the information provided, the Administrator shall provide written concurrence or non-concurrence regarding waiver issuance.

1. If the Administrator determines that additional information is required to support a decision, the Director shall provide the information. At the Administrator’s discretion, they may require that public notice of the new information be initiated.

2. In no case shall a Director of a State-approved program issue a waiver without receipt of written concurrence from the Administrator.

F. If a waiver is issued, within 30 days of waiver issuance, EPA shall post the following information on the Office of Water's Web site:

1. The depth of the proposed injection zone(s);
2. The location of the injection well(s);
3. The name and depth of all USDWs within the area of review;
4. A map of the area of review;
5. The names of any public water supplies affected, reasonably likely to be affected, or served by USDWs in
   the area of review; and
6. The date of waiver issuance.

G. Upon receipt of a waiver of the requirement to inject below the lowermost USDW for geologic sequestration, the
   owner or operator of the Class VI well must comply with:
2. All requirements at R18-9-J661 with the following modified requirements:
   a. The owner or operator must ensure that Class VI wells with a waiver are constructed and completed to
      prevent movement of fluids into any unauthorized zones including USDWs, in lieu of requirements at
      R18-9-J661(A)(1).
   b. The casing and cementing program must be designed to prevent the movement of fluids into any
      unauthorized zones including USDWs in lieu of requirements at R18-9-J661(B)(1).
   c. The surface casing must extend through the base of the nearest USDW directly above the injection
      zone and be cemented to the surface; or, at the Director's discretion, another formation above the
      injection zone and below the nearest USDW above the injection zone.

3. All requirements at R18-9-J665 with the following modified requirements:
   a. The owner or operator shall monitor the groundwater quality, geochemical changes, and pressure in
      the first USDWs immediately above and below the injection zone(s); and in any other formations at
      the discretion of the Director.
   b. Testing and monitoring to track the extent of the carbon dioxide plume and the presence or absence of
      elevated pressure by using direct methods to monitor for pressure changes in the injection zone(s); and,
      indirect methods (such as seismic, electrical, gravity, or electromagnetic surveys and/or
      down-hole carbon dioxide detection tools), unless the Director determines, based on site-specific
      geology, that such methods are not appropriate.

4. All requirements at R18-9-J668 with the following, modified post-injection site care monitoring
   requirements:
   a. The owner or operator shall monitor the groundwater quality, geochemical changes and pressure in
      the first USDWs immediately above and below the injection zone; and in any other formations at the
      discretion of the Director.
   b. Testing and monitoring to track the extent of the carbon dioxide plume and the presence or absence of
      elevated pressure by using direct methods in the injection zone(s); and indirect methods, unless the
      Director determines based on site-specific geology, that such methods are not appropriate.

5. Any additional requirements requested by the Director designed to ensure protection of USDWs above and
   below the injection zone(s).

Table 1: Applicable Standards National Primary Drinking Water Regulations

<table>
<thead>
<tr>
<th>Contaminant</th>
<th>MCL (\text{mg/L})</th>
</tr>
</thead>
<tbody>
<tr>
<td>Alachlor</td>
<td>0.002</td>
</tr>
<tr>
<td>Alpha/photon emitters</td>
<td>15 picocuries per Liter (pCi/L)</td>
</tr>
<tr>
<td>Antimony</td>
<td>0.006</td>
</tr>
<tr>
<td>Arsenic</td>
<td>0.010</td>
</tr>
<tr>
<td>Asbestos (fibers&gt;10 micrometers)</td>
<td>7 million fibers per Liter (MFL)</td>
</tr>
<tr>
<td>Atrazine</td>
<td>0.003</td>
</tr>
<tr>
<td>Barium</td>
<td>2</td>
</tr>
<tr>
<td>Benzene</td>
<td>0.005</td>
</tr>
<tr>
<td>Benzo(a)pyrene (PAHs)</td>
<td>0.0002</td>
</tr>
<tr>
<td>Beryllium</td>
<td>0.004</td>
</tr>
<tr>
<td>Beta photon emitters</td>
<td>4 millirems per year</td>
</tr>
<tr>
<td>Bromate</td>
<td>0.010</td>
</tr>
<tr>
<td>Cadmium</td>
<td>0.005</td>
</tr>
<tr>
<td>Carbofuran</td>
<td>0.04</td>
</tr>
<tr>
<td>Substance</td>
<td>Limit</td>
</tr>
<tr>
<td>---------------------------------------------------------</td>
<td>-----------</td>
</tr>
<tr>
<td>Carbon tetrachloride</td>
<td>0.005</td>
</tr>
<tr>
<td>Chlordane</td>
<td>0.002</td>
</tr>
<tr>
<td>Chlorite</td>
<td>1.0</td>
</tr>
<tr>
<td>Chlorobenzene (total)</td>
<td>0.1</td>
</tr>
<tr>
<td>Cyanide (as free cyanide)</td>
<td>0.2</td>
</tr>
<tr>
<td>2,4-D</td>
<td>0.07</td>
</tr>
<tr>
<td>Dalapon</td>
<td>0.2</td>
</tr>
<tr>
<td>1,2-Dibromo-3-chloropropane (DBCP)</td>
<td>0.0002</td>
</tr>
<tr>
<td>o-Dichlorobenzene</td>
<td>0.6</td>
</tr>
<tr>
<td>p-Dichlorobenzene</td>
<td>0.075</td>
</tr>
<tr>
<td>1,2-Dichloroethane</td>
<td>0.005</td>
</tr>
<tr>
<td>1,1-Dichloroethylene</td>
<td>0.007</td>
</tr>
<tr>
<td>Cis-1,2-Dichloroethylene</td>
<td>0.07</td>
</tr>
<tr>
<td>Trans-1,2-Dichloroethylene</td>
<td>0.1</td>
</tr>
<tr>
<td>Dichloromethane</td>
<td>0.005</td>
</tr>
<tr>
<td>1,2-Dichloropropane</td>
<td>0.005</td>
</tr>
<tr>
<td>Di(2-ethylhexyl) adipate</td>
<td>0.4</td>
</tr>
<tr>
<td>Di(2-ethylhexyl) phthalate</td>
<td>0.006</td>
</tr>
<tr>
<td>Dinosch</td>
<td>0.007</td>
</tr>
<tr>
<td>Dioxin (2,3,7,8-TCDD)</td>
<td>0.00000003</td>
</tr>
<tr>
<td>Diquat</td>
<td>0.02</td>
</tr>
<tr>
<td>Endothall</td>
<td>0.1</td>
</tr>
<tr>
<td>Endrin</td>
<td>0.002</td>
</tr>
<tr>
<td>Ethylbenzene</td>
<td>0.7</td>
</tr>
<tr>
<td>Ethylene dibromide</td>
<td>0.00005</td>
</tr>
<tr>
<td>Fecal coliform and E. coli</td>
<td>MCL^2</td>
</tr>
<tr>
<td>Fluoride</td>
<td>4.0</td>
</tr>
<tr>
<td>Glyphosate</td>
<td>0.7</td>
</tr>
<tr>
<td>Haloacetic acids (HAA5)</td>
<td>0.060</td>
</tr>
<tr>
<td>Heptachlor</td>
<td>0.0004</td>
</tr>
<tr>
<td>Heptachlor epoxide</td>
<td>0.0002</td>
</tr>
<tr>
<td>Hexachlorobenzene</td>
<td>0.001</td>
</tr>
<tr>
<td>Hexachlorocyclopentadiene</td>
<td>0.05</td>
</tr>
<tr>
<td>Lindane</td>
<td>0.0002</td>
</tr>
<tr>
<td>Mercury (inorganic)</td>
<td>0.002</td>
</tr>
<tr>
<td>Methoxychlor</td>
<td>0.04</td>
</tr>
<tr>
<td>Nitrate (measured as Nitrogen)</td>
<td>10</td>
</tr>
<tr>
<td>Nitrite (measured as Nitrogen)</td>
<td>1</td>
</tr>
<tr>
<td>Oxamyl (Vdate)</td>
<td>0.2</td>
</tr>
<tr>
<td>Pentachlorophenol</td>
<td>0.001</td>
</tr>
<tr>
<td>Picloram</td>
<td>0.5</td>
</tr>
<tr>
<td>Polychlorinated biphenyls (PCBs)</td>
<td>0.0005</td>
</tr>
<tr>
<td>Radium 226 and Radium 228 (combined)</td>
<td>5 nCi/L</td>
</tr>
<tr>
<td>Selenium</td>
<td>0.05</td>
</tr>
<tr>
<td>Simazine</td>
<td>0.004</td>
</tr>
<tr>
<td>Styrene</td>
<td>0.1</td>
</tr>
<tr>
<td>Tetrachloroethylene</td>
<td>0.005</td>
</tr>
<tr>
<td>Thallium</td>
<td>0.002</td>
</tr>
<tr>
<td>Toluene</td>
<td>1</td>
</tr>
<tr>
<td>Total Coliforms</td>
<td>5.0 percent^4</td>
</tr>
<tr>
<td>Total Trihalomethanes (TTHMs)</td>
<td>0.080</td>
</tr>
<tr>
<td>Substance</td>
<td>Concentration</td>
</tr>
<tr>
<td>-------------------------------</td>
<td>---------------</td>
</tr>
<tr>
<td>Toxaphene</td>
<td>0.003</td>
</tr>
<tr>
<td>2,4,5-TP (Silvex)</td>
<td>0.05</td>
</tr>
<tr>
<td>1,2,4-Trichlorobenzene</td>
<td>0.07</td>
</tr>
<tr>
<td>1,1,1-Trichloroethane</td>
<td>0.2</td>
</tr>
<tr>
<td>1,1,2-Trichloroethane</td>
<td>0.005</td>
</tr>
<tr>
<td>Trichloroethylene</td>
<td>0.005</td>
</tr>
<tr>
<td>Uranium</td>
<td>30µg/L</td>
</tr>
<tr>
<td>Vinyl chloride</td>
<td>0.002</td>
</tr>
<tr>
<td>Xylenes (total)</td>
<td>10</td>
</tr>
</tbody>
</table>

**NOTES**

1. Maximum Contaminant Level (MCL) – The highest level of a contaminant that is allowed in drinking water. MCLs are set as close to MCLGs as feasible using the best available treatment technology and taking cost into consideration. MCLs are enforceable standards.

2. Units are in milligrams per liter (mg/L) unless otherwise noted. Milligrams per liter are equivalent to parts per million (ppm).

3. A routine sample that is fecal coliform-positive or E. coli-positive triggers repeat samples; if any repeat sample is total coliform-positive, the system has an acute MCL violation. A routine sample that is total coliform-positive, and fecal coliform-negative or E. coli-negative triggers repeat samples; if any repeat sample is fecal coliform-positive or E. coli-positive, the system has an acute MCL violation. See also Total Coliforms.

4. No more than 5.0 percent samples total coliform-positive in a month. (For water systems that collect fewer than 40 routine samples per month, no more than one sample can be total coliform-positive per month.) Every sample that has total coliform must be analyzed for either fecal coliforms or E. coli. If two consecutive TC-positive samples, and one is also positive for E. coli or fecal coliforms, system has an acute MCL violation.
The economic, small business, and consumer impact statement:

This Economic, Small Business, and Consumer Impact Statement has been prepared to meet the requirements of A.R.S. § 41-1055.

A. An identification of the rulemaking:
The rulemaking addressed by this Economic, Small Business, and Consumer Impact Statement (EIS) consists of 72 new sections, as well as amendments to existing sections, made by the Arizona Department of Environmental Quality (ADEQ) to 18 A.A.C. 9, Articles 1 and 6, 18 A.A.C. 1, Article 5 and 18 A.A.C. 14, Article 1 in order to adopt the Federal Safe Drinking Water Act’s (SDWA) Underground Injection Control Program (UIC) under the relevant regulation in 40 C.F.R. Parts 144 through 146 within the State of Arizona as required under A.R.S. §§ 49-203(A)(6), 49-257.01.

Arizona Revised Statutes §§ 49-203(A)(6) and 49-257.01 mandate that ADEQ establishes the UIC Program through rule. Federal statute at 42 United States Code 300h et seq. authorizes EPA to grant states primary enforcement authority or primacy over the UIC program upon the adoption of the program in rule at the state level (see 40 CFR 145.22(a)(5)).

Control of underground injection conducted in the industrial, municipal and residential sectors is necessary in order to protect Arizona’s underground sources of drinking water (USDWs) or aquifers. In Arizona, the UIC program has been administered by the Environmental Protection Agency (EPA) for decades. Currently 5 Federal UIC permits are in effect, along with thousands of UIC Class V wells that are authorized by rule.

Arizona’s program adoption will allow primacy to rest with ADEQ who is entirely focused on, and knowledgeable of, Arizona’s unique geology and climate; and who deeply understand Arizona’s environment, economy, and community. Additionally, program adoption will allow ADEQ to issue better permits, faster, and eliminate duplicative regulation, permitting, and permittee fees between the Federal and state programs. Adoption of this program will supplement Arizona’s already existing groundwater safeguards, taking a place in conjunction with the Aquifer Protection Permit Program.

B. A summary of the EIS:
General Impacts
The primary costs of this rulemaking will be borne by UIC well permit holders and UIC wells authorized by rule. This includes in-situ copper mines, salt mines, municipal aquifer storage and recharge wells, extraction wells, carbon sequestration wells and a host of other injection wells.

There will be an increase in permitting costs due to ADEQ’s fee-for-service model. The fee-for-service model institutes the charging of permittees for a significant portion of the funding needed to support the implementation of the regulatory program. The Federal UIC program operates off of a general fund model, where permittees are not charged and the cost of implementation of the regulatory program comes from specific, legislatively approved funds (usually with an origin in government tax revenue). Many of ADEQ’s programs were changed after the 2008 recession from a general fund model to fee-for service model. The difference between the fee-for-service model and the general fund model is the reason the regulatory program within this rulemaking will impose a financial burden upon the permittees.

Despite the increase in permitting fees, such as annual fees, the beneficial impact to the stakeholders include permits and amendments being issued faster and the elimination of duplicative regulation, permitting, and permittee fees as a result of eliminating one of the two applicable regulatory programs for UIC permittees. ADEQ stands to benefit from this increase in fees by fulfilling a requirement of primacy. The stakeholders and the general public stand to benefit through the assurance provided that high-risk drywells in the state are being physically inspected from time to time, as opposed to rarely, as was the frequency of inspection before the ADEQ UIC program primacy.

A positive impact for all stakeholders is the protection of the environment that the program this rulemaking supports will bring. Individuals with a better understanding of Arizona’s geology and climate will be developing and maintaining these permits, which will lead to better protection of the environment, which supports the economy, which supports the community.
Specific Impacts
While the three existing UIC permittees in the state of Arizona will see an increase in regulatory cost of conducting their business, they stand to benefit greatly in having the program administered in-state through speedier application review and permit services, the elimination of duplicative regulation between the Federal and state governments and local access to ADEQ expertise, personnel and customer service. Despite the increase in regulatory cost, the existing permittees support ADEQ’s adoption of the program.

Drywell regulation in Arizona will be transitioned from dual regulation between the Federal and state governments to a singular, UIC Class V authorization by rule through a simple inventory. Arizona’s more than 65,000 registered drywells will be transitioned into the UIC Class V well inventory without a charge. The former drywell registration fee of $100 will be increased to $200 per UIC Class V inventory.

The reason for this increase to the Drywell fees is to supplement the funds necessary to support the implementation of the Class V portion of the UIC program. This includes an EPA requirement for ADEQ to assume the inspection of responsibilities for Class V wells in the state.

Stakeholder Process
ADEQ and Arizona’s UIC stakeholders spent many hours negotiating the fees for the UIC program in this rulemaking. The transparent and collaborative process rendered a balanced set of fees, whereupon the needs of all parties were met and the support of the stakeholders in adopting the program was preserved.

C. Identification of the persons who will be directly affected by, bear the costs of, or directly benefit from the rules:
This rulemaking will affect state government agencies, political subdivisions, and privately-owned businesses. Additionally, the rulemaking will impact the general public.

ADEQ has identified the following list of affected persons:

State government agencies
State agencies benefit from the rulemaking due to the rulemaking supporting the environment, the community, and industry.

- ADEQ
- Arizona Department of Water Resources
- Arizona Department of Agriculture

Political subdivisions
Political subdivisions benefit from the rulemaking due to the rulemaking supporting the environment, the community, and industry. Additional benefits include faster, better permits facilitating the installation of Drywells as needed and the development of groundwater treatment facilities to support Arizona’s growing potable water needs. As permittees, political subdivisions will also bear the increased cost of the new permitting fee schedule.

- Counties
- Municipalities
- Domestic Water Improvement Districts

Privately-Owned Businesses
Privately-owned businesses will benefit from faster, better permits reducing the costs of delays to permit issuance. As permittees, political subdivisions will also bear the increased cost of the new permitting fee schedule.

- Mines
- Mineral Extraction Companies
- Businesses which utilize drywells
**The General Public**
The general public will benefit from the environmental protection of better permits being issued by an agency with expertise specific to the permitting actions occurring in Arizona’s climate and geology. Additional benefits will be derived through the benefits industry derives which in turn supports the community and the general public.

**D. Cost/benefit analysis**

1. **Part I - Cost/Benefit Stakeholder Matrix:**

<table>
<thead>
<tr>
<th>Minimal</th>
<th>Moderate</th>
<th>Substantial</th>
<th>Significant</th>
</tr>
</thead>
<tbody>
<tr>
<td>$10,000 or less</td>
<td>$10,001 to $1,000,000</td>
<td>$1,000,001 or more</td>
<td>Cost/Burden cannot be calculated, but the Department expects it to be important to the analysis.</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Description of Affected Groups</th>
<th>Description of Effect</th>
<th>Increased Cost / Decreased Revenue</th>
<th>Decreased Cost / Increased Revenue</th>
</tr>
</thead>
<tbody>
<tr>
<td>A. State and Local Government Agencies</td>
<td>Costs of supporting and implementing a new regulatory program</td>
<td>Moderate</td>
<td>Significant</td>
</tr>
<tr>
<td></td>
<td>Ensuring underground sources of drinking water supply or aquifers are better protected from pollution.</td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td>Compliance with state and federal law.</td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td>Support of ADEQ’s mission to protect and enhance public health and the environment.</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Political Subdivisions</td>
<td>Tax revenues and indirect benefits of clean underground sources of drinking water supply</td>
<td></td>
<td>Significant</td>
</tr>
<tr>
<td></td>
<td>Regulation of desalination disposal kept local</td>
<td></td>
<td>Significant</td>
</tr>
<tr>
<td></td>
<td>Cost savings due to the elimination of duplicative regulatory programs (Federal UIC becomes State UIC, UIC permittees no longer applicable to APP)</td>
<td></td>
<td>Significant</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>B. Privately Owned Businesses</th>
<th>Cost savings due to elimination of duplicative regulatory programs (Federal UIC becomes State UIC, UIC permittees no longer applicable to APP)</th>
<th>Moderate</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>Permits and Permit Amendments issued faster</td>
<td>Significant</td>
</tr>
</tbody>
</table>
2. Part II - Individual Stakeholder Summaries/Calculations:

This section outlines ADEQ’s analyses of the estimated costs and benefits of this rulemaking, made after consultation with ADEQ staff, as well as knowledgeable individuals in the area of groundwater protection and underground injection control.

ADEQ
ADEQ will incur moderate costs as a result of implementing this rulemaking and administering the program. The rulemaking process itself requires staff time for technical review, rule composition, and public input. In order to support the administration of the UIC program, ADEQ plans on hiring 3.2 new full-time employees (FTE). These 3.2 FTEs will be split primarily between permit specialist positions, inspectors and other administrative duties. Funding those positions will incur moderate costs to ADEQ annually which will be offset by permit service fees, annual fees, inventory fees, well fees and an EPA work grant.

This rulemaking will create significant benefit to ADEQ in its fulfillment of the legislative mandates at A.R.S. §§ 49-203(A)(6) and 49-257.01. Given ADEQ’s mission to protect human health and the environment, the Department acknowledges the benefits to stakeholders that will flow from the implementation of this program, including a streamlined permitting process and a reduction in cost through the elimination of duplicative regulation between Federal and state programs. Upon adoption of the program, stakeholders who would have in the past had to file dual applications, comply with dual regulatory programs, file a dual set of ongoing reports and pay for consulting costs for dual permits will see all of those obligations consolidated into one, localized state program and permit. This fact stands to save the regulated community time, money and hardship.

The Number of New, Full-Time Employees Necessary to Implement and Enforce the Proposed Rule
3.2

Political Subdivisions
Political subdivisions are likely to see minimal costs and minimal benefit from this rulemaking. As mentioned above, municipalities have shown interest in applying for Class I disposal well permits; however, none have been applied for at the time of this rulemaking. Until political subdivisions apply for UIC permits, they will see no costs due to this rulemaking and the UIC program. However, political subdivisions are interested in the disposal of brine from prospective desalinization plants. This rulemaking stands to localize brine disposal regulation, which would bring benefit to prospective stakeholders. Municipalities also often own a multitude of dry wells, which are to be regulated under the UIC program’s Class V wells.

The UIC program exists currently, administered by the Federal government, until ADEQ achieves primary enforcement authority over the program. As is stated above, the EPA administered program is funded through an approved budget from a Federal general fund. ADEQ’s funding for UIC program administration will be realized through a fee-for-service model. The fee-for-service model institutes the charging of applicants and permittees for a significant portion of the funding necessary to support the regulatory program and the personnel necessary to staff it. Many of ADEQ’s programs are structured this way. The Federal UIC program
does not charge applicants, but rather derives its approved funds from a Federal general fund. The difference between the fee-for-service model and the general fund model is the reason the regulatory program within this rulemaking will impose a potentially minimal financial burden upon political subdivisions.

However, when the political subdivisions choose to engage with the UIC program that is the subject of this rulemaking, the benefits include a streamlined permitting process, and a reduction in cost through the elimination of duplicative regulation between Federal and state programs. Upon adoption of the program stakeholders who would have in the past had to file dual applications, comply with dual regulatory programs, file a dual set of ongoing reports and pay for consulting costs for dual permits will see all of those obligations consolidated into one, localized state program. This fact stands to save the regulated community time, money and hardship.

**Privately-Owned Business**

Privately-owned business is likely to see moderate cost and moderate benefit from this rulemaking. The disparity between EPA’s general fund program model and ADEQ’s fee-for-service model will incur potentially moderate costs to privately-owned businesses, especially the businesses that currently have UIC permits.

However, and as mentioned above, the benefits to privately-owned business include a streamlined permitting process, and a reduction in cost through the elimination of duplicative regulation between Federal and state programs. Upon adoption of the program, stakeholders who would have in the past had to file dual applications, comply with dual regulatory programs, file a dual set of ongoing reports and pay for consulting costs for dual permits will see all of those obligations consolidated into one, localized state program. This fact stands to save the regulated community time, money and hardship.

**General Public**

The general public could see significant benefit from this rulemaking. The UIC program that is the subject of this rulemaking aims to protect underground sources of drinking water supply or aquifers, many of which provide drinking water to Arizonans. The price of treating contaminated water or having to resort to other sources of water for drinking water supply is potentially significant. Furthermore, A positive impact for all stakeholders is the protection of the environment that the program this rulemaking supports will bring. Individuals with a better understanding of Arizona’s geology and climate will be developing and maintaining these permits, which will lead to better protection of the environment, which supports the economy, which supports the community.

E. A general description of the probable impact on private and public employment in business agencies, and political subdivisions of this state directly affected by the rulemaking:

ADEQ estimates that, for the most part, this rulemaking will not have an impact on public or private employment. However, and as mentioned above, all UIC permittees, whether public or private, stand to benefit through the state establishment of a streamlined permitting process, and a reduction in cost through the elimination of duplicative regulation between Federal and state programs. Upon adoption of the program, stakeholders who would have in the past had to file dual applications, comply with dual regulatory programs, file a dual set of ongoing reports and pay for consulting costs for dual permits will see all of those obligations consolidated into one, localized state program. This fact stands to save the regulated community time, money and hardship. Arizona environmental consultants may see a minimal detriment due to the streamlining of environmental compliance for companies using injection wells.

F. A statement of the probable impact of the rules on small business:

In this EIS, ADEQ uses the term “small business” consistent with A.R.S. § 41-1001(21), which defines a “small business” as a concern, including its affiliates, which is independently owned and operated, which is not dominant in its field and which employs fewer than one hundred full-time employees or which had gross annual receipts of less than four million dollars in its last fiscal year.

1. An identification of the small business subject to the rules:
Among the stakeholders listed above, only a few meet the definition of small business as set forth in A.R.S. § 41-1001(21). For example, ADEQ estimates that all three current UIC permit holders in Arizona are not small businesses. However, ADEQ has recorded with frequency around 1,000 drywell registrations annually. Drywells will be regulated under the Class V UIC program upon primacy. Small businesses will constitute a significant portion of the approximately 1,000 drywell inventories ADEQ expects annually upon primacy. In terms of UIC Class V drywell inventorying, some small businesses will be affected in a minimally negative manner by this rulemaking. However, the rulemaking intends to institute some UIC Class V inspections, including drywells, which could prove minimally beneficial to certain small businesses.

2. **The administrative and other costs required for compliance with the rules:**
Compliance costs associated with this rulemaking will vary based on the stakeholder involved. ADEQ’s examination of compliance costs for UIC well owners regulated through a permit or an authorization by rule is addressed in the cost benefit analysis above.

3. **A description of the methods that the agency may use to reduce the impact on small businesses, as required in A.R.S. § 41-1035:**
   a. **Establishing less stringent compliance or reporting requirements in the rule for small businesses:**
      Under the SDWA, small businesses are not given special treatment when it comes to compliance or reporting requirements. In order to be eligible for EPA’s transfer of primary enforcement authority of the program from Federal to State, the Federal SDWA-UIC program must be at least as stringent as the Federal program.
   b. **Establishing less stringent schedules or deadlines in the rule for compliance or reporting requirements for small businesses:**
      Under the SDWA, small businesses are not given special treatment when it comes to the stringency of schedules or deadlines for compliance and reporting. Please reference subsection (F)(3)(a) above for more explanation.
   c. **Consolidating or simplifying the rule's compliance or reporting requirements for small businesses:**
      Under the SDWA, small businesses are not given special treatment when it comes to compliance and reporting requirements. Please reference subsection (F)(3)(a) above for more explanation.
   d. **Establishing performance standards for small businesses to replace design or operational standards in the rule:**
      Under the SDWA, small businesses are not given special treatment when it comes to design or operational standards. Please reference subsection (F)(3)(a) above for more explanation.
   e. **Exempting small businesses from any or all requirements of the law:**
      Under the SDWA, small businesses are not given special treatment when it comes to requirements. Please reference subsection (F)(3)(a) above for more explanation.

4. **The probable costs and benefits to private persons and consumers who are directly affected by the rules:**
As is stated above in this EIS, the SDWA-UIC program in currently in effect, administered by the Federal government’s EPA. This rulemaking is designed to support the primary enforcement authority or primacy application ADEQ has been mandated to pursue according to A.R.S. §§ 49-203(A)(6) and 49-257.01. The existing regulated parties in Arizona include three UIC Class III permittees and tens of thousands of UIC Class V wells (mostly drywells). Also stated above is the disparity in funding mechanisms between EPA’s current administration of the program and ADEQ’s proposed funding mechanisms in administration (EPA: General Fund based; ADEQ: Fee-For-Service based). Despite the new fees associated with Arizona’s potential primacy, the state’s UIC stakeholders have shown support for ADEQ’s primacy pursuit. The reason for their support is the consolidation of Federal and state regulatory obligations into one, localized state program. The benefits to these private entities include the elimination of the necessity to file dual applications, to comply with dual regulatory programs, to file a dual set of ongoing reports and to pay for consulting costs for dual permits. Further benefits include the local access to ADEQ’s expertise, personnel and
customer service, a streamlined permitting process, and a reduction in cost through the elimination of duplicative regulation between Federal and state programs.

UIC applicants and permittees will be subject to a water quality protection service fee of $145 an hour for application review, permit writing and other, similar services. The maximum fee for a single licensing time frame for UIC Area and Classes I, II, III and V permits are set at $200,000. UIC Area and Classes I, II, III and V permit modification and/or permit renewal are set at a maximum of $150,000. UIC Class VI permits maximum fee proposal is “no max”. The reason why no maximum fee has been proposed for UIC Class VI is because of its complicated and unknown nature. Arizona does not have any Class VI carbon sequestration wells and the entire country only has a few in operation. ADEQ believes there is no basis for proposing a maximum on UIC Class VI wells at this time.

UIC permittees will be subject to Annual and Flat Fees, which were determined by considering the necessary revenue needed to support the administration of the program while putting the least burden possible on the stakeholders. Other factors include input from the APP program, other states’ UIC programs and directly affected stakeholders.

Drywell regulation in Arizona will be transitioned from a state statutorily based regulatory program to regulation under the UIC program’s Class V wells. Arizona’s more than 65,000 registered drywells will be transitioned into the UIC Class V well inventory without a charge. However, there will be a cost increase between new drywell registration fees associated with the state statutory program and new inventory fees in the state-administered UIC program. Registration fees are $100 per registration, where inventory fees will be $200 per inventory. The reason for this increase is to supplement the funds necessary to support the administration of the Class V portion of the UIC program, including the commencement of more regular inspection of high-risk drywells in Arizona. A condition of EPA granting ADEQ primacy to administer the UIC program is the inspection of a small portion of the UIC Class V wells in the state. In order to meet this requirement, ADEQ has increased the fee required to inventory a drywell in the state.

In discussion with UIC stakeholders, it was determined that a review of the revenues collected from the UIC program’s fees should take place once every three years in order to ensure that enough revenue is being collected to properly administer the program and to that the fees are equitable by putting the least amount of burden on the stakeholders. To that end, R18-14-115 is proposed in this rulemaking.

G. A statement of the probable effect on state revenues:
This rulemaking will not result in a significant increase, nor decrease in state revenues. Increased and decreased costs to ADEQ are expected to be minimal, as explained above in the analysis of costs and benefits to ADEQ. Because the UIC permittees in Arizona were permitted through the UIC program as administered by the EPA, ADEQ does not anticipate a significant decrease in business activity in the state or a corresponding loss of state tax revenues.

H. A description of any less intrusive or less costly alternative methods of achieving the purpose of the rulemaking:
The purpose of this rulemaking is to adopt the SDWA-UIC program in Arizona rule in order to lay the groundwork for state administration of the program as required by the legislature through A.R.S. §§ 49-203(A)(6) and 49-257.01. There are no less intrusive or less costly alternative methods of achieving the purpose of the rulemaking.

I. A description of any data on which the rule is based with a detailed explanation of how the data was obtained and why the data is acceptable data:
The SDWA allows states to apply for primary enforcement authority in the administration of the UIC regulatory program (see 42 United States Code 300h et seq.). The Arizona legislature mandated pursuit of the SDWA-UIC program through the passage of the following statutes, A.R.S. §§ 49-203(A)(6) and
In order to achieve primacy, one requirement of a state is to put rules in place for the program to operate through (see 40 Code of Federal Regulations 145.22(a)(5)). These rules must be at least as stringent as the Federal UIC program rules in order for EPA to consider a state’s primacy application. The rules must also be no more stringent than the analogous Federal rule, per Arizona state law (see A.R.S. § 49-104(16)). Given those parameters, the language for the rules in this rulemaking came largely from 40 CFR Parts 144, 145 and 146 and to a lesser extent, 40 CFR Parts 124, 141 and 142. A table showing specific analogous Federal regulations to the rules in this rulemaking can be found in section 6 of the Preamble above.
when the individual is exposed to both internal and external radiation (see §20.1202). When an individual is exposed to radioactive materials which fall under several of the translocation classifications (i.e., Class D, Class W, or Class Y) of the same radionuclide, the exposure may be evaluated as if it were a mixture of different radionuclides.

It should be noted that the classification of a compound as Class D, W, or Y is based on the chemical form of the compound and does not take into account the radiological half-life of different radioisotopes. For this reason, values are given for Class D, W, and Y compounds, even for very short-lived radionuclides.

**Table 2**

The columns in table 2 of this appendix captioned “Effluents,” “Air,” and “Water,” are applicable to the assessment and control of dose to the public, particularly in the implementation of the provisions of §20.1302. The concentration values given in columns 1 and 2 of table 2 are equivalent to the radionuclide concentrations which, if inhaled or ingested continuously over the course of a year, would produce a total effective dose equivalent of 0.05 rem (50 milliavels or 0.5 millisieverts).

Consideration of non-stochastic limits has not been included in deriving the air and water effluent concentration limits because non-stochastic effects are presumed not to occur at the dose levels established for individual members of the public. For radionuclides, where the non-stochastic limit was governing in deriving the occupational DAC, the stochastic ALI was used in deriving the corresponding airborne effluent limit in table 2. For this reason, the DAC and airborne effluent limits are not always proportional as was the case in appendix B to §20.1–20.601.

The air concentration values listed in table 2, column 1, were derived by one of two methods. For those radionuclides for which the stochastic limit is governing, the occupational stochastic inhalation ALI was divided by 2.4 × 10^9 ml, relating the inhalation ALI to the DAC, as explained above, and then divided by a factor of 300. The factor of 300 includes the following components: a factor of 50 to relate the 5-rem annual occupational dose limit to the 0.1-rem limit for members of the public, a factor of 3 to adjust for the difference in exposure time and the inhalation rate for a worker and that for members of the public; and a factor of 2 to adjust the occupational values (derived for adults) so that they are applicable to other age groups.

For those radionuclides for which submerison (external dose) is limiting, the occupational DAC in table 1, column 3, was divided by 219. The factor of 219 is composed of a factor of 50, as described above, and a factor of 4.38 relating occupational exposure for 2,000 hours per year to full-time exposure (8,760 hours per year). Note that an additional factor of 2 for age considerations is not warranted in the submersion case.

The water concentrations were derived by taking the most restrictive occupational stochastic oral ingestion ALI and dividing by 7.3 × 10^8. The factor of 7.3 × 10^8 (ml) includes the following components: the factors of 50 and 2 described above and a factor of 7.3 × 10^8 (ml) which is the annual water intake by “Reference Man.”

Note 2 of this appendix provides groupings of radionuclides which are applicable to unknown mixtures of radionuclides. These groupings (including occupational inhalation ALIs and DACs, air and water effluent concentrations and sewerage) require demonstrating that the most limiting radionuclides in successive classes are absent. The limit for the unknown mixture is defined when the presence of one of the listed radionuclides cannot be definitely excluded either from knowledge of the radionuclide composition of the source or from actual measurements.

**Table 3 “Sewer Disposal”**

The monthly average concentrations for release to sanitary sewers are applicable to the provisions in §20.2003. The concentration values were derived by taking the most restrictive occupational stochastic oral ingestion ALI and dividing by 7.3 × 10^9 (ml). The factor of 7.3 × 10^9 (ml) is composed of a factor of 7.3 × 10^8 (ml), the annual water intake by “Reference Man,” and a factor of 10, such that the concentrations, if the sewage released by the licensee were the only source of water ingested by a reference man during a year, would result in a committed effective dose equivalent of 0.5 rem.

**List of Elements**

<table>
<thead>
<tr>
<th>Name</th>
<th>Atomic Number</th>
<th>Symbol</th>
<th>No.</th>
</tr>
</thead>
<tbody>
<tr>
<td>Actinium</td>
<td>89</td>
<td>Ac</td>
<td>89</td>
</tr>
<tr>
<td>Aluminum</td>
<td>13</td>
<td>Al</td>
<td>13</td>
</tr>
<tr>
<td>Americium</td>
<td>95</td>
<td>Am</td>
<td>95</td>
</tr>
<tr>
<td>Antimony</td>
<td>51</td>
<td>Sb</td>
<td>51</td>
</tr>
<tr>
<td>Argon</td>
<td>18</td>
<td>Ar</td>
<td>18</td>
</tr>
<tr>
<td>Arsenic</td>
<td>33</td>
<td>As</td>
<td>33</td>
</tr>
<tr>
<td>Asatine</td>
<td>85</td>
<td>As</td>
<td>85</td>
</tr>
<tr>
<td>Barium</td>
<td>56</td>
<td>Ba</td>
<td>56</td>
</tr>
<tr>
<td>Berkelium</td>
<td>97</td>
<td>Bk</td>
<td>97</td>
</tr>
<tr>
<td>Beryllium</td>
<td>4</td>
<td>Be</td>
<td>4</td>
</tr>
<tr>
<td>Bismuth</td>
<td>83</td>
<td>Bi</td>
<td>83</td>
</tr>
<tr>
<td>Bromine</td>
<td>35</td>
<td>Br</td>
<td>35</td>
</tr>
<tr>
<td>Cadmium</td>
<td>48</td>
<td>Cd</td>
<td>48</td>
</tr>
<tr>
<td>Calcium</td>
<td>20</td>
<td>Ca</td>
<td>20</td>
</tr>
<tr>
<td>Californium</td>
<td>98</td>
<td>Cf</td>
<td>98</td>
</tr>
<tr>
<td>Carbon</td>
<td>6</td>
<td>C</td>
<td>6</td>
</tr>
<tr>
<td>Cerium</td>
<td>58</td>
<td>Ce</td>
<td>58</td>
</tr>
<tr>
<td>Cesium</td>
<td>55</td>
<td>Cs</td>
<td>55</td>
</tr>
<tr>
<td>Chlorine</td>
<td>17</td>
<td>Cl</td>
<td>17</td>
</tr>
<tr>
<td>Chromium</td>
<td>24</td>
<td>Cr</td>
<td>24</td>
</tr>
<tr>
<td>Name</td>
<td>Atomic Symbol</td>
<td>Atomic No.</td>
<td></td>
</tr>
<tr>
<td>------------</td>
<td>---------------</td>
<td>------------</td>
<td></td>
</tr>
<tr>
<td>Cobalt</td>
<td>Co</td>
<td>27</td>
<td></td>
</tr>
<tr>
<td>Copper</td>
<td>Cu</td>
<td>29</td>
<td></td>
</tr>
<tr>
<td>Curium</td>
<td>Cm</td>
<td>96</td>
<td></td>
</tr>
<tr>
<td>Dysprosium</td>
<td>Dy</td>
<td>66</td>
<td></td>
</tr>
<tr>
<td>Einsteinium</td>
<td>Es</td>
<td>99</td>
<td></td>
</tr>
<tr>
<td>Erbium</td>
<td>Er</td>
<td>68</td>
<td></td>
</tr>
<tr>
<td>Europium</td>
<td>Eu</td>
<td>63</td>
<td></td>
</tr>
<tr>
<td>Fermium</td>
<td>Fm</td>
<td>100</td>
<td></td>
</tr>
<tr>
<td>Fluorine</td>
<td>F</td>
<td>9</td>
<td></td>
</tr>
<tr>
<td>Francium</td>
<td>Fr</td>
<td>87</td>
<td></td>
</tr>
<tr>
<td>Gadolinium</td>
<td>Gd</td>
<td>64</td>
<td></td>
</tr>
<tr>
<td>Gallium</td>
<td>Ga</td>
<td>31</td>
<td></td>
</tr>
<tr>
<td>Germanium</td>
<td>Ge</td>
<td>32</td>
<td></td>
</tr>
<tr>
<td>Gold</td>
<td>Au</td>
<td>79</td>
<td></td>
</tr>
<tr>
<td>Holmium</td>
<td>Hf</td>
<td>72</td>
<td></td>
</tr>
<tr>
<td>Holmium</td>
<td>Ho</td>
<td>67</td>
<td></td>
</tr>
<tr>
<td>Hydrogen</td>
<td>H</td>
<td>1</td>
<td></td>
</tr>
<tr>
<td>Indium</td>
<td>In</td>
<td>49</td>
<td></td>
</tr>
<tr>
<td>Iodine</td>
<td>I</td>
<td>53</td>
<td></td>
</tr>
<tr>
<td>Iridium</td>
<td>Ir</td>
<td>77</td>
<td></td>
</tr>
<tr>
<td>Iron</td>
<td>Fe</td>
<td>26</td>
<td></td>
</tr>
<tr>
<td>Krypton</td>
<td>Kr</td>
<td>36</td>
<td></td>
</tr>
<tr>
<td>Lanthanum</td>
<td>La</td>
<td>57</td>
<td></td>
</tr>
<tr>
<td>Lead</td>
<td>Pb</td>
<td>82</td>
<td></td>
</tr>
<tr>
<td>Lutetium</td>
<td>Lu</td>
<td>71</td>
<td></td>
</tr>
<tr>
<td>Magnesium</td>
<td>Mg</td>
<td>12</td>
<td></td>
</tr>
<tr>
<td>Manganese</td>
<td>Mn</td>
<td>25</td>
<td></td>
</tr>
<tr>
<td>Mendelevium</td>
<td>Md</td>
<td>101</td>
<td></td>
</tr>
<tr>
<td>Mercury</td>
<td>Hg</td>
<td>80</td>
<td></td>
</tr>
<tr>
<td>Molybdenum</td>
<td>Mo</td>
<td>42</td>
<td></td>
</tr>
<tr>
<td>Neodymium</td>
<td>Nd</td>
<td>60</td>
<td></td>
</tr>
<tr>
<td>Neptunium</td>
<td>Np</td>
<td>93</td>
<td></td>
</tr>
<tr>
<td>Nickel</td>
<td>Ni</td>
<td>28</td>
<td></td>
</tr>
<tr>
<td>Niobium</td>
<td>Nb</td>
<td>41</td>
<td></td>
</tr>
<tr>
<td>Nitrogen</td>
<td>N</td>
<td>7</td>
<td></td>
</tr>
<tr>
<td>Osmium</td>
<td>Os</td>
<td>76</td>
<td></td>
</tr>
<tr>
<td>Oxygen</td>
<td>O</td>
<td>8</td>
<td></td>
</tr>
<tr>
<td>Palladium</td>
<td>Pd</td>
<td>46</td>
<td></td>
</tr>
<tr>
<td>Phosphorus</td>
<td>P</td>
<td>15</td>
<td></td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Name</th>
<th>Atomic Symbol</th>
<th>Atomic No.</th>
</tr>
</thead>
<tbody>
<tr>
<td>Platinum</td>
<td>Pt</td>
<td>78</td>
</tr>
<tr>
<td>Plutonium</td>
<td>Pu</td>
<td>94</td>
</tr>
<tr>
<td>Polonium</td>
<td>Po</td>
<td>84</td>
</tr>
<tr>
<td>Potassium</td>
<td>K</td>
<td>19</td>
</tr>
<tr>
<td>Praseodymium</td>
<td>Pr</td>
<td>59</td>
</tr>
<tr>
<td>Promethium</td>
<td>Pm</td>
<td>61</td>
</tr>
<tr>
<td>Protactinium</td>
<td>Pa</td>
<td>91</td>
</tr>
<tr>
<td>Radium</td>
<td>Ra</td>
<td>88</td>
</tr>
<tr>
<td>Radon</td>
<td>Re</td>
<td>86</td>
</tr>
<tr>
<td>Rhenium</td>
<td>Re</td>
<td>75</td>
</tr>
<tr>
<td>Rhodium</td>
<td>Rh</td>
<td>45</td>
</tr>
<tr>
<td>Rubidium</td>
<td>Rb</td>
<td>37</td>
</tr>
<tr>
<td>Ruthenium</td>
<td>Ru</td>
<td>44</td>
</tr>
<tr>
<td>Samarium</td>
<td>Sm</td>
<td>62</td>
</tr>
<tr>
<td>Selenium</td>
<td>Se</td>
<td>34</td>
</tr>
<tr>
<td>Silicon</td>
<td>Si</td>
<td>14</td>
</tr>
<tr>
<td>Silver</td>
<td>Ag</td>
<td>47</td>
</tr>
<tr>
<td>Sodium</td>
<td>Na</td>
<td>11</td>
</tr>
<tr>
<td>Strontium</td>
<td>Sr</td>
<td>38</td>
</tr>
<tr>
<td>Sulfur</td>
<td>S</td>
<td>16</td>
</tr>
<tr>
<td>Tantalum</td>
<td>Ta</td>
<td>73</td>
</tr>
<tr>
<td>Technetium</td>
<td>Tc</td>
<td>43</td>
</tr>
<tr>
<td>Tellurium</td>
<td>Te</td>
<td>52</td>
</tr>
<tr>
<td>Terbium</td>
<td>Tb</td>
<td>65</td>
</tr>
<tr>
<td>Thallium</td>
<td>Th</td>
<td>81</td>
</tr>
<tr>
<td>Thorium</td>
<td>Th</td>
<td>90</td>
</tr>
<tr>
<td>Thulium</td>
<td>Tm</td>
<td>69</td>
</tr>
<tr>
<td>Tin</td>
<td>Sn</td>
<td>50</td>
</tr>
<tr>
<td>Titanium</td>
<td>Ti</td>
<td>22</td>
</tr>
<tr>
<td>Tungsten</td>
<td>W</td>
<td>74</td>
</tr>
<tr>
<td>Uranium</td>
<td>U</td>
<td>92</td>
</tr>
<tr>
<td>Vanadium</td>
<td>V</td>
<td>23</td>
</tr>
<tr>
<td>Xenon</td>
<td>Xe</td>
<td>54</td>
</tr>
<tr>
<td>Ytterbium</td>
<td>Yb</td>
<td>70</td>
</tr>
<tr>
<td>Yttrium</td>
<td>Y</td>
<td>39</td>
</tr>
<tr>
<td>Zinc</td>
<td>Zn</td>
<td>30</td>
</tr>
<tr>
<td>Zirconium</td>
<td>Zr</td>
<td>40</td>
</tr>
<tr>
<td>Atomic No.</td>
<td>Radionuclide</td>
<td>Classa</td>
</tr>
<tr>
<td>-----------</td>
<td>--------------</td>
<td>--------</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>1</td>
<td>Hydrogen-3</td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>4</td>
<td>Beryllium-7</td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>4</td>
<td>Beryllium-10</td>
<td>W, see 7Be</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>6</td>
<td>Carbon-11^2</td>
<td>Monoxide</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>6</td>
<td>Carbon-14</td>
<td>Monoxide</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>
### Nuclear Regulatory Commission

**Pt. 20, App. B**

---

**Table 1**

<table>
<thead>
<tr>
<th>Atomic No.</th>
<th>Radionuclide</th>
<th>Class</th>
<th>Ingestion</th>
<th>Inhalation</th>
<th>Monthly</th>
</tr>
</thead>
<tbody>
<tr>
<td>7</td>
<td>Nitrogen-13</td>
<td>Submersion&lt;sup&gt;1&lt;/sup&gt;</td>
<td>-</td>
<td>4E-6</td>
<td>2E-8</td>
</tr>
<tr>
<td>8</td>
<td>Oxygen-16</td>
<td>Submersion&lt;sup&gt;1&lt;/sup&gt;</td>
<td>-</td>
<td>4E-6</td>
<td>2E-8</td>
</tr>
<tr>
<td>9</td>
<td>Fluorine-19</td>
<td>D, fluorides of H, Li, Na, K, Rb, Cs, etc.</td>
<td>(5E+4)</td>
<td>7E-4</td>
<td>7E-4</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td>SI wall</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

**Table 2**

<table>
<thead>
<tr>
<th>Occupational Values</th>
<th>Effluent Releases to Sewers</th>
</tr>
</thead>
<tbody>
<tr>
<td>Col. 1</td>
<td>Col. 2</td>
</tr>
<tr>
<td>ALI</td>
<td>(LCl)</td>
</tr>
<tr>
<td>1E-4</td>
<td>1E-4</td>
</tr>
</tbody>
</table>

**Table 3**

<table>
<thead>
<tr>
<th>Col. 1</th>
<th>Col. 2</th>
</tr>
</thead>
<tbody>
<tr>
<td>ALI</td>
<td>exceptions for W</td>
</tr>
<tr>
<td>1E-3</td>
<td>1E-3</td>
</tr>
</tbody>
</table>

---

**Further Information**

- **FLUORIDE**
- **LANTHANUM**
- **MAGNESIUM-28**
- **ALUMINUM-26**
- **SODIUM-22**
- **SODIUM-24**

---

385
<table>
<thead>
<tr>
<th>Atomic No.</th>
<th>Radionuclide</th>
<th>Class</th>
<th>Col. 1 Occupational Values</th>
<th>Col. 2 Effluent Concentrations</th>
<th>Col. 3 Releases to Severs</th>
</tr>
</thead>
<tbody>
<tr>
<td>14</td>
<td>Silicon-31</td>
<td>O, all compounds except those given for W and Y</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td>W, oxides, hydroxides, carboxylic acids, and nitrates</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td>Y, aluminosilicate glass</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>14</td>
<td>Silicon-32</td>
<td>O, see SI5</td>
<td>ZE-3</td>
<td>ZE-2</td>
<td>ZE-7</td>
</tr>
<tr>
<td></td>
<td></td>
<td>W, see SI5</td>
<td>-</td>
<td>-</td>
<td>-</td>
</tr>
<tr>
<td>15</td>
<td>Phosphorus-32</td>
<td>O, all compounds except phosphates given for W</td>
<td>6E+2</td>
<td>9E+2</td>
<td>4E-7</td>
</tr>
<tr>
<td></td>
<td></td>
<td>W, phosphates of Zn^{2+}, Fe^{3+}, Mg^{2+}, Pb^{2+}, and lanthanides</td>
<td>-</td>
<td>4E+2</td>
<td>2E-7</td>
</tr>
<tr>
<td>15</td>
<td>Phosphorus-33</td>
<td>O, see SI5</td>
<td>EE+3</td>
<td>8E+3</td>
<td>4E-6</td>
</tr>
<tr>
<td>16</td>
<td>Sulfur-35</td>
<td>O, see SI5</td>
<td>-</td>
<td>3E+3</td>
<td>1E-6</td>
</tr>
<tr>
<td></td>
<td></td>
<td>W, elemental sulfur, sulfides of Sr, Ba, Ge, Sn, Pb, As, Sb, Bi, Cu, Ag, Au, Zn, Cd, Mg, W, and Mo. Sulfates of Ca, Sr, Ba, Na, As, Sb, and Bi</td>
<td>-</td>
<td>-</td>
<td>-</td>
</tr>
<tr>
<td>17</td>
<td>Chlorine-36</td>
<td>O, chlorides of N, Li, K, Rb, Cs, and Fr</td>
<td>2E+3</td>
<td>2E+3</td>
<td>1E-6</td>
</tr>
<tr>
<td></td>
<td></td>
<td>W, chlorides of lanthanides, Ba, K, Ca, Sr, Ba, RE, Al, Ca, In, Ti, Ge, Sn, Pb, As, Sb, Bi, Te, Ru, Os, Co, Rh, Ir, Mo, Pt, Pt, Cu, Ag, Au, Zn, Cd, Mg, Sc, Y, Tl, Zr, Hf, V, Mo, Ta, Cr, Mo, W, Mo, Cr, and Re</td>
<td>-</td>
<td>2E+2</td>
<td>1E-7</td>
</tr>
<tr>
<td>Atomic No.</td>
<td>Radionuclide</td>
<td>Class</td>
<td>Col. 1 (Inhalation)</td>
<td>Col. 2</td>
<td>Col. 3</td>
</tr>
<tr>
<td>------------</td>
<td>--------------</td>
<td>-------</td>
<td>---------------------</td>
<td>--------</td>
<td>--------</td>
</tr>
<tr>
<td>17</td>
<td>Chlorine-36</td>
<td>D, see 36Cl</td>
<td>2E-4, 4E-4</td>
<td>2E-5, 6E-8</td>
<td>-</td>
</tr>
<tr>
<td>17</td>
<td>Chlorine-37</td>
<td>D, see 37Cl</td>
<td>2E-4, 5E-4</td>
<td>2E-5, 7E-7</td>
<td>-</td>
</tr>
<tr>
<td>18</td>
<td>Argon-37</td>
<td>Subersion</td>
<td>-</td>
<td>1E-6, 7E-7</td>
<td>-</td>
</tr>
<tr>
<td>18</td>
<td>Argon-39</td>
<td>Subersion</td>
<td>-</td>
<td>2E-4, 8E-7</td>
<td>-</td>
</tr>
<tr>
<td>18</td>
<td>Argon-41</td>
<td>Subersion</td>
<td>-</td>
<td>3E-6, 1E-8</td>
<td>-</td>
</tr>
<tr>
<td>19</td>
<td>Potassium-40</td>
<td>D, all compounds</td>
<td>3E+2, 4E-2</td>
<td>2E-7, 6E-10</td>
<td>4E-5, 4E-5</td>
</tr>
<tr>
<td>19</td>
<td>Potassium-42</td>
<td>D, all compounds</td>
<td>5E+3, 5E-3</td>
<td>2E-6, 6E-6</td>
<td>6E-4</td>
</tr>
<tr>
<td>19</td>
<td>Potassium-43</td>
<td>D, all compounds</td>
<td>6E+3, 6E+3</td>
<td>4E-4, 6E-4</td>
<td>9E-5, 9E-4</td>
</tr>
<tr>
<td>19</td>
<td>Potassium-44</td>
<td>D, all compounds</td>
<td>2E+4, 7E+4</td>
<td>3E-5, 9E-6</td>
<td>-</td>
</tr>
<tr>
<td>19</td>
<td>Potassium-45</td>
<td>D, all compounds</td>
<td>3E+4, 1E+5, 5E+5</td>
<td>2E-7, 7E-3</td>
<td></td>
</tr>
<tr>
<td>20</td>
<td>Calcium-41</td>
<td>W, all compounds</td>
<td>3E+3, 4E+3</td>
<td>2E+6, 6E-6, 5E-9, 6E-5</td>
<td>6E-4</td>
</tr>
<tr>
<td>20</td>
<td>Calcium-45</td>
<td>W, all compounds</td>
<td>2E+3, 4E+2</td>
<td>4E-7, 1E-9, 2E-5</td>
<td>2E-4</td>
</tr>
<tr>
<td>21</td>
<td>Scandium-43</td>
<td>Y, all compounds</td>
<td>7E+3, 2E+4</td>
<td>6E-6, 3E-8, 1E-4</td>
<td>1E-3</td>
</tr>
<tr>
<td>21</td>
<td>Scandium-44</td>
<td>Y, all compounds</td>
<td>5E+2, 7E+2</td>
<td>3E-7, 1E-9, 7E-6</td>
<td>7E-5</td>
</tr>
<tr>
<td>21</td>
<td>Scandium-46</td>
<td>Y, all compounds</td>
<td>4E+3, 1E+4, 5E+6</td>
<td>2E-10, 5E-5, 9E-4</td>
<td></td>
</tr>
<tr>
<td>21</td>
<td>Scandium-47</td>
<td>Y, all compounds</td>
<td>9E+2, 2E+2</td>
<td>7E-7, 3E-10</td>
<td>1E-5, 1E-4</td>
</tr>
<tr>
<td>21</td>
<td>Scandium-48</td>
<td>Y, all compounds</td>
<td>3E+3, 1E+5</td>
<td>6E-6, 4E-9</td>
<td>-</td>
</tr>
<tr>
<td>21</td>
<td>Scandium-49</td>
<td>Y, all compounds</td>
<td>8E+2, 1E+8</td>
<td>6E-7, 2E-9</td>
<td>1E-5, 3E-4</td>
</tr>
<tr>
<td>21</td>
<td>Scandium-50</td>
<td>Y, all compounds</td>
<td>2E+4, 5E+4</td>
<td>2E-5, 4E-8</td>
<td>3E-4, 3E-3</td>
</tr>
<tr>
<td>22</td>
<td>Titanium-44</td>
<td>D, all compounds except those given for W and Y</td>
<td>3E+2, 1E+1</td>
<td>5E-9, 2E+11, 4E-6, 4E-5</td>
<td></td>
</tr>
<tr>
<td>22</td>
<td>Titanium-45</td>
<td>W, oxides, hydroxides, carboxides, halides, and nitrides</td>
<td>-</td>
<td>1E+1, 3E-8, 4E-11</td>
<td>-</td>
</tr>
<tr>
<td>22</td>
<td>Titanium-46</td>
<td>Y, Sr, Te, Se, Xe</td>
<td>-</td>
<td>6E+2, 2E-9</td>
<td>8E-12, -</td>
</tr>
<tr>
<td>22</td>
<td>Titanium-47</td>
<td>Y, Sr, Te, Se, Xe</td>
<td>-</td>
<td>6E+2, 2E-9</td>
<td>8E-12, -</td>
</tr>
<tr>
<td>Atomic No.</td>
<td>Radioisotope</td>
<td>Class</td>
<td>Table 1 Occupational Values</td>
<td>Table 2 Effluent Concentrations</td>
<td>Table 3 Releases to Surface</td>
</tr>
<tr>
<td>-----------</td>
<td>--------------</td>
<td>-------</td>
<td>----------------------------</td>
<td>-------------------------------</td>
<td>-----------------------------</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td>Col. 1 (mg/L)</td>
<td>Col. 2 (mg/L)</td>
<td>Col. 3 (mg/L)</td>
</tr>
<tr>
<td>22</td>
<td>Titanium-45</td>
<td></td>
<td>9E+3</td>
<td>3E+4</td>
<td>3E-5</td>
</tr>
<tr>
<td></td>
<td>D, see Tm</td>
<td></td>
<td>4E+4</td>
<td>3E-5</td>
<td>5E-8</td>
</tr>
<tr>
<td></td>
<td>W, see Tm</td>
<td></td>
<td>3E+4</td>
<td>3E-5</td>
<td>4E-8</td>
</tr>
<tr>
<td>23</td>
<td>Vanadium-47</td>
<td></td>
<td>3E+4</td>
<td>8E+4</td>
<td>3E-5</td>
</tr>
<tr>
<td></td>
<td>D, all except</td>
<td></td>
<td>5E+4</td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td>those given for W</td>
<td></td>
<td>3E+4</td>
<td>4E-5</td>
<td>4E-4</td>
</tr>
<tr>
<td></td>
<td>W, oxides, hydroxides, carbides, and halides</td>
<td></td>
<td>3E+5</td>
<td>4E-5</td>
<td>4E-4</td>
</tr>
<tr>
<td>23</td>
<td>Vanadium-48</td>
<td></td>
<td>6E+6</td>
<td>2E+7</td>
<td>9E-6</td>
</tr>
<tr>
<td></td>
<td>D, see 47V</td>
<td></td>
<td>7E+6</td>
<td>2E+7</td>
<td>9E-6</td>
</tr>
<tr>
<td></td>
<td>W, see 47V</td>
<td></td>
<td>1E+7</td>
<td>2E+7</td>
<td>9E-6</td>
</tr>
<tr>
<td>24</td>
<td>Chromium-48</td>
<td></td>
<td>6E+3</td>
<td>3E+4</td>
<td>3E-6</td>
</tr>
<tr>
<td></td>
<td>D, all except</td>
<td></td>
<td>5E+4</td>
<td>3E+5</td>
<td>3E-6</td>
</tr>
<tr>
<td></td>
<td>those given for W and Y</td>
<td></td>
<td>5E+4</td>
<td>3E-6</td>
<td>3E-6</td>
</tr>
<tr>
<td></td>
<td>W, oxides and hydroxides</td>
<td></td>
<td>7E+3</td>
<td>3E-6</td>
<td>3E-8</td>
</tr>
<tr>
<td>24</td>
<td>Chromium-49</td>
<td></td>
<td>3E+4</td>
<td>8E+4</td>
<td>4E-5</td>
</tr>
<tr>
<td></td>
<td>D, see 49Cr</td>
<td></td>
<td>3E+4</td>
<td>8E+4</td>
<td>4E-5</td>
</tr>
<tr>
<td></td>
<td>W, see 49Cr</td>
<td></td>
<td>3E+4</td>
<td>8E+4</td>
<td>4E-5</td>
</tr>
<tr>
<td></td>
<td>Y, see 49Cr</td>
<td></td>
<td>3E+4</td>
<td>8E+4</td>
<td>4E-5</td>
</tr>
<tr>
<td>24</td>
<td>Chromium-51</td>
<td></td>
<td>4E+4</td>
<td>5E+4</td>
<td>3E-5</td>
</tr>
<tr>
<td></td>
<td>D, see 51Cr</td>
<td></td>
<td>4E+4</td>
<td>5E+4</td>
<td>3E-5</td>
</tr>
<tr>
<td></td>
<td>W, see 51Cr</td>
<td></td>
<td>2E+6</td>
<td>2E+5</td>
<td>3E-5</td>
</tr>
<tr>
<td></td>
<td>Y, see 51Cr</td>
<td></td>
<td>2E+6</td>
<td>2E+5</td>
<td>3E-5</td>
</tr>
<tr>
<td>25</td>
<td>Manganese-52</td>
<td></td>
<td>2E+5</td>
<td>2E+4</td>
<td>3E-4</td>
</tr>
<tr>
<td></td>
<td>D, all except</td>
<td></td>
<td>3E+4</td>
<td>3E-5</td>
<td>3E-5</td>
</tr>
<tr>
<td></td>
<td>those given for W</td>
<td></td>
<td>2E+6</td>
<td>2E+5</td>
<td>3E-6</td>
</tr>
<tr>
<td></td>
<td>W, oxides, hydroxides, carbides, and halides, and nitrates</td>
<td></td>
<td>2E+6</td>
<td>2E+5</td>
<td>3E-6</td>
</tr>
<tr>
<td>25</td>
<td>Manganese-52</td>
<td></td>
<td>3E+4</td>
<td>3E-5</td>
<td>3E-5</td>
</tr>
<tr>
<td></td>
<td>D, see 52Mn</td>
<td></td>
<td>3E+4</td>
<td>3E-5</td>
<td>3E-5</td>
</tr>
<tr>
<td></td>
<td>W, see 52Mn</td>
<td></td>
<td>2E+2</td>
<td>2E-2</td>
<td>2E-2</td>
</tr>
<tr>
<td>25</td>
<td>Manganese-53</td>
<td></td>
<td>3E+4</td>
<td>3E-5</td>
<td>3E-5</td>
</tr>
<tr>
<td></td>
<td>D, see 53Mn</td>
<td></td>
<td>3E+4</td>
<td>3E-5</td>
<td>3E-5</td>
</tr>
<tr>
<td></td>
<td>W, see 53Mn</td>
<td></td>
<td>2E+4</td>
<td>2E-4</td>
<td>2E-4</td>
</tr>
<tr>
<td>25</td>
<td>Manganese-54</td>
<td></td>
<td>3E+4</td>
<td>3E-5</td>
<td>3E-5</td>
</tr>
<tr>
<td></td>
<td>D, see 54Mn</td>
<td></td>
<td>3E+4</td>
<td>3E-5</td>
<td>3E-5</td>
</tr>
<tr>
<td></td>
<td>W, see 54Mn</td>
<td></td>
<td>2E+4</td>
<td>2E-4</td>
<td>2E-4</td>
</tr>
<tr>
<td>25</td>
<td>Manganese-56</td>
<td></td>
<td>3E+4</td>
<td>3E-5</td>
<td>3E-5</td>
</tr>
<tr>
<td></td>
<td>D, see 56Mn</td>
<td></td>
<td>3E+4</td>
<td>3E-5</td>
<td>3E-5</td>
</tr>
<tr>
<td></td>
<td>W, see 56Mn</td>
<td></td>
<td>2E+4</td>
<td>2E-4</td>
<td>2E-4</td>
</tr>
<tr>
<td>Atomic No.</td>
<td>Radiounclide</td>
<td>Class</td>
<td>Table 1 Occupational Values</td>
<td>Table 2 Effluent Concentrations</td>
<td>Table 3 Monthly Average Concentration</td>
</tr>
<tr>
<td>------------</td>
<td>--------------</td>
<td>-------</td>
<td>----------------------------</td>
<td>-------------------------------</td>
<td>-----------------------------------</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td>Col. 1 Oral</td>
<td>Col. 2 Inhale</td>
<td>Col. 3 Inhalation</td>
</tr>
<tr>
<td>26</td>
<td>Iron-52</td>
<td>D, all compounds except those given for W</td>
<td>9E+2</td>
<td>3E+3</td>
<td>1E-6</td>
</tr>
<tr>
<td></td>
<td>w, oxides, hydroxides, and halides</td>
<td>-</td>
<td>2E+3</td>
<td>3E-6</td>
<td>3E-9</td>
</tr>
<tr>
<td>26</td>
<td>Iron-55</td>
<td>D, see Fe</td>
<td>9E+3</td>
<td>2E+3</td>
<td>8E-7</td>
</tr>
<tr>
<td></td>
<td>w, see Fe</td>
<td>-</td>
<td>4E+3</td>
<td>2E-6</td>
<td>6E-9</td>
</tr>
<tr>
<td>26</td>
<td>Iron-59</td>
<td>D, see Fe</td>
<td>8E+2</td>
<td>3E+2</td>
<td>1E-7</td>
</tr>
<tr>
<td></td>
<td>w, see Fe</td>
<td>-</td>
<td>3E+2</td>
<td>2E-7</td>
<td>7E-10</td>
</tr>
<tr>
<td>26</td>
<td>Iron-60</td>
<td>D, see Fe</td>
<td>3E+1</td>
<td>6E+0</td>
<td>3E-9</td>
</tr>
<tr>
<td></td>
<td>w, see Fe</td>
<td>-</td>
<td>2E+1</td>
<td>8E-9</td>
<td>3E-11</td>
</tr>
<tr>
<td>27</td>
<td>Cobalt-55</td>
<td>W, all compounds except those given for Y</td>
<td>1E+3</td>
<td>3E+3</td>
<td>1E-6</td>
</tr>
<tr>
<td></td>
<td>w, oxides, hydroxides, halides, and nitrates</td>
<td>-</td>
<td>3E+3</td>
<td>1E-5</td>
<td>4E-9</td>
</tr>
<tr>
<td>27</td>
<td>Cobalt-56</td>
<td>w, see Co</td>
<td>5E+2</td>
<td>3E+2</td>
<td>1E-7</td>
</tr>
<tr>
<td></td>
<td>y, see Co</td>
<td>-</td>
<td>4E+2</td>
<td>2E-2</td>
<td>6E-8</td>
</tr>
<tr>
<td>27</td>
<td>Cobalt-57</td>
<td>w, see Co</td>
<td>8E+3</td>
<td>3E+3</td>
<td>1E-6</td>
</tr>
<tr>
<td></td>
<td>y, see Co</td>
<td>-</td>
<td>4E+3</td>
<td>7E-2</td>
<td>3E-7</td>
</tr>
<tr>
<td>27</td>
<td>Cobalt-59w</td>
<td>w, see Co</td>
<td>6E+4</td>
<td>9E+4</td>
<td>4E-5</td>
</tr>
<tr>
<td></td>
<td>y, see Co</td>
<td>-</td>
<td>6E+4</td>
<td>3E-5</td>
<td>9E-8</td>
</tr>
<tr>
<td>27</td>
<td>Cobalt-59y</td>
<td>w, see Co</td>
<td>2E+3</td>
<td>1E+3</td>
<td>5E-7</td>
</tr>
<tr>
<td></td>
<td>y, see Co</td>
<td>-</td>
<td>1E+3</td>
<td>7E-2</td>
<td>3E-7</td>
</tr>
<tr>
<td>27</td>
<td>Cobalt-60w</td>
<td>w, see Co</td>
<td>3E+6</td>
<td>4E+6</td>
<td>2E-3</td>
</tr>
<tr>
<td></td>
<td>y, see Co</td>
<td>-</td>
<td>3E+6</td>
<td>1E-3</td>
<td>4E-6</td>
</tr>
<tr>
<td>27</td>
<td>Cobalt-60y</td>
<td>w, see Co</td>
<td>5E+2</td>
<td>2E+2</td>
<td>7E-8</td>
</tr>
<tr>
<td></td>
<td>y, see Co</td>
<td>-</td>
<td>2E+2</td>
<td>3E-1</td>
<td>2E-8</td>
</tr>
<tr>
<td>27</td>
<td>Cobalt-62w</td>
<td>w, see Co</td>
<td>2E+3</td>
<td>6E+4</td>
<td>3E-5</td>
</tr>
<tr>
<td></td>
<td>y, see Co</td>
<td>-</td>
<td>2E+4</td>
<td>6E+4</td>
<td>3E-5</td>
</tr>
<tr>
<td>27</td>
<td>Cobalt-62y</td>
<td>w, see Co</td>
<td>4E+4</td>
<td>6E+4</td>
<td>7E-5</td>
</tr>
<tr>
<td></td>
<td>y, see Co</td>
<td>-</td>
<td>4E+4</td>
<td>5E+4</td>
<td>7E-5</td>
</tr>
<tr>
<td>28</td>
<td>Nickel-56</td>
<td>D, all compounds except those given for W</td>
<td>1E+3</td>
<td>2E+3</td>
<td>8E-7</td>
</tr>
<tr>
<td></td>
<td>w, oxides, hydroxides, and carbonates</td>
<td>-</td>
<td>2E+3</td>
<td>5E-7</td>
<td>2E-9</td>
</tr>
<tr>
<td>28</td>
<td>Nickel-57</td>
<td>D, see Ni</td>
<td>3E+3</td>
<td>5E+3</td>
<td>2E-6</td>
</tr>
<tr>
<td></td>
<td>y, see Ni</td>
<td>-</td>
<td>3E+3</td>
<td>1E-6</td>
<td>4E-9</td>
</tr>
<tr>
<td>Atomic Number</td>
<td>Radionuclide</td>
<td>Class</td>
<td>Oral Ingestion (µCi)</td>
<td>Inhalation (µCi/µCi)</td>
<td>Air (µCi/µCi)</td>
</tr>
<tr>
<td>---------------</td>
<td>-------------</td>
<td>-------</td>
<td>---------------------</td>
<td>----------------------</td>
<td>--------------</td>
</tr>
<tr>
<td>28</td>
<td>Nickel-63</td>
<td>D, see</td>
<td>4×10^3</td>
<td>7×10^6</td>
<td>1×10^3</td>
</tr>
<tr>
<td></td>
<td>W, see</td>
<td>Ni</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>28</td>
<td>Nickel-65</td>
<td>D, see</td>
<td>3×10^3</td>
<td>7×10^6</td>
<td>1×10^3</td>
</tr>
<tr>
<td></td>
<td>W, see</td>
<td>Ni</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>28</td>
<td>Nickel-66</td>
<td>D, see</td>
<td>3×10^3</td>
<td>7×10^3</td>
<td>1×10^3</td>
</tr>
<tr>
<td></td>
<td>W, see</td>
<td>Ni</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>25</td>
<td>Copper-62</td>
<td>D, all</td>
<td>4×10^3</td>
<td>7×10^6</td>
<td>1×10^3</td>
</tr>
<tr>
<td></td>
<td>compounds</td>
<td>except</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td>those given</td>
<td>W and Y</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td>W, sulfides</td>
<td>Ni</td>
<td>3×10^4</td>
<td>5×10^3</td>
<td>9×10^3</td>
</tr>
<tr>
<td></td>
<td>Ni</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td>Ni</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td>Ni</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td>Ni</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td>Ni</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>29</td>
<td>Copper-63</td>
<td>D, see</td>
<td>Ni</td>
<td>3×10^4</td>
<td>7×10^6</td>
</tr>
<tr>
<td></td>
<td>W, see</td>
<td>Cu</td>
<td>3×10^4</td>
<td>7×10^6</td>
<td>1×10^3</td>
</tr>
<tr>
<td></td>
<td>Ni</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td>Ni</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>29</td>
<td>Copper-64</td>
<td>D, see</td>
<td>Ni</td>
<td>3×10^4</td>
<td>7×10^6</td>
</tr>
<tr>
<td></td>
<td>W, see</td>
<td>Cu</td>
<td>Ni</td>
<td>3×10^4</td>
<td>7×10^6</td>
</tr>
<tr>
<td></td>
<td>Ni</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>30</td>
<td>Zinc-62</td>
<td>Y, all</td>
<td>Ni</td>
<td>3×10^4</td>
<td>7×10^6</td>
</tr>
<tr>
<td></td>
<td>Ni</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>30</td>
<td>Zinc-63</td>
<td>Y, all</td>
<td>Ni</td>
<td>3×10^4</td>
<td>7×10^6</td>
</tr>
<tr>
<td></td>
<td>Ni</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>30</td>
<td>Zinc-65</td>
<td>Y, all</td>
<td>Ni</td>
<td>3×10^4</td>
<td>7×10^6</td>
</tr>
<tr>
<td></td>
<td>Ni</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>30</td>
<td>Zinc-69</td>
<td>Y, all</td>
<td>Ni</td>
<td>3×10^4</td>
<td>7×10^6</td>
</tr>
<tr>
<td></td>
<td>Ni</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>30</td>
<td>Zinc-70</td>
<td>Y, all</td>
<td>Ni</td>
<td>3×10^4</td>
<td>7×10^6</td>
</tr>
<tr>
<td></td>
<td>Ni</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>30</td>
<td>Zinc-72</td>
<td>Y, all</td>
<td>Ni</td>
<td>3×10^4</td>
<td>7×10^6</td>
</tr>
<tr>
<td></td>
<td>Ni</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>31</td>
<td>Gallium-65</td>
<td>D, all</td>
<td>Ni</td>
<td>3×10^4</td>
<td>7×10^6</td>
</tr>
<tr>
<td></td>
<td>compounds</td>
<td>except</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td>those given</td>
<td>W and Y</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td>W, sulfides</td>
<td>Ni</td>
<td>3×10^4</td>
<td>7×10^6</td>
<td>1×10^3</td>
</tr>
<tr>
<td></td>
<td>Ni</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td>Ni</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td>Ni</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td>Ni</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td>Ni</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

390
### Table 1: Occupational Values

<table>
<thead>
<tr>
<th>Atomic No.</th>
<th>Radioisotope Class</th>
<th>Col. 1 (Oral Ingestion) Air (μCi/L)</th>
<th>Col. 2 (Inhalation) Gas (μCi/L)</th>
<th>Col. 3 (Inhalation) Dust (μCi/L)</th>
<th>Col. 1 (Monthly Average Concentration) Air (μCi/ft³)</th>
<th>Col. 2 (Monthly Average Concentration) Water (μCi/L)</th>
<th>Col. 3 (Monthly Average Concentration) Water (μCi/L)</th>
</tr>
</thead>
<tbody>
<tr>
<td>31</td>
<td>Gallium-66</td>
<td>3E+3</td>
<td>3E+3</td>
<td>3E-6</td>
<td>5E-9</td>
<td>3E-5</td>
<td>3E-4</td>
</tr>
<tr>
<td>31</td>
<td>Gallium-67</td>
<td>7E+3</td>
<td>3E-6</td>
<td>2E-6</td>
<td>5E-9</td>
<td>3E-5</td>
<td>3E-3</td>
</tr>
<tr>
<td>31</td>
<td>Gallium-68</td>
<td>7E+4</td>
<td>7E-5</td>
<td>2E-7</td>
<td>5E-9</td>
<td>3E-5</td>
<td>3E-3</td>
</tr>
<tr>
<td>31</td>
<td>Gallium-70</td>
<td>5E+4</td>
<td>5E-5</td>
<td>2E-7</td>
<td>5E-9</td>
<td>3E-5</td>
<td>3E-3</td>
</tr>
<tr>
<td>31</td>
<td>Gallium-72</td>
<td>1E+4</td>
<td>1E-5</td>
<td>2E-7</td>
<td>5E-9</td>
<td>3E-5</td>
<td>3E-3</td>
</tr>
<tr>
<td>31</td>
<td>Gallium-73</td>
<td>5E+4</td>
<td>5E-5</td>
<td>2E-7</td>
<td>5E-9</td>
<td>3E-5</td>
<td>3E-3</td>
</tr>
<tr>
<td>32</td>
<td>Germanium-66</td>
<td>3E+4</td>
<td>1E-5</td>
<td>2E-7</td>
<td>5E-9</td>
<td>3E-5</td>
<td>3E-3</td>
</tr>
<tr>
<td>32</td>
<td>Germanium-68</td>
<td>5E+4</td>
<td>5E-5</td>
<td>2E-7</td>
<td>5E-9</td>
<td>3E-5</td>
<td>3E-3</td>
</tr>
<tr>
<td>32</td>
<td>Germanium-70</td>
<td>5E+4</td>
<td>5E-5</td>
<td>2E-7</td>
<td>5E-9</td>
<td>3E-5</td>
<td>3E-3</td>
</tr>
<tr>
<td>32</td>
<td>Germanium-72</td>
<td>5E+4</td>
<td>5E-5</td>
<td>2E-7</td>
<td>5E-9</td>
<td>3E-5</td>
<td>3E-3</td>
</tr>
<tr>
<td>32</td>
<td>Germanium-73</td>
<td>5E+4</td>
<td>5E-5</td>
<td>2E-7</td>
<td>5E-9</td>
<td>3E-5</td>
<td>3E-3</td>
</tr>
<tr>
<td>Atomic No.</td>
<td>Radioisotope</td>
<td>Class</td>
<td>Table 1 Occupational Values</td>
<td>Table 2 Effluent Concentrations</td>
<td>Table 3 Releases to Sewers</td>
<td></td>
<td></td>
</tr>
<tr>
<td>-----------</td>
<td>-----------------</td>
<td>-------</td>
<td>-----------------------------</td>
<td>-------------------------------</td>
<td>-----------------------------</td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td>Col. 1 Oral Ingestion (µCi)</td>
<td>Col. 2 Inhalation (µCi/ml)</td>
<td>Col. 3 DAC (µCi/ml)</td>
<td>Col. 1 Air (µCi/ml)</td>
<td>Col. 2 Water (µCi/ml)</td>
</tr>
<tr>
<td>33</td>
<td>Arsenic-69²</td>
<td>W, all compounds</td>
<td>5E+4</td>
<td>1E+5</td>
<td>5E-5</td>
<td>2E-7</td>
<td>-</td>
</tr>
<tr>
<td>33</td>
<td>Arsenic-70²</td>
<td>W, all compounds</td>
<td>1E+4</td>
<td>5E+4</td>
<td>2E-5</td>
<td>7E-8</td>
<td>2E-4</td>
</tr>
<tr>
<td>33</td>
<td>Arsenic-72</td>
<td>W, all compounds</td>
<td>4E+3</td>
<td>5E+3</td>
<td>2E-6</td>
<td>6E-9</td>
<td>5E-5</td>
</tr>
<tr>
<td>33</td>
<td>Arsenic-72</td>
<td>W, all compounds</td>
<td>9E+2</td>
<td>1E+3</td>
<td>6E-7</td>
<td>2E-9</td>
<td>1E-5</td>
</tr>
<tr>
<td>33</td>
<td>Arsenic-73</td>
<td>W, all compounds</td>
<td>8E+3</td>
<td>2E+3</td>
<td>7E-7</td>
<td>2E-9</td>
<td>1E-4</td>
</tr>
<tr>
<td>33</td>
<td>Arsenic-74</td>
<td>W, all compounds</td>
<td>1E+3</td>
<td>8E+2</td>
<td>3E-7</td>
<td>1E-9</td>
<td>2E-5</td>
</tr>
<tr>
<td>33</td>
<td>Arsenic-76</td>
<td>W, all compounds</td>
<td>1E+3</td>
<td>1E+3</td>
<td>6E-7</td>
<td>2E-9</td>
<td>1E-5</td>
</tr>
<tr>
<td>33</td>
<td>Arsenic-77</td>
<td>W, all compounds</td>
<td>4E+3</td>
<td>5E+3</td>
<td>2E-6</td>
<td>7E-9</td>
<td>-</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td>5E+3</td>
<td>2E-5</td>
<td>6E-5</td>
<td>5E-4</td>
<td>-</td>
</tr>
<tr>
<td>33</td>
<td>Arsenic-78²</td>
<td>W, all compounds</td>
<td>8E+3</td>
<td>2E+4</td>
<td>9E-6</td>
<td>3E-8</td>
<td>3E-4</td>
</tr>
<tr>
<td>34</td>
<td>Selenium-76²</td>
<td>D, all compounds except W</td>
<td>2E+4</td>
<td>4E+4</td>
<td>2E-5</td>
<td>5E-8</td>
<td>1E-4</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td>W, oxides, hydrides, carboxides, and elemental Se</td>
<td>1E+4</td>
<td>4E+4</td>
<td>2E-5</td>
<td>6E-8</td>
</tr>
<tr>
<td>34</td>
<td>Selenium-76²</td>
<td>D, see Se³⁷⁰⁺</td>
<td>6E+4</td>
<td>2E+5</td>
<td>6E-5</td>
<td>2E-7</td>
<td>4E-4</td>
</tr>
<tr>
<td></td>
<td></td>
<td>W, see Se³⁷⁰⁻</td>
<td>3E+4</td>
<td>1E+5</td>
<td>6E-5</td>
<td>2E-7</td>
<td>-</td>
</tr>
<tr>
<td>34</td>
<td>Selenium-78</td>
<td>D, see Se³⁷⁰⁺</td>
<td>3E+3</td>
<td>1E+4</td>
<td>5E-6</td>
<td>2E-8</td>
<td>4E-5</td>
</tr>
<tr>
<td></td>
<td></td>
<td>W, see Se³⁷⁰⁻</td>
<td>-</td>
<td>2E+4</td>
<td>7E-6</td>
<td>2E-8</td>
<td>-</td>
</tr>
<tr>
<td>34</td>
<td>Selenium-79</td>
<td>D, see Se³⁷⁰⁺</td>
<td>5E+2</td>
<td>7E+2</td>
<td>3E-7</td>
<td>3E-9</td>
<td>7E-6</td>
</tr>
<tr>
<td></td>
<td></td>
<td>W, see Se³⁷⁰⁻</td>
<td>-</td>
<td>6E+2</td>
<td>3E-7</td>
<td>8E-10</td>
<td>-</td>
</tr>
<tr>
<td>34</td>
<td>Selenium-81²</td>
<td>D, see Se³⁷⁰⁺</td>
<td>6E+2</td>
<td>8E+2</td>
<td>3E-7</td>
<td>1E-9</td>
<td>8E-6</td>
</tr>
<tr>
<td></td>
<td></td>
<td>W, see Se³⁷⁰⁻</td>
<td>-</td>
<td>6E+2</td>
<td>2E-7</td>
<td>8E-10</td>
<td>-</td>
</tr>
<tr>
<td>34</td>
<td>Selenium-82²</td>
<td>D, see Se³⁷⁰⁺</td>
<td>4E+4</td>
<td>7E+4</td>
<td>3E-5</td>
<td>9E-8</td>
<td>3E-4</td>
</tr>
<tr>
<td></td>
<td></td>
<td>W, see Se³⁷⁰⁻</td>
<td>2E+4</td>
<td>7E+4</td>
<td>3E-5</td>
<td>1E-7</td>
<td>-</td>
</tr>
<tr>
<td>34</td>
<td>Selenium-83²</td>
<td>D, see Se³⁷⁰⁺</td>
<td>6E+4</td>
<td>2E+5</td>
<td>9E-5</td>
<td>3E-7</td>
<td>-</td>
</tr>
<tr>
<td></td>
<td></td>
<td>W, see Se³⁷⁰⁻</td>
<td>-</td>
<td>8E+4</td>
<td>1E-4</td>
<td>1E-3</td>
<td>1E-2</td>
</tr>
<tr>
<td>34</td>
<td>Selenium-85²</td>
<td>D, see Se³⁷⁰⁺</td>
<td>4E+4</td>
<td>3E+5</td>
<td>5E-5</td>
<td>2E-7</td>
<td>4E-4</td>
</tr>
<tr>
<td></td>
<td></td>
<td>W, see Se³⁷⁰⁻</td>
<td>3E+4</td>
<td>3E+5</td>
<td>5E-5</td>
<td>2E-7</td>
<td>-</td>
</tr>
<tr>
<td>Radiographic No</td>
<td>Radionuclide</td>
<td>Description</td>
<td>Col. 1 Oral Ingestion (µCi)</td>
<td>Col. 2 Inhalation (µCi)</td>
<td>Col. 3 Inhalation (µCi/L)</td>
<td>Col. 1 Air (µCi/m³)</td>
<td>Col. 2 Water (µCi/m³)</td>
</tr>
<tr>
<td>----------------</td>
<td>--------------</td>
<td>-------------</td>
<td>-----------------------------</td>
<td>------------------------</td>
<td>--------------------------</td>
<td>-------------------</td>
<td>-----------------</td>
</tr>
<tr>
<td>35</td>
<td>Bromine-74²</td>
<td>D, bromides of H, Li, Be, B, Mg, Ca, Sr, K, Na, Al, Ga, In, Ti, Zr, Hf, V, Mo, Ta, W, Mo, Tc, and Re</td>
<td>3E-4 4E-4 2E-5 5E-8 2E-1</td>
<td>3E-4 4E-4 2E-5 5E-8 2E-1</td>
<td>3E-4 4E-4 2E-5 5E-8 2E-1</td>
<td>3E-4 4E-4 2E-5 5E-8 2E-1</td>
<td>3E-4 4E-4 2E-5 5E-8 2E-1</td>
</tr>
<tr>
<td>36</td>
<td>Krypton-85²</td>
<td>Subversion²</td>
<td>-</td>
<td>-</td>
<td>-</td>
<td>-</td>
<td>-</td>
</tr>
<tr>
<td>36</td>
<td>Krypton-85</td>
<td>Subversion²</td>
<td>-</td>
<td>-</td>
<td>-</td>
<td>-</td>
<td>-</td>
</tr>
<tr>
<td>36</td>
<td>Krypton-85²</td>
<td>Subversion²</td>
<td>-</td>
<td>-</td>
<td>-</td>
<td>-</td>
<td>-</td>
</tr>
<tr>
<td>36</td>
<td>Krypton-85</td>
<td>Subversion²</td>
<td>-</td>
<td>-</td>
<td>-</td>
<td>-</td>
<td>-</td>
</tr>
<tr>
<td>36</td>
<td>Krypton-85²</td>
<td>Subversion²</td>
<td>-</td>
<td>-</td>
<td>-</td>
<td>-</td>
<td>-</td>
</tr>
<tr>
<td>Atomic Number</td>
<td>Radionuclide</td>
<td>Class</td>
<td>Col. 1 Oral Injection (αL)</td>
<td>Col. 2 Inhalation (μL)</td>
<td>Col. 3 Air (μL/L)</td>
<td>Col. 1 Oral Injection (αL)</td>
<td>Col. 2 Inhalation (μL)</td>
</tr>
<tr>
<td>---------------</td>
<td>--------------</td>
<td>-------</td>
<td>---------------------------</td>
<td>------------------------</td>
<td>-----------------</td>
<td>---------------------------</td>
<td>------------------------</td>
</tr>
<tr>
<td>36</td>
<td>Krypton-83m</td>
<td>Subversion</td>
<td>2E-2</td>
<td>5E-5</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>36</td>
<td>Krypton-83m</td>
<td>Subversion</td>
<td>-</td>
<td>2E-5</td>
<td>3E-7</td>
<td></td>
<td></td>
</tr>
<tr>
<td>36</td>
<td>Krypton-85</td>
<td>Subversion</td>
<td>-</td>
<td>2E-4</td>
<td>3E-7</td>
<td></td>
<td></td>
</tr>
<tr>
<td>36</td>
<td>Krypton-87</td>
<td>Subversion</td>
<td>-</td>
<td>2E-8</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>36</td>
<td>Krypton-88</td>
<td>Subversion</td>
<td>-</td>
<td>5E-9</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>37</td>
<td>Rubidium-89</td>
<td>D, all compounds</td>
<td>4E-4</td>
<td>2E-5</td>
<td>5E-5</td>
<td>2E-7</td>
<td>-</td>
</tr>
<tr>
<td>37</td>
<td>Rubidium-89</td>
<td>D, all compounds</td>
<td>3E-5</td>
<td>3E-4</td>
<td>5E-7</td>
<td>-</td>
<td>-</td>
</tr>
<tr>
<td>37</td>
<td>Rubidium-89</td>
<td>D, all compounds</td>
<td>4E-7</td>
<td>2E-8</td>
<td>5E-9</td>
<td>-</td>
<td>-</td>
</tr>
<tr>
<td>37</td>
<td>Rubidium-89</td>
<td>D, all compounds</td>
<td>3E-7</td>
<td>3E-6</td>
<td>9E-9</td>
<td>-</td>
<td>-</td>
</tr>
<tr>
<td>37</td>
<td>Rubidium-89</td>
<td>D, all compounds</td>
<td>4E-8</td>
<td>2E-9</td>
<td>7E-9</td>
<td>-</td>
<td>-</td>
</tr>
<tr>
<td>37</td>
<td>Rubidium-89</td>
<td>D, all compounds</td>
<td>3E-9</td>
<td>3E-8</td>
<td>7E-9</td>
<td>-</td>
<td>-</td>
</tr>
<tr>
<td>37</td>
<td>Rubidium-89</td>
<td>D, all compounds</td>
<td>4E-10</td>
<td>2E-11</td>
<td>7E-9</td>
<td>-</td>
<td>-</td>
</tr>
<tr>
<td>37</td>
<td>Rubidium-89</td>
<td>D, all compounds</td>
<td>5E-11</td>
<td>3E-12</td>
<td>9E-9</td>
<td>-</td>
<td>-</td>
</tr>
<tr>
<td>37</td>
<td>Rubidium-89</td>
<td>D, all compounds</td>
<td>6E-12</td>
<td>4E-13</td>
<td>9E-9</td>
<td>-</td>
<td>-</td>
</tr>
<tr>
<td>38</td>
<td>Strontium-90</td>
<td>D, all soluble compounds except Sr-89</td>
<td>4E-3</td>
<td>5E-6</td>
<td>6E-8</td>
<td>-</td>
<td>-</td>
</tr>
<tr>
<td>38</td>
<td>Strontium-90</td>
<td>D, all soluble compounds except Sr-89</td>
<td>4E-4</td>
<td>3E-6</td>
<td>6E-8</td>
<td>5E-7</td>
<td>3E-6</td>
</tr>
<tr>
<td>38</td>
<td>Strontium-90</td>
<td>D, see Sr-90</td>
<td>3E-4</td>
<td>3E-6</td>
<td>3E-7</td>
<td>3E-6</td>
<td>3E-7</td>
</tr>
<tr>
<td>38</td>
<td>Strontium-90</td>
<td>D, see Sr-90</td>
<td>2E-4</td>
<td>2E-6</td>
<td>3E-7</td>
<td>2E-6</td>
<td>3E-7</td>
</tr>
<tr>
<td>38</td>
<td>Strontium-90</td>
<td>D, see Sr-90</td>
<td>3E-4</td>
<td>3E-6</td>
<td>3E-7</td>
<td>3E-6</td>
<td>3E-7</td>
</tr>
<tr>
<td>38</td>
<td>Strontium-90</td>
<td>D, see Sr-90</td>
<td>4E-4</td>
<td>4E-6</td>
<td>4E-7</td>
<td>4E-6</td>
<td>4E-7</td>
</tr>
<tr>
<td>38</td>
<td>Strontium-90</td>
<td>D, see Sr-90</td>
<td>5E-4</td>
<td>5E-6</td>
<td>5E-7</td>
<td>5E-6</td>
<td>5E-7</td>
</tr>
<tr>
<td>Atomic No.</td>
<td>Radionuclide</td>
<td>Class</td>
<td>Table 1 Occupational Values</td>
<td>Table 2 Effluent Concentrations</td>
<td>Table 3 Releases to Sewers</td>
<td></td>
<td></td>
</tr>
<tr>
<td>-----------</td>
<td>-------------</td>
<td>-------</td>
<td>-----------------------------</td>
<td>---------------------------------</td>
<td>-----------------------------</td>
<td></td>
<td></td>
</tr>
<tr>
<td>38</td>
<td>Strontium-89</td>
<td>D, see Sr</td>
<td>Col. 1</td>
<td>Col. 2</td>
<td>Col. 3</td>
<td>Col. 1</td>
<td>Col. 2</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td>Oral ingestion</td>
<td>Dose</td>
<td>Dose</td>
<td>Air</td>
<td>Water</td>
</tr>
<tr>
<td>38</td>
<td>Strontium-89</td>
<td>D, see Sr</td>
<td>6e-2</td>
<td>8e-2</td>
<td>4e-7</td>
<td>3e-9</td>
<td>-</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td>(L1)</td>
<td>(pCi/L)</td>
<td>(pCi/L)</td>
<td>(pCi/L)</td>
<td>(pCi/L)</td>
</tr>
<tr>
<td>38</td>
<td>Strontium-89</td>
<td>D, see Sr</td>
<td>5e-2</td>
<td>3e-2</td>
<td>6e-8</td>
<td>2e-10</td>
<td>-</td>
</tr>
<tr>
<td>38</td>
<td>Strontium-90</td>
<td>D, see Sr</td>
<td>3e-1</td>
<td>2e-1</td>
<td>8e-9</td>
<td>-</td>
<td>-</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td>Bone surf</td>
<td>Bone surf</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>38</td>
<td>Strontium-91</td>
<td>D, see Sr</td>
<td>2e-3</td>
<td>6e-3</td>
<td>2e-6</td>
<td>8e-9</td>
<td>2e-5</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>38</td>
<td>Strontium-92</td>
<td>D, see Sr</td>
<td>3e-3</td>
<td>9e-3</td>
<td>4e-6</td>
<td>1e-8</td>
<td>4e-5</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>39</td>
<td>Yttrium-89</td>
<td>W, all compounds except those given for Y</td>
<td>2e-4</td>
<td>6e-4</td>
<td>2e-5</td>
<td>8e-8</td>
<td>3e-4</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>39</td>
<td>Yttrium-90</td>
<td>W, see Y</td>
<td>3e-3</td>
<td>3e-3</td>
<td>3e-6</td>
<td>5e-9</td>
<td>2e-5</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>39</td>
<td>Yttrium-91</td>
<td>W, see Y</td>
<td>3e-3</td>
<td>3e-3</td>
<td>3e-6</td>
<td>5e-9</td>
<td>2e-5</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>39</td>
<td>Yttrium-92</td>
<td>W, see Y</td>
<td>3e-3</td>
<td>3e-3</td>
<td>3e-6</td>
<td>5e-9</td>
<td>2e-5</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>39</td>
<td>Yttrium-93</td>
<td>W, see Y</td>
<td>3e-3</td>
<td>3e-3</td>
<td>3e-6</td>
<td>5e-9</td>
<td>2e-5</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>39</td>
<td>Yttrium-94</td>
<td>W, see Y</td>
<td>3e-3</td>
<td>3e-3</td>
<td>3e-6</td>
<td>5e-9</td>
<td>2e-5</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>39</td>
<td>Yttrium-95</td>
<td>W, see Y</td>
<td>3e-3</td>
<td>3e-3</td>
<td>3e-6</td>
<td>5e-9</td>
<td>2e-5</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

395
<table>
<thead>
<tr>
<th>Atomic Number</th>
<th>Atomic Radiouclide</th>
<th>Class</th>
<th>Occupational Values</th>
<th>Efficient Concentrations</th>
<th>Releases to Sewers</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td></td>
<td></td>
<td>Oral Ingestion (mcL)</td>
<td>Inhalation (mcL)</td>
<td>Air (mcL/mL)</td>
</tr>
<tr>
<td>Zirconium-90</td>
<td></td>
<td>D. all compounds except those given for W and Y</td>
<td>1&lt;3</td>
<td>4&lt;3</td>
<td>2&lt;6</td>
</tr>
<tr>
<td>W. oxide, hydroxides, halides, and nitrites</td>
<td>-</td>
<td>3&lt;3</td>
<td>1&lt;6</td>
<td>4&lt;9</td>
<td>-</td>
</tr>
<tr>
<td>Y. carbide</td>
<td>-</td>
<td>3&lt;3</td>
<td>3&lt;6</td>
<td>3&lt;9</td>
<td>-</td>
</tr>
<tr>
<td>Zirconium-88</td>
<td></td>
<td>D. see Zr</td>
<td>4&lt;3</td>
<td>3&lt;2</td>
<td>9&lt;8</td>
</tr>
<tr>
<td>W. see Zr</td>
<td>-</td>
<td>5&lt;2</td>
<td>3&lt;7</td>
<td>3&lt;10</td>
<td>-</td>
</tr>
<tr>
<td>Y. see Zr</td>
<td>-</td>
<td>3&lt;2</td>
<td>1&lt;7</td>
<td>4&lt;10</td>
<td>-</td>
</tr>
<tr>
<td>Zirconium-89</td>
<td></td>
<td>D. see Zr</td>
<td>2&lt;3</td>
<td>4&lt;3</td>
<td>1&lt;6</td>
</tr>
<tr>
<td>W. see Zr</td>
<td>-</td>
<td>3&lt;3</td>
<td>1&lt;6</td>
<td>3&lt;9</td>
<td>-</td>
</tr>
<tr>
<td>Y. see Zr</td>
<td>-</td>
<td>3&lt;3</td>
<td>3&lt;6</td>
<td>3&lt;9</td>
<td>-</td>
</tr>
<tr>
<td>Zirconium-93</td>
<td></td>
<td>D. see Zr</td>
<td>1&lt;3</td>
<td>6&lt;0</td>
<td>3&lt;9</td>
</tr>
<tr>
<td>W. see Zr</td>
<td>-</td>
<td>2&lt;1</td>
<td>3&lt;8</td>
<td>-</td>
<td>-</td>
</tr>
<tr>
<td>Y. see Zr</td>
<td>-</td>
<td>6&lt;1</td>
<td>2&lt;8</td>
<td>-</td>
<td>-</td>
</tr>
<tr>
<td>Zirconium-95</td>
<td></td>
<td>D. see Zr</td>
<td>1&lt;3</td>
<td>3&lt;2</td>
<td>5&lt;8</td>
</tr>
<tr>
<td>W. see Zr</td>
<td>-</td>
<td>3&lt;2</td>
<td>3&lt;7</td>
<td>3&lt;10</td>
<td>-</td>
</tr>
<tr>
<td>Y. see Zr</td>
<td>-</td>
<td>3&lt;2</td>
<td>1&lt;7</td>
<td>4&lt;10</td>
<td>-</td>
</tr>
<tr>
<td>Zirconium-97</td>
<td></td>
<td>D. see Zr</td>
<td>6&lt;2</td>
<td>2&lt;3</td>
<td>8&lt;7</td>
</tr>
<tr>
<td>W. see Zr</td>
<td>-</td>
<td>3&lt;3</td>
<td>4&lt;7</td>
<td>2&lt;9</td>
<td>-</td>
</tr>
<tr>
<td>Y. see Zr</td>
<td>-</td>
<td>3&lt;3</td>
<td>5&lt;7</td>
<td>2&lt;9</td>
<td>-</td>
</tr>
<tr>
<td>Niobium-93*</td>
<td></td>
<td>W. all compounds except those given for Y</td>
<td>5&lt;4</td>
<td>3&lt;5</td>
<td>9&lt;5</td>
</tr>
<tr>
<td>St. well</td>
<td>-</td>
<td>-</td>
<td>-</td>
<td>3&lt;3</td>
<td>1&lt;2</td>
</tr>
<tr>
<td>Y. oxides and hydroxides</td>
<td>-</td>
<td>3&lt;5</td>
<td>9&lt;5</td>
<td>3&lt;7</td>
<td>-</td>
</tr>
<tr>
<td>Niobium-92*</td>
<td></td>
<td>W. see Mo</td>
<td>1&lt;4</td>
<td>4&lt;4</td>
<td>2&lt;5</td>
</tr>
<tr>
<td>(56 min)</td>
<td>-</td>
<td>4&lt;4</td>
<td>3&lt;5</td>
<td>5&lt;8</td>
<td>-</td>
</tr>
<tr>
<td>Niobium-90</td>
<td></td>
<td>W. see Mo</td>
<td>5&lt;3</td>
<td>2&lt;4</td>
<td>8&lt;6</td>
</tr>
<tr>
<td>(322 min)</td>
<td>-</td>
<td>2&lt;4</td>
<td>6&lt;6</td>
<td>2&lt;8</td>
<td>-</td>
</tr>
<tr>
<td>Niobium-91</td>
<td></td>
<td>W. see Mo</td>
<td>1&lt;3</td>
<td>3&lt;3</td>
<td>1&lt;6</td>
</tr>
<tr>
<td>Y. see Mo</td>
<td>-</td>
<td>3&lt;3</td>
<td>1&lt;6</td>
<td>3&lt;9</td>
<td>-</td>
</tr>
<tr>
<td>Niobium-93*</td>
<td></td>
<td>W. see Mo</td>
<td>9&lt;3</td>
<td>3&lt;3</td>
<td>8&lt;7</td>
</tr>
<tr>
<td>St. well</td>
<td>-</td>
<td>2&lt;2</td>
<td>7&lt;8</td>
<td>2&lt;10</td>
<td>-</td>
</tr>
<tr>
<td>Y. see Mo</td>
<td>-</td>
<td>3&lt;3</td>
<td>1&lt;6</td>
<td>4&lt;9</td>
<td>-</td>
</tr>
<tr>
<td>Niobium-94</td>
<td></td>
<td>W. see Mo</td>
<td>9&lt;2</td>
<td>2&lt;2</td>
<td>8&lt;8</td>
</tr>
<tr>
<td>Y. see Mo</td>
<td>-</td>
<td>3&lt;3</td>
<td>6&lt;9</td>
<td>2&lt;11</td>
<td>-</td>
</tr>
<tr>
<td>Niobium-95*</td>
<td></td>
<td>W. see Mo</td>
<td>7&lt;3</td>
<td>3&lt;3</td>
<td>1&lt;6</td>
</tr>
<tr>
<td>St. well</td>
<td>-</td>
<td>3&lt;3</td>
<td>9&lt;7</td>
<td>3&lt;9</td>
<td>-</td>
</tr>
</tbody>
</table>
### Table 3: Occupational Values

<table>
<thead>
<tr>
<th>Atomic No.</th>
<th>Radionuclide</th>
<th>Class</th>
<th>Col. 1 (Occupational)</th>
<th>Col. 2 (Inhalation)</th>
<th>Col. 3 (Ingestion)</th>
<th>Monthly Average Concentration (pCi/L)</th>
</tr>
</thead>
<tbody>
<tr>
<td>41</td>
<td>Niobium-93</td>
<td>W, see Nb</td>
<td>2E-3</td>
<td>5E-3</td>
<td>5E-7</td>
<td>5E-9</td>
</tr>
<tr>
<td>41</td>
<td>Niobium-95</td>
<td>W, see Nb</td>
<td>1E-4</td>
<td>5E-4</td>
<td>5E-4</td>
<td>2E-4</td>
</tr>
<tr>
<td>41</td>
<td>Niobium-97</td>
<td>W, see Nb</td>
<td>2E-4</td>
<td>1E-7</td>
<td>1E-9</td>
<td>1E-6</td>
</tr>
<tr>
<td>41</td>
<td>Niobium-99</td>
<td>W, see Nb</td>
<td>1E-4</td>
<td>5E-4</td>
<td>5E-5</td>
<td>2E-4</td>
</tr>
<tr>
<td>42</td>
<td>Molybdenum-90</td>
<td>D, all compounds except those given for Y, oxides, hydroxides, and NiO₂</td>
<td>4E-3</td>
<td>7E-3</td>
<td>3E-6</td>
<td>1E-8</td>
</tr>
<tr>
<td>42</td>
<td>Molybdenum-91</td>
<td>D, see Mo</td>
<td>4E-3</td>
<td>2E-4</td>
<td>2E-6</td>
<td>2E-8</td>
</tr>
<tr>
<td>42</td>
<td>Molybdenum-93</td>
<td>D, see Mo</td>
<td>4E-3</td>
<td>3E-4</td>
<td>2E-6</td>
<td>2E-8</td>
</tr>
<tr>
<td>42</td>
<td>Molybdenum-93</td>
<td>D, see Mo</td>
<td>4E-3</td>
<td>3E-4</td>
<td>2E-6</td>
<td>2E-8</td>
</tr>
<tr>
<td>42</td>
<td>Molybdenum-95</td>
<td>D, see Mo</td>
<td>2E-4</td>
<td>3E-3</td>
<td>1E-6</td>
<td>4E-9</td>
</tr>
<tr>
<td>42</td>
<td>Molybdenum-97</td>
<td>D, see Mo</td>
<td>1E-4</td>
<td>3E-4</td>
<td>5E-5</td>
<td>2E-4</td>
</tr>
<tr>
<td>43</td>
<td>Technetium-99</td>
<td>D, all compounds except those given for W, oxides, hydroxides, halides, and nitrates</td>
<td>7E-4</td>
<td>2E-5</td>
<td>6E-5</td>
<td>2E-7</td>
</tr>
<tr>
<td>43</td>
<td>Technetium-99</td>
<td>D, see Tc</td>
<td>3E-4</td>
<td>3E-5</td>
<td>1E-7</td>
<td>4E-4</td>
</tr>
<tr>
<td>43</td>
<td>Technetium-99</td>
<td>D, see Tc</td>
<td>4E-4</td>
<td>2E-5</td>
<td>6E-5</td>
<td>3E-4</td>
</tr>
<tr>
<td>43</td>
<td>Technetium-99</td>
<td>D, see Tc</td>
<td>5E-4</td>
<td>3E-5</td>
<td>1E-7</td>
<td>4E-4</td>
</tr>
<tr>
<td>43</td>
<td>Technetium-99</td>
<td>D, see Tc</td>
<td>6E-4</td>
<td>2E-5</td>
<td>6E-5</td>
<td>3E-4</td>
</tr>
<tr>
<td>43</td>
<td>Technetium-99</td>
<td>D, see Tc</td>
<td>7E-4</td>
<td>2E-5</td>
<td>6E-5</td>
<td>3E-4</td>
</tr>
<tr>
<td>43</td>
<td>Technetium-99</td>
<td>D, see Tc</td>
<td>8E-4</td>
<td>2E-5</td>
<td>6E-5</td>
<td>3E-4</td>
</tr>
<tr>
<td>43</td>
<td>Technetium-99</td>
<td>D, see Tc</td>
<td>9E-4</td>
<td>2E-5</td>
<td>6E-5</td>
<td>3E-4</td>
</tr>
<tr>
<td>43</td>
<td>Technetium-99</td>
<td>D, see Tc</td>
<td>1E-4</td>
<td>2E-4</td>
<td>2E-5</td>
<td>2E-2</td>
</tr>
<tr>
<td>43</td>
<td>Technetium-99</td>
<td>D, see Tc</td>
<td>1E-4</td>
<td>2E-4</td>
<td>2E-5</td>
<td>2E-2</td>
</tr>
<tr>
<td>43</td>
<td>Technetium-99</td>
<td>D, see Tc</td>
<td>1E-4</td>
<td>2E-4</td>
<td>2E-5</td>
<td>2E-2</td>
</tr>
<tr>
<td>43</td>
<td>Technetium-99</td>
<td>D, see Tc</td>
<td>1E-4</td>
<td>2E-4</td>
<td>2E-5</td>
<td>2E-2</td>
</tr>
<tr>
<td>43</td>
<td>Technetium-99</td>
<td>D, see Tc</td>
<td>1E-4</td>
<td>2E-4</td>
<td>2E-5</td>
<td>2E-2</td>
</tr>
</tbody>
</table>

**Notes:**

- Col. 1 represents the Occupational Values in pCi/L.
- Col. 2 represents the Inhalation Values in pCi/L.
- Col. 3 represents the Ingestion Values in pCi/L.
- Monthly Average Concentration (pCi/L) is calculated based on the values from Col. 1, Col. 2, and Col. 3.
<table>
<thead>
<tr>
<th>Atomic No.</th>
<th>Radionuclides</th>
<th>Class</th>
<th>Col. 1 (Oral) Ingestion (μCi)</th>
<th>Col. 2</th>
<th>Col. 3</th>
<th>Col. 1 (Inhalation) (μCi)</th>
<th>Col. 2</th>
<th>Col. 3</th>
<th>Col. 1 (Monthly Average Concentration (μCi/m³))</th>
<th>Col. 2</th>
<th>Col. 3</th>
</tr>
</thead>
<tbody>
<tr>
<td>40</td>
<td>Technetium-99</td>
<td>c</td>
<td>1E+4</td>
<td>3E-5</td>
<td>7E-8</td>
<td>5E-4</td>
<td>5E-3</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>W, see c</td>
<td>Technetium-98</td>
<td>c</td>
<td>1E+5</td>
<td>2E-5</td>
<td>3E-9</td>
<td>1E-5</td>
<td>1E-4</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>c</td>
<td>Technetium-99m</td>
<td>c</td>
<td>1E+5</td>
<td>3E-5</td>
<td>3E-7</td>
<td>3E-3</td>
<td>1E-2</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>W, see c</td>
<td>Technetium-99</td>
<td>c</td>
<td>1E+4</td>
<td>2E-5</td>
<td>3E-7</td>
<td>3E-3</td>
<td>1E-2</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>c</td>
<td>Technetium-100</td>
<td>c</td>
<td>1E+5</td>
<td>3E-5</td>
<td>5E-7</td>
<td>5E-3</td>
<td>3E-2</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>c</td>
<td>Technetium-208</td>
<td>c</td>
<td>1E+5</td>
<td>3E-5</td>
<td>1E-7</td>
<td>1E-3</td>
<td>4E-3</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>c</td>
<td>Ruthenium-96</td>
<td>c</td>
<td>1E+4</td>
<td>2E-5</td>
<td>6E-8</td>
<td>2E-4</td>
<td>2E-3</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>W, halide</td>
<td>Ruthenium-97</td>
<td>c</td>
<td>1E+4</td>
<td>3E-5</td>
<td>9E-8</td>
<td>1E-3</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Y, oxides and hydrides</td>
<td>1E+4</td>
<td>2E-5</td>
<td>1E-9</td>
<td>1E-3</td>
<td>1E-3</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>c</td>
<td>Ruthenium-103</td>
<td>c</td>
<td>1E+4</td>
<td>3E-5</td>
<td>3E-9</td>
<td>3E-4</td>
<td>3E-4</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>W, see c</td>
<td>Ruthenium-105</td>
<td>c</td>
<td>1E+4</td>
<td>3E-5</td>
<td>3E-9</td>
<td>3E-4</td>
<td>3E-4</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>c</td>
<td>Ruthenium-110</td>
<td>c</td>
<td>1E+4</td>
<td>3E-5</td>
<td>3E-9</td>
<td>3E-4</td>
<td>3E-4</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>c</td>
<td>Ruthenium-96</td>
<td>c</td>
<td>1E+4</td>
<td>2E-5</td>
<td>6E-8</td>
<td>2E-4</td>
<td>2E-3</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>W, halide</td>
<td>Ruthenium-97</td>
<td>c</td>
<td>1E+4</td>
<td>3E-5</td>
<td>9E-8</td>
<td>1E-3</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Y, oxides and hydrides</td>
<td>1E+4</td>
<td>2E-5</td>
<td>1E-9</td>
<td>1E-3</td>
<td>1E-3</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>c</td>
<td>Ruthenium-103</td>
<td>c</td>
<td>1E+4</td>
<td>3E-5</td>
<td>3E-9</td>
<td>3E-4</td>
<td>3E-4</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>W, see c</td>
<td>Ruthenium-105</td>
<td>c</td>
<td>1E+4</td>
<td>3E-5</td>
<td>3E-9</td>
<td>3E-4</td>
<td>3E-4</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>c</td>
<td>Ruthenium-110</td>
<td>c</td>
<td>1E+4</td>
<td>3E-5</td>
<td>3E-9</td>
<td>3E-4</td>
<td>3E-4</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>c</td>
<td>Ruthenium-96</td>
<td>c</td>
<td>1E+4</td>
<td>2E-5</td>
<td>6E-8</td>
<td>2E-4</td>
<td>2E-3</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>W, halide</td>
<td>Ruthenium-97</td>
<td>c</td>
<td>1E+4</td>
<td>3E-5</td>
<td>9E-8</td>
<td>1E-3</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Y, oxides and hydrides</td>
<td>1E+4</td>
<td>2E-5</td>
<td>1E-9</td>
<td>1E-3</td>
<td>1E-3</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>
Table 1: Occupational Values

<table>
<thead>
<tr>
<th>Atomic No.</th>
<th>Radionuclide Class</th>
<th>Oral</th>
<th>Inhalation</th>
<th>Inhalation</th>
<th>Air</th>
<th>Water</th>
<th>Monthly Average Concentration (µCi/mL)</th>
</tr>
</thead>
<tbody>
<tr>
<td>45</td>
<td>Rhodium-103</td>
<td>99mRh</td>
<td>2E-3</td>
<td>5E-3</td>
<td>2E-6</td>
<td>7E-9</td>
<td>2E-15</td>
</tr>
<tr>
<td></td>
<td></td>
<td>Y, seph 99mRh</td>
<td>-</td>
<td>4E-3</td>
<td>2E-6</td>
<td>6E-8</td>
<td>-</td>
</tr>
<tr>
<td>45</td>
<td>Rhodium-103m</td>
<td>99mRh</td>
<td>6E-3</td>
<td>3E-4</td>
<td>5E-6</td>
<td>2E-8</td>
<td>5E-5</td>
</tr>
<tr>
<td></td>
<td></td>
<td>Y, seph 99mRh</td>
<td>-</td>
<td>4E-3</td>
<td>4E-6</td>
<td>1E-8</td>
<td>-</td>
</tr>
<tr>
<td>45</td>
<td>Rhodium-103</td>
<td>99mRh</td>
<td>2E-3</td>
<td>5E-2</td>
<td>2E-7</td>
<td>2E-13</td>
<td>2E-5</td>
</tr>
<tr>
<td></td>
<td></td>
<td>Y, seph 99mRh</td>
<td>-</td>
<td>2E-2</td>
<td>2E-7</td>
<td>2E-9</td>
<td>-</td>
</tr>
</tbody>
</table>

Table 2: Effluent Concentrations

Table 3: Releases to Severe

---

399
<table>
<thead>
<tr>
<th>Atomic No.</th>
<th>Radioisotope</th>
<th>Atomic Weight (amu)</th>
<th>Class</th>
<th>Col. 1 Oral Ingestion (µCi)</th>
<th>Col. 2 Inhalation (µCi)</th>
<th>Col. 3 Air (µCi/mL)</th>
<th>Col. 1 Water (µCi/mL)</th>
<th>Col. 2 Releases to Sewers (µCi/mL)</th>
</tr>
</thead>
<tbody>
<tr>
<td>46</td>
<td>Palladium-109</td>
<td>203</td>
<td>D, see 103Pd</td>
<td>2E+3</td>
<td>6E+3</td>
<td>3E-6</td>
<td>2E-5</td>
<td>3E-4</td>
</tr>
<tr>
<td></td>
<td>D, see 103Cd</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td>W, see 103Cd</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td>Y, see 103Pd</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>47</td>
<td>Silver-102</td>
<td>102</td>
<td>D, see 102Ag</td>
<td>2E+5</td>
<td>8E-5</td>
<td>2E-7</td>
<td>9E-4</td>
<td>3E-3</td>
</tr>
<tr>
<td></td>
<td>W, see 102Ag</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td>Y, see 102Ag</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>47</td>
<td>Silver-102</td>
<td></td>
<td>D, see 102Ag</td>
<td>2E+4</td>
<td>4E-5</td>
<td>2E-7</td>
<td>3E-4</td>
<td>5E-3</td>
</tr>
<tr>
<td></td>
<td>W, see 102Ag</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td>Y, see 102Ag</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>47</td>
<td>Silver-102</td>
<td></td>
<td>D, see 102Ag</td>
<td>2E+5</td>
<td>5E-5</td>
<td>2E-7</td>
<td>9E-4</td>
<td>3E-3</td>
</tr>
<tr>
<td></td>
<td>W, see 102Ag</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td>Y, see 102Ag</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>47</td>
<td>Silver-102</td>
<td></td>
<td>D, see 102Ag</td>
<td>2E+4</td>
<td>3E-5</td>
<td>2E-7</td>
<td>6E-4</td>
<td>4E-3</td>
</tr>
<tr>
<td></td>
<td>W, see 102Ag</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td>Y, see 102Ag</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>47</td>
<td>Silver-102</td>
<td></td>
<td>D, see 102Ag</td>
<td>2E+5</td>
<td>5E-5</td>
<td>2E-7</td>
<td>9E-4</td>
<td>3E-3</td>
</tr>
<tr>
<td></td>
<td>W, see 102Ag</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td>Y, see 102Ag</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>47</td>
<td>Silver-102</td>
<td></td>
<td>D, see 102Ag</td>
<td>2E+5</td>
<td>8E-5</td>
<td>2E-7</td>
<td>9E-4</td>
<td>3E-3</td>
</tr>
<tr>
<td></td>
<td>W, see 102Ag</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td>Y, see 102Ag</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>47</td>
<td>Silver-102</td>
<td></td>
<td>D, see 102Ag</td>
<td>2E+5</td>
<td>3E-5</td>
<td>2E-7</td>
<td>6E-4</td>
<td>4E-3</td>
</tr>
<tr>
<td></td>
<td>W, see 102Ag</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td>Y, see 102Ag</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

Note: The table contains occupational and effluent concentration values for different radioisotopes, including Silver-102 and Palladium-109, with specific concentration ranges provided in various columns for oral ingestion, inhalation, air, and water, along with releases to sewers.
<table>
<thead>
<tr>
<th>Atomic Number</th>
<th>Radioisotope</th>
<th>Class</th>
<th>Oral</th>
<th>Inhalation</th>
<th>Inhale</th>
<th>Air</th>
<th>Water</th>
<th>Monthly Average Concentration (μCi/ml)</th>
</tr>
</thead>
<tbody>
<tr>
<td>47</td>
<td>Silver-115m</td>
<td>D, see 114Ag</td>
<td>Oral</td>
<td>Inhalation</td>
<td>Inhalation</td>
<td>Inhalation</td>
<td>Inhalation</td>
<td>Inhalation</td>
</tr>
<tr>
<td>48</td>
<td>Cadmium-106</td>
<td>D, all compounds except those given for H and Y</td>
<td>Oral</td>
<td>Inhalation</td>
<td>Inhalation</td>
<td>Inhalation</td>
<td>Inhalation</td>
<td>Inhalation</td>
</tr>
<tr>
<td>48</td>
<td>Cadmium-107</td>
<td>D, see 106Ag</td>
<td>Oral</td>
<td>Inhalation</td>
<td>Inhalation</td>
<td>Inhalation</td>
<td>Inhalation</td>
<td>Inhalation</td>
</tr>
<tr>
<td>48</td>
<td>Cadmium-109</td>
<td>D, see 108Ag</td>
<td>Oral</td>
<td>Inhalation</td>
<td>Inhalation</td>
<td>Inhalation</td>
<td>Inhalation</td>
<td>Inhalation</td>
</tr>
<tr>
<td>48</td>
<td>Cadmium-112m</td>
<td>D, see 112Ag</td>
<td>Oral</td>
<td>Inhalation</td>
<td>Inhalation</td>
<td>Inhalation</td>
<td>Inhalation</td>
<td>Inhalation</td>
</tr>
<tr>
<td>48</td>
<td>Cadmium-113</td>
<td>D, see 112Ag</td>
<td>Oral</td>
<td>Inhalation</td>
<td>Inhalation</td>
<td>Inhalation</td>
<td>Inhalation</td>
<td>Inhalation</td>
</tr>
<tr>
<td>48</td>
<td>Cadmium-115</td>
<td>D, see 116Ag</td>
<td>Oral</td>
<td>Inhalation</td>
<td>Inhalation</td>
<td>Inhalation</td>
<td>Inhalation</td>
<td>Inhalation</td>
</tr>
<tr>
<td>48</td>
<td>Cadmium-117m</td>
<td>D, see 117Ag</td>
<td>Oral</td>
<td>Inhalation</td>
<td>Inhalation</td>
<td>Inhalation</td>
<td>Inhalation</td>
<td>Inhalation</td>
</tr>
<tr>
<td>Atomic No.</td>
<td>Radioisotope</td>
<td>Class</td>
<td>Occupational Values</td>
<td>Effluent Concentrations</td>
<td>Releases to Stormwaters</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>-----------</td>
<td>--------------</td>
<td>-------</td>
<td>---------------------</td>
<td>-------------------------</td>
<td>------------------------</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td>Col. 1</td>
<td>Col. 2</td>
<td>Col. 3</td>
<td>Col. 1</td>
<td>Col. 2</td>
<td>Monthly Average</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td>Oral Ingestion</td>
<td>ALL</td>
<td>Soln.</td>
<td>Air</td>
<td>Water</td>
<td>Concentration (uCi/l)</td>
</tr>
<tr>
<td>48</td>
<td>Cadmium-117</td>
<td>D, see 110m Te</td>
<td>5E-3</td>
<td>2E-4</td>
<td>7E-6</td>
<td>2E-6</td>
<td>6E-4</td>
<td>6E-4</td>
</tr>
<tr>
<td></td>
<td></td>
<td>W, see 110m Te</td>
<td>-</td>
<td>2E-4</td>
<td>7E-6</td>
<td>2E-6</td>
<td>6E-4</td>
<td>6E-4</td>
</tr>
<tr>
<td></td>
<td></td>
<td>Y, see 110m Te</td>
<td>-</td>
<td>1E-4</td>
<td>5E-6</td>
<td>2E-6</td>
<td>6E-4</td>
<td>-</td>
</tr>
<tr>
<td>49</td>
<td>Indium-109</td>
<td>D, all compounds except those given for W</td>
<td>2E-4</td>
<td>4E-4</td>
<td>2E-5</td>
<td>6E-8</td>
<td>3E-4</td>
<td>3E-3</td>
</tr>
<tr>
<td></td>
<td></td>
<td>W, oxides, hydrides, halides, and nitrates</td>
<td>-</td>
<td>1E-4</td>
<td>3E-5</td>
<td>9E-8</td>
<td>-</td>
<td>-</td>
</tr>
<tr>
<td>49</td>
<td>Indium-110</td>
<td>D, see 109m In</td>
<td>2E-4</td>
<td>4E-4</td>
<td>2E-5</td>
<td>6E-8</td>
<td>3E-4</td>
<td>3E-3</td>
</tr>
<tr>
<td></td>
<td></td>
<td>W, see 109m In</td>
<td>-</td>
<td>1E-4</td>
<td>3E-5</td>
<td>9E-8</td>
<td>-</td>
<td>-</td>
</tr>
<tr>
<td>49</td>
<td>Indium-111</td>
<td>D, see 109m In</td>
<td>4E-3</td>
<td>2E-4</td>
<td>7E-6</td>
<td>2E-8</td>
<td>7E-4</td>
<td>7E-4</td>
</tr>
<tr>
<td></td>
<td></td>
<td>W, see 109m In</td>
<td>-</td>
<td>2E-4</td>
<td>7E-6</td>
<td>2E-8</td>
<td>7E-4</td>
<td>7E-4</td>
</tr>
<tr>
<td>49</td>
<td>Indium-112</td>
<td>D, see 109m In</td>
<td>2E-5</td>
<td>5E-5</td>
<td>3E-4</td>
<td>6E-7</td>
<td>2E-3</td>
<td>2E-2</td>
</tr>
<tr>
<td></td>
<td></td>
<td>W, see 109m In</td>
<td>-</td>
<td>1E-5</td>
<td>3E-4</td>
<td>3E-6</td>
<td>-</td>
<td>-</td>
</tr>
<tr>
<td>49</td>
<td>Indium-113</td>
<td>D, see 109m In</td>
<td>5E-4</td>
<td>1E-5</td>
<td>6E-5</td>
<td>3E-7</td>
<td>7E-4</td>
<td>7E-3</td>
</tr>
<tr>
<td></td>
<td></td>
<td>W, see 109m In</td>
<td>-</td>
<td>1E-5</td>
<td>6E-5</td>
<td>3E-7</td>
<td>-</td>
<td>-</td>
</tr>
<tr>
<td>49</td>
<td>Indium-114</td>
<td>D, see 109m In</td>
<td>3E-2</td>
<td>1E-1</td>
<td>3E-8</td>
<td>9E-11</td>
<td>-</td>
<td>-</td>
</tr>
<tr>
<td></td>
<td></td>
<td>W, see 109m In</td>
<td>-</td>
<td>1E-2</td>
<td>4E-8</td>
<td>1E-10</td>
<td>-</td>
<td>-</td>
</tr>
<tr>
<td>49</td>
<td>Indium-115</td>
<td>D, see 109m In</td>
<td>1E-4</td>
<td>4E-4</td>
<td>2E-5</td>
<td>6E-8</td>
<td>2E-4</td>
<td>2E-3</td>
</tr>
<tr>
<td></td>
<td></td>
<td>W, see 109m In</td>
<td>-</td>
<td>1E-4</td>
<td>3E-5</td>
<td>7E-8</td>
<td>-</td>
<td>-</td>
</tr>
<tr>
<td>49</td>
<td>Indium-116</td>
<td>D, see 109m In</td>
<td>1E-5</td>
<td>5E-5</td>
<td>6E-10</td>
<td>2E-12</td>
<td>5E-7</td>
<td>5E-6</td>
</tr>
<tr>
<td></td>
<td></td>
<td>W, see 109m In</td>
<td>-</td>
<td>1E-5</td>
<td>2E-9</td>
<td>6E-12</td>
<td>-</td>
<td>-</td>
</tr>
<tr>
<td>49</td>
<td>Indium-117</td>
<td>D, see 109m In</td>
<td>2E-4</td>
<td>8E-4</td>
<td>3E-5</td>
<td>1E-7</td>
<td>3E-4</td>
<td>3E-3</td>
</tr>
<tr>
<td></td>
<td></td>
<td>W, see 109m In</td>
<td>-</td>
<td>1E-4</td>
<td>2E-5</td>
<td>3E-7</td>
<td>-</td>
<td>-</td>
</tr>
<tr>
<td>49</td>
<td>Indium-118</td>
<td>D, see 109m In</td>
<td>4E-4</td>
<td>1E-4</td>
<td>3E-5</td>
<td>8E-8</td>
<td>2E-4</td>
<td>2E-3</td>
</tr>
<tr>
<td></td>
<td></td>
<td>W, see 109m In</td>
<td>-</td>
<td>4E-4</td>
<td>2E-5</td>
<td>6E-8</td>
<td>-</td>
<td>-</td>
</tr>
<tr>
<td>49</td>
<td>Indium-119</td>
<td>D, see 109m In</td>
<td>1E-5</td>
<td>5E-5</td>
<td>2E-7</td>
<td>7E-8</td>
<td>-</td>
<td>-</td>
</tr>
<tr>
<td></td>
<td></td>
<td>W, see 109m In</td>
<td>-</td>
<td>1E-5</td>
<td>6E-5</td>
<td>2E-7</td>
<td>-</td>
<td>-</td>
</tr>
<tr>
<td>50</td>
<td>Tm-150</td>
<td>D, all compounds except those given for W</td>
<td>4E-3</td>
<td>1E-4</td>
<td>5E-6</td>
<td>2E-8</td>
<td>5E-5</td>
<td>5E-4</td>
</tr>
<tr>
<td></td>
<td></td>
<td>W, sulfides, oxides, hydrides, halides, nitrates, and stannic phosphate</td>
<td>-</td>
<td>1E-4</td>
<td>5E-6</td>
<td>2E-8</td>
<td>-</td>
<td>-</td>
</tr>
<tr>
<td>50</td>
<td>Tm-151</td>
<td>D, see 152m Sm</td>
<td>7E-4</td>
<td>1E-4</td>
<td>9E-5</td>
<td>3E-7</td>
<td>3E-3</td>
<td>3E-2</td>
</tr>
<tr>
<td></td>
<td></td>
<td>W, see 152m Sm</td>
<td>-</td>
<td>1E-4</td>
<td>6E-7</td>
<td>2E-7</td>
<td>-</td>
<td>-</td>
</tr>
</tbody>
</table>

402
## Table 1: Occupational Values

<table>
<thead>
<tr>
<th>Atomic No.</th>
<th>Radioisotope</th>
<th>Class</th>
<th>Oral (uCi)</th>
<th>Inhalation (uCi)</th>
<th>Air (uCi/L)</th>
<th>Water (uCi/mL)</th>
<th>Monthly Average Concentration (uCi/mL)</th>
</tr>
</thead>
<tbody>
<tr>
<td>50</td>
<td>Tm-113</td>
<td>O. see</td>
<td>2E-3</td>
<td>2E-3</td>
<td>2E-3</td>
<td>2E-3</td>
<td>2E-3</td>
</tr>
<tr>
<td></td>
<td></td>
<td>W. see</td>
<td>-</td>
<td>-</td>
<td>-</td>
<td>-</td>
<td>-</td>
</tr>
<tr>
<td>50</td>
<td>Tm-113m</td>
<td>O. see</td>
<td>2E-3</td>
<td>2E-3</td>
<td>2E-3</td>
<td>2E-3</td>
<td>2E-3</td>
</tr>
<tr>
<td></td>
<td></td>
<td>W. see</td>
<td>-</td>
<td>-</td>
<td>-</td>
<td>-</td>
<td>-</td>
</tr>
<tr>
<td>50</td>
<td>Tm-119</td>
<td>O. see</td>
<td>3E-3</td>
<td>3E-3</td>
<td>3E-3</td>
<td>3E-3</td>
<td>3E-3</td>
</tr>
<tr>
<td></td>
<td></td>
<td>W. see</td>
<td>-</td>
<td>-</td>
<td>-</td>
<td>-</td>
<td>-</td>
</tr>
<tr>
<td>50</td>
<td>Tm-120m</td>
<td>O. see</td>
<td>3E-3</td>
<td>3E-3</td>
<td>3E-3</td>
<td>3E-3</td>
<td>3E-3</td>
</tr>
<tr>
<td></td>
<td></td>
<td>W. see</td>
<td>-</td>
<td>-</td>
<td>-</td>
<td>-</td>
<td>-</td>
</tr>
<tr>
<td>50</td>
<td>Tm-121</td>
<td>O. see</td>
<td>6E-3</td>
<td>6E-3</td>
<td>6E-3</td>
<td>6E-3</td>
<td>6E-3</td>
</tr>
<tr>
<td></td>
<td></td>
<td>W. see</td>
<td>-</td>
<td>-</td>
<td>-</td>
<td>-</td>
<td>-</td>
</tr>
<tr>
<td>50</td>
<td>Tm-122m</td>
<td>O. see</td>
<td>5E-3</td>
<td>5E-3</td>
<td>5E-3</td>
<td>5E-3</td>
<td>5E-3</td>
</tr>
<tr>
<td></td>
<td></td>
<td>W. see</td>
<td>-</td>
<td>-</td>
<td>-</td>
<td>-</td>
<td>-</td>
</tr>
<tr>
<td>50</td>
<td>Tm-123</td>
<td>O. see</td>
<td>5E-3</td>
<td>5E-3</td>
<td>5E-3</td>
<td>5E-3</td>
<td>5E-3</td>
</tr>
<tr>
<td></td>
<td></td>
<td>W. see</td>
<td>-</td>
<td>-</td>
<td>-</td>
<td>-</td>
<td>-</td>
</tr>
<tr>
<td>50</td>
<td>Tm-125</td>
<td>O. see</td>
<td>5E-3</td>
<td>5E-3</td>
<td>5E-3</td>
<td>5E-3</td>
<td>5E-3</td>
</tr>
<tr>
<td></td>
<td></td>
<td>W. see</td>
<td>-</td>
<td>-</td>
<td>-</td>
<td>-</td>
<td>-</td>
</tr>
<tr>
<td>50</td>
<td>Tm-126</td>
<td>O. see</td>
<td>5E-3</td>
<td>5E-3</td>
<td>5E-3</td>
<td>5E-3</td>
<td>5E-3</td>
</tr>
<tr>
<td></td>
<td></td>
<td>W. see</td>
<td>-</td>
<td>-</td>
<td>-</td>
<td>-</td>
<td>-</td>
</tr>
<tr>
<td>50</td>
<td>Tm-127</td>
<td>O. see</td>
<td>5E-3</td>
<td>5E-3</td>
<td>5E-3</td>
<td>5E-3</td>
<td>5E-3</td>
</tr>
<tr>
<td></td>
<td></td>
<td>W. see</td>
<td>-</td>
<td>-</td>
<td>-</td>
<td>-</td>
<td>-</td>
</tr>
<tr>
<td>50</td>
<td>Tm-128</td>
<td>O. see</td>
<td>5E-3</td>
<td>5E-3</td>
<td>5E-3</td>
<td>5E-3</td>
<td>5E-3</td>
</tr>
<tr>
<td></td>
<td></td>
<td>W. see</td>
<td>-</td>
<td>-</td>
<td>-</td>
<td>-</td>
<td>-</td>
</tr>
</tbody>
</table>

## Table 2: Effluent Concentrations

<table>
<thead>
<tr>
<th>Atomic No.</th>
<th>Radioisotope</th>
<th>Class</th>
<th>Oral (uCi)</th>
<th>Inhalation (uCi)</th>
<th>Air (uCi/L)</th>
<th>Water (uCi/mL)</th>
</tr>
</thead>
<tbody>
<tr>
<td>50</td>
<td>Tm-113</td>
<td>O. see</td>
<td>2E-3</td>
<td>2E-3</td>
<td>2E-3</td>
<td>2E-3</td>
</tr>
<tr>
<td></td>
<td></td>
<td>W. see</td>
<td>-</td>
<td>-</td>
<td>-</td>
<td>-</td>
</tr>
<tr>
<td>50</td>
<td>Tm-113m</td>
<td>O. see</td>
<td>2E-3</td>
<td>2E-3</td>
<td>2E-3</td>
<td>2E-3</td>
</tr>
<tr>
<td></td>
<td></td>
<td>W. see</td>
<td>-</td>
<td>-</td>
<td>-</td>
<td>-</td>
</tr>
<tr>
<td>50</td>
<td>Tm-119</td>
<td>O. see</td>
<td>3E-3</td>
<td>3E-3</td>
<td>3E-3</td>
<td>3E-3</td>
</tr>
<tr>
<td></td>
<td></td>
<td>W. see</td>
<td>-</td>
<td>-</td>
<td>-</td>
<td>-</td>
</tr>
<tr>
<td>50</td>
<td>Tm-120m</td>
<td>O. see</td>
<td>3E-3</td>
<td>3E-3</td>
<td>3E-3</td>
<td>3E-3</td>
</tr>
<tr>
<td></td>
<td></td>
<td>W. see</td>
<td>-</td>
<td>-</td>
<td>-</td>
<td>-</td>
</tr>
<tr>
<td>50</td>
<td>Tm-121</td>
<td>O. see</td>
<td>6E-3</td>
<td>6E-3</td>
<td>6E-3</td>
<td>6E-3</td>
</tr>
<tr>
<td></td>
<td></td>
<td>W. see</td>
<td>-</td>
<td>-</td>
<td>-</td>
<td>-</td>
</tr>
<tr>
<td>50</td>
<td>Tm-122m</td>
<td>O. see</td>
<td>5E-3</td>
<td>5E-3</td>
<td>5E-3</td>
<td>5E-3</td>
</tr>
<tr>
<td></td>
<td></td>
<td>W. see</td>
<td>-</td>
<td>-</td>
<td>-</td>
<td>-</td>
</tr>
<tr>
<td>50</td>
<td>Tm-123</td>
<td>O. see</td>
<td>5E-3</td>
<td>5E-3</td>
<td>5E-3</td>
<td>5E-3</td>
</tr>
<tr>
<td></td>
<td></td>
<td>W. see</td>
<td>-</td>
<td>-</td>
<td>-</td>
<td>-</td>
</tr>
<tr>
<td>50</td>
<td>Tm-125</td>
<td>O. see</td>
<td>5E-3</td>
<td>5E-3</td>
<td>5E-3</td>
<td>5E-3</td>
</tr>
<tr>
<td></td>
<td></td>
<td>W. see</td>
<td>-</td>
<td>-</td>
<td>-</td>
<td>-</td>
</tr>
<tr>
<td>50</td>
<td>Tm-126</td>
<td>O. see</td>
<td>5E-3</td>
<td>5E-3</td>
<td>5E-3</td>
<td>5E-3</td>
</tr>
<tr>
<td></td>
<td></td>
<td>W. see</td>
<td>-</td>
<td>-</td>
<td>-</td>
<td>-</td>
</tr>
<tr>
<td>50</td>
<td>Tm-127</td>
<td>O. see</td>
<td>5E-3</td>
<td>5E-3</td>
<td>5E-3</td>
<td>5E-3</td>
</tr>
<tr>
<td></td>
<td></td>
<td>W. see</td>
<td>-</td>
<td>-</td>
<td>-</td>
<td>-</td>
</tr>
<tr>
<td>50</td>
<td>Tm-128</td>
<td>O. see</td>
<td>5E-3</td>
<td>5E-3</td>
<td>5E-3</td>
<td>5E-3</td>
</tr>
<tr>
<td></td>
<td></td>
<td>W. see</td>
<td>-</td>
<td>-</td>
<td>-</td>
<td>-</td>
</tr>
</tbody>
</table>

## Table 3: Releases to Sewers

<table>
<thead>
<tr>
<th>Atomic No.</th>
<th>Radioisotope</th>
<th>Class</th>
<th>Oral (uCi)</th>
<th>Inhalation (uCi)</th>
<th>Air (uCi/L)</th>
<th>Water (uCi/mL)</th>
</tr>
</thead>
<tbody>
<tr>
<td>50</td>
<td>Tm-113</td>
<td>O. see</td>
<td>2E-3</td>
<td>2E-3</td>
<td>2E-3</td>
<td>2E-3</td>
</tr>
<tr>
<td></td>
<td></td>
<td>W. see</td>
<td>-</td>
<td>-</td>
<td>-</td>
<td>-</td>
</tr>
<tr>
<td>50</td>
<td>Tm-113m</td>
<td>O. see</td>
<td>2E-3</td>
<td>2E-3</td>
<td>2E-3</td>
<td>2E-3</td>
</tr>
<tr>
<td></td>
<td></td>
<td>W. see</td>
<td>-</td>
<td>-</td>
<td>-</td>
<td>-</td>
</tr>
<tr>
<td>50</td>
<td>Tm-119</td>
<td>O. see</td>
<td>3E-3</td>
<td>3E-3</td>
<td>3E-3</td>
<td>3E-3</td>
</tr>
<tr>
<td></td>
<td></td>
<td>W. see</td>
<td>-</td>
<td>-</td>
<td>-</td>
<td>-</td>
</tr>
<tr>
<td>50</td>
<td>Tm-120m</td>
<td>O. see</td>
<td>3E-3</td>
<td>3E-3</td>
<td>3E-3</td>
<td>3E-3</td>
</tr>
<tr>
<td></td>
<td></td>
<td>W. see</td>
<td>-</td>
<td>-</td>
<td>-</td>
<td>-</td>
</tr>
<tr>
<td>50</td>
<td>Tm-121</td>
<td>O. see</td>
<td>6E-3</td>
<td>6E-3</td>
<td>6E-3</td>
<td>6E-3</td>
</tr>
<tr>
<td></td>
<td></td>
<td>W. see</td>
<td>-</td>
<td>-</td>
<td>-</td>
<td>-</td>
</tr>
<tr>
<td>50</td>
<td>Tm-122m</td>
<td>O. see</td>
<td>5E-3</td>
<td>5E-3</td>
<td>5E-3</td>
<td>5E-3</td>
</tr>
<tr>
<td></td>
<td></td>
<td>W. see</td>
<td>-</td>
<td>-</td>
<td>-</td>
<td>-</td>
</tr>
<tr>
<td>50</td>
<td>Tm-123</td>
<td>O. see</td>
<td>5E-3</td>
<td>5E-3</td>
<td>5E-3</td>
<td>5E-3</td>
</tr>
<tr>
<td></td>
<td></td>
<td>W. see</td>
<td>-</td>
<td>-</td>
<td>-</td>
<td>-</td>
</tr>
<tr>
<td>50</td>
<td>Tm-125</td>
<td>O. see</td>
<td>5E-3</td>
<td>5E-3</td>
<td>5E-3</td>
<td>5E-3</td>
</tr>
<tr>
<td></td>
<td></td>
<td>W. see</td>
<td>-</td>
<td>-</td>
<td>-</td>
<td>-</td>
</tr>
<tr>
<td>50</td>
<td>Tm-126</td>
<td>O. see</td>
<td>5E-3</td>
<td>5E-3</td>
<td>5E-3</td>
<td>5E-3</td>
</tr>
<tr>
<td></td>
<td></td>
<td>W. see</td>
<td>-</td>
<td>-</td>
<td>-</td>
<td>-</td>
</tr>
<tr>
<td>50</td>
<td>Tm-127</td>
<td>O. see</td>
<td>5E-3</td>
<td>5E-3</td>
<td>5E-3</td>
<td>5E-3</td>
</tr>
<tr>
<td></td>
<td></td>
<td>W. see</td>
<td>-</td>
<td>-</td>
<td>-</td>
<td>-</td>
</tr>
<tr>
<td>50</td>
<td>Tm-128</td>
<td>O. see</td>
<td>5E-3</td>
<td>5E-3</td>
<td>5E-3</td>
<td>5E-3</td>
</tr>
<tr>
<td></td>
<td></td>
<td>W. see</td>
<td>-</td>
<td>-</td>
<td>-</td>
<td>-</td>
</tr>
</tbody>
</table>

403
<table>
<thead>
<tr>
<th>Atomic No.</th>
<th>Radioisotope</th>
<th>Class</th>
<th>Col. 1 Oral Ingestion (uCi)</th>
<th>Col. 2 Inhalation (uCi)</th>
<th>Col. 3 Surface Water (uCi/ml)</th>
<th>Col. 1 Air (uCi/ml)</th>
<th>Col. 2 Water (uCi/ml)</th>
<th>Monthly Average Concentration (uCi/ml)</th>
</tr>
</thead>
<tbody>
<tr>
<td>51</td>
<td>Antimony-110</td>
<td></td>
<td>6E+3</td>
<td>2E+4</td>
<td>8E+6</td>
<td>2E+8</td>
<td>7E+5</td>
<td>7E+4</td>
</tr>
<tr>
<td>51</td>
<td>Antimony-110</td>
<td>V. see 115</td>
<td>5E+3</td>
<td>2E+4</td>
<td>9E+6</td>
<td>3E+8</td>
<td>7E+5</td>
<td></td>
</tr>
<tr>
<td>51</td>
<td>Antimony-120</td>
<td></td>
<td>2E+4</td>
<td>5E+4</td>
<td>2E+5</td>
<td>6E+8</td>
<td>2E+4</td>
<td>2E+3</td>
</tr>
<tr>
<td>51</td>
<td>Antimony-120</td>
<td>V. see 115</td>
<td>3E+4</td>
<td>3E+4</td>
<td>1E+5</td>
<td>4E+8</td>
<td>7E+7</td>
<td></td>
</tr>
<tr>
<td>51</td>
<td>Antimony-120</td>
<td></td>
<td>1E+5</td>
<td>4E+4</td>
<td>2E+4</td>
<td>6E+7</td>
<td>2E-3</td>
<td>2E+2</td>
</tr>
<tr>
<td>51</td>
<td>Antimony-120</td>
<td>V. see 115</td>
<td>3E+5</td>
<td>5E+4</td>
<td>2E+4</td>
<td>7E+7</td>
<td>2E-3</td>
<td>2E-2</td>
</tr>
<tr>
<td>51</td>
<td>Antimony-120</td>
<td></td>
<td>1E+5</td>
<td>2E+3</td>
<td>9E-7</td>
<td>3E-9</td>
<td>1E-5</td>
<td>1E-4</td>
</tr>
<tr>
<td>51</td>
<td>Antimony-120</td>
<td>V. see 115</td>
<td>9E+2</td>
<td>1E+3</td>
<td>5E-7</td>
<td>2E-9</td>
<td>2E-4</td>
<td></td>
</tr>
<tr>
<td>51</td>
<td>Antimony-122</td>
<td></td>
<td>8E+2</td>
<td>2E+3</td>
<td>1E-6</td>
<td>3E-9</td>
<td>2E-5</td>
<td>1E-4</td>
</tr>
<tr>
<td>51</td>
<td>Antimony-122</td>
<td>V. see 115</td>
<td>7E+2</td>
<td>1E+3</td>
<td>4E-7</td>
<td>2E-9</td>
<td>2E-4</td>
<td></td>
</tr>
<tr>
<td>51</td>
<td>Antimony-124</td>
<td></td>
<td>3E+5</td>
<td>8E+5</td>
<td>4E-4</td>
<td>3E-8</td>
<td>3E-3</td>
<td>3E-2</td>
</tr>
<tr>
<td>51</td>
<td>Antimony-124</td>
<td>V. see 115</td>
<td>2E+5</td>
<td>6E+5</td>
<td>2E-4</td>
<td>8E-7</td>
<td>7E-10</td>
<td></td>
</tr>
<tr>
<td>51</td>
<td>Antimony-126</td>
<td></td>
<td>6E+2</td>
<td>2E+2</td>
<td>1E-7</td>
<td>3E-9</td>
<td>7E-6</td>
<td>7E-5</td>
</tr>
<tr>
<td>51</td>
<td>Antimony-126</td>
<td>V. see 115</td>
<td>5E+2</td>
<td>2E+2</td>
<td>1E-7</td>
<td>3E-9</td>
<td>7E-6</td>
<td></td>
</tr>
<tr>
<td>51</td>
<td>Antimony-126</td>
<td></td>
<td>3E+3</td>
<td>2E+3</td>
<td>1E-6</td>
<td>3E-9</td>
<td>3E-5</td>
<td>3E-4</td>
</tr>
<tr>
<td>51</td>
<td>Antimony-126</td>
<td>V. see 115</td>
<td>-</td>
<td>5E+2</td>
<td>2E-7</td>
<td>7E-10</td>
<td>7E-5</td>
<td></td>
</tr>
<tr>
<td>51</td>
<td>Antimony-127</td>
<td></td>
<td>5E+4</td>
<td>5E+5</td>
<td>8E-5</td>
<td>9E-4</td>
<td>9E-5</td>
<td></td>
</tr>
<tr>
<td>51</td>
<td>Antimony-127</td>
<td>V. see 115</td>
<td>2E+5</td>
<td>2E+5</td>
<td>9E-7</td>
<td>2E-9</td>
<td>2E-4</td>
<td></td>
</tr>
<tr>
<td>51</td>
<td>Antimony-127</td>
<td></td>
<td>8E+2</td>
<td>1E+3</td>
<td>5E-7</td>
<td>2E-9</td>
<td>7E-6</td>
<td>7E-5</td>
</tr>
<tr>
<td>51</td>
<td>Antimony-127</td>
<td>V. see 115</td>
<td>5E+2</td>
<td>5E+2</td>
<td>2E-7</td>
<td>7E-10</td>
<td>7E-5</td>
<td></td>
</tr>
<tr>
<td>51</td>
<td>Antimony-128</td>
<td></td>
<td>8E+2</td>
<td>2E+3</td>
<td>9E-7</td>
<td>2E-9</td>
<td>2E-4</td>
<td>2E-4</td>
</tr>
<tr>
<td>51</td>
<td>Antimony-128</td>
<td>V. see 115</td>
<td>5E+4</td>
<td>1E+5</td>
<td>2E-7</td>
<td>1E-5</td>
<td>1E-4</td>
<td>1E-5</td>
</tr>
<tr>
<td>51</td>
<td>Antimony-128</td>
<td></td>
<td>5E+4</td>
<td>1E+5</td>
<td>2E-7</td>
<td>1E-5</td>
<td>1E-4</td>
<td>1E-5</td>
</tr>
<tr>
<td>51</td>
<td>Antimony-129</td>
<td></td>
<td>1E+3</td>
<td>4E+3</td>
<td>2E-6</td>
<td>6E-9</td>
<td>2E-5</td>
<td>2E-4</td>
</tr>
<tr>
<td>51</td>
<td>Antimony-129</td>
<td>V. see 115</td>
<td>-</td>
<td>3E+3</td>
<td>1E+6</td>
<td>5E-9</td>
<td>1E-3</td>
<td></td>
</tr>
<tr>
<td>51</td>
<td>Antimony-130</td>
<td></td>
<td>3E+3</td>
<td>4E+3</td>
<td>1E-6</td>
<td>5E-9</td>
<td>1E-3</td>
<td></td>
</tr>
<tr>
<td>51</td>
<td>Antimony-130</td>
<td>V. see 115</td>
<td>-</td>
<td>3E+3</td>
<td>1E-6</td>
<td>5E-9</td>
<td>1E-3</td>
<td></td>
</tr>
<tr>
<td>51</td>
<td>Antimony-131</td>
<td></td>
<td>2E+4</td>
<td>6E+4</td>
<td>3E-5</td>
<td>9E-8</td>
<td>3E-4</td>
<td>3E-3</td>
</tr>
<tr>
<td>51</td>
<td>Antimony-131</td>
<td>V. see 115</td>
<td>-</td>
<td>8E+4</td>
<td>3E-5</td>
<td>1E-7</td>
<td>3E-4</td>
<td></td>
</tr>
<tr>
<td>51</td>
<td>Antimony-131</td>
<td></td>
<td>3E+4</td>
<td>2E+4</td>
<td>1E-5</td>
<td>6E-9</td>
<td>2E-4</td>
<td>2E-3</td>
</tr>
<tr>
<td>51</td>
<td>Antimony-131</td>
<td>V. see 115</td>
<td>-</td>
<td>4E+4</td>
<td>1E-5</td>
<td>6E-9</td>
<td>2E-4</td>
<td></td>
</tr>
<tr>
<td>Atomic No.</td>
<td>Radionuclide</td>
<td>Class</td>
<td>Table 1: Occupational Values</td>
<td>Table 2: Effluent Concentrations</td>
<td>Table 3: Releases to Sewers</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>-----------</td>
<td>--------------</td>
<td>-------</td>
<td>------------------------------</td>
<td>----------------------------------</td>
<td>-----------------------------</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td>Col. 1 Oral Ingestion (AL) (uCi)</td>
<td>Col. 2 Inhalation (uCi)</td>
<td>Col. 3 Air (uCi/m³)</td>
<td>Col. 1 Water (uCi/m³)</td>
<td>Monthly Average Concentration (uCi/m³)</td>
<td></td>
</tr>
<tr>
<td>52</td>
<td>Tellurium-138</td>
<td>D, all compounds except those given for W</td>
<td>5E+3</td>
<td>2E+4</td>
<td>9E-6</td>
<td>3E-8</td>
<td>1E-4</td>
<td>1E-3</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td>-</td>
<td>3E+4</td>
<td>1E-5</td>
<td>4E-8</td>
<td>-</td>
<td>-</td>
</tr>
<tr>
<td>52</td>
<td>Tellurium-132m</td>
<td>D, see 132Te</td>
<td>5E+2</td>
<td>2E+2</td>
<td>8E-8</td>
<td>-</td>
<td>-</td>
<td>-</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td>-</td>
<td>-</td>
<td>-</td>
<td>3E-10</td>
<td>1E-7</td>
<td>1E-4</td>
</tr>
<tr>
<td>52</td>
<td>Tellurium-122</td>
<td>D, see 132Te</td>
<td>3E+3</td>
<td>3E+3</td>
<td>3E+6</td>
<td>3E-9</td>
<td>4E-9</td>
<td>4E-4</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td>-</td>
<td>3E-3</td>
<td>1E-6</td>
<td>4E-9</td>
<td>-</td>
<td>-</td>
</tr>
<tr>
<td>52</td>
<td>Tellurium-122m</td>
<td>D, see 132Te</td>
<td>6E+2</td>
<td>2E+2</td>
<td>5E-8</td>
<td>-</td>
<td>-</td>
<td>-</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td>-</td>
<td>5E-10</td>
<td>1E-5</td>
<td>1E-4</td>
<td>-</td>
<td>-</td>
</tr>
<tr>
<td>52</td>
<td>Tellurium-123</td>
<td>D, see 132Te</td>
<td>5E+2</td>
<td>3E+2</td>
<td>8E-8</td>
<td>-</td>
<td>-</td>
<td>-</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td>-</td>
<td>3E-10</td>
<td>1E-5</td>
<td>1E-4</td>
<td>-</td>
<td>-</td>
</tr>
<tr>
<td>52</td>
<td>Tellurium-123m</td>
<td>D, see 132Te</td>
<td>5E+2</td>
<td>3E+2</td>
<td>8E-8</td>
<td>-</td>
<td>-</td>
<td>-</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td>-</td>
<td>2E-7</td>
<td>2E-7</td>
<td>2E-7</td>
<td>2E-9</td>
<td>-</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td>-</td>
<td>-</td>
<td>-</td>
<td>-</td>
<td>-</td>
<td>-</td>
</tr>
<tr>
<td>52</td>
<td>Tellurium-122m</td>
<td>D, see 132Te</td>
<td>1E+3</td>
<td>4E+2</td>
<td>3E-7</td>
<td>3E-9</td>
<td>2E-5</td>
<td>2E-4</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td>-</td>
<td>7E+3</td>
<td>2E-7</td>
<td>2E-7</td>
<td>2E-9</td>
<td>-</td>
</tr>
<tr>
<td>52</td>
<td>Tellurium-122m</td>
<td>D, see 132Te</td>
<td>6E+2</td>
<td>3E+2</td>
<td>8E-6</td>
<td>-</td>
<td>-</td>
<td>-</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td>-</td>
<td>3E+10</td>
<td>1E-5</td>
<td>1E-4</td>
<td>-</td>
<td>-</td>
</tr>
<tr>
<td>52</td>
<td>Tellurium-122m</td>
<td>D, see 132Te</td>
<td>7E+3</td>
<td>3E+6</td>
<td>9E-8</td>
<td>-</td>
<td>-</td>
<td>-</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td>-</td>
<td>3E-8</td>
<td>1E-4</td>
<td>1E-3</td>
<td>-</td>
<td>-</td>
</tr>
<tr>
<td>52</td>
<td>Tellurium-122m</td>
<td>D, see 132Te</td>
<td>5E+2</td>
<td>3E+2</td>
<td>8E-6</td>
<td>-</td>
<td>-</td>
<td>-</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td>-</td>
<td>2E-7</td>
<td>2E-7</td>
<td>2E-7</td>
<td>2E-9</td>
<td>-</td>
</tr>
<tr>
<td>52</td>
<td>Tellurium-122m</td>
<td>D, see 132Te</td>
<td>3E+4</td>
<td>3E+5</td>
<td>9E-8</td>
<td>-</td>
<td>-</td>
<td>-</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td>-</td>
<td>4E-4</td>
<td>4E-4</td>
<td>4E-4</td>
<td>-</td>
<td>-</td>
</tr>
<tr>
<td>52</td>
<td>Tellurium-122m</td>
<td>D, see 132Te</td>
<td>3E+4</td>
<td>3E+5</td>
<td>9E-8</td>
<td>-</td>
<td>-</td>
<td>-</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td>-</td>
<td>1E-7</td>
<td>1E-7</td>
<td>1E-7</td>
<td>1E-9</td>
<td>-</td>
</tr>
<tr>
<td>52</td>
<td>Tellurium-122m</td>
<td>D, see 132Te</td>
<td>3E+4</td>
<td>3E+5</td>
<td>9E-8</td>
<td>-</td>
<td>-</td>
<td>-</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td>-</td>
<td>3E-6</td>
<td>3E-6</td>
<td>3E-6</td>
<td>3E-8</td>
<td>-</td>
</tr>
<tr>
<td>52</td>
<td>Tellurium-122m</td>
<td>D, see 132Te</td>
<td>4E+2</td>
<td>3E+2</td>
<td>8E-6</td>
<td>-</td>
<td>-</td>
<td>-</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td>-</td>
<td>2E-7</td>
<td>2E-7</td>
<td>2E-7</td>
<td>2E-9</td>
<td>-</td>
</tr>
<tr>
<td>52</td>
<td>Tellurium-122m</td>
<td>D, see 132Te</td>
<td>5E+3</td>
<td>3E+3</td>
<td>8E-6</td>
<td>-</td>
<td>-</td>
<td>-</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td>-</td>
<td>5E-6</td>
<td>5E-6</td>
<td>5E-6</td>
<td>5E-8</td>
<td>-</td>
</tr>
<tr>
<td>52</td>
<td>Tellurium-122m</td>
<td>D, see 132Te</td>
<td>5E+3</td>
<td>3E+3</td>
<td>8E-6</td>
<td>-</td>
<td>-</td>
<td>-</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td>-</td>
<td>2E-6</td>
<td>2E-6</td>
<td>2E-6</td>
<td>2E-8</td>
<td>-</td>
</tr>
<tr>
<td>Atomic No.</td>
<td>Radionuclide</td>
<td>Class</td>
<td>Table 1 Occupational Values</td>
<td>Table 2 Effluent Concentrations</td>
<td>Table 3 Releases to Sewers</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>-----------</td>
<td>--------------</td>
<td>-------</td>
<td>-----------------------------</td>
<td>---------------------------------</td>
<td>-----------------------------</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td>Col. 1 Oral Ingestion (uCi)</td>
<td>Col. 2 Limination (uCi)</td>
<td>Col. 1 Col. 2 Monthly Average Concentration (uCi/L)</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>52</td>
<td>Tellurium-132</td>
<td>D, see 132Te</td>
<td>2E+8</td>
<td>2E+8</td>
<td>9E-6</td>
<td>9E-5</td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td>W, see 132Te</td>
<td></td>
<td>2E+8</td>
<td>2E+8</td>
<td>9E-6</td>
<td>9E-5</td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td>(1E+2)</td>
<td>(1E+2)</td>
<td>(1E+2)</td>
<td>(1E+2)</td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td>9E-10</td>
<td>9E-10</td>
<td>9E-10</td>
<td>9E-10</td>
<td></td>
<td></td>
</tr>
<tr>
<td>52</td>
<td>Tellurium-132m2</td>
<td>D, see 132Te</td>
<td>3E+3</td>
<td>5E-3</td>
<td>2E-6</td>
<td>9E-4</td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td>W, see 132Te</td>
<td></td>
<td>5E-3</td>
<td>5E-3</td>
<td>2E-6</td>
<td>9E-4</td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td>(1E+3)</td>
<td>(1E+3)</td>
<td>(1E+3)</td>
<td>(1E+3)</td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td>2E-8</td>
<td>2E-8</td>
<td>2E-8</td>
<td>2E-8</td>
<td></td>
<td></td>
</tr>
<tr>
<td>52</td>
<td>Tellurium-133</td>
<td>D, see 133Te</td>
<td>3E+4</td>
<td>3E+4</td>
<td>9E-6</td>
<td>4E-3</td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td>W, see 133Te</td>
<td></td>
<td>3E+4</td>
<td>3E+4</td>
<td>9E-6</td>
<td>4E-3</td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td>(2E+4)</td>
<td>(2E+4)</td>
<td>(2E+4)</td>
<td>(2E+4)</td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td>4E-3</td>
<td>4E-3</td>
<td>4E-3</td>
<td>4E-3</td>
<td></td>
<td></td>
</tr>
<tr>
<td>52</td>
<td>Tellurium-134</td>
<td>D, see 134Te</td>
<td>2E+4</td>
<td>2E+4</td>
<td>1E-5</td>
<td>3E-3</td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td>W, see 134Te</td>
<td></td>
<td>2E+4</td>
<td>2E+4</td>
<td>1E-5</td>
<td>3E-3</td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td>(2E+4)</td>
<td>(2E+4)</td>
<td>(2E+4)</td>
<td>(2E+4)</td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td>7E-6</td>
<td>7E-6</td>
<td>7E-6</td>
<td>7E-6</td>
<td></td>
<td></td>
</tr>
<tr>
<td>53</td>
<td>Iodine-120</td>
<td>D, all compounds</td>
<td>1E+4</td>
<td>2E+4</td>
<td>9E-6</td>
<td>2E-3</td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td>(1E+4)</td>
<td>(1E+4)</td>
<td>(1E+4)</td>
<td>(1E+4)</td>
<td></td>
<td></td>
</tr>
<tr>
<td>53</td>
<td>Iodine-120</td>
<td>D, all compounds</td>
<td>4E+3</td>
<td>4E+3</td>
<td>4E-6</td>
<td>2E-3</td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td>(1E+4)</td>
<td>(1E+4)</td>
<td>(1E+4)</td>
<td>(1E+4)</td>
<td></td>
<td></td>
</tr>
<tr>
<td>53</td>
<td>Iodine-121</td>
<td>D, all compounds</td>
<td>1E+4</td>
<td>3E+4</td>
<td>8E-6</td>
<td>4E-3</td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td>(3E+4)</td>
<td>(3E+4)</td>
<td>(3E+4)</td>
<td>(3E+4)</td>
<td></td>
<td></td>
</tr>
<tr>
<td>53</td>
<td>Iodine-123</td>
<td>D, all compounds</td>
<td>3E+3</td>
<td>6E+3</td>
<td>3E-6</td>
<td>4E-3</td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td>(1E+4)</td>
<td>(1E+4)</td>
<td>(1E+4)</td>
<td>(1E+4)</td>
<td></td>
<td></td>
</tr>
<tr>
<td>53</td>
<td>Iodine-124</td>
<td>D, all compounds</td>
<td>5E+1</td>
<td>8E+1</td>
<td>3E-8</td>
<td>4E-3</td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td>(2E+2)</td>
<td>(2E+2)</td>
<td>(2E+2)</td>
<td>(2E+2)</td>
<td></td>
<td></td>
</tr>
<tr>
<td>53</td>
<td>Iodine-125</td>
<td>D, all compounds</td>
<td>4E+1</td>
<td>6E+1</td>
<td>3E-8</td>
<td>4E-3</td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td>(1E+2)</td>
<td>(1E+2)</td>
<td>(1E+2)</td>
<td>(1E+2)</td>
<td></td>
<td></td>
</tr>
<tr>
<td>53</td>
<td>Iodine-126</td>
<td>D, all compounds</td>
<td>2E+1</td>
<td>4E+1</td>
<td>3E-8</td>
<td>4E-3</td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td>(7E+1)</td>
<td>(7E+1)</td>
<td>(7E+1)</td>
<td>(7E+1)</td>
<td></td>
<td></td>
</tr>
<tr>
<td>53</td>
<td>Iodine-128</td>
<td>D, all compounds</td>
<td>4E+4</td>
<td>8E+4</td>
<td>4E-9</td>
<td>4E-3</td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td>(6E+4)</td>
<td>(6E+4)</td>
<td>(6E+4)</td>
<td>(6E+4)</td>
<td></td>
<td></td>
</tr>
<tr>
<td>53</td>
<td>Iodine-129</td>
<td>D, all compounds</td>
<td>5E+0</td>
<td>9E+0</td>
<td>4E-9</td>
<td>4E-3</td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td>(2E+1)</td>
<td>(2E+1)</td>
<td>(2E+1)</td>
<td>(2E+1)</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Atomic No.</td>
<td>Radioisotope</td>
<td>Class</td>
<td>Table 1 Occupational Values</td>
<td>Table 2 Effluent Concentrations</td>
<td>Table 3 Releases to Sewers</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>-----------</td>
<td>-------------</td>
<td>-------</td>
<td>-----------------------------</td>
<td>--------------------------------</td>
<td>---------------------------</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td>Col. 1 Oral Ingestion (µCi)</td>
<td>Col. 2 Inhalation (µCi)</td>
<td>Col. 3 Inhalation (µCi)</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td>µCi/L</td>
<td>µCi/L</td>
<td>µCi/L</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>53</td>
<td>Iodine-133</td>
<td>O, all compounds</td>
<td>4E+2 Thyroid (IE-13)</td>
<td>7E+2 Thyroid (IE-2)</td>
<td>3E-7</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td>3E-1 Thyroid (IE-11)</td>
<td>5E-1 Thyroid (IE-2)</td>
<td>2E-8</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>53</td>
<td>Iodine-133</td>
<td>O, all compounds</td>
<td>4E+3 Thyroid (IE-13)</td>
<td>8E+3 Thyroid (IE-4)</td>
<td>3E-6</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>53</td>
<td>Iodine-133</td>
<td>O, all compounds</td>
<td>4E+3 Thyroid (IE-13)</td>
<td>8E+3 Thyroid (IE-4)</td>
<td>3E-6</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>53</td>
<td>Iodine-133</td>
<td>O, all compounds</td>
<td>3E+2 Thyroid (IE-2)</td>
<td>3E+2 Thyroid (IE-2)</td>
<td>3E-7</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>53</td>
<td>Iodine-133</td>
<td>O, all compounds</td>
<td>3E+2 Thyroid (IE-2)</td>
<td>3E+2 Thyroid (IE-2)</td>
<td>3E-7</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>53</td>
<td>Iodine-133</td>
<td>O, all compounds</td>
<td>3E+2 Thyroid (IE-2)</td>
<td>3E+2 Thyroid (IE-2)</td>
<td>3E-7</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>54</td>
<td>Xenon-125</td>
<td>Submersion</td>
<td>-</td>
<td>-</td>
<td>1E-5</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>54</td>
<td>Xenon-125</td>
<td>Submersion</td>
<td>-</td>
<td>-</td>
<td>1E-5</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>54</td>
<td>Xenon-125</td>
<td>Submersion</td>
<td>-</td>
<td>-</td>
<td>1E-5</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>54</td>
<td>Xenon-123</td>
<td>Submersion</td>
<td>-</td>
<td>-</td>
<td>6E-6</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>54</td>
<td>Xenon-125</td>
<td>Submersion</td>
<td>-</td>
<td>-</td>
<td>2E-5</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>54</td>
<td>Xenon-125</td>
<td>Submersion</td>
<td>-</td>
<td>-</td>
<td>6E-8</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>54</td>
<td>Xenon-125</td>
<td>Submersion</td>
<td>-</td>
<td>-</td>
<td>6E-8</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>54</td>
<td>Xenon-125</td>
<td>Submersion</td>
<td>-</td>
<td>-</td>
<td>6E-8</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>54</td>
<td>Xenon-125</td>
<td>Submersion</td>
<td>-</td>
<td>-</td>
<td>6E-8</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>54</td>
<td>Xenon-125</td>
<td>Submersion</td>
<td>-</td>
<td>-</td>
<td>6E-8</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>54</td>
<td>Xenon-125</td>
<td>Submersion</td>
<td>-</td>
<td>-</td>
<td>6E-8</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>55</td>
<td>Cesium-135</td>
<td>O, all compounds</td>
<td>6E+4 St. wall (IE-4)</td>
<td>3E+5</td>
<td>2E-7</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>55</td>
<td>Cesium-137</td>
<td>O, all compounds</td>
<td>6E+4 St. wall (IE-4)</td>
<td>3E+5</td>
<td>2E-7</td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

407
<table>
<thead>
<tr>
<th>A0010</th>
<th>Radionuclide</th>
<th>Class</th>
<th>Col. 1 Occupational Values</th>
<th>Col. 2 Effluent Concentrations</th>
<th>Col. 1 Releases to Sewers</th>
</tr>
</thead>
<tbody>
<tr>
<td>Atomic No.</td>
<td></td>
<td>Oral Ingestion</td>
<td>Air (µCi)</td>
<td>Inhaling</td>
<td>Air (µCi/m³)</td>
</tr>
<tr>
<td>55</td>
<td>Cesium-137</td>
<td>0, all compounds</td>
<td>2E-4</td>
<td>3E-4</td>
<td>1E-5</td>
</tr>
<tr>
<td>55</td>
<td>Cesium-134</td>
<td>0, all compounds</td>
<td>6E-4</td>
<td>2E-5</td>
<td>8E-5</td>
</tr>
<tr>
<td>55</td>
<td>Cesium-133</td>
<td>0, all compounds</td>
<td>6E-5</td>
<td>2E-5</td>
<td>8E-5</td>
</tr>
<tr>
<td>55</td>
<td>Cesium-131</td>
<td>0, all compounds</td>
<td>6E-5</td>
<td>2E-5</td>
<td>8E-5</td>
</tr>
<tr>
<td>55</td>
<td>Cesium-134m</td>
<td>0, all compounds</td>
<td>1E-5</td>
<td>2E-3</td>
<td>1E-5</td>
</tr>
<tr>
<td>55</td>
<td>Cesium-133m</td>
<td>0, all compounds</td>
<td>1E-5</td>
<td>2E-3</td>
<td>1E-5</td>
</tr>
<tr>
<td>55</td>
<td>Cesium-134m</td>
<td>0, all compounds</td>
<td>7E-1</td>
<td>1E-2</td>
<td>4E-8</td>
</tr>
<tr>
<td>55</td>
<td>Cesium-135</td>
<td>0, all compounds</td>
<td>1E-5</td>
<td>2E-5</td>
<td>8E-5</td>
</tr>
<tr>
<td>55</td>
<td>Cesium-135m</td>
<td>0, all compounds</td>
<td>1E-5</td>
<td>2E-5</td>
<td>8E-5</td>
</tr>
<tr>
<td>55</td>
<td>Cesium-136</td>
<td>0, all compounds</td>
<td>1E-2</td>
<td>2E-2</td>
<td>1E-6</td>
</tr>
<tr>
<td>55</td>
<td>Cesium-137</td>
<td>0, all compounds</td>
<td>1E-2</td>
<td>2E-2</td>
<td>1E-6</td>
</tr>
<tr>
<td>55</td>
<td>Cesium-138</td>
<td>0, all compounds</td>
<td>2E-4</td>
<td>6E-4</td>
<td>2E-5</td>
</tr>
<tr>
<td>55</td>
<td>Cesium-138m</td>
<td>0, all compounds</td>
<td>2E-4</td>
<td>6E-4</td>
<td>2E-5</td>
</tr>
<tr>
<td>55</td>
<td>Barium-129</td>
<td>0, all compounds</td>
<td>6E-3</td>
<td>2E-4</td>
<td>6E-6</td>
</tr>
<tr>
<td>55</td>
<td>Barium-129m</td>
<td>0, all compounds</td>
<td>6E-3</td>
<td>2E-4</td>
<td>6E-6</td>
</tr>
<tr>
<td>55</td>
<td>Barium-133</td>
<td>0, all compounds</td>
<td>6E-5</td>
<td>2E-5</td>
<td>6E-6</td>
</tr>
<tr>
<td>55</td>
<td>Barium-133m</td>
<td>0, all compounds</td>
<td>6E-5</td>
<td>2E-5</td>
<td>6E-6</td>
</tr>
<tr>
<td>55</td>
<td>Barium-134</td>
<td>0, all compounds</td>
<td>3E-3</td>
<td>8E-3</td>
<td>3E-6</td>
</tr>
<tr>
<td>55</td>
<td>Barium-134m</td>
<td>0, all compounds</td>
<td>3E-3</td>
<td>8E-3</td>
<td>3E-6</td>
</tr>
<tr>
<td>55</td>
<td>Barium-135</td>
<td>0, all compounds</td>
<td>3E-3</td>
<td>8E-3</td>
<td>3E-6</td>
</tr>
<tr>
<td>55</td>
<td>Barium-135m</td>
<td>0, all compounds</td>
<td>3E-3</td>
<td>8E-3</td>
<td>3E-6</td>
</tr>
<tr>
<td>55</td>
<td>Barium-136</td>
<td>0, all compounds</td>
<td>3E-3</td>
<td>8E-3</td>
<td>3E-6</td>
</tr>
<tr>
<td>55</td>
<td>Barium-136m</td>
<td>0, all compounds</td>
<td>3E-3</td>
<td>8E-3</td>
<td>3E-6</td>
</tr>
<tr>
<td>55</td>
<td>Barium-137</td>
<td>0, all compounds</td>
<td>3E-3</td>
<td>8E-3</td>
<td>3E-6</td>
</tr>
<tr>
<td>55</td>
<td>Barium-137m</td>
<td>0, all compounds</td>
<td>3E-3</td>
<td>8E-3</td>
<td>3E-6</td>
</tr>
<tr>
<td>55</td>
<td>Barium-138</td>
<td>0, all compounds</td>
<td>3E-3</td>
<td>8E-3</td>
<td>3E-6</td>
</tr>
<tr>
<td>55</td>
<td>Barium-138m</td>
<td>0, all compounds</td>
<td>3E-3</td>
<td>8E-3</td>
<td>3E-6</td>
</tr>
<tr>
<td>55</td>
<td>Lanthanum-132</td>
<td>0, all compounds except those given for W</td>
<td>5E-4</td>
<td>1E-5</td>
<td>5E-5</td>
</tr>
<tr>
<td></td>
<td>Lanthanum-132m</td>
<td>0, all compounds except those given for W</td>
<td>5E-4</td>
<td>1E-5</td>
<td>5E-5</td>
</tr>
<tr>
<td>Atomic Number</td>
<td>Radioisotope</td>
<td>Class</td>
<td>Oral Ingestion</td>
<td>Inhalation</td>
<td>Air (µCi/mL)</td>
</tr>
<tr>
<td>---------------</td>
<td>-------------</td>
<td>-------</td>
<td>----------------</td>
<td>-----------</td>
<td>-------------</td>
</tr>
<tr>
<td>57</td>
<td>Lanthanum-132</td>
<td>D.</td>
<td>3E+3</td>
<td>3E+3</td>
<td>3E+3</td>
</tr>
<tr>
<td>57</td>
<td>Lanthanum-135</td>
<td>D.</td>
<td>3E+4</td>
<td>3E+4</td>
<td>3E-7</td>
</tr>
<tr>
<td>57</td>
<td>Lanthanum-137</td>
<td>D.</td>
<td>3E+4</td>
<td>3E+1</td>
<td>3E-10</td>
</tr>
<tr>
<td>57</td>
<td>Lanthanum-138</td>
<td>D.</td>
<td>3E+2</td>
<td>3E+2</td>
<td>3E-9</td>
</tr>
<tr>
<td>57</td>
<td>Lanthanum-140</td>
<td>D.</td>
<td>3E+2</td>
<td>3E+3</td>
<td>3E-9</td>
</tr>
<tr>
<td>57</td>
<td>Lanthanum-141</td>
<td>D.</td>
<td>3E+3</td>
<td>3E+3</td>
<td>3E-9</td>
</tr>
<tr>
<td>57</td>
<td>Lanthanum-142</td>
<td>D.</td>
<td>3E+3</td>
<td>3E+3</td>
<td>3E-9</td>
</tr>
<tr>
<td>57</td>
<td>Lanthanum-143</td>
<td>D.</td>
<td>3E+4</td>
<td>3E+1</td>
<td>3E-9</td>
</tr>
<tr>
<td>58</td>
<td>Cerium-134</td>
<td>W.</td>
<td>3E+3</td>
<td>3E+3</td>
<td>3E-9</td>
</tr>
<tr>
<td>58</td>
<td>Cerium-135</td>
<td>W.</td>
<td>3E+3</td>
<td>3E+3</td>
<td>3E-9</td>
</tr>
<tr>
<td>58</td>
<td>Cerium-137a</td>
<td>W.</td>
<td>3E+3</td>
<td>3E+3</td>
<td>3E-9</td>
</tr>
<tr>
<td>58</td>
<td>Cerium-137b</td>
<td>W.</td>
<td>3E+3</td>
<td>3E+3</td>
<td>3E-9</td>
</tr>
<tr>
<td>58</td>
<td>Cerium-137c</td>
<td>W.</td>
<td>3E+3</td>
<td>3E+3</td>
<td>3E-9</td>
</tr>
<tr>
<td>58</td>
<td>Cerium-137d</td>
<td>W.</td>
<td>3E+3</td>
<td>3E+3</td>
<td>3E-9</td>
</tr>
<tr>
<td>58</td>
<td>Cerium-138</td>
<td>W.</td>
<td>3E+3</td>
<td>3E+3</td>
<td>3E-9</td>
</tr>
<tr>
<td>58</td>
<td>Cerium-139</td>
<td>W.</td>
<td>3E+3</td>
<td>3E+3</td>
<td>3E-9</td>
</tr>
<tr>
<td>58</td>
<td>Cerium-141</td>
<td>W.</td>
<td>3E+3</td>
<td>3E+3</td>
<td>3E-9</td>
</tr>
<tr>
<td>58</td>
<td>Cerium-143</td>
<td>W.</td>
<td>3E+3</td>
<td>3E+3</td>
<td>3E-9</td>
</tr>
<tr>
<td>Atomic No.</td>
<td>Radionuclide Class</td>
<td>Oral Ingestion Al (µCi)</td>
<td>Inhalation Al (µCi)</td>
<td>AI (µCi)</td>
<td>BIC (µCi/m³)</td>
</tr>
<tr>
<td>-----------</td>
<td>--------------------</td>
<td>-------------------------</td>
<td>---------------------</td>
<td>----------</td>
<td>--------------</td>
</tr>
<tr>
<td></td>
<td></td>
<td>Col. 1</td>
<td>Col. 2</td>
<td>Col. 3</td>
<td>Col. 1</td>
</tr>
<tr>
<td>58</td>
<td>Cerium-144 W, see 139Ce</td>
<td>2E+2</td>
<td>3E+1</td>
<td>1E+0</td>
<td>4E-11</td>
</tr>
<tr>
<td></td>
<td></td>
<td>(1E+2)</td>
<td>(3E+1)</td>
<td>(1E+0)</td>
<td>(4E-11)</td>
</tr>
<tr>
<td>59</td>
<td>Praseodymium-145 W, all compounds except those given for 3</td>
<td>5E+1</td>
<td>5E+1</td>
<td>5E-1</td>
<td>5E+1</td>
</tr>
<tr>
<td></td>
<td></td>
<td>(3E+1)</td>
<td>(5E+1)</td>
<td>(5E-1)</td>
<td>(5E+1)</td>
</tr>
<tr>
<td>59</td>
<td>Praseodymium-146 W, see 139Pr</td>
<td>3E+1</td>
<td>3E+1</td>
<td>8E-1</td>
<td>3E+1</td>
</tr>
<tr>
<td></td>
<td></td>
<td>(4E+1)</td>
<td>(3E+1)</td>
<td>(8E-1)</td>
<td>(3E+1)</td>
</tr>
<tr>
<td>59</td>
<td>Praseodymium-147 W, see 139Pr</td>
<td>3E+1</td>
<td>3E+1</td>
<td>8E-1</td>
<td>3E+1</td>
</tr>
<tr>
<td></td>
<td></td>
<td>(4E+1)</td>
<td>(3E+1)</td>
<td>(8E-1)</td>
<td>(3E+1)</td>
</tr>
<tr>
<td>59</td>
<td>Praseodymium-148 W, see 139Pr</td>
<td>3E+1</td>
<td>3E+1</td>
<td>8E-1</td>
<td>3E+1</td>
</tr>
<tr>
<td></td>
<td></td>
<td>(5E+1)</td>
<td>(3E+1)</td>
<td>(8E-1)</td>
<td>(3E+1)</td>
</tr>
<tr>
<td>59</td>
<td>Praseodymium-149 W, see 139Pr</td>
<td>3E+1</td>
<td>3E+1</td>
<td>8E-1</td>
<td>3E+1</td>
</tr>
<tr>
<td></td>
<td></td>
<td>(5E+1)</td>
<td>(3E+1)</td>
<td>(8E-1)</td>
<td>(3E+1)</td>
</tr>
<tr>
<td>59</td>
<td>Praseodymium-150 W, see 139Pr</td>
<td>3E+1</td>
<td>3E+1</td>
<td>8E-1</td>
<td>3E+1</td>
</tr>
<tr>
<td></td>
<td></td>
<td>(5E+1)</td>
<td>(3E+1)</td>
<td>(8E-1)</td>
<td>(3E+1)</td>
</tr>
<tr>
<td>59</td>
<td>Praseodymium-151 W, see 139Pr</td>
<td>3E+1</td>
<td>3E+1</td>
<td>8E-1</td>
<td>3E+1</td>
</tr>
<tr>
<td></td>
<td></td>
<td>(5E+1)</td>
<td>(3E+1)</td>
<td>(8E-1)</td>
<td>(3E+1)</td>
</tr>
<tr>
<td>59</td>
<td>Praseodymium-152 W, see 139Pr</td>
<td>3E+1</td>
<td>3E+1</td>
<td>8E-1</td>
<td>3E+1</td>
</tr>
<tr>
<td></td>
<td></td>
<td>(5E+1)</td>
<td>(3E+1)</td>
<td>(8E-1)</td>
<td>(3E+1)</td>
</tr>
<tr>
<td>59</td>
<td>Praseodymium-153 W, see 139Pr</td>
<td>3E+1</td>
<td>3E+1</td>
<td>8E-1</td>
<td>3E+1</td>
</tr>
<tr>
<td></td>
<td></td>
<td>(5E+1)</td>
<td>(3E+1)</td>
<td>(8E-1)</td>
<td>(3E+1)</td>
</tr>
<tr>
<td>59</td>
<td>Praseodymium-154 W, see 139Pr</td>
<td>3E+1</td>
<td>3E+1</td>
<td>8E-1</td>
<td>3E+1</td>
</tr>
<tr>
<td></td>
<td></td>
<td>(5E+1)</td>
<td>(3E+1)</td>
<td>(8E-1)</td>
<td>(3E+1)</td>
</tr>
<tr>
<td>59</td>
<td>Praseodymium-155 W, see 139Pr</td>
<td>3E+1</td>
<td>3E+1</td>
<td>8E-1</td>
<td>3E+1</td>
</tr>
<tr>
<td></td>
<td></td>
<td>(5E+1)</td>
<td>(3E+1)</td>
<td>(8E-1)</td>
<td>(3E+1)</td>
</tr>
<tr>
<td></td>
<td></td>
<td>(1E+3)</td>
<td>(3E+3)</td>
<td>(8E-1)</td>
<td>(3E+1)</td>
</tr>
<tr>
<td></td>
<td></td>
<td>(1E+3)</td>
<td>(3E+3)</td>
<td>(8E-1)</td>
<td>(3E+1)</td>
</tr>
<tr>
<td>60</td>
<td>Neodymium-146 W, all compounds except those given for 3</td>
<td>3E+1</td>
<td>3E+1</td>
<td>8E-1</td>
<td>3E+1</td>
</tr>
<tr>
<td></td>
<td></td>
<td>(4E+1)</td>
<td>(3E+1)</td>
<td>(8E-1)</td>
<td>(3E+1)</td>
</tr>
<tr>
<td>60</td>
<td>Neodymium-147 W, see 139Nd</td>
<td>3E+1</td>
<td>3E+1</td>
<td>8E-1</td>
<td>3E+1</td>
</tr>
<tr>
<td></td>
<td></td>
<td>(4E+1)</td>
<td>(3E+1)</td>
<td>(8E-1)</td>
<td>(3E+1)</td>
</tr>
<tr>
<td>60</td>
<td>Neodymium-148 W, see 139Nd</td>
<td>3E+1</td>
<td>3E+1</td>
<td>8E-1</td>
<td>3E+1</td>
</tr>
<tr>
<td></td>
<td></td>
<td>(4E+1)</td>
<td>(3E+1)</td>
<td>(8E-1)</td>
<td>(3E+1)</td>
</tr>
<tr>
<td>60</td>
<td>Neodymium-149 W, see 139Nd</td>
<td>3E+1</td>
<td>3E+1</td>
<td>8E-1</td>
<td>3E+1</td>
</tr>
<tr>
<td></td>
<td></td>
<td>(4E+1)</td>
<td>(3E+1)</td>
<td>(8E-1)</td>
<td>(3E+1)</td>
</tr>
<tr>
<td>Atomic Radionuclide</td>
<td>Class</td>
<td>Table 1: Occupational Values</td>
<td>Table 2: Effluent Concentrations</td>
<td>Table 3: Releases to Sewers</td>
<td></td>
</tr>
<tr>
<td>---------------------</td>
<td>-------</td>
<td>-------------------------------</td>
<td>----------------------------------</td>
<td>---------------------------</td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td>Col. 1</td>
<td>Oral</td>
<td>Ingestion</td>
<td>Col. 2</td>
</tr>
<tr>
<td></td>
<td></td>
<td>Oral</td>
<td>Ingestion</td>
<td>Inhalation</td>
<td>Air</td>
</tr>
<tr>
<td></td>
<td></td>
<td>(µCi)</td>
<td>(µCi)</td>
<td>(µCi)</td>
<td>(µCi/ml)</td>
</tr>
<tr>
<td>60 Neodymium-139²</td>
<td>W, see ¹³⁹Nd</td>
<td>9E+4</td>
<td>3E+5</td>
<td>1E-4</td>
<td>5E-7</td>
</tr>
<tr>
<td>60 Neodymium-140</td>
<td>W, see ¹⁴⁰Nd</td>
<td>7E+5</td>
<td>5E-4</td>
<td>3E-6</td>
<td>7E-3</td>
</tr>
<tr>
<td>60 Neodymium-147</td>
<td>W, see ¹⁴⁷Nd</td>
<td>9E+2</td>
<td>4E+7</td>
<td>1E-9</td>
<td>-</td>
</tr>
<tr>
<td>60 Neodymium-149²</td>
<td>W, see ¹⁴⁹Nd</td>
<td>8E+2</td>
<td>4E+7</td>
<td>1E-9</td>
<td>-</td>
</tr>
<tr>
<td>60 Neodymium-151²</td>
<td>W, see ¹⁵¹Nd</td>
<td>7E+4</td>
<td>5E-5</td>
<td>3E-7</td>
<td>9E-4</td>
</tr>
<tr>
<td>61 Promethium-141²</td>
<td>W, all compounds except those given for Y</td>
<td>5E+4</td>
<td>7E-5</td>
<td>2E-7</td>
<td>-</td>
</tr>
<tr>
<td>61 Promethium-143</td>
<td>W, see ¹⁴³Pu</td>
<td>7E+3</td>
<td>5E-7</td>
<td>1E-10</td>
<td>7E-5</td>
</tr>
<tr>
<td>61 Promethium-144</td>
<td>W, see ¹⁴⁴Pu</td>
<td>7E+2</td>
<td>2E-7</td>
<td>1E-9</td>
<td>-</td>
</tr>
<tr>
<td>61 Promethium-145</td>
<td>W, see ¹⁴⁵Pu</td>
<td>7E+2</td>
<td>2E-7</td>
<td>1E-9</td>
<td>-</td>
</tr>
<tr>
<td>61 Promethium-146</td>
<td>W, see ¹⁴⁶Pu</td>
<td>5E+2</td>
<td>5E-8</td>
<td>2E-10</td>
<td>2E-4</td>
</tr>
<tr>
<td>61 Promethium-147</td>
<td>W, see ¹⁴⁷Pu</td>
<td>5E+2</td>
<td>5E-8</td>
<td>2E-10</td>
<td>2E-4</td>
</tr>
<tr>
<td>61 Promethium-148</td>
<td>W, see ¹⁴⁸Pu</td>
<td>5E+2</td>
<td>5E-8</td>
<td>2E-10</td>
<td>2E-4</td>
</tr>
<tr>
<td>61 Promethium-149</td>
<td>W, see ¹⁴⁹Pu</td>
<td>5E+2</td>
<td>5E-8</td>
<td>2E-10</td>
<td>2E-4</td>
</tr>
<tr>
<td>61 Promethium-150</td>
<td>W, see ¹⁵⁰Pu</td>
<td>5E+2</td>
<td>5E-8</td>
<td>2E-10</td>
<td>2E-4</td>
</tr>
<tr>
<td>61 Promethium-151</td>
<td>W, see ¹⁵¹Pu</td>
<td>5E+2</td>
<td>5E-8</td>
<td>2E-10</td>
<td>2E-4</td>
</tr>
<tr>
<td>Atomic No.</td>
<td>Radioisotope</td>
<td>Class</td>
<td>Table 1: Occupational Values</td>
<td>Table 2: Efficent Concentrations</td>
<td>Table 3: Releases to Sewers</td>
</tr>
<tr>
<td>------------</td>
<td>----------------</td>
<td>-------------</td>
<td>------------------------------</td>
<td>----------------------------------</td>
<td>------------------------------</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td>Col. 1 Oral Dose (μCi)</td>
<td>Col. 2 Inhaled Air (μCi)</td>
<td>Col. 3 Inhalation Dose (μCi/60 min)</td>
</tr>
<tr>
<td>62</td>
<td>Samarium-144</td>
<td>W, all compounds</td>
<td>3E+4</td>
<td>1E+5</td>
<td>4E-5</td>
</tr>
<tr>
<td>62</td>
<td>Samarium-142</td>
<td>W, all compounds</td>
<td>5E+4</td>
<td>2E+5</td>
<td>8E-5</td>
</tr>
<tr>
<td>62</td>
<td>Samarium-141</td>
<td>W, all compounds</td>
<td>8E+3</td>
<td>3E+4</td>
<td>1E-5</td>
</tr>
<tr>
<td>62</td>
<td>Samarium-140</td>
<td>W, all compounds</td>
<td>6E+3</td>
<td>5E+2</td>
<td>2E-7</td>
</tr>
<tr>
<td>62</td>
<td>Samarium-139</td>
<td>W, all compounds</td>
<td>3E+3</td>
<td>1E+2</td>
<td>6E-13</td>
</tr>
<tr>
<td>62</td>
<td>Samarium-138</td>
<td>W, all compounds</td>
<td>2E+3</td>
<td>4E-2</td>
<td>6E-13</td>
</tr>
<tr>
<td>62</td>
<td>Samarium-137</td>
<td>W, all compounds</td>
<td>2E+3</td>
<td>2E-2</td>
<td>7E-13</td>
</tr>
<tr>
<td>62</td>
<td>Samarium-136</td>
<td>W, all compounds</td>
<td>3E+3</td>
<td>3E-2</td>
<td>4E-6</td>
</tr>
<tr>
<td>62</td>
<td>Samarium-135</td>
<td>W, all compounds</td>
<td>6E+4</td>
<td>5E+3</td>
<td>6E-5</td>
</tr>
<tr>
<td>62</td>
<td>Samarium-134</td>
<td>W, all compounds</td>
<td>5E+3</td>
<td>4E+3</td>
<td>4E-6</td>
</tr>
<tr>
<td>63</td>
<td>Europium-164</td>
<td>W, all compounds</td>
<td>2E+3</td>
<td>1E+3</td>
<td>8E-7</td>
</tr>
<tr>
<td>63</td>
<td>Europium-163</td>
<td>W, all compounds</td>
<td>3E+3</td>
<td>3E-3</td>
<td>5E-7</td>
</tr>
<tr>
<td>63</td>
<td>Europium-162</td>
<td>W, all compounds</td>
<td>3E+3</td>
<td>3E-3</td>
<td>7E-7</td>
</tr>
<tr>
<td>63</td>
<td>Europium-161</td>
<td>W, all compounds</td>
<td>2E+3</td>
<td>4E+2</td>
<td>1E-7</td>
</tr>
<tr>
<td>63</td>
<td>Europium-160</td>
<td>W, all compounds</td>
<td>3E+4</td>
<td>3E-3</td>
<td>1E-6</td>
</tr>
<tr>
<td>63</td>
<td>Europium-159</td>
<td>W, all compounds</td>
<td>3E+3</td>
<td>8E+3</td>
<td>4E-6</td>
</tr>
<tr>
<td>63</td>
<td>Europium-158</td>
<td>W, all compounds</td>
<td>4E+2</td>
<td>2E+1</td>
<td>8E-9</td>
</tr>
<tr>
<td>63</td>
<td>Europium-157</td>
<td>W, all compounds</td>
<td>3E+3</td>
<td>6E+3</td>
<td>3E-6</td>
</tr>
<tr>
<td>63</td>
<td>Europium-156</td>
<td>W, all compounds</td>
<td>3E+3</td>
<td>3E+3</td>
<td>3E-6</td>
</tr>
<tr>
<td>63</td>
<td>Europium-155</td>
<td>W, all compounds</td>
<td>8E+2</td>
<td>2E+1</td>
<td>1E-8</td>
</tr>
<tr>
<td>63</td>
<td>Europium-154</td>
<td>W, all compounds</td>
<td>8E+2</td>
<td>2E+1</td>
<td>8E-9</td>
</tr>
<tr>
<td>63</td>
<td>Europium-153</td>
<td>W, all compounds</td>
<td>8E+2</td>
<td>8E+2</td>
<td>4E-8</td>
</tr>
<tr>
<td>63</td>
<td>Europium-152</td>
<td>W, all compounds</td>
<td>8E+2</td>
<td>5E+2</td>
<td>2E-7</td>
</tr>
</tbody>
</table>

412
### Table 1

<table>
<thead>
<tr>
<th>Atomic No.</th>
<th>Radioisotope</th>
<th>Class</th>
<th>Col. 1</th>
<th>Col. 2</th>
<th>Col. 3</th>
<th>Monthly Average Concentration (µCi/ml)</th>
</tr>
</thead>
<tbody>
<tr>
<td>63</td>
<td>Europium-157</td>
<td>W, all compounds</td>
<td>Oral Injection (µCi)</td>
<td>2E+3</td>
<td>5E+3</td>
<td>2E-6</td>
</tr>
<tr>
<td>63</td>
<td>Europium-158</td>
<td>W, all compounds</td>
<td>Oral Injection (µCi)</td>
<td>2E+4</td>
<td>6E+4</td>
<td>2E-5</td>
</tr>
<tr>
<td>64</td>
<td>Gadolinium-154</td>
<td>D, all compounds except those given for W</td>
<td>Oral Injection (µCi)</td>
<td>2E+5</td>
<td>5E+5</td>
<td>2E-7</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td>Inhalation (µCi/ml)</td>
<td>-</td>
<td>-</td>
<td>8E-6</td>
</tr>
<tr>
<td></td>
<td>Gadolinium-146</td>
<td>D, see 146Gd</td>
<td>Oral Injection (µCi)</td>
<td>2E+3</td>
<td>5E+3</td>
<td>2E-6</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td>Inhalation (µCi/ml)</td>
<td>3E+2</td>
<td>5E-4</td>
<td>2E-7</td>
</tr>
<tr>
<td></td>
<td>Gadolinium-147</td>
<td>D, see 147Gd</td>
<td>Oral Injection (µCi)</td>
<td>2E+3</td>
<td>4E+3</td>
<td>2E-6</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td>Inhalation (µCi/ml)</td>
<td>3E+3</td>
<td>2E-6</td>
<td>5E-9</td>
</tr>
<tr>
<td></td>
<td>Gadolinium-148</td>
<td>D, see 148Gd</td>
<td>Oral Injection (µCi)</td>
<td>2E+3</td>
<td>8E-12</td>
<td>2E-12</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td>Inhalation (µCi/ml)</td>
<td>3E+2</td>
<td>1E+1</td>
<td>3E-7</td>
</tr>
<tr>
<td></td>
<td>Gadolinium-149</td>
<td>D, see 149Gd</td>
<td>Oral Injection (µCi)</td>
<td>3E+3</td>
<td>2E+3</td>
<td>5E-7</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td>Inhalation (µCi/ml)</td>
<td>3E+2</td>
<td>2E-6</td>
<td>5E-9</td>
</tr>
<tr>
<td></td>
<td>Gadolinium-152</td>
<td>D, see 152Gd</td>
<td>Oral Injection (µCi)</td>
<td>3E+3</td>
<td>1E+1</td>
<td>3E-7</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td>Inhalation (µCi/ml)</td>
<td>3E+3</td>
<td>8E-11</td>
<td>8E-11</td>
</tr>
<tr>
<td></td>
<td>Gadolinium-153</td>
<td>D, see 153Gd</td>
<td>Oral Injection (µCi)</td>
<td>3E+3</td>
<td>2E-12</td>
<td>2E-12</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td>Inhalation (µCi/ml)</td>
<td>3E+3</td>
<td>1E+1</td>
<td>3E-7</td>
</tr>
<tr>
<td></td>
<td>Gadolinium-159</td>
<td>D, see 159Gd</td>
<td>Oral Injection (µCi)</td>
<td>3E+3</td>
<td>8E-12</td>
<td>2E-12</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td>Inhalation (µCi/ml)</td>
<td>3E+3</td>
<td>8E-12</td>
<td>2E-12</td>
</tr>
<tr>
<td>65</td>
<td>Terbium-146</td>
<td>W, all compounds</td>
<td>Oral Injection (µCi)</td>
<td>2E+3</td>
<td>5E+3</td>
<td>2E-5</td>
</tr>
<tr>
<td>65</td>
<td>Terbium-147</td>
<td>W, all compounds</td>
<td>Oral Injection (µCi)</td>
<td>3E+3</td>
<td>3E+3</td>
<td>3E-6</td>
</tr>
<tr>
<td>65</td>
<td>Terbium-150</td>
<td>W, all compounds</td>
<td>Oral Injection (µCi)</td>
<td>2E+3</td>
<td>5E+3</td>
<td>2E-6</td>
</tr>
<tr>
<td>65</td>
<td>Terbium-155</td>
<td>W, all compounds</td>
<td>Oral Injection (µCi)</td>
<td>3E+3</td>
<td>3E+3</td>
<td>3E-6</td>
</tr>
<tr>
<td>65</td>
<td>Terbium-158</td>
<td>W, all compounds</td>
<td>Oral Injection (µCi)</td>
<td>3E+3</td>
<td>3E+3</td>
<td>3E-6</td>
</tr>
<tr>
<td>64</td>
<td>Iodine-131</td>
<td>W, all compounds</td>
<td>Oral Injection (µCi)</td>
<td>2E+3</td>
<td>5E+3</td>
<td>2E-5</td>
</tr>
<tr>
<td>Atomic No.</td>
<td>Radionuclide</td>
<td>Class</td>
<td>Col. 1 (Gravel) Inhalation (μCi)</td>
<td>Col. 2 (Sand) Inhalation (μCi)</td>
<td>Col. 3 (Gravel) Inhalation (μCi)</td>
<td>Col. 1 (Gravel) Air (μCi/l)</td>
</tr>
<tr>
<td>-----------</td>
<td>--------------</td>
<td>--------</td>
<td>---------------------------------</td>
<td>---------------------------------</td>
<td>---------------------------------</td>
<td>-----------------------------</td>
</tr>
<tr>
<td>65</td>
<td>Terbium-156m</td>
<td>W, all compounds</td>
<td>7E+3 8E+3 3E-6</td>
<td>1E-8 1E-4</td>
<td>1E-3</td>
<td></td>
</tr>
<tr>
<td>65</td>
<td>Terbium-156</td>
<td>W, all compounds</td>
<td>1E+3 1E+3 6E-7</td>
<td>2E-9 1E-5</td>
<td>1E-4</td>
<td></td>
</tr>
<tr>
<td>65</td>
<td>Terbium-157</td>
<td>W, all compounds</td>
<td>SI+4 3E+2 1E-7</td>
<td>-</td>
<td>-</td>
<td></td>
</tr>
<tr>
<td>65</td>
<td>Terbium-158</td>
<td>W, all compounds</td>
<td>1E+3 2E+1 8E-9</td>
<td>3E-11 2E-5</td>
<td>2E-4</td>
<td></td>
</tr>
<tr>
<td>65</td>
<td>Terbium-160</td>
<td>W, all compounds</td>
<td>8E+2 2E+2 9E-8</td>
<td>3E+10 7E-4</td>
<td>7E-3</td>
<td></td>
</tr>
<tr>
<td>65</td>
<td>Terbium-161</td>
<td>W, all compounds</td>
<td>2E+3 2E+3 7E-7</td>
<td>7E-9 -</td>
<td>-</td>
<td></td>
</tr>
<tr>
<td>66</td>
<td>Dysprosium-155</td>
<td>W, all compounds</td>
<td>9E+3 3E+4 1E-5</td>
<td>4E-8 1E-4</td>
<td>1E-5</td>
<td></td>
</tr>
<tr>
<td>66</td>
<td>Dysprosium-157</td>
<td>W, all compounds</td>
<td>2E+4 6E+4 3E-5</td>
<td>9E+4 3E-4</td>
<td>3E-3</td>
<td></td>
</tr>
<tr>
<td>66</td>
<td>Dysprosium-159</td>
<td>W, all compounds</td>
<td>1E+4 2E+4 1E-6</td>
<td>3E+9 2E-4</td>
<td>2E-3</td>
<td></td>
</tr>
<tr>
<td>66</td>
<td>Dysprosium-165</td>
<td>W, all compounds</td>
<td>1E+4 5E+4 2E-5</td>
<td>6E+8 2E-4</td>
<td>2E-3</td>
<td></td>
</tr>
<tr>
<td>66</td>
<td>Dysprosium-166</td>
<td>W, all compounds</td>
<td>6E+2 7E+2 3E-7</td>
<td>7E-9 -</td>
<td>-</td>
<td></td>
</tr>
<tr>
<td>67</td>
<td>Holmium-155</td>
<td>W, all compounds</td>
<td>4E+4 2E+5 6E-5</td>
<td>2E-7 6E-4</td>
<td>6E-3</td>
<td></td>
</tr>
<tr>
<td>67</td>
<td>Holmium-157</td>
<td>W, all compounds</td>
<td>3E+5 3E+6 8E-4</td>
<td>2E-6 4E-3</td>
<td>4E-2</td>
<td></td>
</tr>
<tr>
<td>67</td>
<td>Holmium-159</td>
<td>W, all compounds</td>
<td>2E+5 3E+6 4E-4</td>
<td>1E-6 3E-3</td>
<td>3E-2</td>
<td></td>
</tr>
<tr>
<td>67</td>
<td>Holmium-163</td>
<td>W, all compounds</td>
<td>3E+5 4E+5 2E-4</td>
<td>8E-5 3E-3</td>
<td>1E-2</td>
<td></td>
</tr>
<tr>
<td>67</td>
<td>Holmium-164</td>
<td>W, all compounds</td>
<td>5E+5 5E+5 2E-3</td>
<td>3E-6 -</td>
<td>-</td>
<td></td>
</tr>
<tr>
<td>67</td>
<td>Holmium-166</td>
<td>W, all compounds</td>
<td>6E+5 8E+5 1E-2</td>
<td>4E-7 1E-3</td>
<td>1E-2</td>
<td></td>
</tr>
<tr>
<td>67</td>
<td>Holmium-166m</td>
<td>W, all compounds</td>
<td>8E+2 7E+2 3E-9</td>
<td>2E-12 9E-6</td>
<td>3E-5</td>
<td></td>
</tr>
<tr>
<td>67</td>
<td>Holmium-166</td>
<td>W, all compounds</td>
<td>9E+2 2E+3 7E-7</td>
<td>2E-9 -</td>
<td>-</td>
<td></td>
</tr>
<tr>
<td>68</td>
<td>Erbium-167</td>
<td>W, all compounds</td>
<td>2E+4 6E+4 2E-5</td>
<td>8E-8 2E-4</td>
<td>7E-3</td>
<td></td>
</tr>
<tr>
<td>68</td>
<td>Erbium-168</td>
<td>W, all compounds</td>
<td>2E+4 6E+4 3E-5</td>
<td>9E-8 2E-4</td>
<td>2E-3</td>
<td></td>
</tr>
<tr>
<td>Atomic No.</td>
<td>Radionuclide</td>
<td>Class</td>
<td>Table 1: Occupational Values</td>
<td>Table 2: Effluent Concentrations</td>
<td>Table 3: Releases to Seawater</td>
<td></td>
</tr>
<tr>
<td>-----------</td>
<td>--------------</td>
<td>-------</td>
<td>-----------------------------</td>
<td>---------------------------------</td>
<td>-------------------------------</td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td>Col. 1 Oral Ingestion</td>
<td>Col. 2 Inhalation</td>
<td>Col. 3 Bone Marrow</td>
<td>Col. 1 Air (µCi/ml)</td>
</tr>
<tr>
<td>68</td>
<td>Erbium-169</td>
<td>W, all compounds</td>
<td>3 x 3</td>
<td>3 x 3</td>
<td>10-6</td>
<td>4 x 9</td>
</tr>
<tr>
<td>68</td>
<td>Erbium-171</td>
<td>W, all compounds</td>
<td>4 x 3</td>
<td>4 x 3</td>
<td>1 x 10</td>
<td>5 x 5</td>
</tr>
<tr>
<td>68</td>
<td>Erbium-172</td>
<td>W, all compounds</td>
<td>3 x 3</td>
<td>3 x 3</td>
<td>2 x 7</td>
<td>2 x 9</td>
</tr>
<tr>
<td>69</td>
<td>Thulium-168</td>
<td>W, all compounds</td>
<td>3 x 4</td>
<td>3 x 4</td>
<td>1 x 4</td>
<td>4 x 7</td>
</tr>
<tr>
<td>69</td>
<td>Thulium-168</td>
<td>W, all compounds</td>
<td>4 x 3</td>
<td>4 x 3</td>
<td>1 x 6</td>
<td>2 x 8</td>
</tr>
<tr>
<td>69</td>
<td>Thulium-167</td>
<td>W, all compounds</td>
<td>4 x 3</td>
<td>4 x 3</td>
<td>1 x 6</td>
<td>2 x 8</td>
</tr>
<tr>
<td>69</td>
<td>Thulium-167</td>
<td>W, all compounds</td>
<td>3 x 4</td>
<td>3 x 4</td>
<td>1 x 7</td>
<td>-</td>
</tr>
<tr>
<td>69</td>
<td>Thulium-167</td>
<td>W, all compounds</td>
<td>4 x 3</td>
<td>4 x 3</td>
<td>1 x 6</td>
<td>2 x 8</td>
</tr>
<tr>
<td>69</td>
<td>Thulium-167</td>
<td>W, all compounds</td>
<td>3 x 4</td>
<td>3 x 4</td>
<td>1 x 7</td>
<td>-</td>
</tr>
<tr>
<td>69</td>
<td>Thulium-167</td>
<td>W, all compounds</td>
<td>4 x 3</td>
<td>4 x 3</td>
<td>1 x 6</td>
<td>2 x 8</td>
</tr>
<tr>
<td>69</td>
<td>Thulium-167</td>
<td>W, all compounds</td>
<td>3 x 4</td>
<td>3 x 4</td>
<td>1 x 7</td>
<td>-</td>
</tr>
<tr>
<td>70</td>
<td>Ytterbium-168</td>
<td>W, all compounds</td>
<td>4 x 3</td>
<td>4 x 3</td>
<td>1 x 4</td>
<td>4 x 7</td>
</tr>
<tr>
<td></td>
<td>Ytterbium-168</td>
<td>Y, oxides, hydroxides, and fluorides</td>
<td>-</td>
<td>3 x 5</td>
<td>1 x 4</td>
<td>4 x 7</td>
</tr>
<tr>
<td>70</td>
<td>Ytterbium-168</td>
<td>W, see 167Y</td>
<td>3 x 3</td>
<td>2 x 3</td>
<td>8 x 7</td>
<td>3 x 9</td>
</tr>
<tr>
<td></td>
<td>Y, see 167Y</td>
<td>Y, see 167Y</td>
<td>-</td>
<td>2 x 3</td>
<td>8 x 7</td>
<td>3 x 9</td>
</tr>
<tr>
<td>70</td>
<td>Ytterbium-168</td>
<td>W, see 167Y</td>
<td>3 x 5</td>
<td>3 x 5</td>
<td>1 x 6</td>
<td>4 x 3</td>
</tr>
<tr>
<td></td>
<td>Y, see 167Y</td>
<td>Y, see 167Y</td>
<td>-</td>
<td>3 x 5</td>
<td>3 x 4</td>
<td>1 x 6</td>
</tr>
<tr>
<td>70</td>
<td>Ytterbium-169</td>
<td>W, see 167Y</td>
<td>2 x 3</td>
<td>2 x 3</td>
<td>4 x 7</td>
<td>3 x 9</td>
</tr>
<tr>
<td></td>
<td>Y, see 167Y</td>
<td>Y, see 167Y</td>
<td>-</td>
<td>3 x 5</td>
<td>3 x 7</td>
<td>1 x 9</td>
</tr>
<tr>
<td>70</td>
<td>Ytterbium-175</td>
<td>W, see 167Y</td>
<td>3 x 3</td>
<td>3 x 3</td>
<td>1 x 8</td>
<td>5 x 9</td>
</tr>
<tr>
<td></td>
<td>Y, see 167Y</td>
<td>Y, see 167Y</td>
<td>-</td>
<td>3 x 3</td>
<td>1 x 6</td>
<td>5 x 9</td>
</tr>
<tr>
<td>70</td>
<td>Ytterbium-177</td>
<td>W, see 167Y</td>
<td>5 x 4</td>
<td>5 x 4</td>
<td>2 x 5</td>
<td>7 x 8</td>
</tr>
<tr>
<td></td>
<td>Y, see 167Y</td>
<td>Y, see 167Y</td>
<td>-</td>
<td>5 x 4</td>
<td>2 x 5</td>
<td>7 x 8</td>
</tr>
<tr>
<td>70</td>
<td>Ytterbium-178</td>
<td>W, see 167Y</td>
<td>1 x 4</td>
<td>1 x 4</td>
<td>2 x 5</td>
<td>6 x 8</td>
</tr>
<tr>
<td></td>
<td>Y, see 167Y</td>
<td>Y, see 167Y</td>
<td>-</td>
<td>1 x 4</td>
<td>2 x 5</td>
<td>6 x 8</td>
</tr>
<tr>
<td>Atomic No.</td>
<td>Radioisotope</td>
<td>Class</td>
<td>Col. 1 Oral Ingestion (µCi)</td>
<td>Col. 2 Inhalation (µCi)</td>
<td>Col. 3 Inhalation (µCi/m³)</td>
<td>Col. 1 Air (µCi/m³)</td>
</tr>
<tr>
<td>------------</td>
<td>--------------</td>
<td>-------</td>
<td>----------------------------</td>
<td>------------------------</td>
<td>---------------------------</td>
<td>---------------------</td>
</tr>
<tr>
<td>71</td>
<td>Lutetium-169</td>
<td>W, all compounds except those given for Y</td>
<td>1E+3</td>
<td>4E+3</td>
<td>2E-6</td>
<td>4E-9</td>
</tr>
<tr>
<td>71</td>
<td>Lutetium-170</td>
<td>W, see 137Ba</td>
<td>1E+3</td>
<td>2E+3</td>
<td>9E-7</td>
<td>3E-9</td>
</tr>
<tr>
<td>71</td>
<td>Lutetium-171</td>
<td>W, see 137Ba</td>
<td>2E+3</td>
<td>2E+3</td>
<td>8E-7</td>
<td>2E-9</td>
</tr>
<tr>
<td>71</td>
<td>Lutetium-172</td>
<td>W, see 137Ba</td>
<td>2E+3</td>
<td>2E+3</td>
<td>8E-7</td>
<td>2E-9</td>
</tr>
<tr>
<td>71</td>
<td>Lutetium-173</td>
<td>W, see 137Ba</td>
<td>3E+3</td>
<td>3E+3</td>
<td>7E-7</td>
<td>3E-9</td>
</tr>
<tr>
<td>71</td>
<td>Lutetium-174</td>
<td>W, see 137Ba</td>
<td>5E+3</td>
<td>3E+3</td>
<td>5E-7</td>
<td>7E-9</td>
</tr>
<tr>
<td>71</td>
<td>Lutetium-175</td>
<td>W, see 137Ba</td>
<td>5E+3</td>
<td>3E+3</td>
<td>5E-8</td>
<td>7E-9</td>
</tr>
<tr>
<td>71</td>
<td>Lutetium-176</td>
<td>W, see 137Ba</td>
<td>5E+3</td>
<td>3E+3</td>
<td>5E-8</td>
<td>7E-9</td>
</tr>
<tr>
<td>71</td>
<td>Lutetium-177</td>
<td>W, see 137Ba</td>
<td>5E+3</td>
<td>3E+3</td>
<td>5E-8</td>
<td>7E-9</td>
</tr>
<tr>
<td>71</td>
<td>Lutetium-178</td>
<td>W, see 137Ba</td>
<td>5E+3</td>
<td>3E+3</td>
<td>5E-8</td>
<td>7E-9</td>
</tr>
<tr>
<td>71</td>
<td>Lutetium-179</td>
<td>W, see 137Ba</td>
<td>5E+3</td>
<td>3E+3</td>
<td>5E-8</td>
<td>7E-9</td>
</tr>
</tbody>
</table>

416
<table>
<thead>
<tr>
<th>Atomic No.</th>
<th>Radon isotopes</th>
<th>Class</th>
<th>Oral Ingestion</th>
<th>Inhalation</th>
<th>Air</th>
<th>Water</th>
<th>Monthly Average</th>
</tr>
</thead>
<tbody>
<tr>
<td>72</td>
<td>Hafnium-178</td>
<td>D, all compounds except those given for W</td>
<td>3E+3</td>
<td>5E+3</td>
<td>2E-6</td>
<td>8E-9</td>
<td>4E-5</td>
</tr>
<tr>
<td></td>
<td>W, oxides, hydroxides, carbonates, and nitrates</td>
<td></td>
<td></td>
<td></td>
<td>5E+3</td>
<td>2E-6</td>
<td>6E-9</td>
</tr>
<tr>
<td>72</td>
<td>Hafnium-172</td>
<td>D, see 170Wf</td>
<td>1E+3</td>
<td>9E+0</td>
<td>4E-9</td>
<td>-</td>
<td>2E-5</td>
</tr>
<tr>
<td></td>
<td>W, see 170Wf</td>
<td></td>
<td></td>
<td></td>
<td>4E+1</td>
<td>2E-0</td>
<td>-</td>
</tr>
<tr>
<td>72</td>
<td>Hafnium-172</td>
<td>D, see 170Wf</td>
<td>5E+3</td>
<td>1E+4</td>
<td>5E-6</td>
<td>2E-8</td>
<td>7E-5</td>
</tr>
<tr>
<td></td>
<td>W, see 170Wf</td>
<td></td>
<td></td>
<td></td>
<td>1E+4</td>
<td>5E-6</td>
<td>2E-8</td>
</tr>
<tr>
<td>72</td>
<td>Hafnium-175</td>
<td>D, see 170Wf</td>
<td>1E+3</td>
<td>9E+2</td>
<td>4E-7</td>
<td>-</td>
<td>4E-5</td>
</tr>
<tr>
<td></td>
<td>W, see 170Wf</td>
<td></td>
<td></td>
<td></td>
<td>1E+3</td>
<td>6E-7</td>
<td>2E-9</td>
</tr>
<tr>
<td>72</td>
<td>Hafnium-172m²</td>
<td>D, see 170Wf</td>
<td>1E+2</td>
<td>1E+0</td>
<td>5E-10</td>
<td>-</td>
<td>3E-4</td>
</tr>
<tr>
<td></td>
<td>W, see 170Wf</td>
<td></td>
<td></td>
<td></td>
<td>5E+0</td>
<td>2E-9</td>
<td>-</td>
</tr>
<tr>
<td></td>
<td>W, see 170Wf</td>
<td></td>
<td></td>
<td></td>
<td>5E+0</td>
<td>2E-9</td>
<td>-</td>
</tr>
<tr>
<td>72</td>
<td>Hafnium-176a</td>
<td>D, see 170Wf</td>
<td>1E+2</td>
<td>3E+2</td>
<td>1E-7</td>
<td>-</td>
<td>1E-5</td>
</tr>
<tr>
<td></td>
<td>W, see 170Wf</td>
<td></td>
<td></td>
<td></td>
<td>6E+2</td>
<td>3E-7</td>
<td>6E-10</td>
</tr>
<tr>
<td>72</td>
<td>Hafnium-180a</td>
<td>D, see 170Wf</td>
<td>7E+3</td>
<td>7E+4</td>
<td>9E-6</td>
<td>3E-8</td>
<td>3E-4</td>
</tr>
<tr>
<td></td>
<td>W, see 170Wf</td>
<td></td>
<td></td>
<td></td>
<td>7E+4</td>
<td>1E-5</td>
<td>4E-8</td>
</tr>
<tr>
<td>72</td>
<td>Hafnium-181</td>
<td>D, see 170Wf</td>
<td>1E+3</td>
<td>2E+2</td>
<td>7E-8</td>
<td>-</td>
<td>2E-5</td>
</tr>
<tr>
<td></td>
<td>W, see 170Wf</td>
<td></td>
<td></td>
<td></td>
<td>6E+2</td>
<td>4E-7</td>
<td>6E-10</td>
</tr>
<tr>
<td>72</td>
<td>Hafnium-182</td>
<td>D, see 170Wf</td>
<td>7E+4</td>
<td>5E+4</td>
<td>4E-5</td>
<td>1E-7</td>
<td>5E-4</td>
</tr>
<tr>
<td></td>
<td>W, see 170Wf</td>
<td></td>
<td></td>
<td></td>
<td>5E+4</td>
<td>4E-5</td>
<td>2E-7</td>
</tr>
<tr>
<td>72</td>
<td>Hafnium-182</td>
<td>D, see 170Wf</td>
<td>5E+2</td>
<td>8E-1</td>
<td>3E-10</td>
<td>-</td>
<td>-</td>
</tr>
<tr>
<td></td>
<td>W, see 170Wf</td>
<td></td>
<td></td>
<td></td>
<td>7E+2</td>
<td>1E-9</td>
<td>1E-11</td>
</tr>
<tr>
<td>72</td>
<td>Hafnium-182</td>
<td>D, see 170Wf</td>
<td>3E+4</td>
<td>5E+4</td>
<td>2E-5</td>
<td>6E-8</td>
<td>3E-4</td>
</tr>
<tr>
<td></td>
<td>W, see 170Wf</td>
<td></td>
<td></td>
<td></td>
<td>5E+4</td>
<td>2E-5</td>
<td>6E-8</td>
</tr>
<tr>
<td>72</td>
<td>Hafnium-184</td>
<td>D, see 170Wf</td>
<td>2E+3</td>
<td>8E+3</td>
<td>3E-6</td>
<td>3E-8</td>
<td>3E-5</td>
</tr>
<tr>
<td></td>
<td>W, see 170Wf</td>
<td></td>
<td></td>
<td></td>
<td>6E+3</td>
<td>3E-6</td>
<td>9E-9</td>
</tr>
<tr>
<td>Atomic No.</td>
<td>Radioisotope</td>
<td>Class</td>
<td>Table 1: Occupational Values</td>
<td>Table 2: Effluent Concentrations</td>
<td>Table 3: Releases to Sewers</td>
<td></td>
<td></td>
</tr>
<tr>
<td>------------</td>
<td>-------------</td>
<td>-------</td>
<td>-------------------------------</td>
<td>-------------------------------</td>
<td>-------------------------------</td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td>Col. 1 (Ingestion) (µCi)</td>
<td>Col. 2 (Inhalation) (µCi)</td>
<td>Col. 3 (Inhalation) (µCi)</td>
<td>Col. 4 (Air) (µCi/m³)</td>
<td>Col. 5 (Water) (µCi/m³)</td>
</tr>
<tr>
<td>73</td>
<td>Tantalum-177</td>
<td>V, all compounds except those given for Y</td>
<td>4E-4</td>
<td>3E-5</td>
<td>1E-5</td>
<td>2E-7</td>
<td>5E-4</td>
</tr>
<tr>
<td>73</td>
<td>Tantalum-173</td>
<td>Y, see 177Ta</td>
<td>7E+3</td>
<td>2E+4</td>
<td>8E-6</td>
<td>3E-8</td>
<td>9E-5</td>
</tr>
<tr>
<td>73</td>
<td>Tantalum-174</td>
<td>Y, see 177Ta</td>
<td>1E+3</td>
<td>7E+4</td>
<td>3E-6</td>
<td>2E-8</td>
<td>9E-5</td>
</tr>
<tr>
<td>73</td>
<td>Tantalum-175</td>
<td>Y, see 177Ta</td>
<td>2E+3</td>
<td>2E+4</td>
<td>7E-6</td>
<td>2E-8</td>
<td>8E-5</td>
</tr>
<tr>
<td>73</td>
<td>Tantalum-176</td>
<td>Y, see 177Ta</td>
<td>2E+3</td>
<td>2E+4</td>
<td>7E-6</td>
<td>2E-8</td>
<td>8E-5</td>
</tr>
<tr>
<td>73</td>
<td>Tantalum-177</td>
<td>Y, see 177Ta</td>
<td>3E+3</td>
<td>2E+4</td>
<td>8E-6</td>
<td>3E-8</td>
<td>9E-5</td>
</tr>
<tr>
<td>73</td>
<td>Tantalum-178</td>
<td>Y, see 177Ta</td>
<td>3E+3</td>
<td>2E+4</td>
<td>7E-6</td>
<td>2E-8</td>
<td>8E-5</td>
</tr>
<tr>
<td>73</td>
<td>Tantalum-179</td>
<td>Y, see 177Ta</td>
<td>4E+3</td>
<td>3E+4</td>
<td>8E-6</td>
<td>3E-8</td>
<td>9E-5</td>
</tr>
<tr>
<td>73</td>
<td>Tantalum-180</td>
<td>Y, see 177Ta</td>
<td>4E+3</td>
<td>3E+4</td>
<td>8E-6</td>
<td>3E-8</td>
<td>9E-5</td>
</tr>
<tr>
<td>73</td>
<td>Tantalum-181</td>
<td>Y, see 177Ta</td>
<td>5E+3</td>
<td>3E+4</td>
<td>8E-6</td>
<td>3E-8</td>
<td>9E-5</td>
</tr>
<tr>
<td>73</td>
<td>Tantalum-182</td>
<td>Y, see 177Ta</td>
<td>6E+3</td>
<td>4E+4</td>
<td>8E-6</td>
<td>3E-8</td>
<td>9E-5</td>
</tr>
<tr>
<td>73</td>
<td>Tantalum-183</td>
<td>Y, see 177Ta</td>
<td>7E+3</td>
<td>5E+4</td>
<td>8E-6</td>
<td>3E-8</td>
<td>9E-5</td>
</tr>
<tr>
<td>73</td>
<td>Tantalum-184</td>
<td>Y, see 177Ta</td>
<td>8E+3</td>
<td>6E+4</td>
<td>8E-6</td>
<td>3E-8</td>
<td>9E-5</td>
</tr>
<tr>
<td>73</td>
<td>Tantalum-185</td>
<td>Y, see 177Ta</td>
<td>9E+3</td>
<td>7E+4</td>
<td>8E-6</td>
<td>3E-8</td>
<td>9E-5</td>
</tr>
<tr>
<td>73</td>
<td>Tantalum-186</td>
<td>Y, see 177Ta</td>
<td>1E+4</td>
<td>8E+4</td>
<td>8E-6</td>
<td>3E-8</td>
<td>9E-5</td>
</tr>
<tr>
<td>73</td>
<td>Tantalum-187</td>
<td>Y, see 177Ta</td>
<td>1E+4</td>
<td>8E+4</td>
<td>8E-6</td>
<td>3E-8</td>
<td>9E-5</td>
</tr>
<tr>
<td>73</td>
<td>Tantalum-188</td>
<td>Y, see 177Ta</td>
<td>1E+4</td>
<td>8E+4</td>
<td>8E-6</td>
<td>3E-8</td>
<td>9E-5</td>
</tr>
<tr>
<td>73</td>
<td>Tantalum-189</td>
<td>Y, see 177Ta</td>
<td>1E+4</td>
<td>8E+4</td>
<td>8E-6</td>
<td>3E-8</td>
<td>9E-5</td>
</tr>
<tr>
<td>74</td>
<td>Tungsten-178</td>
<td>D, all compounds</td>
<td>1E+4</td>
<td>8E+4</td>
<td>8E-6</td>
<td>3E-8</td>
<td>9E-5</td>
</tr>
<tr>
<td>74</td>
<td>Tungsten-179</td>
<td>D, all compounds</td>
<td>1E+4</td>
<td>8E+4</td>
<td>8E-6</td>
<td>3E-8</td>
<td>9E-5</td>
</tr>
<tr>
<td>74</td>
<td>Tungsten-180</td>
<td>D, all compounds</td>
<td>1E+4</td>
<td>8E+4</td>
<td>8E-6</td>
<td>3E-8</td>
<td>9E-5</td>
</tr>
</tbody>
</table>
### Table 1
#### Occupational Values

<table>
<thead>
<tr>
<th>Atomic No.</th>
<th>Radioisotope</th>
<th>Class</th>
<th>Cont. 1</th>
<th>Cont. 2</th>
<th>Cont. 3</th>
<th>Inhalation</th>
<th>Monthly Average Concentration</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td></td>
<td></td>
<td>Ingestion</td>
<td>Ingestion</td>
<td>Ingestion</td>
<td>Ingestion</td>
<td>(μCi/l air)</td>
</tr>
<tr>
<td>74</td>
<td>Tungsten-178</td>
<td>D, all compounds</td>
<td>5e+4</td>
<td>5e+4</td>
<td>8e-6</td>
<td>3e-8</td>
<td>7e-5</td>
</tr>
<tr>
<td>74</td>
<td>Tungsten-179</td>
<td>D, all compounds</td>
<td>5e+5</td>
<td>5e+4</td>
<td>8e-4</td>
<td>3e-6</td>
<td>7e-3</td>
</tr>
<tr>
<td>74</td>
<td>Tungsten-181</td>
<td>D, all compounds</td>
<td>3e+4</td>
<td>3e+5</td>
<td>1e-5</td>
<td>5e-8</td>
<td>7e-4</td>
</tr>
<tr>
<td>74</td>
<td>Tungsten-185</td>
<td>D, all compounds</td>
<td>2e+4</td>
<td>3e+3</td>
<td>3e-6</td>
<td>9e-9</td>
<td>3e-4</td>
</tr>
<tr>
<td>74</td>
<td>Tungsten-188</td>
<td>D, all compounds</td>
<td>3e+4</td>
<td>3e+4</td>
<td>3e-6</td>
<td>9e-9</td>
<td>3e-4</td>
</tr>
<tr>
<td>75</td>
<td>Rhenium-177</td>
<td>D, all compounds</td>
<td>5e+4</td>
<td>5e+4</td>
<td>3e-4</td>
<td>4e-7</td>
<td>-</td>
</tr>
<tr>
<td>75</td>
<td>Rhenium-177</td>
<td>D, see 177Re</td>
<td>5e+4</td>
<td>3e+5</td>
<td>3e-4</td>
<td>4e-7</td>
<td>-</td>
</tr>
<tr>
<td>75</td>
<td>Rhenium-181</td>
<td>D, see 181Re</td>
<td>5e+3</td>
<td>5e+4</td>
<td>3e-5</td>
<td>8e-7</td>
<td>7e-5</td>
</tr>
<tr>
<td>75</td>
<td>Rhenium-182</td>
<td>D, see 182Re</td>
<td>7e+3</td>
<td>7e+4</td>
<td>5e-6</td>
<td>2e-8</td>
<td>9e-5</td>
</tr>
<tr>
<td>75</td>
<td>Rhenium-183</td>
<td>D, see 183Re</td>
<td>3e+3</td>
<td>3e+4</td>
<td>6e-6</td>
<td>3e-8</td>
<td>-</td>
</tr>
<tr>
<td>75</td>
<td>Rhenium-183</td>
<td>D, see 183Re</td>
<td>3e+3</td>
<td>3e+4</td>
<td>6e-6</td>
<td>3e-8</td>
<td>-</td>
</tr>
<tr>
<td>75</td>
<td>Rhenium-184</td>
<td>D, see 184Re</td>
<td>3e+3</td>
<td>3e+4</td>
<td>6e-6</td>
<td>3e-8</td>
<td>-</td>
</tr>
<tr>
<td>75</td>
<td>Rhenium-185</td>
<td>D, see 185Re</td>
<td>7e+3</td>
<td>7e+4</td>
<td>5e-6</td>
<td>2e-8</td>
<td>9e-5</td>
</tr>
<tr>
<td>75</td>
<td>Rhenium-186</td>
<td>D, see 186Re</td>
<td>7e+4</td>
<td>7e+5</td>
<td>4e-4</td>
<td>8e-7</td>
<td>6e-5</td>
</tr>
<tr>
<td>75</td>
<td>Rhenium-187</td>
<td>D, see 187Re</td>
<td>7e+5</td>
<td>7e+6</td>
<td>4e-4</td>
<td>8e-7</td>
<td>6e-5</td>
</tr>
<tr>
<td>75</td>
<td>Rhenium-188</td>
<td>D, see 188Re</td>
<td>7e+5</td>
<td>7e+6</td>
<td>4e-4</td>
<td>8e-7</td>
<td>6e-5</td>
</tr>
</tbody>
</table>

### Table 2
#### Effluent Concentrations

<table>
<thead>
<tr>
<th>Atomic No.</th>
<th>Radioisotope</th>
<th>Class</th>
<th>Cont. 1</th>
<th>Cont. 2</th>
<th>Cont. 3</th>
<th>Inhalation</th>
<th>Monthly Average Concentration</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td></td>
<td></td>
<td>Ingestion</td>
<td>Ingestion</td>
<td>Ingestion</td>
<td>Ingestion</td>
<td>(μCi/l air)</td>
</tr>
<tr>
<td>74</td>
<td>Tungsten-178</td>
<td>D, all compounds</td>
<td>5e+4</td>
<td>5e+4</td>
<td>8e-6</td>
<td>3e-8</td>
<td>7e-5</td>
</tr>
<tr>
<td>74</td>
<td>Tungsten-179</td>
<td>D, all compounds</td>
<td>5e+5</td>
<td>5e+4</td>
<td>8e-4</td>
<td>3e-6</td>
<td>7e-3</td>
</tr>
<tr>
<td>74</td>
<td>Tungsten-181</td>
<td>D, all compounds</td>
<td>3e+4</td>
<td>3e+5</td>
<td>1e-5</td>
<td>5e-8</td>
<td>7e-4</td>
</tr>
<tr>
<td>74</td>
<td>Tungsten-185</td>
<td>D, all compounds</td>
<td>2e+4</td>
<td>3e+3</td>
<td>3e-6</td>
<td>9e-9</td>
<td>3e-4</td>
</tr>
<tr>
<td>74</td>
<td>Tungsten-188</td>
<td>D, all compounds</td>
<td>3e+4</td>
<td>3e+4</td>
<td>3e-6</td>
<td>9e-9</td>
<td>3e-4</td>
</tr>
<tr>
<td>75</td>
<td>Rhenium-177</td>
<td>D, all compounds</td>
<td>5e+4</td>
<td>5e+4</td>
<td>3e-4</td>
<td>4e-7</td>
<td>-</td>
</tr>
<tr>
<td>75</td>
<td>Rhenium-177</td>
<td>D, see 177Re</td>
<td>5e+4</td>
<td>3e+5</td>
<td>3e-4</td>
<td>4e-7</td>
<td>-</td>
</tr>
<tr>
<td>75</td>
<td>Rhenium-181</td>
<td>D, see 181Re</td>
<td>5e+3</td>
<td>5e+4</td>
<td>3e-5</td>
<td>8e-7</td>
<td>7e-5</td>
</tr>
<tr>
<td>75</td>
<td>Rhenium-182</td>
<td>D, see 182Re</td>
<td>7e+3</td>
<td>7e+4</td>
<td>5e-6</td>
<td>2e-8</td>
<td>9e-5</td>
</tr>
<tr>
<td>75</td>
<td>Rhenium-183</td>
<td>D, see 183Re</td>
<td>3e+3</td>
<td>3e+4</td>
<td>6e-6</td>
<td>3e-8</td>
<td>-</td>
</tr>
<tr>
<td>75</td>
<td>Rhenium-183</td>
<td>D, see 183Re</td>
<td>3e+3</td>
<td>3e+4</td>
<td>6e-6</td>
<td>3e-8</td>
<td>-</td>
</tr>
<tr>
<td>75</td>
<td>Rhenium-184</td>
<td>D, see 184Re</td>
<td>3e+3</td>
<td>3e+4</td>
<td>6e-6</td>
<td>3e-8</td>
<td>-</td>
</tr>
<tr>
<td>75</td>
<td>Rhenium-185</td>
<td>D, see 185Re</td>
<td>7e+3</td>
<td>7e+4</td>
<td>5e-6</td>
<td>2e-8</td>
<td>9e-5</td>
</tr>
<tr>
<td>75</td>
<td>Rhenium-186</td>
<td>D, see 186Re</td>
<td>7e+4</td>
<td>7e+5</td>
<td>4e-4</td>
<td>8e-7</td>
<td>6e-5</td>
</tr>
<tr>
<td>75</td>
<td>Rhenium-187</td>
<td>D, see 187Re</td>
<td>7e+5</td>
<td>7e+6</td>
<td>4e-4</td>
<td>8e-7</td>
<td>6e-5</td>
</tr>
<tr>
<td>75</td>
<td>Rhenium-188</td>
<td>D, see 188Re</td>
<td>7e+5</td>
<td>7e+6</td>
<td>4e-4</td>
<td>8e-7</td>
<td>6e-5</td>
</tr>
<tr>
<td>Atomic No.</td>
<td>Radiouclide</td>
<td>Class</td>
<td>Table 1: Occupational Values</td>
<td>Table 2: Effluent Concentrations</td>
<td>Table 3: Releases to Sewers</td>
<td></td>
<td></td>
</tr>
<tr>
<td>-----------</td>
<td>-------------</td>
<td>-------</td>
<td>----------------------------</td>
<td>--------------------------------</td>
<td>---------------------------</td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td>Col. 1 Oral Ingestion (µCi)</td>
<td>Col. 2 Inhalation (µCi)</td>
<td>Col. 3 Inhalation (µCi/ml)</td>
<td>Col. 1 Air (µCi/ml)</td>
<td>Col. 2 Water (µCi/ml)</td>
</tr>
<tr>
<td>75</td>
<td>Americium-241</td>
<td>D, see 24</td>
<td>3 ≥ 3 5 ≤ 3 25 ≤ 6 75 ≤ 9 45 ≤ 9 45 ≤ 9</td>
<td>-</td>
<td>-</td>
<td>-</td>
<td>-</td>
</tr>
<tr>
<td>76</td>
<td>Oxide-185</td>
<td>D, see 185</td>
<td>1 × 5 4 ≥ 5 25 ≤ 4 55 ≤ 7 1E-3 1E-2</td>
<td>-</td>
<td>-</td>
<td>-</td>
<td>-</td>
</tr>
<tr>
<td></td>
<td>Y, oxides and hydroxides</td>
<td>-</td>
<td>5 ≤ 5 25 ≤ 4 55 ≤ 7</td>
<td>-</td>
<td>-</td>
<td>-</td>
<td>-</td>
</tr>
<tr>
<td>76</td>
<td>Oxide-185</td>
<td>D, see 185</td>
<td>4E+4 25 ≤ 5 45 ≤ 8 25 ≤ 4 4E+3</td>
<td>-</td>
<td>-</td>
<td>-</td>
<td>-</td>
</tr>
<tr>
<td></td>
<td>W, oxides</td>
<td>25 ≤ 5 45 ≤ 8</td>
<td>-</td>
<td>-</td>
<td>-</td>
<td>-</td>
<td>-</td>
</tr>
<tr>
<td></td>
<td>Y, oxides</td>
<td>-</td>
<td>45 ≤ 8</td>
<td>-</td>
<td>-</td>
<td>-</td>
<td>-</td>
</tr>
<tr>
<td>76</td>
<td>Oxide-185</td>
<td>D, see 185</td>
<td>2E+3 6 ≤ 3 25 ≤ 6 85 ≤ 9 3E-4 3E-4</td>
<td>-</td>
<td>-</td>
<td>-</td>
<td>-</td>
</tr>
<tr>
<td></td>
<td>W, oxides</td>
<td>6 ≤ 3 25 ≤ 6</td>
<td>-</td>
<td>-</td>
<td>-</td>
<td>-</td>
<td>-</td>
</tr>
<tr>
<td></td>
<td>Y, oxides</td>
<td>-</td>
<td>25 ≤ 6</td>
<td>-</td>
<td>-</td>
<td>-</td>
<td>-</td>
</tr>
<tr>
<td>76</td>
<td>Oxide-185</td>
<td>D, see 185</td>
<td>2E+3 5 ≤ 2 25 ≤ 7 75 ≤ 10 3E-5 3E-4</td>
<td>-</td>
<td>-</td>
<td>-</td>
<td>-</td>
</tr>
<tr>
<td></td>
<td>W, oxides</td>
<td>5 ≤ 2 25 ≤ 7</td>
<td>-</td>
<td>-</td>
<td>-</td>
<td>-</td>
<td>-</td>
</tr>
<tr>
<td></td>
<td>Y, oxides</td>
<td>-</td>
<td>25 ≤ 7</td>
<td>-</td>
<td>-</td>
<td>-</td>
<td>-</td>
</tr>
<tr>
<td>76</td>
<td>Oxide-185m</td>
<td>D, see 185m</td>
<td>6E+4 25 ≤ 5 35 ≤ 5 35 ≤ 5 1E-3 1E-2</td>
<td>-</td>
<td>-</td>
<td>-</td>
<td>-</td>
</tr>
<tr>
<td></td>
<td>W, oxides</td>
<td>25 ≤ 5 35 ≤ 5</td>
<td>-</td>
<td>-</td>
<td>-</td>
<td>-</td>
<td>-</td>
</tr>
<tr>
<td></td>
<td>Y, oxides</td>
<td>-</td>
<td>35 ≤ 5</td>
<td>-</td>
<td>-</td>
<td>-</td>
<td>-</td>
</tr>
<tr>
<td>76</td>
<td>Oxide-185m</td>
<td>D, see 185m</td>
<td>3E+4 3 ≤ 4 35 ≤ 5 45 ≤ 8 2E-4 2E-3</td>
<td>-</td>
<td>-</td>
<td>-</td>
<td>-</td>
</tr>
<tr>
<td></td>
<td>W, oxides</td>
<td>3 ≤ 4 35 ≤ 5</td>
<td>-</td>
<td>-</td>
<td>-</td>
<td>-</td>
<td>-</td>
</tr>
<tr>
<td></td>
<td>Y, oxides</td>
<td>-</td>
<td>35 ≤ 5</td>
<td>-</td>
<td>-</td>
<td>-</td>
<td>-</td>
</tr>
<tr>
<td>76</td>
<td>Oxide-185</td>
<td>D, see 185</td>
<td>2E+3 25 ≤ 3 90 ≤ 7 3E-9</td>
<td>-</td>
<td>-</td>
<td>-</td>
<td>-</td>
</tr>
<tr>
<td></td>
<td>L1 wall</td>
<td>(1E+3)</td>
<td>-</td>
<td>-</td>
<td>-</td>
<td>-</td>
<td>-</td>
</tr>
<tr>
<td></td>
<td>W, oxides</td>
<td>25 ≤ 3 90 ≤ 7</td>
<td>-</td>
<td>-</td>
<td>-</td>
<td>-</td>
<td>-</td>
</tr>
<tr>
<td></td>
<td>Y, oxides</td>
<td>-</td>
<td>90 ≤ 7</td>
<td>-</td>
<td>-</td>
<td>-</td>
<td>-</td>
</tr>
<tr>
<td>76</td>
<td>Oxide-185</td>
<td>D, see 185</td>
<td>2E+3 5 ≤ 3 25 ≤ 6 65 ≤ 9</td>
<td>-</td>
<td>-</td>
<td>-</td>
<td>-</td>
</tr>
<tr>
<td></td>
<td>L1 wall</td>
<td>(2E+3)</td>
<td>-</td>
<td>-</td>
<td>-</td>
<td>-</td>
<td>-</td>
</tr>
<tr>
<td></td>
<td>W, oxides</td>
<td>5 ≤ 3 25 ≤ 6</td>
<td>-</td>
<td>-</td>
<td>-</td>
<td>-</td>
<td>-</td>
</tr>
<tr>
<td></td>
<td>Y, oxides</td>
<td>-</td>
<td>25 ≤ 6</td>
<td>-</td>
<td>-</td>
<td>-</td>
<td>-</td>
</tr>
<tr>
<td>76</td>
<td>Oxide-185</td>
<td>D, see 185</td>
<td>4E+2 4E+1 2E+0 6E+11</td>
<td>-</td>
<td>-</td>
<td>-</td>
<td>-</td>
</tr>
<tr>
<td></td>
<td>L1 wall</td>
<td>(4E+2)</td>
<td>-</td>
<td>-</td>
<td>-</td>
<td>-</td>
<td>-</td>
</tr>
<tr>
<td></td>
<td>W, oxides</td>
<td>4E+1 2E+0</td>
<td>-</td>
<td>-</td>
<td>-</td>
<td>-</td>
<td>-</td>
</tr>
<tr>
<td></td>
<td>Y, oxides</td>
<td>-</td>
<td>2E+0</td>
<td>-</td>
<td>-</td>
<td>-</td>
<td>-</td>
</tr>
<tr>
<td>77</td>
<td>Iridium-182</td>
<td>D, see 182</td>
<td>4E+4 4E+3 4E+5 4E+5 4E-7 4E-6</td>
<td>-</td>
<td>-</td>
<td>-</td>
<td>-</td>
</tr>
<tr>
<td></td>
<td>W, oxides</td>
<td>4E+4 4E+5 4E-7</td>
<td>-</td>
<td>-</td>
<td>-</td>
<td>-</td>
<td>-</td>
</tr>
<tr>
<td></td>
<td>Y, oxides</td>
<td>-</td>
<td>4E+5</td>
<td>-</td>
<td>-</td>
<td>-</td>
<td>-</td>
</tr>
<tr>
<td>77</td>
<td>Iridium-182</td>
<td>D, see 182</td>
<td>4E+3 4E+4 4E-5 4E-6 4E-4 4E-3</td>
<td>-</td>
<td>-</td>
<td>-</td>
<td>-</td>
</tr>
<tr>
<td></td>
<td>W, oxides</td>
<td>4E+4 4E-5</td>
<td>-</td>
<td>-</td>
<td>-</td>
<td>-</td>
<td>-</td>
</tr>
<tr>
<td></td>
<td>Y, oxides</td>
<td>-</td>
<td>4E-5</td>
<td>-</td>
<td>-</td>
<td>-</td>
<td>-</td>
</tr>
<tr>
<td>Atomic</td>
<td>Radiouclide</td>
<td>Class</td>
<td>Table 1 Occupational Values</td>
<td>Table 2 Efficient Concentrations</td>
<td>Table 3 Releases to Sewers</td>
<td></td>
<td></td>
</tr>
<tr>
<td>---------</td>
<td>-------------</td>
<td>-------</td>
<td>----------------------------</td>
<td>---------------------------------</td>
<td>---------------------------</td>
<td></td>
<td></td>
</tr>
<tr>
<td>No.</td>
<td></td>
<td></td>
<td>Col. 1 Oral Ingestion</td>
<td>Col. 2 Inhalation</td>
<td>Col. 3</td>
<td>Col. 1 Oral</td>
<td>Col. 2 Inhalation</td>
</tr>
<tr>
<td>77</td>
<td>Iridium-185</td>
<td>D, see 185Ir</td>
<td>52+3</td>
<td>22+4</td>
<td>52-6</td>
<td>22-8</td>
<td>7E-5</td>
</tr>
<tr>
<td></td>
<td></td>
<td>Y, see 136Ir</td>
<td>11+4</td>
<td>41+6</td>
<td>11-8</td>
<td>-</td>
<td>-</td>
</tr>
<tr>
<td>77</td>
<td>Iridium-186</td>
<td>D, see 186Ir</td>
<td>25+3</td>
<td>52+3</td>
<td>32-6</td>
<td>11-8</td>
<td>3E-5</td>
</tr>
<tr>
<td></td>
<td></td>
<td>Y, see 186Ir</td>
<td>62+3</td>
<td>22+6</td>
<td>62-9</td>
<td>-</td>
<td>-</td>
</tr>
<tr>
<td>77</td>
<td>Iridium-187</td>
<td>D, see 187Ir</td>
<td>1E+4</td>
<td>32+4</td>
<td>12-5</td>
<td>52-8</td>
<td>3E-4</td>
</tr>
<tr>
<td></td>
<td></td>
<td>Y, see 187Ir</td>
<td>32+4</td>
<td>32-5</td>
<td>41-0</td>
<td>-</td>
<td>-</td>
</tr>
<tr>
<td>77</td>
<td>Iridium-188</td>
<td>D, see 188Ir</td>
<td>25+3</td>
<td>52+3</td>
<td>25-6</td>
<td>52-9</td>
<td>3E-5</td>
</tr>
<tr>
<td></td>
<td></td>
<td>Y, see 188Ir</td>
<td>32+3</td>
<td>12-6</td>
<td>52-9</td>
<td>-</td>
<td>-</td>
</tr>
<tr>
<td>77</td>
<td>Iridium-189</td>
<td>D, see 189Ir</td>
<td>9E+3</td>
<td>52+3</td>
<td>7E-6</td>
<td>7E-5</td>
<td>-</td>
</tr>
<tr>
<td></td>
<td></td>
<td>Y, see 189Ir</td>
<td>-</td>
<td>-</td>
<td>-</td>
<td>-</td>
<td>7E-5</td>
</tr>
<tr>
<td>77</td>
<td>Iridium-190</td>
<td>D, see 190Ir</td>
<td>25+5</td>
<td>25+5</td>
<td>8E-5</td>
<td>2E-7</td>
<td>2E-3</td>
</tr>
<tr>
<td></td>
<td></td>
<td>Y, see 190Ir</td>
<td>-</td>
<td>-</td>
<td>-</td>
<td>-</td>
<td>-</td>
</tr>
<tr>
<td>77</td>
<td>Iridium-192</td>
<td>D, see 192Ir</td>
<td>1E+3</td>
<td>9E+2</td>
<td>4E-7</td>
<td>1E-9</td>
<td>1E-5</td>
</tr>
<tr>
<td></td>
<td></td>
<td>Y, see 192Ir</td>
<td>-</td>
<td>-</td>
<td>-</td>
<td>-</td>
<td>-</td>
</tr>
<tr>
<td>77</td>
<td>Iridium-192a</td>
<td>D, see 192a Ir</td>
<td>3E+0</td>
<td>9E+1</td>
<td>4E-8</td>
<td>3E-10</td>
<td>4E-5</td>
</tr>
<tr>
<td></td>
<td></td>
<td>Y, see 192a Ir</td>
<td>-</td>
<td>2E-3</td>
<td>6E-9</td>
<td>2E-11</td>
<td>-</td>
</tr>
<tr>
<td>77</td>
<td>Iridium-192b</td>
<td>D, see 192b Ir</td>
<td>9E+2</td>
<td>3E+2</td>
<td>1E-7</td>
<td>4E-10</td>
<td>1E-5</td>
</tr>
<tr>
<td></td>
<td></td>
<td>Y, see 192b Ir</td>
<td>-</td>
<td>4E-2</td>
<td>2E-7</td>
<td>6E-10</td>
<td>-</td>
</tr>
<tr>
<td>77</td>
<td>Iridium-194a</td>
<td>D, see 194a Ir</td>
<td>6E+2</td>
<td>9E+1</td>
<td>4E-8</td>
<td>3E-10</td>
<td>9E-6</td>
</tr>
<tr>
<td></td>
<td></td>
<td>Y, see 194a Ir</td>
<td>-</td>
<td>2E+2</td>
<td>3E-8</td>
<td>2E-10</td>
<td>-</td>
</tr>
<tr>
<td>77</td>
<td>Iridium-194b</td>
<td>D, see 194b Ir</td>
<td>1E+0</td>
<td>8E+3</td>
<td>1E-6</td>
<td>4E-9</td>
<td>1E-5</td>
</tr>
<tr>
<td></td>
<td></td>
<td>Y, see 194b Ir</td>
<td>-</td>
<td>2E+3</td>
<td>9E-7</td>
<td>3E-9</td>
<td>-</td>
</tr>
<tr>
<td>77</td>
<td>Iridium-195a</td>
<td>D, see 195a Ir</td>
<td>8E+3</td>
<td>2E+4</td>
<td>1E-5</td>
<td>3E-10</td>
<td>8E-5</td>
</tr>
<tr>
<td></td>
<td></td>
<td>Y, see 195a Ir</td>
<td>-</td>
<td>3E+4</td>
<td>1E-5</td>
<td>4E-9</td>
<td>-</td>
</tr>
<tr>
<td>77</td>
<td>Iridium-195b</td>
<td>D, see 195b Ir</td>
<td>1E+4</td>
<td>4E+4</td>
<td>2E-5</td>
<td>6E-9</td>
<td>2E-4</td>
</tr>
<tr>
<td></td>
<td></td>
<td>Y, see 195b Ir</td>
<td>-</td>
<td>5E+4</td>
<td>2E-5</td>
<td>7E-9</td>
<td>-</td>
</tr>
<tr>
<td>78</td>
<td>Platinum-186</td>
<td>D, all compounds</td>
<td>1E+4</td>
<td>4E+4</td>
<td>2E-5</td>
<td>5E-9</td>
<td>2E-4</td>
</tr>
<tr>
<td>78</td>
<td>Platinum-188</td>
<td>D, all compounds</td>
<td>2E+3</td>
<td>2E+3</td>
<td>7E-7</td>
<td>2E-9</td>
<td>2E-5</td>
</tr>
<tr>
<td>78</td>
<td>Platinum-189</td>
<td>D, all compounds</td>
<td>1E+4</td>
<td>3E+4</td>
<td>1E-5</td>
<td>4E-9</td>
<td>1E-4</td>
</tr>
<tr>
<td>78</td>
<td>Platinum-191</td>
<td>D, all compounds</td>
<td>4E+3</td>
<td>8E+3</td>
<td>4E-6</td>
<td>1E-8</td>
<td>5E-5</td>
</tr>
<tr>
<td>Atomic Number</td>
<td>Radiounclide</td>
<td>Class</td>
<td>Table 1: Occupational Values</td>
<td>Table 2: Efficient Concentrations</td>
<td>Table 3: Releases to Sowers</td>
<td></td>
<td></td>
</tr>
<tr>
<td>---------------</td>
<td>--------------</td>
<td>-------</td>
<td>-----------------------------</td>
<td>---------------------------------</td>
<td>---------------------------</td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td>Col. 1</td>
<td>Col. 2</td>
<td>Col. 3</td>
<td>Col. 1</td>
<td>Col. 2</td>
</tr>
<tr>
<td>70</td>
<td>Platinum-195m</td>
<td>D, all compounds</td>
<td>3E+3</td>
<td>3E+5</td>
<td>3E-3</td>
<td>3E-3</td>
<td>3E-3</td>
</tr>
<tr>
<td>70</td>
<td>Platinum-195</td>
<td>D, all compounds</td>
<td>4E+4</td>
<td>4E-5</td>
<td>4E-5</td>
<td>4E-5</td>
<td>4E-5</td>
</tr>
<tr>
<td>70</td>
<td>Platinum-195e</td>
<td>D, all compounds</td>
<td>2E+3</td>
<td>2E-6</td>
<td>2E-6</td>
<td>2E-6</td>
<td>2E-6</td>
</tr>
<tr>
<td>70</td>
<td>Platinum-197</td>
<td>D, all compounds</td>
<td>2E+4</td>
<td>2E-5</td>
<td>2E-5</td>
<td>2E-5</td>
<td>2E-5</td>
</tr>
<tr>
<td>70</td>
<td>Platinum-197e</td>
<td>D, all compounds</td>
<td>1E+3</td>
<td>1E-4</td>
<td>1E-4</td>
<td>1E-4</td>
<td>1E-4</td>
</tr>
<tr>
<td>70</td>
<td>Platinum-198</td>
<td>D, all compounds</td>
<td>9E+3</td>
<td>9E-4</td>
<td>9E-4</td>
<td>9E-4</td>
<td>9E-4</td>
</tr>
<tr>
<td>70</td>
<td>Gold-199</td>
<td>D, all compounds except those given for W and Y</td>
<td>3E+3</td>
<td>3E-4</td>
<td>3E-1</td>
<td>3E-1</td>
<td>3E-1</td>
</tr>
<tr>
<td>70</td>
<td>Gold-199Au</td>
<td>W, see 193Au</td>
<td>3E+3</td>
<td>3E-4</td>
<td>3E-1</td>
<td>3E-1</td>
<td>3E-1</td>
</tr>
<tr>
<td>70</td>
<td>Gold-199W</td>
<td>W, see 193W</td>
<td>3E+3</td>
<td>3E-4</td>
<td>3E-1</td>
<td>3E-1</td>
<td>3E-1</td>
</tr>
<tr>
<td>70</td>
<td>Gold-199m</td>
<td>D, see 193mAu</td>
<td>1E+3</td>
<td>1E-4</td>
<td>1E-1</td>
<td>1E-1</td>
<td>1E-1</td>
</tr>
<tr>
<td>70</td>
<td>Gold-199W</td>
<td>W, see 193W</td>
<td>1E+3</td>
<td>1E-4</td>
<td>1E-1</td>
<td>1E-1</td>
<td>1E-1</td>
</tr>
<tr>
<td>70</td>
<td>Gold-199Au</td>
<td>W, see 193Au</td>
<td>1E+3</td>
<td>1E-4</td>
<td>1E-1</td>
<td>1E-1</td>
<td>1E-1</td>
</tr>
<tr>
<td>70</td>
<td>Gold-200</td>
<td>D, see 193Au</td>
<td>3E+4</td>
<td>3E-5</td>
<td>3E-2</td>
<td>3E-2</td>
<td>3E-2</td>
</tr>
<tr>
<td>70</td>
<td>Gold-200W</td>
<td>W, see 193W</td>
<td>3E+4</td>
<td>3E-5</td>
<td>3E-2</td>
<td>3E-2</td>
<td>3E-2</td>
</tr>
<tr>
<td>70</td>
<td>Gold-200m</td>
<td>D, see 193mAu</td>
<td>4E+4</td>
<td>4E-5</td>
<td>4E-2</td>
<td>4E-2</td>
<td>4E-2</td>
</tr>
<tr>
<td>70</td>
<td>Gold-200m</td>
<td>D, see 193mAu</td>
<td>7E+4</td>
<td>7E-5</td>
<td>7E-2</td>
<td>7E-2</td>
<td>7E-2</td>
</tr>
<tr>
<td>70</td>
<td>Gold-200W</td>
<td>W, see 193W</td>
<td>7E+4</td>
<td>7E-5</td>
<td>7E-2</td>
<td>7E-2</td>
<td>7E-2</td>
</tr>
</tbody>
</table>

422
### Table 1: Occupational Values

<table>
<thead>
<tr>
<th>Atomic Radioisotope</th>
<th>Class</th>
<th>Oral Ingestion (pCi/l)</th>
<th>Inhalation (pCi/l)</th>
<th>Air (pCi/l)</th>
<th>Water (pCi/l)</th>
<th>Monthly Average Concentration (pCi/l)</th>
</tr>
</thead>
<tbody>
<tr>
<td>80</td>
<td>Mercury-193m</td>
<td>Vapor</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td>Organic D</td>
<td>4E-3</td>
<td>1E-6</td>
<td>1E-8</td>
<td>4E-4</td>
<td></td>
</tr>
<tr>
<td></td>
<td>Organic D</td>
<td>3E-3</td>
<td>9E-3</td>
<td>1E-0</td>
<td>4E-4</td>
<td></td>
</tr>
<tr>
<td></td>
<td>Mercury-193</td>
<td>Vapor</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td>Organic D</td>
<td>4E-4</td>
<td>2E-5</td>
<td>6E-6</td>
<td>2E-4</td>
<td>2E-3</td>
</tr>
<tr>
<td></td>
<td>Mercury-194</td>
<td>Vapor</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td>Organic D</td>
<td>4E-4</td>
<td>2E-5</td>
<td>6E-6</td>
<td>2E-4</td>
<td>2E-3</td>
</tr>
<tr>
<td></td>
<td>Mercury-195m</td>
<td>Vapor</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td>Organic D</td>
<td>4E-3</td>
<td>2E-6</td>
<td>6E-0</td>
<td>4E-4</td>
<td>4E-4</td>
</tr>
<tr>
<td></td>
<td>Mercury-195</td>
<td>Vapor</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td>Organic D</td>
<td>4E-5</td>
<td>3E-5</td>
<td>6E-0</td>
<td>4E-4</td>
<td>4E-4</td>
</tr>
<tr>
<td></td>
<td>Mercury-197m</td>
<td>Vapor</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td>Organic D</td>
<td>4E-3</td>
<td>2E-6</td>
<td>6E-0</td>
<td>4E-4</td>
<td>4E-4</td>
</tr>
<tr>
<td></td>
<td>Mercury-197</td>
<td>Vapor</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td>Organic D</td>
<td>4E-3</td>
<td>2E-6</td>
<td>6E-0</td>
<td>4E-4</td>
<td>4E-4</td>
</tr>
<tr>
<td></td>
<td>Mercury-199m²</td>
<td>Vapor</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td>Organic D</td>
<td>8E-5</td>
<td>3E-5</td>
<td>1E-7</td>
<td>4E-5</td>
<td>8E-4</td>
</tr>
<tr>
<td></td>
<td>Mercury-203</td>
<td>Vapor</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td>Organic D</td>
<td>8E-3</td>
<td>2E-7</td>
<td>1E-0</td>
<td>7E-5</td>
<td>1E-2</td>
</tr>
<tr>
<td></td>
<td>Thallium-194m²</td>
<td>D, all compounds</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>
### Table 1

<table>
<thead>
<tr>
<th>Atomic No.</th>
<th>Radionuclide</th>
<th>Concentration Values</th>
<th>Unit</th>
<th>Monthly Average Concentration</th>
</tr>
</thead>
<tbody>
<tr>
<td>81</td>
<td>Thallium-194</td>
<td>Oral Ingestion (μCi)</td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td>Oral Lung (μCi)</td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td>Oral GI (μCi)</td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td>Oral Subcutaneous (μCi)</td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td>Oral Other (μCi)</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

### Table 2

<table>
<thead>
<tr>
<th>Atomic No.</th>
<th>Radionuclide</th>
<th>Concentration Values</th>
<th>Unit</th>
<th>Monthly Average Concentration</th>
</tr>
</thead>
<tbody>
<tr>
<td>81</td>
<td>Thallium-194</td>
<td>Effluent Concentrations</td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td>Air (μCi/m³)</td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td>Water (μCi/m³)</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

### Table 3

<table>
<thead>
<tr>
<th>Atomic No.</th>
<th>Radionuclide</th>
<th>Releases to Sewers</th>
<th>Unit</th>
<th>Monthly Average Concentration</th>
</tr>
</thead>
<tbody>
<tr>
<td>Atomic No.</td>
<td>Nuclear Data</td>
<td>Class</td>
<td>Table 1</td>
<td>Table 2</td>
</tr>
<tr>
<td>-----------</td>
<td>--------------</td>
<td>-------</td>
<td>---------</td>
<td>---------</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td>Oral Ingestion</td>
<td>Inhalation</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td>Activity (uCi)</td>
<td>Concentration (uCi/L)</td>
</tr>
<tr>
<td>83</td>
<td>Bismuth-203</td>
<td>D, see</td>
<td>2e+3</td>
<td>3e-6</td>
</tr>
<tr>
<td></td>
<td></td>
<td>209Bi</td>
<td></td>
<td></td>
</tr>
<tr>
<td>83</td>
<td>Bismuth-206</td>
<td>D, see</td>
<td>3e+3</td>
<td>3e-6</td>
</tr>
<tr>
<td></td>
<td></td>
<td>209Bi</td>
<td></td>
<td></td>
</tr>
<tr>
<td>83</td>
<td>Bismuth-207</td>
<td>D, see</td>
<td>3e+3</td>
<td>3e-6</td>
</tr>
<tr>
<td></td>
<td></td>
<td>209Bi</td>
<td></td>
<td></td>
</tr>
<tr>
<td>83</td>
<td>Bismuth-210</td>
<td>D, see</td>
<td>3e+3</td>
<td>3e-6</td>
</tr>
<tr>
<td></td>
<td></td>
<td>209Bi</td>
<td></td>
<td></td>
</tr>
<tr>
<td>84</td>
<td>Polonium-210</td>
<td>D, see</td>
<td>5e+3</td>
<td>3e-6</td>
</tr>
<tr>
<td></td>
<td></td>
<td>210Bi</td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td>3e+3</td>
<td>3e-6</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td>3e+3</td>
<td>3e-6</td>
</tr>
<tr>
<td>85</td>
<td>Astatine-210</td>
<td>D, see</td>
<td>3e+3</td>
<td>3e-6</td>
</tr>
<tr>
<td></td>
<td></td>
<td>210Bi</td>
<td></td>
<td></td>
</tr>
<tr>
<td>86</td>
<td>Radon-220</td>
<td>D, see</td>
<td>3e+3</td>
<td>3e-6</td>
</tr>
<tr>
<td></td>
<td></td>
<td>222</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

*Note: D indicates a daughter of the indicated radionuclide.*
<table>
<thead>
<tr>
<th>Atomic Radionuclide No.</th>
<th>Class</th>
<th>Occupational Values</th>
<th>Emission Concentrations</th>
<th>Releases to Severe</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td></td>
<td>Col. 1 Oral Implantation (pCi)</td>
<td>Col. 2 Inhalation (pCi)</td>
<td>Col. 3 Inhalation (pCi)</td>
</tr>
<tr>
<td>86 Radon-222</td>
<td></td>
<td>1E-4</td>
<td>4E-6</td>
<td>3E-6</td>
</tr>
<tr>
<td></td>
<td></td>
<td>(or 4 working level months)</td>
<td></td>
<td></td>
</tr>
<tr>
<td>87 Francium-223</td>
<td>D, all compounds</td>
<td>2E+3</td>
<td>5E+2</td>
<td>2E-7</td>
</tr>
<tr>
<td>88 Radium-226</td>
<td>W, all compounds</td>
<td>5E+0</td>
<td>7E+1</td>
<td>3E+10</td>
</tr>
<tr>
<td></td>
<td></td>
<td>Bone surf (9%)</td>
<td></td>
<td></td>
</tr>
<tr>
<td>88 Radium-226</td>
<td>W, all compounds</td>
<td>8E+0</td>
<td>2E+0</td>
<td>7E+10</td>
</tr>
<tr>
<td></td>
<td></td>
<td>Bone surf (2E+1)</td>
<td></td>
<td></td>
</tr>
<tr>
<td>88 Radium-226</td>
<td>W, all compounds</td>
<td>8E+0</td>
<td>7E+1</td>
<td>3E+10</td>
</tr>
<tr>
<td></td>
<td></td>
<td>Bone surf (2E+1)</td>
<td></td>
<td></td>
</tr>
<tr>
<td>89 Actinium-226</td>
<td>D, all compounds except those given for W and Y</td>
<td>2E+3</td>
<td>5E+1</td>
<td>2E-8</td>
</tr>
<tr>
<td></td>
<td></td>
<td>(LI well) (2E+3)</td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td>Bone surf (4E+1)</td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td>W, halides and nitrates</td>
<td>5E+1</td>
<td>2E-8</td>
<td>7E-11</td>
</tr>
<tr>
<td></td>
<td></td>
<td>(LI well) (4E+1)</td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td>Y, oxides and hydroxides</td>
<td>5E+1</td>
<td>2E-8</td>
<td>6E-11</td>
</tr>
<tr>
<td>89 Actinium-226</td>
<td>D, see 224Ac</td>
<td>5E+1</td>
<td>1E-10</td>
<td>-</td>
</tr>
<tr>
<td></td>
<td></td>
<td>(LI well) (5E+1)</td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td>W, see 224Ac</td>
<td>-</td>
<td>3E-10</td>
<td>9E-13</td>
</tr>
<tr>
<td></td>
<td></td>
<td>Bone surf (3E-1)</td>
<td></td>
<td></td>
</tr>
<tr>
<td>89 Actinium-226</td>
<td>D, see 224Ac</td>
<td>3E+2</td>
<td>5E+0</td>
<td>1E-9</td>
</tr>
<tr>
<td></td>
<td></td>
<td>(LI well) (3E+2)</td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td>W, see 224Ac</td>
<td>-</td>
<td>2E-10</td>
<td>9E-13</td>
</tr>
<tr>
<td></td>
<td></td>
<td>Bone surf (2E-1)</td>
<td></td>
<td></td>
</tr>
<tr>
<td>89 Actinium-226</td>
<td>D, see 224Ac</td>
<td>3E+0</td>
<td>2E+0</td>
<td>6E-12</td>
</tr>
<tr>
<td></td>
<td></td>
<td>(LI well) (3E+0)</td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td>W, see 224Ac</td>
<td>-</td>
<td>2E+0</td>
<td>7E-12</td>
</tr>
<tr>
<td></td>
<td></td>
<td>Bone surf (2E+0)</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Atomic No.</td>
<td>Radioisotope</td>
<td>Class</td>
<td>Col. 1 Occupational Values</td>
<td>Col. 2 Effluent Concentrations</td>
</tr>
<tr>
<td>-----------</td>
<td>--------------</td>
<td>-------</td>
<td>---------------------------</td>
<td>-------------------------------</td>
</tr>
<tr>
<td>89</td>
<td>Actinium-229</td>
<td>D, see 229Ac</td>
<td>2x10</td>
<td>6x0</td>
</tr>
<tr>
<td></td>
<td></td>
<td>W, see 229Ac</td>
<td>4x10</td>
<td>6x1</td>
</tr>
<tr>
<td></td>
<td></td>
<td>Y, see 229Ac</td>
<td>6x1</td>
<td>6x1</td>
</tr>
<tr>
<td>90</td>
<td>Thorium-229</td>
<td>W, all compounds except those given for Y</td>
<td>5x10</td>
<td>2x1</td>
</tr>
<tr>
<td></td>
<td></td>
<td>Y, oxides and hydroxides</td>
<td>3x5</td>
<td>-</td>
</tr>
<tr>
<td>90</td>
<td>Thorium-227</td>
<td>W, see 227</td>
<td>6x2</td>
<td>3x1</td>
</tr>
<tr>
<td></td>
<td></td>
<td>Y, see 227</td>
<td>1x1</td>
<td>6x1</td>
</tr>
<tr>
<td>90</td>
<td>Thorium-229</td>
<td>W, see 229</td>
<td>6x0</td>
<td>1x2</td>
</tr>
<tr>
<td></td>
<td></td>
<td>Y, see 229</td>
<td>2x1</td>
<td>2x10</td>
</tr>
<tr>
<td>90</td>
<td>Thorium-229</td>
<td>W, see 229</td>
<td>1x10</td>
<td>2x10</td>
</tr>
<tr>
<td></td>
<td></td>
<td>Y, see 229</td>
<td>2x10</td>
<td>2x10</td>
</tr>
<tr>
<td>90</td>
<td>Thorium-230</td>
<td>W, see 230</td>
<td>4x0</td>
<td>6x3</td>
</tr>
<tr>
<td></td>
<td></td>
<td>Y, see 230</td>
<td>2x10</td>
<td>2x10</td>
</tr>
<tr>
<td>90</td>
<td>Thorium-231</td>
<td>W, see 231</td>
<td>6x3</td>
<td>6x3</td>
</tr>
<tr>
<td></td>
<td></td>
<td>Y, see 231</td>
<td>3x10</td>
<td>3x10</td>
</tr>
<tr>
<td>90</td>
<td>Thorium-232</td>
<td>W, see 232</td>
<td>3x10</td>
<td>3x10</td>
</tr>
<tr>
<td></td>
<td></td>
<td>Y, see 232</td>
<td>3x10</td>
<td>3x10</td>
</tr>
<tr>
<td>90</td>
<td>Thorium-234</td>
<td>W, see 234</td>
<td>3x10</td>
<td>3x10</td>
</tr>
<tr>
<td></td>
<td></td>
<td>Y, see 234</td>
<td>3x10</td>
<td>3x10</td>
</tr>
<tr>
<td>91</td>
<td>Protactinium-233</td>
<td>W, all compounds except those given for Y</td>
<td>4x10</td>
<td>3x2</td>
</tr>
<tr>
<td></td>
<td></td>
<td>Y, oxides and hydroxides</td>
<td>2x10</td>
<td>2x10</td>
</tr>
<tr>
<td>91</td>
<td>Protactinium-239</td>
<td>W, see 239</td>
<td>3x10</td>
<td>3x10</td>
</tr>
<tr>
<td></td>
<td></td>
<td>Y, see 239</td>
<td>3x10</td>
<td>3x10</td>
</tr>
<tr>
<td>Atomic Number</td>
<td>Radionuclide</td>
<td>Class</td>
<td>Col. 1 Occupational Values</td>
<td>Col. 2 Effluent Concentrations</td>
</tr>
<tr>
<td>---------------</td>
<td>--------------</td>
<td>-------</td>
<td>---------------------------</td>
<td>-----------------------------</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td>Oral Ingestion All (μCi/l)</td>
<td>Inhalation All (μCi/l)</td>
</tr>
<tr>
<td>91</td>
<td>Protactinium-234 W. see 229Pa</td>
<td>Y. see 229Pa</td>
<td>6E+2</td>
<td>5E+0</td>
</tr>
<tr>
<td>91</td>
<td>Protactinium-231 W. see 227Pa</td>
<td>2E-1</td>
<td>2E-3</td>
<td>6E-13</td>
</tr>
<tr>
<td></td>
<td></td>
<td>Y. see 227Pa</td>
<td>4E+0</td>
<td>1E-9</td>
</tr>
<tr>
<td>91</td>
<td>Protactinium-229 W. see 227Pa</td>
<td>1E+3</td>
<td>2E+3</td>
<td>9E-9</td>
</tr>
<tr>
<td></td>
<td></td>
<td>Y. see 227Pa</td>
<td>6E+0</td>
<td>1E+11</td>
</tr>
<tr>
<td>91</td>
<td>Protactinium-223 W. see 227Pa</td>
<td>1E-1</td>
<td>2E-3</td>
<td>6E-9</td>
</tr>
<tr>
<td></td>
<td></td>
<td>Y. see 227Pa</td>
<td>6E+2</td>
<td>2E-7</td>
</tr>
<tr>
<td>92</td>
<td>Uranium-235 D. see 232U, 234U, 235U, 238U</td>
<td>Y. see 232U</td>
<td>2E+3</td>
<td>8E+3</td>
</tr>
<tr>
<td></td>
<td></td>
<td>W. see 232U, 234U, 235U</td>
<td>8E+0</td>
<td>4E+1</td>
</tr>
<tr>
<td></td>
<td></td>
<td>Y. see 232U, 234U</td>
<td>4E+3</td>
<td>1E+10</td>
</tr>
<tr>
<td>92</td>
<td>Uranium-233 D. see 232U, 234U, 235U</td>
<td>Y. see 232U</td>
<td>6E+3</td>
<td>8E+3</td>
</tr>
<tr>
<td></td>
<td></td>
<td>W. see 232U, 234U, 235U</td>
<td>6E+0</td>
<td>4E+1</td>
</tr>
<tr>
<td></td>
<td></td>
<td>Y. see 232U, 234U</td>
<td>6E+3</td>
<td>8E+3</td>
</tr>
<tr>
<td>92</td>
<td>Uranium-231 D. see 232U, 234U, 235U</td>
<td>Y. see 232U</td>
<td>1E+0</td>
<td>5E+0</td>
</tr>
<tr>
<td></td>
<td></td>
<td>W. see 232U, 234U, 235U</td>
<td>1E+1</td>
<td>4E-12</td>
</tr>
<tr>
<td></td>
<td></td>
<td>Y. see 232U, 234U</td>
<td>1E+2</td>
<td>2E-11</td>
</tr>
<tr>
<td>92</td>
<td>Uranium-238 D. see 232U, 234U, 235U</td>
<td>Y. see 232U</td>
<td>1E+0</td>
<td>5E+0</td>
</tr>
<tr>
<td></td>
<td></td>
<td>W. see 232U, 234U, 235U</td>
<td>1E+1</td>
<td>4E-12</td>
</tr>
<tr>
<td></td>
<td></td>
<td>Y. see 232U, 234U</td>
<td>1E+2</td>
<td>2E-11</td>
</tr>
<tr>
<td>Atomic Radionuclide</td>
<td>Class</td>
<td>Table 1</td>
<td>Table 2</td>
<td>Table 3</td>
</tr>
<tr>
<td>--------------------</td>
<td>-------</td>
<td>---------</td>
<td>---------</td>
<td>---------</td>
</tr>
<tr>
<td>No.</td>
<td></td>
<td>Occupational Values</td>
<td>Efficent Concentrations</td>
<td>Releases to Severe</td>
</tr>
<tr>
<td></td>
<td></td>
<td>Col. 1</td>
<td>Col. 2</td>
<td>Col. 3</td>
</tr>
<tr>
<td>Uranium-233</td>
<td>D, see 230U</td>
<td>3E+3</td>
<td>3E+0</td>
<td>6E-10</td>
</tr>
<tr>
<td></td>
<td>V, see 230U</td>
<td>3E+3</td>
<td>3E+0</td>
<td>6E-10</td>
</tr>
<tr>
<td>Uranium-236</td>
<td>D, see 230U</td>
<td>3E+1</td>
<td>3E+0</td>
<td>5E-10</td>
</tr>
<tr>
<td></td>
<td>V, see 230U</td>
<td>3E+1</td>
<td>3E+0</td>
<td>5E-10</td>
</tr>
<tr>
<td>Uranium-237</td>
<td>D, see 230U</td>
<td>2E+3</td>
<td>3E+3</td>
<td>5E-6</td>
</tr>
<tr>
<td></td>
<td>V, see 230U</td>
<td>2E+3</td>
<td>3E+3</td>
<td>5E-6</td>
</tr>
<tr>
<td>Uranium-238</td>
<td>D, see 230U</td>
<td>3E+1</td>
<td>3E+0</td>
<td>6E-10</td>
</tr>
<tr>
<td></td>
<td>V, see 230U</td>
<td>3E+1</td>
<td>3E+0</td>
<td>6E-10</td>
</tr>
<tr>
<td>Uranium-239</td>
<td>D, see 230U</td>
<td>7E+4</td>
<td>2E+5</td>
<td>6E-7</td>
</tr>
<tr>
<td></td>
<td>V, see 230U</td>
<td>7E+4</td>
<td>2E+5</td>
<td>6E-7</td>
</tr>
<tr>
<td>Uranium-240</td>
<td>D, see 230U</td>
<td>1E+3</td>
<td>4E+3</td>
<td>2E-6</td>
</tr>
<tr>
<td></td>
<td>V, see 230U</td>
<td>1E+3</td>
<td>4E+3</td>
<td>2E-6</td>
</tr>
<tr>
<td>Uranium-natural</td>
<td>D, see 230U</td>
<td>1E+3</td>
<td>4E+3</td>
<td>2E-6</td>
</tr>
<tr>
<td></td>
<td>V, see 230U</td>
<td>1E+3</td>
<td>4E+3</td>
<td>2E-6</td>
</tr>
<tr>
<td>Neptunium-232</td>
<td>W, all compounds</td>
<td>1E+5</td>
<td>3E+3</td>
<td>3E+7</td>
</tr>
<tr>
<td></td>
<td>V, see 230U</td>
<td>1E+5</td>
<td>3E+3</td>
<td>3E+7</td>
</tr>
<tr>
<td>Neptunium-234</td>
<td>W, all compounds</td>
<td>8E+5</td>
<td>3E+6</td>
<td>3E+3</td>
</tr>
<tr>
<td></td>
<td>V, see 230U</td>
<td>8E+5</td>
<td>3E+6</td>
<td>3E+3</td>
</tr>
<tr>
<td>Neptunium-235</td>
<td>W, all compounds</td>
<td>2E+3</td>
<td>3E+3</td>
<td>3E+6</td>
</tr>
<tr>
<td></td>
<td>V, see 230U</td>
<td>2E+3</td>
<td>3E+3</td>
<td>3E+6</td>
</tr>
<tr>
<td>Neptunium-236</td>
<td>W, all compounds</td>
<td>2E+4</td>
<td>3E+3</td>
<td>3E+7</td>
</tr>
<tr>
<td>(1.54±0.5 p)</td>
<td>V, see 230U</td>
<td>2E+4</td>
<td>3E+3</td>
<td>3E+7</td>
</tr>
<tr>
<td>Neptunium-236</td>
<td>W, all compounds</td>
<td>2E+4</td>
<td>3E+3</td>
<td>3E+7</td>
</tr>
<tr>
<td>(22.5 h)</td>
<td>V, see 230U</td>
<td>2E+4</td>
<td>3E+3</td>
<td>3E+7</td>
</tr>
<tr>
<td>Atomic No.</td>
<td>Radionuclide</td>
<td>Class</td>
<td>Col. 1 Oral Ingestion (nCi)</td>
<td>Col. 2 Inhalation (nCi)</td>
</tr>
<tr>
<td>-----------</td>
<td>--------------</td>
<td>-------</td>
<td>----------------------------</td>
<td>-------------------------</td>
</tr>
<tr>
<td>93</td>
<td>Neptunium-238</td>
<td>W, all compounds</td>
<td>1E+3 Bone surf (2E+7)</td>
<td>3E-8</td>
</tr>
<tr>
<td>93</td>
<td>Neptunium-239</td>
<td>W, all compounds</td>
<td>2E+3 2E+3</td>
<td>3E-7</td>
</tr>
<tr>
<td></td>
<td></td>
<td>LL wall (2E+3)</td>
<td>-</td>
<td>-</td>
</tr>
<tr>
<td>93</td>
<td>Neptunium-240</td>
<td>W, all compounds</td>
<td>2E+4 4E+4</td>
<td>3E-5</td>
</tr>
<tr>
<td>94</td>
<td>Plutonium-234</td>
<td>W, all compounds except PuO₂</td>
<td>3E+3 3E+3</td>
<td>3E-8</td>
</tr>
<tr>
<td></td>
<td></td>
<td>PuO₂</td>
<td>-</td>
<td>3E-6</td>
</tr>
<tr>
<td>94</td>
<td>Plutonium-239</td>
<td>W, see 234Pu</td>
<td>3E+5 3E+5</td>
<td>3E-3</td>
</tr>
<tr>
<td></td>
<td></td>
<td>Y, see 234Pu</td>
<td>-</td>
<td>-</td>
</tr>
<tr>
<td>94</td>
<td>Plutonium-236</td>
<td>W, see 234Pu</td>
<td>2E+0 2E+0</td>
<td>8E-12</td>
</tr>
<tr>
<td></td>
<td></td>
<td>Y, see 234Pu</td>
<td>-</td>
<td>3E+3 3E+3</td>
</tr>
<tr>
<td>94</td>
<td>Plutonium-237</td>
<td>W, see 234Pu</td>
<td>3E+4 3E+4</td>
<td>3E-6</td>
</tr>
<tr>
<td></td>
<td></td>
<td>Y, see 234Pu</td>
<td>-</td>
<td>3E+3 3E+3</td>
</tr>
<tr>
<td>94</td>
<td>Plutonium-238</td>
<td>W, see 234Pu</td>
<td>3E-1 3E-1</td>
<td>3E-12</td>
</tr>
<tr>
<td></td>
<td></td>
<td>Y, see 234Pu</td>
<td>-</td>
<td>3E-2 3E-2</td>
</tr>
<tr>
<td>94</td>
<td>Plutonium-239</td>
<td>W, see 234Pu</td>
<td>3E-1 3E-1</td>
<td>3E-12</td>
</tr>
<tr>
<td></td>
<td></td>
<td>Y, see 234Pu</td>
<td>-</td>
<td>3E-2 3E-2</td>
</tr>
<tr>
<td>94</td>
<td>Plutonium-240</td>
<td>W, see 234Pu</td>
<td>3E-1 3E-1</td>
<td>3E-12</td>
</tr>
<tr>
<td></td>
<td></td>
<td>Y, see 234Pu</td>
<td>-</td>
<td>3E-2 3E-2</td>
</tr>
<tr>
<td>94</td>
<td>Plutonium-241</td>
<td>W, see 234Pu</td>
<td>3E+1 3E+1</td>
<td>3E-10</td>
</tr>
<tr>
<td></td>
<td></td>
<td>Y, see 234Pu</td>
<td>-</td>
<td>3E-1 3E-1</td>
</tr>
<tr>
<td>Atomic Number</td>
<td>Radioisotope</td>
<td>Class</td>
<td>Table 1 Occupational Values</td>
<td>Table 2 Effluent Concentrations</td>
</tr>
<tr>
<td>---------------</td>
<td>-------------</td>
<td>-------</td>
<td>-----------------------------</td>
<td>---------------------------------</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td>Col. 1 Oral Ingestion (µCi)</td>
<td>Col. 2 Inhalation (µCi/ml)</td>
</tr>
<tr>
<td>94</td>
<td>Plutonium-238</td>
<td>Bone surf</td>
<td>1E-3</td>
<td>3E-12</td>
</tr>
<tr>
<td></td>
<td></td>
<td>Bone surf</td>
<td>(1E-2)</td>
<td>-</td>
</tr>
<tr>
<td></td>
<td></td>
<td>Bone surf</td>
<td>(2E-2)</td>
<td>-</td>
</tr>
<tr>
<td>94</td>
<td>Plutonium-241</td>
<td>Y, see 239Pu</td>
<td>2E-4</td>
<td>4E-4</td>
</tr>
<tr>
<td></td>
<td></td>
<td>-</td>
<td>4E-4</td>
<td>2E-5</td>
</tr>
<tr>
<td>95</td>
<td>Americium-237</td>
<td>W, all compounds</td>
<td>8E-4</td>
<td>3E-4</td>
</tr>
<tr>
<td>95</td>
<td>Americium-237</td>
<td>Y, see 235Pu</td>
<td>3E-4</td>
<td>1E-6</td>
</tr>
<tr>
<td></td>
<td></td>
<td>Bone surf</td>
<td>(6E-2)</td>
<td>-</td>
</tr>
<tr>
<td>95</td>
<td>Americium-239</td>
<td>W, all compounds</td>
<td>5E-3</td>
<td>3E-4</td>
</tr>
<tr>
<td>95</td>
<td>Americium-240</td>
<td>W, all compounds</td>
<td>2E-3</td>
<td>3E-4</td>
</tr>
<tr>
<td>95</td>
<td>Americium-241</td>
<td>W, all compounds</td>
<td>8E-3</td>
<td>6E-3</td>
</tr>
<tr>
<td></td>
<td></td>
<td>Bone surf</td>
<td>(1E-0)</td>
<td>-</td>
</tr>
<tr>
<td>95</td>
<td>Americium-242</td>
<td>W, all compounds</td>
<td>4E-3</td>
<td>8E-4</td>
</tr>
<tr>
<td></td>
<td></td>
<td>Bone surf</td>
<td>(9E-1)</td>
<td>-</td>
</tr>
<tr>
<td>95</td>
<td>Americium-243</td>
<td>W, all compounds</td>
<td>8E-1</td>
<td>6E-3</td>
</tr>
<tr>
<td></td>
<td></td>
<td>Bone surf</td>
<td>(1E-0)</td>
<td>-</td>
</tr>
<tr>
<td>95</td>
<td>Americium-244</td>
<td>W, all compounds</td>
<td>6E-4</td>
<td>4E-3</td>
</tr>
<tr>
<td></td>
<td></td>
<td>Bone surf</td>
<td>(8E-4)</td>
<td>-</td>
</tr>
<tr>
<td>95</td>
<td>Americium-245</td>
<td>W, all compounds</td>
<td>3E-3</td>
<td>2E-2</td>
</tr>
<tr>
<td></td>
<td></td>
<td>Bone surf</td>
<td>(3E-2)</td>
<td>-</td>
</tr>
<tr>
<td>95</td>
<td>Americium-246</td>
<td>W, all compounds</td>
<td>3E-4</td>
<td>8E-4</td>
</tr>
<tr>
<td>Atomic No.</td>
<td>Radionuclide</td>
<td>Class</td>
<td>Table 1 Occupational Values</td>
<td>Table 2 Effluent Concentrations</td>
</tr>
<tr>
<td>-----------</td>
<td>------------------------</td>
<td>-------</td>
<td>-----------------------------</td>
<td>---------------------------------</td>
</tr>
<tr>
<td>95</td>
<td>Americium-243</td>
<td>W, all compounds</td>
<td></td>
<td></td>
</tr>
<tr>
<td>95</td>
<td>Americium-244</td>
<td>W, all compounds</td>
<td></td>
<td></td>
</tr>
<tr>
<td>96</td>
<td>Curium-238</td>
<td>W, all compounds</td>
<td></td>
<td></td>
</tr>
<tr>
<td>96</td>
<td>Curium-240</td>
<td>W, all compounds</td>
<td></td>
<td></td>
</tr>
<tr>
<td>96</td>
<td>Curium-241</td>
<td>W, all compounds</td>
<td></td>
<td></td>
</tr>
<tr>
<td>96</td>
<td>Curium-242</td>
<td>W, all compounds</td>
<td></td>
<td></td>
</tr>
<tr>
<td>96</td>
<td>Curium-243</td>
<td>W, all compounds</td>
<td></td>
<td></td>
</tr>
<tr>
<td>96</td>
<td>Curium-244</td>
<td>W, all compounds</td>
<td></td>
<td></td>
</tr>
<tr>
<td>96</td>
<td>Curium-245</td>
<td>W, all compounds</td>
<td></td>
<td></td>
</tr>
<tr>
<td>96</td>
<td>Curium-246</td>
<td>W, all compounds</td>
<td></td>
<td></td>
</tr>
<tr>
<td>96</td>
<td>Curium-247</td>
<td>W, all compounds</td>
<td></td>
<td></td>
</tr>
<tr>
<td>96</td>
<td>Curium-248</td>
<td>W, all compounds</td>
<td></td>
<td></td>
</tr>
<tr>
<td>96</td>
<td>Curium-249</td>
<td>W, all compounds</td>
<td></td>
<td></td>
</tr>
<tr>
<td>96</td>
<td>Curium-250</td>
<td>W, all compounds</td>
<td></td>
<td></td>
</tr>
<tr>
<td>97</td>
<td>Berkelium-245</td>
<td>W, all compounds</td>
<td></td>
<td></td>
</tr>
<tr>
<td>97</td>
<td>Berkelium-246</td>
<td>W, all compounds</td>
<td></td>
<td></td>
</tr>
<tr>
<td>97</td>
<td>Berkelium-247</td>
<td>W, all compounds</td>
<td></td>
<td></td>
</tr>
<tr>
<td>97</td>
<td>Berkelium-249</td>
<td>W, all compounds</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Atomic No.</th>
<th>Radionuclide</th>
<th>Class</th>
<th>Table 1 Occupational Values</th>
<th>Table 2 Effluent Concentrations</th>
<th>Table 3 Releases to Sewers</th>
</tr>
</thead>
<tbody>
<tr>
<td>95</td>
<td>Americium-243</td>
<td>W, all compounds</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>95</td>
<td>Americium-244</td>
<td>W, all compounds</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>96</td>
<td>Curium-238</td>
<td>W, all compounds</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>96</td>
<td>Curium-240</td>
<td>W, all compounds</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>96</td>
<td>Curium-241</td>
<td>W, all compounds</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>96</td>
<td>Curium-242</td>
<td>W, all compounds</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>96</td>
<td>Curium-243</td>
<td>W, all compounds</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>96</td>
<td>Curium-244</td>
<td>W, all compounds</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>96</td>
<td>Curium-245</td>
<td>W, all compounds</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>96</td>
<td>Curium-246</td>
<td>W, all compounds</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>96</td>
<td>Curium-247</td>
<td>W, all compounds</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>96</td>
<td>Curium-248</td>
<td>W, all compounds</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>96</td>
<td>Curium-249</td>
<td>W, all compounds</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>96</td>
<td>Curium-250</td>
<td>W, all compounds</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>97</td>
<td>Berkelium-245</td>
<td>W, all compounds</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>97</td>
<td>Berkelium-246</td>
<td>W, all compounds</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>97</td>
<td>Berkelium-247</td>
<td>W, all compounds</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>97</td>
<td>Berkelium-249</td>
<td>W, all compounds</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Atomic Number</td>
<td>Atomic Radiation Class</td>
<td>\begin{tabular}{</td>
<td>c</td>
<td>c</td>
<td>c</td>
</tr>
<tr>
<td>Atomic No.</td>
<td>Radioisotope</td>
<td>Class</td>
<td>( {\text{Table 1 Occupational Values}} )</td>
<td>( {\text{Table 2 Efficent Concentrations}} )</td>
<td>( {\text{Table 3 Releases to Sewers}} )</td>
</tr>
<tr>
<td>-----------</td>
<td>-------------</td>
<td>-------</td>
<td>---------------------------------</td>
<td>---------------------------------</td>
<td>---------------------------------</td>
</tr>
<tr>
<td>99</td>
<td>Einsteinium-254a</td>
<td>W, all compounds</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td>( 3 \times 10^{-3} )</td>
<td>( 1 \times 10^{-4} )</td>
<td>( 1 \times 10^{-3} )</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td>( 3 \times 10^{-4} )</td>
<td>( 2 \times 10^{-5} )</td>
<td>( 2 \times 10^{-4} )</td>
</tr>
<tr>
<td>99</td>
<td>Einsteinium-254</td>
<td>W, all compounds</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td>( 4 \times 10^{0} )</td>
<td>( 7 \times 10^{-2} )</td>
<td>( 2 \times 10^{-5} )</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td>( 3 \times 10^{-1} )</td>
<td>( 2 \times 10^{-2} )</td>
<td>( 4 \times 10^{-5} )</td>
</tr>
<tr>
<td>100</td>
<td>Fermium-252</td>
<td>W, all compounds</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td>( 1 \times 10^{3} )</td>
<td>( 1 \times 10^{-1} )</td>
<td>( 4 \times 10^{-5} )</td>
</tr>
<tr>
<td>100</td>
<td>Fermium-253</td>
<td>W, all compounds</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td>( 1 \times 10^{-3} )</td>
<td>( 1 \times 10^{-2} )</td>
<td>( 1 \times 10^{-5} )</td>
</tr>
<tr>
<td>100</td>
<td>Fermium-254</td>
<td>W, all compounds</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td>( 1 \times 10^{-3} )</td>
<td>( 9 \times 10^{-1} )</td>
<td>( 1 \times 10^{-4} )</td>
</tr>
<tr>
<td>100</td>
<td>Fermium-255</td>
<td>W, all compounds</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td>( 1 \times 10^{-2} )</td>
<td>( 2 \times 10^{-1} )</td>
<td>( 7 \times 10^{-5} )</td>
</tr>
<tr>
<td>100</td>
<td>Fermium-257</td>
<td>W, all compounds</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td>( 2 \times 10^{-3} )</td>
<td>( 7 \times 10^{-2} )</td>
<td>( 4 \times 10^{-5} )</td>
</tr>
<tr>
<td>101</td>
<td>Mendeleevium-257</td>
<td>W, all compounds</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td>( 8 \times 10^{-3} )</td>
<td>( 2 \times 10^{-1} )</td>
<td>( 3 \times 10^{-5} )</td>
</tr>
<tr>
<td>101</td>
<td>Mendeleevium-258</td>
<td>W, all compounds</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td>( 3 \times 10^{-3} )</td>
<td>( 2 \times 10^{-2} )</td>
<td>( 5 \times 10^{-5} )</td>
</tr>
</tbody>
</table>

- Any single radionuclide not listed above with decay mode other than alpha emission or spontaneous fission and with radioactive half-life less than 2 hours is Subversion.  
- Any single radionuclide not listed above with decay mode other than alpha emission or spontaneous fission and with radioactive half-life greater than 2 hours is Subversion.
- Any single radionuclide not listed above that decays by alpha emission or spontaneous fission, or any mixture for which either the identity or the concentration of any radionuclide in the mixture is not known.
FOOTNOTES:

1. "Submergence" means that values given are for submergence in a hemispherical semi-infinite cloud of airborne material.

2. These radionuclides have radiological half-lives of less than 2 hours. The total effective dose equivalent received during operations with these radionuclides might include a significant contribution from external exposure. The DAC values for all radionuclides, other than those designated Class "Submergence," are based upon the committed effective dose equivalent due to the intake of the radionuclide into the body and do NOT include potentially significant contributions to dose equivalent from external exposures. The license may substitute IE-7 μCi/μCi for the listed DAC to account for the submergence dose prospectively, but should use individual monitoring devices or other radiation measuring instruments that measure external exposure to demonstrate compliance with the limits. (See 10 CFR 20.1203.)

3. For soluble mixtures of U-238, U-235, and U-235 in air, chemical toxicity may be the limiting factor (see 10 CFR 20.121(a)). If the percent by weight (enrichment) of U-235 is not greater than 5, the concentration value for a 40-hour work week is 0.7 μCi/m 3 /gram per cubic meter of air average. For any enrichment, the product of the average concentration and time of exposure during a 40-hour work week shall not exceed IE-3 (SA) μCi/μCi, where SA is the specific activity of the uranium labeled. The specific activity for natural uranium is 6.7E-7 curies per gram U. The specific activity for other mixtures of U-238, U-235, and U-235, if not known, shall be:

   \[ SA = 3.6E-7 \text{ curies} / \text{gram U} \]

   \[ SA = 0.4 + 0.38 \times (\text{enrichment}) + 0.0034 \times (\text{enrichment})^2 \]

   \[ \text{IE-6} \], enrichment \( \leq 0.72 \%

   where enrichment is the percentage by weight of U-235, expressed as percent.

NOTE:

1. If the identity of each radionuclide in a mixture is known but the concentration of one or more of the radionuclides in the mixture is not known, the DAC for the mixture shall be the most restrictive DAC of any radionuclide in the mixture.

2. If the identity of each radionuclide in the mixture is not known, but it is known that certain radionuclides specified in this appendix are not present in the mixture, the inhalation ALI, DAC, and effluent and sewage concentrations for the mixture are the lowest values specified in this appendix for any radionuclide that is not known to be absent from the mixture or:

\begin{table}[h]
\centering
\begin{tabular}{|c|c|c|c|c|c|}
\hline
Radionuclide & Col. 1 & Col. 2 & Col. 3 & Table 2 Effluent Concentrations & Table 3 Releases to Sewers & Monthly Average Concentration (μCi/μCi) \\
\hline
\hline
\multicolumn{6}{|c|}{Table 1 Occupational Values} \\
\multicolumn{6}{|c|}{Table 2 Effluent Concentrations} \\
\multicolumn{6}{|c|}{Table 3 Releases to Sewers} \\
\hline
\hline
If it is known that Ac-227-D and Ca-250-W are not present & - & 7E-4 & 3E-13 & - & - & - \\
If, in addition, it is known that Sm-146-W, Sm-146-W, Sm-146-W, Sm-146-W, Sm-146-W, Sm-146-W, Sm-146-W, Sm-146-W, Sm-146-W, Sm-146-W, Sm-146-W, Sm-146-W, Sm-146-W, Sm-146-W, Sm-146-W, Sm-146-W, Sm-146-W, Sm-146-W, Sm-146-W, and Sm-146-W are not present & - & 7E-2 & 3E-11 & - & - & - \\
If, in addition, it is known that Pr-210-D, Pr-210-D, Pr-210-D, Pr-210-D, Pr-210-D, Pr-210-D, Pr-210-D, Pr-210-D, Pr-210-D, Pr-210-D, Pr-210-D, Pr-210-D, Pr-210-D, Pr-210-D, Pr-210-D, Pr-210-D, Pr-210-D, Pr-210-D, and Pr-210-D are not present & - & 7E-1 & 3E-10 & - & - & - \\
\hline
\end{tabular}
\end{table}
### Table 2: Occupational Values

<table>
<thead>
<tr>
<th>Radioisotope</th>
<th>G.I.</th>
<th>H.T.</th>
<th>D.A.C. (g/cu m)</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

### Table 2: Effluent Concentrations

<table>
<thead>
<tr>
<th>Radioisotope</th>
<th>Air</th>
<th>Water</th>
<th>Monthly Average Concentration (g/cu m)</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

### Table 3: Reliance on Others

<table>
<thead>
<tr>
<th>Radioisotope</th>
<th>Col. 1</th>
<th>Col. 2</th>
<th>Col. 3</th>
<th>Col. 1</th>
<th>Col. 2</th>
<th>Col. 3</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

---

3 If a mixture of radionuclides consists of uranium and its daughters in ore dust (10 µm particle size assumed) prior to chemical separation of the uranium from the ore, the following values may be used for the D.M. of the mixture: 6E-11 mCi of gross alpha activity per uranium-238, uranium-234, thorium-230, and radium-226 per milliliter of air; or 65 micrograms of natural uranium per cubic meter of air.

4 If the identity and concentration of each radionuclide in a mixture are known, the limiting values should be derived as follows: Determine, for each radionuclide in the mixture, the ratio between the concentration present in the mixture and the concentration otherwise established in Appendix B for the specific radionuclide when not in a mixture. The sum of such ratios for all of the radionuclides in the mixture may not exceed "1." (e.g., "unity").

Example: If radionuclides "A," "B," and "C" are present in concentrations "a," "b," and "c," and if the applicable D.A.C.s are DAC_A, DAC_B, and DAC_C respectively, then the concentrations shall be limited so that the following relationship exists:

\[
c_a \frac{DAC_A}{DAC_A} + c_b \frac{DAC_B}{DAC_B} + c_c \frac{DAC_C}{DAC_C} < 1
\]

---

organizations reporting any such transactions under subsection (a)(3) of this section.


(f) Rates

Nothing in this section shall be construed to confer upon the Secretary any authority to approve or disapprove the rates charged by any health maintenance organization.

(g) Annual financial statement

Any health maintenance organization failing to file with the Secretary the annual financial statement required in subsection (a) of this section shall be ineligible for any Federal assistance under this subchapter until such time as such statement is received by the Secretary and shall not be a qualified health maintenance organization for purposes of section 300e–9 of this title.

(h) Penalties

Whoever knowingly and willfully makes or causes to be made any false statement or representation of a material fact in any statement filed pursuant to this section shall be guilty of a felony and upon conviction thereof shall be fined not more than $25,000 or imprisoned for not more than five years, or both.


AMENDMENTS


1986—Subsec. (e). Pub. L. 99–660 struck out subsec. (e) which read as follows: “The Secretary shall file an annual report with the Congress on the operation of this section. Such report shall include—

“(1) an enumeration of standards and norms utilized to make the evaluations required under subsection (d) of this section;

“(2) an assessment of the degree of conformity or nonconformity of each health maintenance organization evaluated by the Secretary under subsection (d) of this section with such standards and norms;

“(3) what action, if any, the Secretary considers necessary under section 300e–11 of this title with respect to health maintenance organizations evaluated under subsection (d) of this section.”

1981—Subsec. (a). Pub. L. 97–35, § 948(a), (b), in par. (2) inserted reference to copy of the report, if any, filed with the Health Care Financing Administration, and in par. (3)(B) reorganized excluding provisions and, among revisions, inserted salaries paid to employees for services.

Subsec. (b)(1). Pub. L. 97–35, § 948(c), inserted “responsible for management or administration” after “employee”.

Subsec. (b)(4). Pub. L. 97–35, § 948(e), substituted “spouse, child, or parent” for “member of the immediate family”.

EFFECTIVE DATE OF 1986 AMENDMENT


SUBCHAPTER XII—SAFETY OF PUBLIC WATER SYSTEMS

PART A—DEFINITIONS

§ 300f. Definitions

For purposes of this subchapter:

(1) The term “primary drinking water regulation” means a regulation which—

(A) applies to public water systems;

(B) specifies contaminants which, in the judgment of the Administrator, may have any adverse effect on the health of persons;

(C) specifies for each such contaminant either—

(i) a maximum contaminant level, if, in the judgment of the Administrator, it is economically and technologically feasible to ascertain the level of such contaminant in water in public water systems, or

(ii) if, in the judgment of the Administrator, it is not economically or technologically feasible to so ascertain the level of such contaminant, each treatment technique known to the Administrator which leads to a reduction in the level of such contaminant sufficient to satisfy the requirements of section 300g–1 of this title; and

(D) contains criteria and procedures to assure a supply of drinking water which dependably complies with such maximum contaminant levels; including accepted methods for quality control and testing procedures to insure compliance with such levels and to insure proper operation and maintenance of the system, and requirements as to (i) the minimum quality of water which may be taken into the system and (ii) siting for new facilities for public water systems.

At any time after promulgation of a regulation referred to in this paragraph, the Administrator may add equally effective quality control and testing procedures by guidance published in the Federal Register. Such procedures shall be treated as an alternative for public water systems to the quality control and testing procedures listed in the regulation.

(2) The term “secondary drinking water regulation” means a regulation which applies to public water systems and which specifies the maximum contaminant levels which, in the judgment of the Administrator, are requisite to protect the public welfare. Such regulations may apply to any contaminant in drinking water (A) which may adversely affect the odor or appearance of such water and consequently may cause a substantial number of the persons served by the public water system providing such water to discontinue its use, or (B) which may otherwise adversely affect the public welfare. Such regulations may vary according to geographic and other circumstances.

(3) The term “maximum contaminant level” means the maximum permissible level of a contaminant in water which is delivered to any user of a public water system.

(4) PUBLIC WATER SYSTEM.—

(A) IN GENERAL.—The term “public water system” means a system for the provision to
the public of water for human consumption through pipes or other constructed conveyances, if such system has at least fifteen service connections or regularly serves at least twenty-five individuals. Such term includes (i) any collection, treatment, storage, and distribution facilities under control of the operator of such system and used primarily in connection with such system, and (ii) any collection or pretreatment storage facilities not under such control which are used primarily in connection with such system.

(B) CONNECTIONS.—

(i) In general.—For purposes of subparagraph (A), a connection to a system that delivers water by a constructed conveyance other than a pipe shall not be considered a connection, if—

(I) the water is used exclusively for purposes other than residential uses (consisting of drinking, bathing, and cooking, or other similar uses);

(II) the Administrator or the State (in the case of a State exercising primary enforcement responsibility for public water systems) determines that alternative water to achieve the equivalent level of public health protection provided by the applicable national primary drinking water regulation is provided for residential or similar uses for drinking and cooking; or

(III) the Administrator or the State (in the case of a State exercising primary enforcement responsibility for public water systems) determines that the water provided for residential or similar uses for drinking, cooking, and bathing is centrally treated or treated at the point of entry by the provider, a pass-through entity, or the user to achieve the equivalent level of protection provided by the applicable national primary drinking water regulations.

(ii) IRRIGATION DISTRICTS.—An irrigation district in existence prior to May 18, 1994, that provides primarily agricultural service through a piped water system with only incidental residential or similar use shall not be considered to be a public water system if the system or the residential or similar users of the system comply with subclause (II) or (III) of clause (i).

(C) TRANSITION PERIOD.—A water supplier that would be a public water system only as a result of modifications made to this paragraph by the Safe Drinking Water Act Amendments of 1996 shall not be considered a public water system for purposes of the Act until the date that is two years after August 6, 1996. If a water supplier does not serve 15 service connections (as defined in subparagraphs (A) and (B)) or 25 people at any time after the conclusion of the 2-year period, the water supplier shall not be considered a public water system.

(5) The term “supplier of water” means any person who owns or operates a public water system.

(6) The term “contaminant” means any physical, chemical, biological, or radiological substance or matter in water.

(7) The term “Administrator” means the Administrator of the Environmental Protection Agency.

(8) The term “Agency” means the Environmental Protection Agency.

(9) The term “Council” means the National Drinking Water Advisory Council established under section 300j–5 of this title.

(10) The term “municipality” means a city, town, or other public body created by or pursuant to State law, or an Indian Tribe.

(11) The term “Federal agency” means any department, agency, or instrumentality of the United States.

(12) The term “person” means an individual, corporation, company, association, partnership, State, municipality, or Federal agency (and includes officers, employees, and agents of any corporation, company, association, State, municipality, or Federal agency).

(13)(A) Except as provided in subparagraph (B), the term “State” includes, in addition to the several States, only the District of Columbia, Guam, the Commonwealth of Puerto Rico, the Northern Mariana Islands, the Virgin Islands, American Samoa, and the Trust Territory of the Pacific Islands.

(B) For purposes of section 300j–12 of this title, the term “State” means each of the 50 States, the District of Columbia, and the Commonwealth of Puerto Rico.

(14) The term “Indian Tribe” means any Indian tribe having a Federally recognized governing body carrying out substantial governmental duties and powers over any area. For purposes of section 300j–12 of this title, the term includes any Native village (as defined in section 1602(c) of title 43).

(15) COMMUNITY WATER SYSTEM.—The term “community water system” means a public water system that—

(A) serves at least 15 service connections used by year-round residents of the area served by the system; or

(B) regularly serves at least 25 year-round residents.

(16) NONCOMMUNITY WATER SYSTEM.—The term “noncommunity water system” means a public water system that is not a community water system.


REFERENCES IN TEXT


AMENDMENTS

referred to in this paragraph, the Administrator may add equally effective quality control and testing procedures by guidance published in the Federal Register. Such procedures shall be treated as an alternative for public water systems to the quality control and testing procedures listed in the regulation."

Par. (1)(D). Pub. L. 104-182, §101(a)(1)(A), inserted "accepted methods for before "quality control".

Par. (4). Pub. L. 104-182, §101(b)(1), designated existing provisions as subpar. (A), inserted par. and subpar. headings, redesignated former subpars. (A) and (B) as cls. (i) and (ii), respectively, substituted "water for human consumption through pipes or other constructed conveyances" for "piped water for human consumption" in first sentence, and added subpars. (B) and (C).

Par. (13). Pub. L. 104-182, §101(a)(2), designated existing provisions as subpar. (A), substituted "Except as provided in subparagraph (B), the term" for "The term", and added subpar. (B).

Par. (14). Pub. L. 104-182, §101(a)(3), inserted at end "For purposes of section 303j-12 of this title, the term includes any Native village (as defined in section 1982(c) of title 43)."


1977—Par. (12). Pub. L. 95-190 expanded definition of "person" to include Federal agency, and officers, employees, and agents of any corporation, company, etc.


Pub. L. 94-517 added par. (13).

EFFECTIVE DATE OF 1996 AMENDMENT

Section 2(b) of Pub. L. 104-182 provided that: "Except as otherwise specified in this Act [enacting sections 300g-7 to 300q-9, 300h-3, 300i-3c, and 300j-12 to 300j-18 of this title and section 1263a of Title 33, Navigation and Navigable Waters, amending this section, sections 300g-1 to 300q-6, 300h, 300h-5 to 300h-7, 300i, 300i-1, 300j to 300j-2, 300j-4 to 300j-8, 300j-11, and 300j-21 to 300j-25 of this title, sections 4701 and 4721 of Title 16, Conservation, and section 349 of Title 21, Food and Drugs, repealing section 1356i of this title, enacting provisions set out as notes under this section, sections 201, 300c-1, 300j-1, and 300j-12 of this title, section 1281 of Title 33, and section 45 of former Title 40, Public Buildings, Property, and Works, and amending provisions set out as a note under section 201 of this title] or in the amendments made by this Act, this Act and the amendments made by this Act shall take effect on the date of enactment of this Act [Aug. 6, 1996]."

SHORT TITLE

This subchapter is known as the "Safe Drinking Water Act", see note set out under section 201 of this title.

TERMINATION OF TRUST TERRITORY OF THE PACIFIC ISLANDS

For termination of Trust Territory of the Pacific Islands, see note set out preceding section 1681 of Title 48, Territories and Insular Possessions.

EFFECT OF PUBLIC LAW 104-182 ON FEDERAL WATER POLLUTION CONTROL ACT

Section 2(c) of Pub. L. 104-182 provided that: "Except for the provisions of section 302 (42 U.S.C. 300-12 note) (relating to transfers of funds), nothing in this Act [see Effective Date of 1996 Amendment above] or in any amendments made by this Act to title XIV of the Public Health Service Act [this subchapter] (commonly known as the 'Safe Drinking Water Act') or any other law shall be construed by the Administrator of the Environmental Protection Agency or the courts as affecting, modifying, expanding, changing, or altering—

"(1) the provisions of the Federal Water Pollution Control Act [33 U.S.C. 1251 et seq.];

"(2) the duties and responsibilities of the Administrator under that Act; or

"(3) the regulation or control of point or nonpoint sources of pollution discharged into waters covered by that Act."

The Administrator shall identify in the agency's annual budget all funding and full-time equivalents administering such title XIV separately from funding and staffing for the Federal Water Pollution Control Act."

CONGRESSIONAL FINDINGS

Section 3 of Pub. L. 104-182 provided that: "The Congress finds that—

"(1) safe drinking water is essential to the protection of public health;

"(2) because the requirements of the Safe Drinking Water Act (42 U.S.C. 300f et seq.) now exceed the financial and technical capacity of some public water systems, especially many small public water systems, the Federal Government needs to provide assistance to communities to help the communities meet Federal drinking water requirements;

"(3) the Federal Government commits to maintaining and improving its partnership with the States in the administration and implementation of the Safe Drinking Water Act;

"(4) States play a central role in the implementation of safe drinking water programs, and States need increased financial resources and appropriate flexibility to ensure the prompt and effective development and implementation of drinking water programs;

"(5) the existing process for the assessment and selection of additional drinking water contaminants needs to be revised and improved to ensure that there is a sound scientific basis for setting priorities in establishing drinking water regulations;

"(6) procedures for assessing the health effects of contaminants establishing drinking water standards should be revised to provide greater opportunity for public education and participation;

"(7) in considering the appropriate level of regulation for contaminants in drinking water, risk assessment, based on sound and objective science, and benefit-cost analysis are important analytical tools for improving the efficiency and effectiveness of drinking water regulations to protect human health;

"(8) more effective protection of public health requires—

"(A) a Federal commitment to set priorities that will allow scarce Federal, State, and local resources to be targeted toward the drinking water problems of greatest public health concern;

"(B) maximizing the value of the different and complementary strengths and responsibilities of the Federal and State governments in those States that have primary enforcement responsibility for the Safe Drinking Water Act; and

"(C) prevention of drinking water contamination through well-trained system operators, water systems with adequate managerial, technical, and financial capacity, and enhanced protection of source waters of public water systems;

"(9) compliance with the requirements of the Safe Drinking Water Act continues to be a concern at public water systems experiencing technical and financial limitations, and Federal, State, and local governments need more resources and more effective authority to attain the objectives of the Safe Drinking Water Act; and

"(10) consumers served by public water systems should be provided with information on the source of the water they are drinking and its quality and safety, as well as prompt notification of any violation of drinking water regulations."

GAO STUDY

“(A) ascertain the numbers and locations of individuals and households relying for their residential water needs, including drinking, bathing, and cooking (or other similar uses) on irrigation water systems, mining water systems, industrial water systems, or other water systems covered by section 1401(4)(B) of the Safe Drinking Water Act [par. (4)(B) of this section] that are not public water systems subject to the Safe Drinking Water Act [this subchapter];

“(B) determine the sources and costs and affordability (to users and systems) of water used by such populations for their residential water needs; and

“(C) review State and water system compliance with the exclusion provisions of section 1401(4)(B) of such Act.

The Comptroller General shall submit a report to the Congress within 3 years after the date of enactment of this Act [Aug. 6, 1996] containing the results of such study.”

SAFE DRINKING WATER AMENDMENTS OF 1977

RESTRICTIONS ON APPROPRIATIONS FOR RESEARCH

Pub. L. 95–190, §2(e), Nov. 16, 1977, 91 Stat. 1393, provided that: “Nothing in this Act [see Short Title of 1977 Amendment note set out under section 201 of this title] shall be construed to authorize the appropriation of any amount for research under title XIV of the Public Health Service Act [this subchapter] (relating to safe drinking water).”

SAFE DRINKING WATER AMENDMENTS OF 1977 AS NOT AFFECTING AUTHORITY OF ADMINISTRATOR WITH RESPECT TO CONTAMINANTS

Pub. L. 95–190, §3(e)(2), Nov. 16, 1977, 91 Stat. 1394, provided that: “Nothing in this Act [see Short Title of 1977 Amendment note set out under section 201 of this title] shall be construed to alter or affect the Administrator’s authority or duty under title 14 of the Public Health Service Act [this subchapter] to promulgate regulations or take other action with respect to any contaminant.”

RURAL WATER SURVEY; REPORT TO PRESIDENT AND CONGRESS; AUTHORIZATION OF APPROPRIATIONS

Section 3 of Pub. L. 93–523, as amended by Pub. L. 95–190, §§2(d), 3(d), Nov. 16, 1977, 91 Stat. 1393, 1394, directed Administrator of Environmental Protection Agency, after consultation with Secretary of Agriculture and the several States, to enter into arrangements with public or private entities to conduct a survey of quantity, quality, and availability of rural drinking water supplies, which survey was to include, but not be limited to, consideration of number of residents in each rural area who presently are being inadequately served by a public or private drinking water supply system, or by an individual home drinking water supply system, or who presently have limited or otherwise inadequate access to drinking water, or who, due to absence or inadequacy of a drinking water supply system, are exposed to an increased health hazard, and who have experienced incidents of chronic or acute illness, which may be attributed to inadequacy of a drinking water supply system. Survey to be completed within eighteen months of Dec. 16, 1974, and a final report thereon submitted, not later than six months after completion of survey, to President and to Congress.

FEDERAL COMPLIANCE WITH POLLUTION CONTROL STANDARDS

For provisions relating to the responsibility of the head of each Executive agency for compliance with applicable pollution control standards, see Ex. Ord. No. 12088, Oct. 13, 1978, 43 F.R. 47707, set out as a note under section 4321 of this title.

TERMINATION OF ADVISORY COMMITTEES

Pub. L. 93–441, §6, Jan. 4, 1974, 88 Stat. 2275, set out as a note under section 217a of this title, provided that an advisory committee established pursuant to the Public Health Service Act shall terminate at such time as may be specifically prescribed by an Act of Congress enacted after Jan. 4, 1975.

PART B—PUBLIC WATER SYSTEMS

§300g. Coverage

Subject to sections 300g–4 and 300g–5 of this title, national primary drinking water regulations under this part shall apply to each public water system in each State; except that such regulations shall not apply to a public water system—

(1) which consists only of distribution and storage facilities (and does not have any collection and treatment facilities);

(2) which obtains all of its water from, but is not owned or operated by, a public water system to which such regulations apply;

(3) which does not sell water to any person; and

(4) which is not a carrier which conveys passengers in interstate commerce.

(July 1, 1944, ch. 373, title XIV, §1411, as added Pub. L. 93–523, §2(a), Dec. 16, 1974, 88 Stat. 1662.)

§300g–1. National drinking water regulations

(a) National primary drinking water regulations; maximum contaminant level goals; simultaneous publication of regulations and goals

(1) Effective on June 19, 1986, each national interim or revised primary drinking water regulation promulgated under this section before June 19, 1986, shall be deemed to be a national primary drinking water regulation under subsection (b) of this section. No such regulation shall be required to comply with the standards set forth in subsection (b)(4) of this section unless such regulation is amended to establish a different maximum contaminant level after June 19, 1986.

(2) After June 19, 1986, each recommended maximum contaminant level published before June 19, 1986, shall be treated as a maximum contaminant level goal.

(3) Whenever a national primary drinking water regulation is proposed under subsection (b) of this section for any contaminant, the maximum contaminant level goal for such contaminant shall be proposed simultaneously. Whenever a national primary drinking water regulation is promulgated under subsection (b) of this section for any contaminant, the maximum contaminant level goal for such contaminant shall be published simultaneously.

(4) Paragraph (3) shall not apply to any recommended maximum contaminant level published before June 19, 1986.

(b) Standards

(1) IDENTIFICATION OF CONTAMINANTS FOR LISTING.—

(A) GENERAL AUTHORITY.—The Administrator shall, in accordance with the procedures established by this subsection, publish a maximum contaminant level goal and promulgate a national primary drinking water regulation for a contaminant (other than a contaminant referred to in paragraph (2) for which a national primary drinking water regulation has been
promulgated as of August 6, 1996) if the Administrator determines that—

(i) the contaminant may have an adverse effect on the health of persons;

(ii) the contaminant is known to occur or there is a substantial likelihood that the contaminant will occur in public water systems with a frequency and at levels of public health concern; and

(iii) in the sole judgment of the Administrator, regulation of such contaminant presents a meaningful opportunity for health risk reduction for persons served by public water systems.

(B) REGULATION OF UNREGULATED CONTAMINANTS.—

(i) LISTING OF CONTAMINANTS FOR CONSIDERATION.—(I) Not later than 18 months after August 6, 1996, and every 5 years thereafter, the Administrator, after consultation with the scientific community, including the Science Advisory Board, after notice and opportunity for public comment, and after considering the occurrence data base established under section 300g–1 of this title, shall publish a list of contaminants which, at the time of publication, are not subject to any proposed or promulgated national primary drinking water regulation, which are known or anticipated to occur in public water systems, and which may require regulation under this subchapter.

(II) The unregulated contaminants considered under subclause (I) shall include, but not be limited to, substances referred to in section 9601(14) of this title, and substances registered as pesticides under the Federal Insecticide, Fungicide, and Rodenticide Act [7 U.S.C. 136 et seq.].

(III) The Administrator’s decision whether or not to select an unregulated contaminant for a list under this clause shall not be subject to judicial review.

(ii) DETERMINATION TO REGULATE.—(I) Not later than 5 years after August 6, 1996, and every 5 years thereafter, the Administrator shall, after notice of the preliminary determination and opportunity for public comment, for not fewer than 5 contaminants included on the list published under clause (i), make determinations of whether or not to regulate such contaminants.

(II) A determination to regulate a contaminant shall be based on findings that the criteria of clauses (i), (ii), and (iii) of subparagraph (A) are satisfied. Such findings shall be based on the best available public health information, including the occurrence data base established under section 300g–4(g) of this title.

(III) The Administrator may make a determination to regulate a contaminant that does not appear on a list under clause (i) if the determination to regulate is made pursuant to subclause (II).

(IV) A determination under this clause not to regulate a contaminant shall be considered final agency action and subject to judicial review.

(iii) REVIEW.—Each document setting forth the determination for a contaminant under clause (ii) shall be available for public comment at such time as the determination is published.

(C) PRIORITIES.—In selecting unregulated contaminants for consideration under subparagraph (B), the Administrator shall select contaminants that present the greatest public health concern. The Administrator, in making such selection, shall take into consideration, among other factors of public health concern, the effect of such contaminants upon subgroups that comprise a meaningful portion of the general population (such as infants, children, pregnant women, the elderly, individuals with a history of serious illness, or other subpopulations) that are identifiable as being at greater risk of adverse health effects due to exposure to contaminants in drinking water than the general population.

(D) URGENT THREATS TO PUBLIC HEALTH.—The Administrator may promulgate an interim national primary drinking water regulation for a contaminant without making a determination for the contaminant under paragraph (4)(C), or completing the analysis under paragraph (3)(C), to address an urgent threat to public health as determined by the Administrator after consultation with and written response to any comments provided by the Secretary of Health and Human Services, acting through the director of the Centers for Disease Control and Prevention or the director of the National Institutes of Health. A determination for any contaminant in accordance with paragraph (4)(C) subject to an interim regulation under this subparagraph shall be issued, and a completed analysis meeting the requirements of paragraph (3)(C) shall be published, not later than 3 years after the date on which the regulation is promulgated and the regulation shall be repromulgated, or revised if appropriate, not later than 5 years after that date.

(E) REGULATION.—For each contaminant that the Administrator determines to regulate under subparagraph (B), the Administrator shall publish maximum contaminant level goals and promulgate, by rule, national primary drinking water regulations under this subsection. The Administrator shall propose the maximum contaminant level goal and national primary drinking water regulation for a contaminant not later than 24 months after the determination to regulate under subparagraph (B), and may publish such proposed regulation concurrent with the determination to regulate. The Administrator shall publish a maximum contaminant level goal and promulgate a national primary drinking water regulation within 18 months after the proposal thereof. The Administrator, by notice in the Federal Register, may extend the deadline for such promulgation for up to 9 months.

(F) HEALTH ADVISORIES AND OTHER ACTIONS.—The Administrator may publish health advisories (which are not regulations) or take other appropriate actions for contaminants not subject to any national primary drinking water regulation.

(2) SCHEDULES AND DEADLINES.—

(A) IN GENERAL.—In the case of the contaminants listed in the Advance Notice of Proposed
Rulemaking published in volume 47, Federal Register, page 9352, and in volume 48, Federal Register, page 45502, the Administrator shall publish maximum contaminant level goals and promulgate national primary drinking water regulations—

(i) not later than 1 year after June 19, 1986, for not fewer than 9 of the listed contaminants;

(ii) not later than 2 years after June 19, 1986, for not fewer than 40 of the listed contaminants; and

(iii) not later than 3 years after June 19, 1986, for the remainder of the listed contaminants.

(B) SUBSTITUTION OF CONTAMINANTS.—If the Administrator identifies a drinking water contaminant the regulation of which, in the judgment of the Administrator, is more likely to be protective of public health (taking into account the schedule for regulation under subparagraph (A)) than a contaminant referred to in subparagraph (A), the Administrator may publish a maximum contaminant level goal and promulgate a national primary drinking water regulation for the identified contaminant in lieu of regulating the contaminant referred to in subparagraph (A). Substitutions may be made for not more than 7 contaminants referred to in subparagraph (A). Regulation of a contaminant identified under this subparagraph shall be in accordance with the schedule applicable to the contaminant for which the substitution is made.

(C) DISINFECTION BYPRODUCTS.—The Administrator shall promulgate an Interim Enhanced Surface Water Treatment Rule, a Stage I Disinfectants and Disinfection Byproducts Rule, and a Stage II Disinfectants and Disinfection Byproducts Rule in accordance with the schedule published in volume 59, Federal Register, page 6361 (February 10, 1994), in table III.13 of the proposed Information Collection Rule. If a delay occurs with respect to the promulgation of any rule in the schedule referred to in this subparagraph, all subsequent rules shall be completed as expeditiously as practicable but no later than a revised date that reflects the interval or intervals for the rules in the schedule.

(3) RISK ASSESSMENT, MANAGEMENT, AND COMMUNICATION.

(A) USE OF SCIENCE IN DECISIONMAKING.—In carrying out this section, and, to the degree that an Agency action is based on science, the Administrator shall use—

(i) the best available, peer-reviewed science and supporting studies conducted in accordance with sound and objective scientific practices; and

(ii) data collected by accepted methods or best available methods (if the reliability of the method and the nature of the decision justifies use of the data).

(B) PUBLIC INFORMATION.—In carrying out this section, the Administrator shall ensure that the presentation of information on public health effects is comprehensive, informative, and understandable. The Administrator shall, in a document made available to the public in support of a regulation promulgated under this section, specify, to the extent practicable—

(i) each population addressed by any estimate of public health effects;

(ii) the expected risk or central estimate of risk for the specific populations;

(iii) each appropriate upper-bound or lower-bound estimate of risk;

(iv) each significant uncertainty identified in the process of the assessment of public health effects and studies that would assist in resolving the uncertainty; and

(v) peer-reviewed studies known to the Administrator that support, are directly relevant to, or fail to support any estimate of public health effects and the methodology used to reconcile inconsistencies in the scientific data.

(C) HEALTH RISK REDUCTION AND COST ANALYSIS.—

(i) MAXIMUM CONTAMINANT LEVELS.—When proposing any national primary drinking water regulation that includes a maximum contaminant level, the Administrator shall, with respect to a maximum contaminant level that is being considered in accordance with paragraph (4) and each alternative maximum contaminant level that is being considered pursuant to paragraph (6)(A), publish, seek public comment on, and use for the purposes of paragraphs (4), (5), and (6) an analysis of each of the following:

(I) Quantifiable and nonquantifiable health risk reduction benefits for which there is a factual basis in the rulemaking record to conclude that such benefits are likely to occur as the result of treatment to comply with each level.

(II) Quantifiable and nonquantifiable health risk reduction benefits for which there is a factual basis in the rulemaking record to conclude that such benefits are likely to occur from reductions in co-occurring contaminants that may be attributed solely to compliance with the maximum contaminant level, excluding benefits resulting from compliance with other proposed or promulgated regulations.

(III) Quantifiable and nonquantifiable costs for which there is a factual basis in the rulemaking record to conclude that such costs are likely to occur solely as a result of compliance with the maximum contaminant level, including monitoring, treatment, and other costs and excluding costs resulting from compliance with other proposed or promulgated regulations.

(IV) The incremental costs and benefits associated with each alternative maximum contaminant level considered.

(V) The effects of the contaminant on the general population and on groups within the general population such as infants, children, pregnant women, the elderly, individuals with a history of serious illness, or other subpopulations that are identified as likely to be at greater risk of adverse health effects due to exposure to contami-
§ 300g–1

(4) When proposing a national primary drinking water regulation which includes a treatment technique, the Administrator shall publish and seek public comment on an analysis of the health risk reduction benefits and costs likely to be experienced as the result of compliance with the treatment technique and alternative treatment techniques that are being considered, taking into account, as appropriate, the factors described in clause (i).

(ii) TREATMENT TECHNIQUES.—When proposing a national primary drinking water regulation in accordance with paragraph (7)(A), the Administrator shall publish and seek public comment on an analysis of the health risk reduction benefits and costs likely to be experienced as the result of compliance with the treatment technique and alternative treatment techniques that are being considered, taking into account, as appropriate, the factors described in clause (i).

(iii) APPROACHES TO MEASURE AND VALUE BENEFITS.—The Administrator may identify valid approaches for the measurement and valuation of benefits under this subparagraph, including approaches to identify consumer willingness to pay for reductions in health risks from drinking water contaminants.

(iv) AUTHORIZATION.—There are authorized to be appropriated to the Administrator, acting through the Office of Ground Water and Drinking Water, to conduct studies, assessments, and analyses in support of regulations or the development of methods, $35,000,000 for each of fiscal years 1996 through 2003.

(4) GOALS AND STANDARDS.—

(A) MAXIMUM CONTAMINANT LEVEL GOALS.—Each maximum contaminant level goal established under this subsection shall be set at the level at which no known or anticipated adverse effects on the health of persons result and which allows an adequate margin of safety.

(B) MAXIMUM CONTAMINANT LEVELS.—Except as provided in paragraphs (5) and (6), each national primary drinking water regulation for a contaminant for which a maximum contaminant level goal is established under this subsection shall specify a maximum contaminant level for such contaminant which is as close as practicable to the maximum contaminant level goal as is feasible.

(C) DETERMINATION.—At the time the Administrator proposes a national primary drinking water regulation under this paragraph, the Administrator shall publish a determination as required under this subsection, the term “feasible” means feasible with the use of the best technology, treatment techniques and other means which the Administrator finds, after examination for efficacy under field conditions and not solely under laboratory conditions, are available (taking cost into consideration). For the purpose of this paragraph, granular activated carbon is feasible for the control of synthetic organic chemicals, and any technology, treatment technique, or other means found to be the best available for the control of synthetic organic chemicals must be at least as effective in controlling synthetic organic chemicals as granular activated carbon.

(E) FEASIBLE TECHNOLOGIES.—

(i) IN GENERAL.—Each national primary drinking water regulation which establishes a maximum contaminant level shall list the technology, treatment techniques, and other means which the Administrator finds to be feasible for purposes of meeting such maximum contaminant level, but a regulation under this subsection shall not require that any specified technology, treatment technique, or other means be used for purposes of meeting such maximum contaminant level.

(ii) LIST OF TECHNOLOGIES FOR SMALL SYSTEMS.—The Administrator shall include in the list any technology, treatment technique, or other means that is affordable, as determined by the Administrator in consultation with the States, for small public water systems serving:

(I) a population of 10,000 or fewer but more than 3,300;

(II) a population of 3,300 or fewer but more than 500; and

(iii) a population of 500 or fewer but more than 25;

and that achieves compliance with the maximum contaminant level or treatment technique, including packaged or modular systems and point-of-entry or point-of-use treatment units. Point-of-entry and point-of-use treatment units shall be owned, controlled and maintained by the public water system or by a person under contract with the public water system to ensure proper operation and maintenance and compliance with the maximum contaminant level or treatment technique and equipped with mechanical warnings to ensure that customers are automatically notified of operational problems. The Administrator shall not include in the list any point-of-use treatment technology, treatment technique, or other means to achieve compliance with a maximum contaminant level or treatment technique requirement for a microbial contaminant (or an indicator of a microbial contaminant). If the American National Standards Institute has issued product standards applicable to a specific type of point-of-entry or point-of-use treatment unit, individual units of that type may be accepted for compliance with a maximum contaminant level or treatment technique requirement only if they are independently certified in accordance with such standards. In listing any technology, treatment technique, or other means pursuant to this clause, the Administrator shall consider the quality of the source water to be treated.

(iii) LIST OF TECHNOLOGIES THAT ACHIEVE COMPLIANCE.—Except as provided in clause
that the benefits of a maximum contaminant level or treatment procedure for each category of public water systems described in subclauses (I), (II), and (III) of clause (ii) for each national primary drinking water regulation promulgated prior to June 19, 1986.

(iv) ADDITIONAL TECHNOLOGIES.—The Administrator may, at any time after a national primary drinking water regulation has been promulgated, supplement the list of technologies describing additional or new or innovative treatment technologies that meet the requirements of this paragraph for categories of small public water systems described in subclauses (I), (II), and (III) of clause (ii) that are subject to the regulation.

(v) TECHNOLOGIES THAT MEET SURFACE WATER TREATMENT RULE.—Within one year after August 6, 1996, the Administrator shall list technologies that meet the Surface Water Treatment Rule for each category of public water systems described in subclauses (I), (II), and (III) of clause (ii).

(5) ADDITIONAL HEALTH RISK CONSIDERATIONS.—

(A) IN GENERAL.—Notwithstanding paragraph (4), the Administrator may establish a maximum contaminant level for a contaminant at a level other than the feasible level, if the technology, treatment techniques, and other means used to determine the feasible level would result in an increase in the health risk from drinking water by—

(i) increasing the concentration of other contaminants in drinking water; or

(ii) interfering with the efficacy of drinking water treatment techniques or processes that are used to comply with other national primary drinking water regulations.

(B) ESTABLISHMENT OF LEVEL.—If the Administrator establishes a maximum contaminant level or levels or requires the use of treatment techniques for any contaminant or contaminants pursuant to the authority of this paragraph—

(i) the level or levels or treatment techniques shall minimize the overall risk of adverse health effects by balancing the risk from the contaminant and the risk from other contaminants the concentrations of which may be affected by the use of a treatment technique or process that would be employed to attain the maximum contaminant level or levels; and

(ii) the combination of technology, treatment techniques, or other means required to meet the level or levels shall not be more stringent than is feasible (as defined in paragraph (4)(D)).

(6) ADDITIONAL HEALTH RISK REDUCTION AND COST CONSIDERATIONS.—

(A) IN GENERAL.—Notwithstanding paragraph (4), if the Administrator determines based on an analysis conducted under paragraph (3)(C) that the benefits of a maximum contaminant level promulgated in accordance with paragraph (4) would not justify the costs of complying with the level, the Administrator may, after notice and opportunity for public comment, promulgate a maximum contaminant level for the contaminant that maximizes health risk reduction benefits at a cost that is justified by the benefits.

(B) EXCEPTION.—The Administrator shall not use the authority of this paragraph to promulgate a maximum contaminant level for a contaminant, if the benefits of compliance with a national primary drinking water regulation for the contaminant that would be promulgated in accordance with paragraph (4) experienced by—

(i) persons served by large public water systems; and

(ii) persons served by such other systems as are unlikely, based on information provided by the States, to receive a variance under section 300g–4(e) of this title (relating to small system variances); or

would justify the costs to the systems of complying with the regulation. This subparagraph shall not apply if the contaminant is found almost exclusively in small systems eligible under section 300g–4(e) of this title for a small system variance.

(C) DISINFECTANTS AND DISINFECTION BYPRODUCTS.—The Administrator may not use the authority of this paragraph to establish a maximum contaminant level in a Stage I or Stage II national primary drinking water regulation (as described in paragraph (2)(C)) for contaminants that are disinfectants or disinfection byproducts, or to establish a maximum contaminant level or treatment technique requirement for the control of cryptosporidium. The authority of this paragraph may be used to establish regulations for the use of disinfection by systems relying on ground water sources as required by paragraph (8).

(D) JUDICIAL REVIEW.—A determination by the Administrator that the benefits of a maximum contaminant level or treatment requirement justify or do not justify the costs of complying with the level shall be reviewed by the court pursuant to section 300j–7 of this title, only as part of a review of a final national primary drinking water regulation that has been promulgated based on the determination and shall not be set aside by the court under that section unless the court finds that the determination is arbitrary and capricious.

(7)(A) The Administrator is authorized to promulgate a national primary drinking water regulation that requires the use of a treatment technique in lieu of establishing a maximum contaminant level, if the Administrator makes a finding that it is not economically or technologically feasible to ascertain the level of the contaminant. In such case, the Administrator shall identify those treatment techniques which, in the Administrator’s judgment, would prevent known or anticipated adverse effects on the health of persons to the extent feasible. Such regulations shall specify each treatment technique known to the Administrator which meets the requirements of this paragraph, but the Administrator may grant a variance from any specified treatment technique in accordance with section 300g–4(a)(3) of this title.
(B) Any schedule referred to in this subsection for the promulgation of a national primary drinking water regulation for any contaminant shall apply in the same manner if the regulation requires a treatment technique in lieu of establishing a maximum contaminant level.

(C)(i) Not later than 18 months after June 19, 1986, the Administrator shall propose and promulgate national primary drinking water regulations specifying criteria under which filtration (including coagulation and sedimentation, as appropriate) is required as a treatment technique for public water systems supplied by surface water sources. In promulgating such rules, the Administrator shall consider the quality of source waters, protection afforded by watershed management, treatment practices (such as disinfection and length of water storage) and other factors relevant to protection of health.

(ii) In lieu of the provisions of section 300g-4 of this title the Administrator shall specify procedures by which the State determines which public water systems within its jurisdiction shall adopt filtration under the criteria of clause (i). The State may require the public water system to provide studies or other information to assist in this determination. The procedures shall provide notice and opportunity for public hearing on this determination. If the State determines that filtration is required, the State shall prescribe a schedule for compliance by the public water system with the filtration requirement. A schedule shall require compliance within 18 months of a determination made under clause (iii).

(iii) Within 18 months from the time that the Administrator establishes the criteria and procedures under this subparagraph, a State with primary enforcement responsibility shall adopt any necessary regulations to implement this subparagraph. Within 12 months of adoption of such regulations the State shall make determinations regarding filtration for all the public water systems within its jurisdiction supplied by surface waters.

(iv) If a State does not have primary enforcement responsibility for public water systems, the Administrator shall have the authority to make the determination in clause (ii) in such State as the State would have under that clause. Any filtration requirement or schedule under this subparagraph shall be treated as if it were a requirement of a national primary drinking water regulation.

(v) As an additional alternative to the regulations promulgated pursuant to clauses (i) and (iii), including the criteria for avoiding filtration contained in 40 CFR 141.71, a State exercising primary enforcement responsibility for public water systems may, on a case-by-case basis, and after notice and opportunity for public comment, establish treatment requirements as an alternative to filtration in the case of systems having uninhabited, undeveloped watersheds in consolidated ownership, and having control over access to, and activities in, those watersheds. If the State determines (and the Administrator concurs) that the quality of the source water and the alternative treatment requirements established by the State ensure greater removal or inactivation efficiencies of pathogenic organisms for which national primary drinking water regulations have been promulgated or that are of public health concern than would be achieved by the combination of filtration and chlorine disinfection (in compliance with this section).

(8) DISINFECTION.—At any time after the end of the 3-year period that begins on August 6, 1996, but not later than the date on which the Administrator promulgates a Stage II rulemaking for disinfectants and disinfection byproducts (as described in paragraph (2)(C)), the Administrator shall also promulgate national primary drinking water regulations requiring disinfection as a treatment technique for all public water systems, including surface water systems and, as necessary, ground water systems. After consultation with the States, the Administrator shall (as part of the regulations) promulgate criteria that the Administrator, or a State that has primary enforcement responsibility under section 300g-2 of this title, shall apply to determine whether disinfection shall be required as a treatment technique for any public water system served by ground water. The Administrator shall simultaneously promulgate a rule specifying criteria that will be used by the Administrator (or delegated State authorities) to grant variances from this requirement according to the provisions of sections 300g-4(a)(1)(B) and 300g-4(a)(3) of this title. In implementing section 300j-1(e) of this title the Administrator or the delegated State authority shall, where appropriate, give special consideration to providing technical assistance to small public water systems in complying with the regulations promulgated under this paragraph.

(9) REVIEW AND REVISION.—The Administrator shall, not less often than every 6 years, review and revise, as appropriate, each national primary drinking water regulation promulgated under this subchapter. Any revision of a national primary drinking water regulation shall be promulgated in accordance with this section, except that each revision shall maintain, or provide for greater, protection of the health of persons.

(10) EFFECTIVE DATE.—A national primary drinking water regulation promulgated under this section (and any amendment thereto) shall take effect on the date that is 3 years after the date on which the regulation is promulgated unless the Administrator determines that an earlier date is practicable, except that the Administrator, or a State (in the case of an individual system), may allow up to 2 additional years to comply with a maximum contaminant level or treatment technique if the Administrator or State (in the case of an individual system) determines that additional time is necessary for capital improvements.

(11) No national primary drinking water regulation may require the addition of any substance for preventive health care purposes unrelated to contamination of drinking water.

(12) CERTAIN CONTAMINANTS.—

(A) ARSENIC.—

(i) SCHEDULE AND STANDARD.—Notwithstanding the deadlines set forth in paragraph (1), the Administrator shall promulgate a national primary drinking water regulation
for arsenic pursuant to this subsection, in accordance with the schedule established by this paragraph.

(ii) STUDY PLAN.—Not later than 180 days after August 6, 1996, the Administrator shall develop a comprehensive plan for study in support of drinking water rulemaking to reduce the uncertainty in assessing health risks associated with exposure to low levels of arsenic. In conducting such study, the Administrator shall consult with the National Academy of Sciences, other Federal agencies, and interested public and private entities.

(iii) COOPERATIVE AGREEMENTS.—In carrying out the study plan, the Administrator may enter into cooperative agreements with other Federal agencies, State and local governments, and other interested public and private entities.

(iv) PROPOSED REGULATIONS.—The Administrator shall propose a national primary drinking water regulation for arsenic not later than January 1, 2000.

(v) FINAL REGULATIONS.—Not later than January 1, 2001, after notice and opportunity for public comment, the Administrator shall promulgate a national primary drinking water regulation for arsenic.

(vi) AUTHORIZATION.—There are authorized to be appropriated $2,500,000 for each of fiscal years 1997 through 2000 for the studies required by this paragraph.

(B) SULFATE.—

(i) ADDITIONAL STUDY.—Prior to promulgating a national primary drinking water regulation for sulfate, the Administrator and the Director of the Centers for Disease Control and Prevention shall jointly conduct an additional study to establish a reliable dose-response relationship for the adverse human health effects that may result from exposure to sulfate in drinking water, including the health effects that may be experienced by groups within the general population (including infants and travelers) that are potentially at greater risk of adverse health effects as the result of such exposure. The study shall be conducted in consultation with interested States, shall be based on the best available, peer-reviewed science and supporting studies conducted in accordance with sound and objective scientific practices, and shall be completed not later than 30 months after August 6, 1996.

(ii) DETERMINATION.—The Administrator shall include sulfate among the 5 or more contaminants for which a determination is made pursuant to paragraph (3)(B) not later than 5 years after August 6, 1996.

(iii) PROPOSED AND FINAL RULE.—Notwithstanding the deadlines set forth in paragraph (2), the Administrator may, pursuant to the authorities of this subsection and after notice and opportunity for public comment, promulgate a final national primary drinking water regulation for sulfate. Any such regulation shall include requirements for public notification and options for the provision of alternative water supplies to populations at risk as a means of complying with the regulation in lieu of a best available treatment technology or other means.

(13) RADON IN DRINKING WATER.—

(A) NATIONAL PRIMARY DRINKING WATER REGULATION.—Notwithstanding paragraph (2), the Administrator shall withdraw any national primary drinking water regulation for radon proposed prior to August 6, 1996, and shall propose and promulgate a regulation for radon under this section, as amended by the Safe Drinking Water Act Amendments of 1996.

(B) RISK ASSESSMENT AND STUDIES.—

(i) ASSESSMENT BY NAS.—Prior to proposing a national primary drinking water regulation for radon, the Administrator shall arrange for the National Academy of Sciences to prepare a risk assessment for radon in drinking water using the best available science in accordance with the requirements of paragraph (3). The risk assessment shall consider each of the risks associated with exposure to radon from drinking water and consider studies on the health effects of radon at levels and under conditions likely to be experienced through residential exposure. The risk assessment shall be peer-reviewed.

(ii) STUDY OF OTHER MEASURES.—The Administrator shall arrange for the National Academy of Sciences to prepare an assessment of the health risk reduction benefits associated with various mitigation measures to reduce radon levels in indoor air. The assessment may be conducted as part of the risk assessment authorized by clause (i) and shall be used by the Administrator to prepare the guidance and approve State programs under subparagraph (G).

(iii) OTHER ORGANIZATION.—If the National Academy of Sciences declines to prepare the risk assessment or studies required by this subparagraph, the Administrator shall enter into a contract or cooperative agreement with another independent, scientific organization to prepare such assessments or studies.

(C) HEALTH RISK REDUCTION AND COST ANALYSIS.—Not later than 30 months after August 6, 1996, the Administrator shall publish, and seek public comment on, a health risk reduction and cost analysis meeting the requirements of paragraph (3)(C) for potential maximum contaminant levels that are being considered for radon in drinking water. The Administrator shall include a response to all significant public comments received on the analysis with the preamble for the proposed rule published under subparagraph (D).

(D) PROPOSED REGULATION.—Not later than 36 months after August 6, 1996, the Administrator shall propose a maximum contaminant level goal and a national primary drinking water regulation for radon pursuant to this section.

(E) FINAL REGULATION.—Not later than 12 months after the date of the proposal under subparagraph (D), the Administrator shall publish a maximum contaminant level goal and promulgate a national primary drinking water regulation for radon pursuant to this
section based on the risk assessment prepared pursuant to subparagraph (B) and the health risk reduction and cost analysis published pursuant to subparagraph (C). In considering the risk assessment and the health risk reduction and cost analysis in connection with the promulgation of such a standard, the Administrator shall take into account the costs and benefits of control programs for radon from other sources.

(F) ALTERNATIVE MAXIMUM CONTAMINANT LEVEL.—If the maximum contaminant level for radon in drinking water promulgated pursuant to subparagraph (E) is more stringent than necessary to reduce the contribution to the national average concentration of radon in outdoor air, the Administrator shall, simultaneously with the promulgation of such level, promulgate an alternative maximum contaminant level for radon that would result in a contribution of radon from drinking water to radon levels in indoor air equivalent to the national average concentration of radon in outdoor air. If the Administrator promulgates an alternative maximum contaminant level under this subparagraph, the Administrator shall, after notice and opportunity for public comment and in consultation with the States, publish guidelines for State programs, including criteria for multimedia measures to mitigate radon levels in indoor air, to be used by the States in preparing programs under subparagraph (G). The guidelines shall take into account data from existing radon mitigation programs and the assessment of mitigation measures prepared under subparagraph (B).

(G) MULTIMEDIA RADON MITIGATION PROGRAMS.—

(i) In general.—A State may develop and submit a multimedia program to mitigate radon levels in indoor air for approval by the Administrator under this subparagraph. If, after notice and the opportunity for public comment, such program is approved by the Administrator, public water systems in the State may comply with the alternative maximum contaminant level promulgated under subparagraph (F) in lieu of the maximum contaminant level in the national primary drinking water regulation promulgated pursuant to this section, the Administrator promulgates a national primary drinking water regulation promulgated under subparagraph (E).

(ii) ELEMENTS OF PROGRAMS.—State programs may rely on a variety of mitigation measures including public education, testing, training, technical assistance, remediation grant and loan or incentive programs, or other regulatory or nonregulatory measures. The effectiveness of elements in State programs shall be evaluated by the Administrator based on the assessment prepared by the National Academy of Sciences under subparagraph (B) and the guidelines published by the Administrator under subparagraph (F).

(iii) APPROVAL.—The Administrator shall approve a State program submitted under this paragraph if the health risk reduction benefits that would be achieved if each public water system in the State complied with the maximum contaminant level promulgated under subparagraph (E). The Administrator shall approve or disapprove a program submitted under this paragraph within 180 days of receipt. A program that is not disapproved during such period shall be deemed approved. A program that is disapproved may be modified to address the objections of the Administrator and be resubmitted for approval.

(iv) REVIEW.—The Administrator shall periodically, but not less often than every 5 years, review each multimedia mitigation program approved under this subparagraph to determine whether it continues to meet the requirements of clause (iii) and shall, after written notice to the State and an opportunity for the State to correct any deficiency in the program, withdraw approval of programs that no longer comply with such requirements.

(v) EXTENSION.—If, within 90 days after the promulgation of an alternative maximum contaminant level under subparagraph (F), the Governor of a State submits a letter to the Administrator committing to develop a multimedia mitigation program under this subparagraph, the effective date of the national primary drinking water regulation for radon in the State that would be applicable under paragraph (10) shall be extended for a period of 18 months.

(vi) LOCAL PROGRAMS.—In the event that a State chooses not to submit a multimedia mitigation program for approval under this subparagraph or has submitted a program that has been disapproved, any public water system in the State may submit a program for approval by the Administrator according to the same criteria, conditions, and approval process that would apply to a State program. The Administrator shall approve a multimedia mitigation program if the health risk reduction benefits expected to be achieved by the program are equal to or greater than the health risk reduction benefits that would result from compliance by the public water system with the maximum contaminant level for radon promulgated under subparagraph (E).

(14) RECYCLING OF FILTER BACKWASH.—The Administrator shall promulgate a regulation to govern the recycling of filter backwash water within the treatment process of a public water system. The Administrator shall promulgate such regulation not later than 4 years after August 6, 1996, unless such recycling has been addressed by the Administrator's Enhanced Surface Water Treatment Rule prior to such date.

(15) VARIANCE TECHNOLOGIES.—

(A) IN GENERAL.—At the same time as the Administrator promulgates a national primary drinking water regulation for a contaminant pursuant to this section, the Administrator shall issue guidance or regulations describing the best treatment technologies, treatment techniques, or other means (referred to in this paragraph as “variance technology”) for the contaminant that the Admin-
istrator finds, after examination for efficacy under field conditions and not solely under laboratory conditions, are available and affordable, as determined by the Administrator in consultation with the States, for public water systems of varying size, considering the quality of the source water to be treated. The Administrator shall identify such variance technologies for public water systems serving—

(i) a population of 10,000 or fewer but more than 3,300;
(ii) a population of 3,300 or fewer but more than 500; and
(iii) a population of 500 or fewer but more than 25.

if, considering the quality of the source water to be treated, no treatment technology is listed for public water systems of that size under paragraph (4)(E). Variance technologies identified by the Administrator pursuant to this paragraph may not achieve compliance with the maximum contaminant level or treatment technique requirement of such regulation, but shall achieve the maximum reduction or inactivation efficiency that is affordable considering the size of the system and the quality of the source water. The guidance or regulations shall not require the use of a technology from a specific manufacturer or brand.

(B) LIMITATION.—The Administrator shall not identify any variance technology under this paragraph, unless the Administrator has determined, considering the quality of the source water to be treated and the expected useful life of the technology, that the variance technology is protective of public health.

(C) ADDITIONAL INFORMATION.—The Administrator shall include in the guidance or regulations identifying variance technologies under this paragraph any assumptions supporting the public health determination referred to in subparagraph (B), where such assumptions concern the public water system to which the technology may be applied, or its source waters. The Administrator shall provide any assumptions used in determining affordability, taking into consideration the number of persons served by such systems. The Administrator shall provide as much reliable information as practicable on performance, effectiveness, limitations, costs, and other relevant factors including the applicability of variance technology to waters from surface and groundwater sources.

(D) REGULATIONS AND GUIDANCE.—Not later than 2 years after August 6, 1996, and after consultation with the States, the Administrator shall issue guidance or regulations under subparagraph (A) for each national primary drinking water regulation promulgated prior to August 6, 1996, for which a variance may be granted under section 300g–4(e) of this title. The Administrator may, at any time after a national primary drinking water regulation has been promulgated, issue guidance or regulations describing additional variance technologies. The Administrator shall, not less often than every 7 years, or upon receipt of a petition supported by substantial information, review variance technologies identified under this paragraph. The Administrator shall issue revised guidance or regulations if new or innovative variance technologies become available that meet the requirements of this paragraph and achieve an equal or greater reduction or inactivation efficiency than the variance technologies previously identified under this subparagraph. No public water system shall be required to replace a variance technology during the useful life of the technology for the sole reason that a more efficient variance technology has been listed under this subparagraph.

(c) Secondary regulations; publication of proposed regulations; promulgation; amendments

The Administrator shall publish proposed national secondary drinking water regulations within 270 days after December 16, 1974. Within 90 days after publication of any such regulation, he shall promulgate such regulation with such modifications as he deems appropriate. Regulations under this subsection may be amended from time to time.

(d) Regulations; public hearings; administrative consultations

Regulations under this section shall be prescribed in accordance with section 553 of title 5 (relating to rulemaking), except that the Administrator shall provide opportunity for public hearing prior to promulgation of such regulations. In proposing and promulgating regulations under this section, the Administrator shall consult with the Secretary and the National Drinking Water Advisory Council.

(e) Science Advisory Board comments

The Administrator shall request comments from the Science Advisory Board (established under the Environmental Research, Development, and Demonstration Act of 1978) prior to proposal of a maximum contaminant level goal and national primary drinking water regulation. The Board shall respond, as it deems appropriate, within the time period applicable for promulgation of the national primary drinking water standard concerned. This subsection shall, under no circumstances, be used to delay final promulgation of any national primary drinking water standard.

(3) The Safe Drinking Water Act Amendments of 1996, referred to in subsec. (b)(13)(A), is Pub. L. 104–182, Aug. 6,
§ 300g–1  TITLES 42—THE PUBLIC HEALTH AND WELFARE  Page 976


AMENDMENTS

1996—Subsec. (a)(3). Pub. L. 104–182, § 102(c)(2), struck out “paragraph (1), (2), or (3) of” before “subsection (b) in two places.

Subsec. (b). Pub. L. 104–182, § 102(a), inserted heading.

Subsec. (b)(1). Pub. L. 104–182, § 102(a), added paras. (12) and (13) and struck out former par. (11) inserted subpar. (C) and designated subpar. (B) as subpar. (A) and subpar. (A) as subpar. (B), redesignated subpars. (D) and (E), respectively, of subsec. (a) generally. Prior to amendment, subsec. (a) read as follows:

“(1) The Administrator shall publish proposed national interim primary drinking water regulations within 90 days after December 16, 1974. Within 180 days after December 16, 1974, he shall promulgate such regulations with such modifications as he deems appropriate. Regulations under this paragraph may be amended from time to time.

“(2) National interim primary drinking water regulations promulgated under paragraph (1) shall protect health to the extent feasible, using technology, treatment techniques, and other means permit greater protection of the health of persons, but in any event such regulations shall be reviewed at least once every 3 years. Such review shall include an analysis of innovations or changes in technology, treatment techniques or other activities that have occurred over the previous 3-year period and that may provide for greater protection of the health of persons. The findings of such review shall be published in the Federal Register. If, after opportunity for public comment, the Administrator concludes that the technology, treatment techniques, or other means resulting from such innovations or changes are not feasible within the meaning of paragraph (5), an explanation of such conclusion shall be published in the Federal Register.

Subsec. (b)(10). Pub. L. 104–182, § 110, amended par. (10) generally. Prior to amendment, par. (10) read as follows: “National primary drinking water regulations promulgated under this subsection (and amendments thereto) shall take effect eighteen months after the date of their promulgation. Regulations under subsection (a) of this section shall be superseded by regulations under this subsection to the extent provided by the regulations under this subsection.”


1986—Subsec. (a). Pub. L. 99–339, § 101(a), substituted sec. (a) generally. Prior to amendment, subsec. (a) read as follows:

“(1) The Administrator shall publish proposed national interim primary drinking water regulations within 90 days after December 16, 1974. Within 180 days after December 16, 1974, he shall promulgate such regulations with such modifications as he deems appropriate. Regulations under this paragraph may be amended from time to time.

“(2) National interim primary drinking water regulations promulgated under paragraph (1) shall protect health to the extent feasible, using technology, treatment techniques, and other means, which the Administrator determines are generally available (taking costs into consideration) on December 16, 1974.

“(3) The interim primary regulations first promulgated under paragraph (1) shall take effect eighteen months after the date of their promulgation.”

Subsec. (b)(1). Pub. L. 99–339, § 101(b), substituted provisions establishing standard setting schedules and deadlines for provisions relating to establishment of maximum contaminant levels and a list of contaminants with adverse effect but not yet determined.

Subsec. (b)(2). Pub. L. 99–339, § 101(b), substituted provisions authorizing the Administrator to substitute contaminants for those referred to in par. (1) and to supply a list of the contaminants proposed for inclusion, with the decision of the Administrator to regulate such contaminant not subject to judicial review, for provisions which authorized the Administrator to publish in the Federal Register proposed revised national interim primary drinking water regulations and 180 days after the date of such proposed regulations to promulgate such revised regulations with modification as deemed appropriate.

Subsec. (b)(3). Pub. L. 99–339, § 101(b), substituted provisions directing the Administrator to publish maximum contaminant level goals and promulgate national primary drinking water regulations for contaminants other than specified in par. (1) or (2), which may have an adverse effect on health and are known or anticipated to occur in public water systems; to establish an advisory working group to aid in establishing a list of such contaminants, and to publish, within a specified time, both proposed and final goals and regulations for water regulations for contaminants, other than those referred to in pars. (1) or (2), which may have an adverse effect on human health and are known to occur in public water systems.

Subsec. (b)(4). Pub. L. 104–182, § 104(a)(1), designated first sentence as subpar. (A), inserted par. and subpar. (A) headings, designated second sentence as subpar. (B), inserted subpar. (B) heading, substituted “Except as provided in paragraphs (5) and (6), each national” for “Each national” and specified a maximum contaminant level for “specify a maximum level”, and added subpar. (C).

Subsec. (b)(4)(D). Pub. L. 104–182, § 104(a)(2), (3), redesignated par. (5) as subpar. (D) of par. (4), inserted subpar. heading, and substituted “this paragraph” for “paragraph (4)”.


Subsec. (b)(5). Pub. L. 104–182, § 104(a)(6), added par. (5) and (6). For provisions parts (5) and (6) redesignated subpars. (D) and (E)(1), respectively, of par. (4).


Subsec. (b)(8). Pub. L. 104–182, § 501(a)(2), substituted “section (a) of this section shall be superseded by regulations promulgated under this subsection” for “subsection (a) of this section shall be superseded by regulations promulgated under this subsection (and amendments thereto)”.

Subsec. (b)(9). Pub. L. 104–182, § 107, inserted heading, realigned margins, and substituted “At any time after the end of the 3-year period that begins on August 6, 1996, but not later than the date on which the Administrator promulgates a Stage II rulemaking for disinfectants and disinfection byproducts (as described in paragraph (2)(C)(ii) of this section) and to promulgate criteria that the Administrator shall as (part of the regulations) promulgate criteria that the Administrator, or a State that has primary enforcement responsibility under section 300g–2 of this title, shall apply to determine whether disinfection shall be required as a treatment technique for any public water system served by ground water.” for “Not later than 36 months after June 19, 1996, the Administrator shall propose and promulgate national primary drinking water regulations requiring disinfection as a treatment technique for all public water systems, including surface water systems and, as necessary, ground water systems. After consultation with the States, the Administrator shall (as part of the regulations) promulgate criteria that the Administrator, or a State that has primary enforcement responsibility under section 300g–2 of this title, shall apply to determine whether disinfection shall be required as a treatment technique for any public water system served by ground water.” for “Not later than 36 months after June 19, 1996, the Administrator shall propose and promulgate national primary drinking water regulations requiring disinfection as a treatment technique for all public water systems.”

Subsec. (b)(10). Pub. L. 104–182, § 108, amended par. (9) generally. Prior to amendment, par. (9) read as follows: “National primary drinking water regulations shall be amended whenever changes in technology, treatment techniques, and other means permit greater protection of the health of persons, but in any event such regulations shall be reviewed at least once every 3 years. Such review shall include an analysis of innovations or changes in technology, treatment techniques or other activities that have occurred over the previous 3-year period and that may provide for greater protection of the health of persons. The findings of such review shall be published in the Federal Register. If, after opportunity for public comment, the Administrator concludes that the technology, treatment techniques, or other means resulting from such innovations or changes are not feasible within the meaning of paragraph (5), an explanation of such conclusion shall be published in the Federal Register.”


was to be as close to the recommended level or technique as feasible, and defined the term "feasible".

Subsec. (b)(4) to (11), Pub. L. 99-338, § 10(f)(b), (c)(1), (d), added subsec. (e), Pub. L. 99-339, § 10(e), amended subsec. (e), (f) to (k), redesignated former pars. (4) to (9) as pars. (9) to (15), respectively, in par. (9) substituted "National" for "Revised National" and inserted provisions that review include analysis, and publication in Federal Register, of innovations in technology, treatment techniques or other activities occurring during previous three years and their feasibility, and in par. (16) substituted "National" for "Revised National".

Subsec. (e), Pub. L. 99-338, § 10(e), amended subsec. (e) generally, substituting provisions which relate to the request by the Administrator of comments by the Science Advisory Board prior to proposal of a maximum contaminant level goal and national primary drinking water regulation for provisions which related to study by the National Academy of Sciences to determine the maximum contaminant levels, report to Congress, and funding therefor.

1977—Subsec. (e)(2), Pub. L. 95-190 inserted provisions relating to revisions of the required report and cl. (G).

NATIONAL PRIMARY DRINKING WATER REGULATION FOR ARSENIC

Pub. L. 106-377, § 1(a)(1) [title III], Oct. 27, 2000, 114 Stat. 1411, 141A-41, provided in part: "That notwithstanding section 1412(b)(5) of the Safe Drinking Water Act, as amended [subsec. (b)(5) of this section], the Administrator shall promulgate a national primary drinking water regulation for arsenic not later than June 22, 2001."

APPLICABILITY OF PRIOR REQUIREMENTS

Section 102(b) of Pub. L. 104-182 provided that: "The requirements of subparagraphs (C) and (D) of section 1412(b)(3) of the Safe Drinking Water Act [subsec. (b)(3)(C), (D) of this section] as in effect before the date of enactment of this Act [Aug. 6, 1996], and any obligation to promulgate regulations pursuant to such subparagraph as of the date of enactment of this Act, are superseded by the amendments made by subsection (a) [amending this section]."

DISINFECTANTS AND DISINFECTION BYPRODUCTS

Section 104(b) of Pub. L. 104-182 provided that: "The Administrator of the Environmental Protection Agency may use the authority of section 1412(b)(5) of the Safe Drinking Water Act [subsec. (b)(5) of this section] (as amended by this Act) to promulgate the Stage I and Stage II Disinfectants and Disinfection Byproducts Rules as proposed in volume 59, Federal Register, page 30693, July 29, 1994. The considerations used in the development of the July 29, 1994, proposed national primary drinking water regulation on disinfectants and disinfection byproducts shall be treated as consistent with such section 1412(b)(5) for purposes of such Stage I and Stage II rules."
specify a State’s authority under this subchapter when it is determined to have primary enforcement responsibility for public water systems.

(2) When an application is submitted in accordance with the Administrator’s regulations under paragraph (1), the Administrator shall, within 90 days of the date on which such application is submitted, (A) make the determination applied for, or (B) deny the application and notify the applicant in writing of the reasons for his denial.

(c) Interim primary enforcement authority

A State that has primary enforcement authority under this section with respect to each existing national primary drinking water regulation shall be considered to have primary enforcement authority with respect to each new or revised national primary drinking water regulation during the period beginning on the effective date of a regulation adopted and submitted by the State with respect to the new or revised national primary drinking water regulation in accordance with subsection (b)(1) of this section and ending at such time as the Administrator makes a determination under subsection (b)(2)(B) of this section with respect to the regulation.

(2) Enforcement in nonprimary States.—

(A) In general.—If, on the basis of information available to the Administrator, the Administrator finds, with respect to a period in which a State does not have primary enforcement responsibility for public water systems, that a public water system in the State—

(i) for which a variance under section 300g–4 of this title or an exemption under section 300g–5 of this title is not in effect, does not comply with any applicable requirement; or

(ii) for which a variance under section 300g–4 of this title or an exemption under section 300g–5 of this title is in effect, does not comply with any schedule or other requirement imposed pursuant to the variance or exemption;

the Administrator shall issue an order under subsection (g) of this section requiring the public water system to comply with such applicable requirement or the Administrator shall commence a civil action under subsection (b) of this section.

(B) Notice.—If the Administrator takes any action pursuant to this paragraph, the Administrator shall notify an appropriate local official of the State in which is located the public water system as may be appropriate to bring the system into compliance with the requirement by the earliest feasible time.

(b) Judicial determinations in appropriate Federal district courts; civil penalties, separate violations

The Administrator may bring a civil action in the appropriate United States district court to require compliance with any applicable requirement, with an order issued under subsection (g) of this section, or with any schedule or other requirement imposed pursuant to a variance or exemption granted under section 300g–4 or 300g–5 of this title if—

(1) authorized under paragraph (1) or (2) of subsection (a) of this section, or

(2) if requested by (A) the chief executive officer of the State in which is located the public water system which is not in compliance with such regulation or requirement, or (B) the agency of such State which has jurisdiction over compliance by public water systems in the State with national primary drinking water regulations.

The court may enter, in an action brought under this subsection, such judgement as protection of
public health may require, taking into consideration the time necessary to comply and the availability of alternative water supplies; and, if the court determines that there has been a violation of the regulation or schedule or other requirement with respect to which the action was brought, the court may, taking into account the seriousness of the violation, the population at risk, and other appropriate factors, impose on the violator a civil penalty of not to exceed $25,000 for each day in which such violation occurs.

(c) Notice to persons served

(1) In general

Each owner or operator of a public water system shall give notice of each of the following to the persons served by the system:

(A) Notice of any failure on the part of the public water system to—

(i) comply with an applicable maximum contaminant level or treatment technique requirement of, or a testing procedure prescribed by, a national primary drinking water regulation; or

(ii) perform monitoring required by section 300j–4(a) of this title.

(B) If the public water system is subject to a variance granted under subsection (a)(1)(A), (a)(2), or (e) of section 300g–4 of this title for an inability to meet a maximum contaminant level requirement or is subject to an exemption granted under section 300g–5 of this title, notice of—

(i) the existence of the variance or exemption; and

(ii) any failure to comply with the requirements of any schedule prescribed pursuant to the variance or exemption.

(C) Notice of the concentration level of any unregulated contaminant for which the Administrator has required public notice pursuant to paragraph (2)(E).

(2) Form, manner, and frequency of notice

(A) In general

The Administrator shall, by regulation, and after consultation with the States, prescribe the manner, frequency, form, and content for giving notice under this subsection.

The regulations shall—

(i) provide for different frequencies of notice based on the differences between violations that are intermittent or infrequent and violations that are continuous or frequent; and

(ii) take into account the seriousness of any potential adverse health effects that may be involved.

(B) State requirements

(i) In general

A State may, by rule, establish alternative notification requirements—

(I) with respect to the form and content of notice given under and in a manner in accordance with subparagraph (C); and

(II) with respect to the form and content of notice given under subparagraph (D).

(ii) Contents

The alternative requirements shall provide the same type and amount of information as required pursuant to this subsection and regulations issued under subparagraph (A).

(iii) Relationship to section 300g–2

Nothing in this subparagraph shall be construed or applied to modify the requirements of section 300g–2 of this title.

(C) Violations with potential to have serious adverse effects on human health

Regulations issued under subparagraph (A) shall specify notification procedures for each violation by a public water system that has the potential to have serious adverse effects on human health as a result of short-term exposure. Each notice of violation provided under this subparagraph shall—

(i) be distributed as soon as practicable after the occurrence of the violation, but not later than 24 hours after the occurrence of the violation;

(ii) provide a clear and readily understandable explanation of—

(I) the violation;

(II) the potential adverse effects on human health;

(III) the steps that the public water system is taking to correct the violation; and

(IV) the necessity of seeking alternative water supplies until the violation is corrected;

(iii) be provided to the Administrator or the head of the State agency that has primary enforcement responsibility under section 300g–2 of this title as soon as practicable, but not later than 24 hours after the occurrence of the violation; and

(iv) be provided to the Administrator or the head of the State agency in general regulations of the State agency, or on a case-by-case basis after the consultation referred to in clause (iii), considering the health risks involved—

(I) be provided to appropriate broadcast media;

(II) be prominently published in a newspaper of general circulation serving the area not later than 1 day after distribution of a notice pursuant to clause (i) or the date of publication of the next issue of the newspaper; or

(III) be provided by posting or door-to-door notification in lieu of notification by means of broadcast media or newspaper.

(D) Written notice

(i) In general

Regulations issued under subparagraph (A) shall specify notification procedures for violations other than the violations covered by subparagraph (C). The procedures shall specify that a public water system shall provide written notice to each person served by the system by notice (I) in the first bill (if any) prepared after the date of occurrence of the violation, (II) in
an annual report issued not later than 1 year after the date of occurrence of the violation, or (III) by mail or direct delivery as soon as practicable, but not later than 1 year after the date of occurrence of the violation.

(ii) Form and manner of notice

The Administrator shall prescribe the form and manner of the notice to provide a clear and readily understandable explanation of the violation, any potential adverse health effects, and the steps that the system is taking to seek alternative water supplies, if any, until the violation is corrected.

(E) Unregulated contaminants

The Administrator may require the owner or operator of a public water system to give notice to the persons served by the system of the concentration levels of an unregulated contaminant required to be monitored under section 300j–4(a) of this title.

(3) Reports

(A) Annual report by State

(i) In general

Not later than January 1, 1998, and annually thereafter, each State that has primary enforcement responsibility under section 300g–2 of this title shall prepare, make readily available to the public, and submit to the Administrator an annual report on violations of national primary drinking water regulations by public water systems in the State, including violations with respect to (I) maximum contaminant levels, (II) treatment requirements, (III) variances and exemptions, and (IV) monitoring requirements determined to be significant by the Administrator after consultation with the States.

(ii) Distribution

The State shall publish and distribute summaries of the report and indicate where the full report is available for review.

(B) Annual report by Administrator

Not later than July 1, 1998, and annually thereafter, the Administrator shall prepare and make available to the public an annual report summarizing and evaluating reports submitted by States pursuant to subparagraph (A) and notices submitted by public water systems serving Indian Tribes provided to the Administrator pursuant to subparagraph (O) or (D) of paragraph (2) and making recommendations concerning the resources needed to improve compliance with this subchapter. The report shall include information about public water system compliance on Indian reservations and about enforcement activities undertaken and financial assistance provided by the Administrator on Indian reservations, and shall make specific recommendations concerning the resources needed to improve compliance with this subchapter on Indian reservations.

(4) Consumer confidence reports by community water systems

(A) Annual reports to consumers

The Administrator, in consultation with public water systems, environmental groups, public interest groups, risk communication experts, and the States, and other interested parties, shall issue regulations within 24 months after August 6, 1996, to require each community water system to mail to each customer of the system at least once annually a report on the level of contaminants in the drinking water purveyed by that system (referred to in this paragraph as a “consumer confidence report”). Such regulations shall provide a brief and plainly worded definition of the terms “maximum contaminant level goal”, “maximum contaminant level”, “variances”, and “exemptions” and brief statements in plain language regarding the health concerns that resulted in regulation of each regulated contaminant. The regulations shall also include a brief and plainly worded explanation regarding contaminants that may reasonably be expected to be present in drinking water, including bottled water. The regulations shall also provide for an Environmental Protection Agency toll-free hotline that consumers can call for more information and explanation.

(B) Contents of report

The consumer confidence reports under this paragraph shall include, but not be limited to, each of the following:

(i) Information on the source of the water purveyed.

(ii) A brief and plainly worded definition of the terms “maximum contaminant level goal”, “maximum contaminant level”, “variances”, and “exemptions” as provided in the regulations of the Administrator.

(iii) If any regulated contaminant is detected in the water purveyed by the public water system, a statement setting forth (I) the maximum contaminant level goal, (II) the maximum contaminant level, (III) the level of such contaminant in such water system, and (IV) for any regulated contaminant for which there has been a violation of the maximum contaminant level during the year concerned, the brief statement in plain language regarding the health concerns that resulted in regulation of such contaminant, as provided by the Administrator in regulations under subparagraph (A).

(iv) Information on compliance with national primary drinking water regulations, as required by the Administrator, and notice if the system is operating under a variance or exemption and the basis on which the variance or exemption was granted.

(v) Information on the levels of unregulated contaminants for which monitoring is required under section 300j–4(a)(2) of this title (including levels of cryptosporidium and radon where States determine they may be found).
(vi) A statement that the presence of contaminants in drinking water does not necessarily indicate that the drinking water poses a health risk and that more information about contaminants and potential health effects can be obtained by calling the Environmental Protection Agency hotline.

A public water system may include such additional information as it deems appropriate for public education. The Administrator may, for not more than 3 regulated contaminants other than those referred to in sub-clause (iv) of clause (iii), require a consumer confidence report under this paragraph to include the brief statement in plain language regarding the health concerns that resulted in regulation of the contaminant or contaminants concerned, as provided by the Administrator in regulations under subparagraph (A).

(C) Coverage

The Governor of a State may determine not to apply the mailing requirement of subparagraph (A) to a community water system serving fewer than 10,000 persons. Any such system shall—

(i) inform, in the newspaper notice required by clause (iii) or by other means, its customers that the system will not be mailing the report as required by subparagraph (A);

(ii) make the consumer confidence report available upon request to the public; and

(iii) publish the report referred to in subparagraph (A) annually in one or more local newspapers serving the area in which customers of the system are located.

(D) Alternative to publication

For any community water system which, pursuant to subparagraph (C), is not required to meet the mailing requirement of subparagraph (A) and which serves 500 persons or fewer, the community water system may elect not to comply with clause (i) or (iii) of subparagraph (C). If the community water system so elects, the system shall, at a minimum—

(i) prepare an annual consumer confidence report pursuant to subparagraph (B); and

(ii) provide notice at least once per year to each of its customers by mail, by door-to-door delivery, by posting or by other means authorized by the regulations of the Administrator that the consumer confidence report is available upon request.

(E) Alternative form and content

A State exercising primary enforcement responsibility may establish, by rule, after notice and public comment, alternative requirements with respect to the form and content of consumer confidence reports under this paragraph.

(d) Notice of noncompliance with secondary drinking water regulations

Whenever, on the basis of information available to him, the Administrator finds that within a reasonable time after national secondary drinking water regulations have been promulgated, one or more public water systems in a State do not comply with such secondary regulations, and that such noncompliance appears to result from a failure of such State to take reasonable action to assure that public water systems throughout such State meet such secondary regulations, he shall so notify the State.

(e) State authority to adopt or enforce laws or regulations respecting drinking water regulations or public water systems unaffected

Nothing in this subchapter shall diminish any authority of a State or political subdivision to adopt or enforce any law or regulation respecting drinking water regulations or public water systems, but no such law or regulation shall relieve any person of any requirement otherwise applicable under this subchapter.

(f) Notice and public hearing; availability of recommendations transmitted to State and public water system

If the Administrator makes a finding of noncompliance (described in subparagraph (A) or (B) of subsection (a)(1) of this section) with respect to a public water system in a State which has primary enforcement responsibility, the Administrator may, for the purpose of assisting that State in carrying out such responsibility and upon the petition of such State or public water system or persons served by such system, hold, after appropriate notice, public hearings for the purpose of gathering information from technical or other experts, Federal, State, or other public officials, representatives of such public water system, persons served by such system, and other interested persons on—

(1) the ways in which such system can within the earliest feasible time be brought into compliance with the regulation or requirement with respect to which such finding was made, and

(2) the means for the maximum feasible protection of the public health during any period in which such system is not in compliance with a national primary drinking water regulation or requirement applicable to a variance or exemption.

On the basis of such hearings the Administrator shall issue recommendations which shall be sent to such State and public water system and shall be made available to the public and communications media.

(g) Administrative order requiring compliance; notice and hearing; civil penalty; civil actions

(1) In any case in which the Administrator is authorized to bring a civil action under this section or under section 300j–4 of this title with respect to any applicable requirement, the Administrator also may issue an order to require compliance with such applicable requirement.

(2) An order issued under this subsection shall not take effect, in the case of a State having primary enforcement responsibility for public water systems in that State, until after the Administrator has provided the State with an opportunity to confer with the Administrator regarding the order. A copy of any order issued
under this subsection shall be sent to the appropriate State agency of the State involved if the State has primary enforcement responsibility for public water systems in that State. Any order issued under this subsection shall state with reasonable specificity the nature of the violation. In any case in which an order under this subsection is issued to a corporation, a copy of such order shall be issued to appropriate corporate officers.

(3)(A) Any person who violates, or fails or refuses to comply with, an order under this subsection shall be liable to the United States for a civil penalty of not more than $25,000 per day of violation.

(B) In a case in which a civil penalty sought by the Administrator under this paragraph does not exceed $5,000, the penalty shall be assessed by the Administrator after notice and opportunity for a public hearing (unless the person against whom the penalty is assessed requests a hearing on the record in accordance with section 554 of title 5). In a case in which a civil penalty sought by the Administrator under this paragraph exceeds $5,000, but does not exceed $25,000, the penalty shall be assessed by the Administrator after notice and opportunity for a hearing on the record in accordance with section 554 of title 5.

(C) Whenever any civil penalty sought by the Administrator under this subsection for a violation of an applicable requirement exceeds $25,000, the penalty shall be assessed by a civil action brought by the Administrator in the appropriate United States district court (as determined under the provisions of title 28).

(D) If any person fails to pay an assessment of a civil penalty after it has become a final and unappealable order, or after the appropriate court of appeals has entered final judgment in favor of the Administrator, the Attorney General shall recover the amount for which such person is liable in any appropriate district court of the United States. In any such action, the validity and appropriateness of the final order imposing the civil penalty shall not be subject to review.

(h) Consolidation incentive

(1) In general

An owner or operator of a public water system may submit to the State in which the system is located (if the State has primary enforcement responsibility under section 300g–2 of this title) or to the Administrator (if the State does not have primary enforcement responsibility) a plan (including specific measures and schedules) for—

(A) the physical consolidation of the system with 1 or more other systems;

(B) the consolidation of significant management and administrative functions of the system with 1 or more other systems; or

(C) the transfer of ownership of the system that may reasonably be expected to improve drinking water quality.

(2) Consequences of approval

If the State or the Administrator approves a plan pursuant to paragraph (1), no enforcement action shall be taken pursuant to this part with respect to a specific violation identified in the approved plan prior to the date that is the earlier of the date on which consolidation is completed according to the plan or the date that is 2 years after the plan is approved.

(i) “Applicable requirement” defined

In this section, the term “applicable requirement” means—

(1) a requirement of section 300g–1, 300g–3, 300g–4, 300g–5, 300g–6, 300i–2, 300j–4, or 300j–4 of this title;

(2) a regulation promulgated pursuant to a section referred to in paragraph (1);

(3) a schedule or requirement imposed pursuant to a section referred to in paragraph (1); and

(4) a requirement of, or permit issued under, an applicable State program for which the Administrator has made a determination that the requirements of section 300g–2 of this title have been satisfied, or an applicable State program approved pursuant to this part.

(AMENDMENTS)


Subsec. (a)(1)(B). Pub. L. 104–182, §113(a)(1)(A)(ii), substituted “any applicable requirement” for “any national primary drinking water regulation in effect under section 300g–1 of this title”.

Subsec. (a)(2). Pub. L. 104–182, §113(a)(1)(B), added par. (2) and struck out former par. (2) which read as follows: “Whenever, on the basis of information available to him, the Administrator finds during a period during which a State does not have primary enforcement responsibility for public water systems that a public water system in such State—

“(A) for which a variance under section 300g–4(a)(2) or an exemption under section 300g–5(f) of this title is not in effect, does not comply with any national primary drinking water regulation in effect under section 300g–1 of this title, or

“(B) for which a variance under section 300g–4(a)(2) or an exemption under section 300g–5(f) of this title is in effect, does not comply with any schedule or other requirement imposed pursuant thereto, the Administrator shall issue an order under subsection (g) of this section requiring the public water system to comply with such regulation or requirement or the Administrator shall commence a civil action under subsection (b) of this section.”


Subsec. (c). Pub. L. 104–182, §114(a), amended subsec. (c) generally. Prior to amendment, subsec. (c) related to notice of owner or operator of public water system to persons served, regulations for form, manner, and

1So in original. There probably should be a comma.
frequency of notice, amendment of regulations to provide different types and frequencies of notice, and penalties.

Subsec. (g)(1). Pub. L. 104–182, §113(a)(3)(A), substituted “applicable requirement” for “regulation, schedule, or other requirement” in two places.

Subsec. (g)(2). Pub. L. 104–182, §113(a)(3)(B), substituted “effect, in the case” for “effect until after no-” and struck out “proposed order” and struck out former subsec. (B) which read as follows: “Whenever any civil penalty sought by the Administrator under this paragraph does not exceed a total of $5,000, the penalty shall be assessed by the Administrator after notice and opportunity for a hearing on the record in accordance with section 554 of title 5.”

Subsec. (g)(3)(B). Pub. L. 104–182, §113(a)(3)(C)(i), substituted “subsection for a violation of an applicable requirement exceeds $25,000” for “paragraph exceeds $5,000”.

Subsecs. (h), (i). Pub. L. 104–182, §113(a)(4), added subsecs. (h) and (i).


Subsec. (a)(1)(A). Pub. L. 99–339, §102(a), inserted “and such public water system” after “notify the State” in provisions following cl. (i).

Subsec. (a)(1)(B). Pub. L. 99–339, §102(b)(1), amended subpar. (B), generally, substituting provisions which relate to issuance of an order to public water system to comply with regulations, or commencement of civil action if the State has not commenced appropriate enforcement action for provisions which related to public notice of noncompliance and commencement of civil action by Administrator if State failed to take steps to obtain compliance by public water system.

Subsec. (a)(2). Pub. L. 99–339, §102(b)(2), substituted “the Administrator shall issue an order under subsection (g) of this section requiring the public water system to comply with such regulation or requirement, or the Administrator shall commence a civil action under subsection (b) of this section” for “he may commence a civil action under subsection (b) of this section”.

Subsec. (b). Pub. L. 99–339, §102(c), inserted “, with an order issued under subsection (g) of this section,” before “or with any schedule” and substituted “there has been a violation” for “there has been a willful violation” and “$25,000” for “$5,000”.

Subsec. (c). Pub. L. 99–339, §103, substituted provisions relating to amendment of regulations within fifteen months after June 19, 1986, to provide different types and frequencies of notice based on the differences between violations which are intermittent or continuous, manner and content of notices, notice required to public served by owner or operator of public water system, and civil penalty of $25,000, for provisions relating to form, manner, and frequency of notice based on three month billing period for water bills, notice required to public served by owner or operator of public water system, and civil penalty of $5,000.

Subsec. (g). Pub. L. 99–339, §102(d), added subsec. (g).

1977—Subsec. (c). Pub. L. 95–190 inserted provisions relating to frequency of required notice, and notice respecting contaminant levels, and substituted “issued under this subsection” for “thereunder”.

§300g–4. Variances

(a) Characteristics of raw water sources; specific treatment technique; notice to Administrator, reasons for variance; compliance, enforcement; approval or revision of schedules and revocation of variances; review of variances and schedules; publication in Federal Register, notice and results of review; notice to State; considerations respecting abuse of discretion in granting variances or failing to prescribe schedules; State corrective action; authority of Administrator in a State without primary enforcement responsibility; alternative treatment techniques

Notwithstanding any other provision of this part, variances from national primary drinking water regulations may be granted as follows:

(1)(A) A State which has primary enforcement responsibility for public water systems may grant one or more variances from an applicable national primary drinking water regulation to one or more public water systems within its jurisdiction which, because of characteristics of the raw water sources which are reasonably available to the systems, cannot meet the requirements respecting the maximum contaminant levels of such drinking water regulation. A variance may be issued to a system on condition that the system install the best technology, treatment techniques, or other means, which the Administrator finds are available (taking costs into consideration), and based upon an evaluation satisfactory to the State that indicates that alternative sources of water are not reasonably available to the system. The Administrator shall propose and promulgate his finding of the best available technology, treatment techniques or other means available for each contaminant for purposes of this subsection at the time he proposes and promulgates a maximum contaminant level for each such contaminant. The Administrator’s finding of the best available technology, treatment techniques or other means for purposes of this subsection may vary depending on the number of persons served by the system or for other physical conditions related to engineering feasibility and costs of compliance with maximum contaminant levels as considered appropriate by the Administrator. Before a State may grant a variance under this subparagraph, the State must find that the variance will not result in an unreasonable risk to health. If a State grants a public water system a variance under this subparagraph, the State shall prescribe at the the time the variance is granted, a schedule for—

(i) compliance (including increments of progress) by the public water system with each containment level requirement with respect to which the variance was granted, and

(ii) implementation by the public water system of such additional control measures as the State may require for each contaminant, subject to such contaminant level requirement, during the period ending on the date compliance with such requirement is required.
Before a schedule prescribed by a State pursuant to this subparagraph may take effect, the State shall provide notice and opportunity for a public hearing on the schedule. A notice given pursuant to the preceding sentence may cover the prescribing of more than one such schedule and a hearing held pursuant to such notice shall include each of the schedules covered by the notice. A schedule prescribed pursuant to this subparagraph for a public water system granted a variance shall require compliance by the system with each contaminant level requirement with respect to which the variance was granted as expeditiously as practicable (as the State may reasonably determine).

(B) A State which has primary enforcement responsibility for public water systems may grant to one or more public water systems within its jurisdiction one or more variances from any provision of the national primary drinking water regulation which requires the use of a specified treatment technique with respect to a contaminant if the public water system applying for the variance demonstrates to the satisfaction of the State that such treatment technique is not necessary to protect the health of persons because of the nature of the raw water source of such system. A variance granted under this subparagraph shall be conditioned on such monitoring and other requirements as the Administrator may prescribe.

(C) Before a variance proposed to be granted by a State under subparagraph (A) or (B) may take effect, such State shall provide notice and opportunity for public hearing on the proposed variance. A notice given pursuant to the preceding sentence may cover the granting of more than one variance and a hearing held pursuant to such notice shall include each of the variances covered by the notice. The State shall promptly notify the Administrator of all variances granted by it. Such notification shall contain the reason for the variance (and in the case of a variance under subparagraph (A), the basis for the finding required by that subparagraph before the granting of the variance and documentation of the need for the variance.

(D) Each public water system’s variance granted by a State under subparagraph (A) shall be conditioned by the State upon compliance by the public water system with the schedule prescribed by the State pursuant to that subparagraph. The requirements of each schedule prescribed by a State pursuant to that subparagraph shall be enforceable by the State under its laws. Any requirement of a schedule on which a variance granted under that subparagraph is conditioned may be enforced under section 300g-3 of this title as if such requirement was part of a national primary drinking water regulation.

(E) Each schedule prescribed by a State pursuant to subparagraph (A) shall be deemed approved by the Administrator unless the variance for which it was prescribed is revoked by the Administrator under subparagraph (G) or the schedule is revised by the Administrator under such subparagraph.

(F) Not later than 18 months after the effective date of the interim national primary drinking water regulations the Administrator shall complete a comprehensive review of the variances granted under subparagraph (A) (and schedules prescribed pursuant thereto) and under subparagraph (B) by the States during the one-year period beginning on such effective date. The Administrator shall conduct such subsequent reviews of variances and schedules as he deems necessary to carry out the purposes of this subchapter, but each subsequent review shall be completed within each 3-year period following the completion of the first review under this subparagraph. Before conducting any review under this subparagraph, the Administrator shall publish notice of the proposed review in the Federal Register. Such notice shall (i) provide information respecting the location of data and other information respecting the variances to be reviewed (including data and other information concerning new scientific matters bearing on such variances), and (ii) advise of the opportunity to submit comments on the variances reviewed and on the need for continuing them. Upon completion of any such review, the Administrator shall publish in the Federal Register the results of his review together with findings responsive to comments submitted in connection with such review.

(G)(i) If the Administrator finds that a State has, in a substantial number of instances, abused its discretion in granting variances under subparagraph (A) or (B) or that in a substantial number of cases the State has failed to prescribe schedules in accordance with subparagraph (A), the Administrator shall notify the State of his findings. In determining if a State has abused its discretion in granting variances in a substantial number of instances, the Administrator shall consider the number of persons who are affected by the variances and if the requirements applicable to the granting of the variances were complied with. A notice under this clause shall—

(I) identify each public water system with respect to which the finding was made,

(II) specify the reasons for the finding, and

(III) as appropriate, propose revocations of specific variances or propose revised schedules or other requirements for specific public water systems granted variances, or both.

(ii) The Administrator shall provide reasonable notice and public hearing on the provisions of each notice given pursuant to clause (i) of this subparagraph. After a hearing on a notice pursuant to such clause, the Administrator shall (I) rescind the finding for which the notice was given and promptly notify the State of such rescission, or (II) promulgate (with such modifications as he deems appropriate) such variance revocations and revised schedules or other requirements proposed in such notice as he deems appropriate. Not later than 180 days after the date a notice is given pursuant to clause (i) of this subparagraph, the Administrator shall complete the hearing on the notice and take the action required by the preceding sentence.

(iii) If a State is notified under clause (i) of this subparagraph of a finding of the Adminis-
Enforcement of schedule or other requirement

Any schedule or other requirement on which a variance granted under paragraph (1)(B) or (2) of subsection (a) of this section is conditioned may take effect before the expiration of 90 days following the date of the notice in which the revocation or revised schedule or other requirement was proposed.

(2) If a State does not have primary enforcement responsibility for public water systems, the Administrator shall have the same authority to grant variances in such State as the State would have under paragraph (1) if it had primary enforcement responsibility.

(3) The Administrator may grant a variance from any treatment technique requirement of a national primary drinking water regulation upon a showing by any person that an alternative treatment technique not included in such requirement is at least as efficient in lowering the level of the contaminant with respect to which such requirement was prescribed. A variance under this paragraph shall be conditioned on the use of the alternative treatment technique which is the basis of the variance.

(b) Enforcement of schedule or other requirement

Any schedule or other requirement on which a variance granted under paragraph (1)(B) or (2) of subsection (a) of this section is conditioned may be enforced under section 300g–3 of this title as subsection (a) of this section is made, the State takes corrective action with respect to such variance or schedule or other requirement which the Administrator determines makes his finding inapplicable to such variance or schedule or other requirement, the Administrator shall rescind the application of his finding to that variance on schedule or other requirement. No variance revocation or revised schedule or other requirement may take effect before the expiration of 90 days following the date of the notice in which the revocation or revised schedule or other requirement was proposed.

(2) If a State does not have primary enforcement responsibility for public water systems, the Administrator shall have the same authority to grant variances in such State as the State would have under paragraph (1) if it had primary enforcement responsibility.

(3) The Administrator may grant a variance from any treatment technique requirement of a national primary drinking water regulation upon a showing by any person that an alternative treatment technique not included in such requirement is at least as efficient in lowering the level of the contaminant with respect to which such requirement was prescribed. A variance under this paragraph shall be conditioned on the use of the alternative treatment technique which is the basis of the variance.

(c) Applications for variances; regulations: reasonable time for acting

If an application for a variance under subsection (a) of this section is made, the State receiving the application or the Administrator, as the case may be, shall act upon such application within a reasonable period (as determined under regulations prescribed by the Administrator) after the date of its submission.

(d) "Treatment technique requirement" defined

For purposes of this section, the term "treatment technique requirement" means a requirement in a national primary drinking water regulation which specifies for a contaminant (in accordance with section 300g(c)(ii) of this title) each treatment technique known to the Administrator which leads to a reduction in the level of such contaminant sufficient to satisfy the requirements of section 300g–1(b) of this title.

(e) Small system variances

(1) In general

A State exercising primary enforcement responsibility for public water systems under section 300g–2 of this title (or the Administrator in nonprimacy States) may grant a variance under this subsection for compliance with a requirement specifying a maximum contaminant level or treatment technique contained in a national primary drinking water regulation to—

(A) public water systems serving 3,300 or fewer persons; and

(B) with the approval of the Administrator pursuant to paragraph (9), public water systems serving more than 3,300 persons but fewer than 10,000 persons,

if the variance meets each requirement of this subsection.

(2) Availability of variances

A public water system may receive a variance pursuant to paragraph (1), if—

(A) the Administrator has identified a variance technology under section 300g–1(b)(15) of this title that is applicable to the size and source water quality conditions of the public water system;

(B) the public water system installs, operates, and maintains, in accordance with guidance or regulations issued by the Administrator, such treatment technology, treatment technique, or other means; and

(C) the State in which the system is located determines that the conditions of paragraph (3) are met.

(3) Conditions for granting variances

A variance under this subsection shall be available only to a system—

(A) that cannot afford to comply, in accordance with affordability criteria established by the Administrator (or the State in the case of a State that has primary enforcement responsibility under section 300g–2 of this title), with a national primary drinking water regulation, including compliance through—

(i) treatment;

(ii) alternative source of water supply; or

(iii) restructuring or consolidation (unless the Administrator (or the State in the case of a State that has primary enforcement responsibility under section 300g–2 of this title) makes a written determination that restructuring or consolidation is not practicable); and

(B) for which the Administrator (or the State in the case of a State that has primary enforcement responsibility under section 300g–2 of this title) determines that the terms of the variance ensure adequate protection of human health, considering the quality of the source water for the system and the removal efficiencies and expected useful life of the treatment technology required by the variance.

(4) Compliance schedules

A variance granted under this subsection shall require compliance with the conditions of the variance not later than 3 years after the date on which the variance is granted, except that the Administrator (or the State in the case of a State that has primary enforcement
responsibility under section 300g–2 of this title) may allow up to 2 additional years to comply with a variance technology, secure an alternative source of water, restructure or consolidate if the Administrator (or the State) determines that additional time is necessary for capital improvements, or to allow for financial assistance provided pursuant to section 300j–12 of this title or any other Federal or State program.

(5) Duration of variances

The Administrator (or the State in the case of a State that has primary enforcement responsibility under section 300g–2 of this title) shall review each variance granted under this subsection not less often than every 5 years after the compliance date established in the variance to determine whether the system remains eligible for the variance and is conforming to each condition of the variance.

(6) Ineligibility for variances

A variance shall not be available under this subsection for—

(A) any maximum contaminant level or treatment technique for a contaminant with respect to which a national primary drinking water regulation was promulgated prior to January 1, 1986; or

(B) a national primary drinking water regulation for a microbial contaminant (including a bacterium, virus, or other organism) or an indicator or treatment technique for a microbial contaminant.

(7) Regulations and guidance

(A) In general

Not later than 2 years after August 6, 1996, and in consultation with the States, the Administrator shall promulgate regulations for variances to be granted under this subsection. The regulations shall, at a minimum, specify:

(i) procedures to be used by the Administrator or a State to grant or deny variances, including requirements for notifying the Administrator and consumers of the public water system that a variance is proposed to be granted (including information regarding the contaminant and variance) and requirements for a public hearing on the variance before the variance is granted;

(ii) requirements for the installation and proper operation of variance technology that is identified (pursuant to section 300g–1(b)(15) of this title) for small systems and the financial and technical capability to operate the treatment system, including operator training and certification;

(iii) eligibility criteria for a variance for each national primary drinking water regulation, including requirements for the quality of the source water (pursuant to section 300g–1(b)(15)(A) of this title); and

(iv) information requirements for variance applications.

(B) Affordability criteria

Not later than 18 months after August 6, 1996, the Administrator, in consultation with the States and the Rural Utilities Service of the Department of Agriculture, shall publish information to assist the States in developing affordability criteria. The affordability criteria shall be reviewed by the States not less often than every 5 years to determine if changes are needed to the criteria.

(8) Review by the Administrator

(A) In general

The Administrator shall periodically review the program of each State that has primary enforcement responsibility for public water systems under section 300g–2 of this title with respect to variances to determine whether the variances granted by the State comply with the requirements of this subsection. With respect to affordability, the determination of the Administrator shall be limited to whether the variances granted by the State comply with the affordability criteria developed by the State.

(B) Notice and publication

If the Administrator determines that variances granted by a State are not in compliance with affordability criteria developed by the State, the Administrator shall notify the State in writing of the deficiencies and make public the determination.

(9) Approval of variances

A State proposing to grant a variance under this subsection to a public water system serving more than 3,300 and fewer than 10,000 persons shall submit the variance to the Administrator for review and approval prior to the issuance of the variance. The Administrator shall approve the variance if it meets each of the requirements of this subsection. The Administrator shall approve or disapprove the variance within 90 days. If the Administrator disapproves a variance under this paragraph, the Administrator shall notify the State in writing of the deficiencies and variance may be resubmitted with modifications to address the objections stated by the Administrator.

(10) Objections to variances

(A) By the Administrator

The Administrator may review and object to any variance proposed to be granted by a State, if the objection is communicated to the State not later than 90 days after the State proposes to grant the variance. If the Administrator objects to the granting of a variance, the Administrator shall notify the State in writing of each basis for the objection and propose a modification to the variance to resolve the concerns of the Administrator. The State shall make the recommended modification or respond in writing to each objection. If the State issues the variance without resolving the concerns of the Administrator, the Administrator may overturn the State decision to grant the variance if the Administrator determines that the State decision does not comply with this subsection.
(B) Petition by consumers

Not later than 30 days after a State exercising primary enforcement responsibility for public water systems under section 300g-2 of this title proposes to grant a variance for a public water system, any person served by the system may petition the Administrator to object to the granting of a variance. The Administrator shall respond to the petition and determine whether to object to the variance under subparagraph (A) not later than 60 days after the receipt of the petition.

(C) Timing

No variance shall be granted by a State until the later of the following:

1. 90 days after the State proposes to grant a variance.
2. If the Administrator objects to the variance, the date on which the State makes the recommended modifications or responds in writing to each objection.


AMENDMENTS


1986—Pub. L. 99–339, title I, § 104(4), struck out provisions relating to proposal and promulgation by Administrator of a finding on best available technology, treatment techniques or other means available for each contaminant level and treatment technique requirement, during the period ending on the date compliance with such requirement is required.

Before a schedule prescribed by a State pursuant to this subsection may take effect, the State shall provide notice and opportunity for a public hearing on the schedule. A notice given pursuant to the preceding sentence may cover the prescribing of more than one such schedule and a hearing held pursuant to such notice shall include each of the schedules covered by the notice.

(2)(A) A schedule prescribed pursuant to this subsection for a public water system granted an exemption under subsection (a) of this section shall require compliance by the system with each contaminant level and treatment technique requirement with respect to which the exemption was granted, and

(b) Compliance schedule and implementation of control measures; notice and hearing; dates for compliance with schedule; compliance, enforcement; approval or revision of schedules and revocation of exemptions

(1) If a State grants a public water system an exemption under subsection (a) of this section, the State shall prescribe, at the time the exemption is granted, a schedule for:

A. compliance (including increments of progress or measures to develop an alternative source of water supply) by the public water system with each contaminant level requirement or treatment technique requirement with respect to which the exemption was granted, and

B. implementation by the public water system of such control measures as the State may require for each contaminant, subject to such contaminant level requirement or treatment technique requirement, during the period ending on the date compliance with such requirement is required.

§ 300g–5. Exemptions

(a) Requisite findings

A State which has primary enforcement responsibility may exempt any public water system within the State’s jurisdiction from any requirement respecting a maximum contaminant level or any treatment technique requirement, or from both, of an applicable national primary drinking water regulation upon a finding that—

1. due to compelling factors (which may include economic factors, including qualification of the public water system as a system serving a disadvantaged community pursuant to section 300j–12(d) of this title), the public water system is unable to comply with such contaminant level or treatment technique requirement, or to implement measures to develop an alternative source of water supply

2. the public water system was in operation on the effective date of such contaminant level or treatment technique requirement, or, for a system that was not in operation by that date, only if no reasonable alternative source of drinking water is available to such new system,

3. the granting of the exemption will not result in an unreasonable risk to health; 1 and

4. management or restructuring changes (or both) cannot reasonably be made that will result in compliance with this subchapter or, if compliance cannot be achieved, improve the quality of the drinking water.

(b) Compliance schedule and implementation of control measures; notice and hearing; dates for compliance with schedule; compliance, enforcement; approval or revision of schedules and revocation of exemptions

1. So in original. The semicolon probably should be a comma.
(ii) in the case of a system which needs financial assistance for the necessary improvements, the system has entered into an agreement to obtain such financial assistance or assistance pursuant to section 3001–12 of this title or any other Federal or State program is reasonably likely to be available within the period of the exemption; or

(iii) the system has entered into an enforceable agreement to become a part of a regional public water system; and

the system is taking all practicable steps to meet the standard.

(C) In the case of a system which does not serve more than a population of 3,300 and which needs financial assistance for the necessary improvements, an exemption granted under clause (i) or (ii) of subparagraph (B) may be renewed for one or more additional 2-year periods, but not to exceed a total of 6 years, if the system establishes that it is taking all practicable steps to meet the requirements of subparagraph (B).

(D) LIMITATION.—A public water system may not receive an exemption under this section if the system was granted a variance under section 300g–4(e) of this title.

(3) Each public water system's exemption granted by a State under subsection (a) of this section shall be conditioned by the State upon compliance by the public water system with the schedule prescribed by the State pursuant to this subsection. The requirements of each schedule prescribed by a State pursuant to this subsection shall be enforceable by the State under its laws. Any requirement of a schedule on which an exemption granted under this section is conditioned may be enforced under section 300g–3 of this title as if such requirement was part of a national primary drinking water regulation.

(4) Each schedule prescribed by a State pursuant to this subsection shall be deemed approved by the Administrator unless the exemption for which it was prescribed is revoked by the Administrator under subsection (d)(2) of this section or the schedule is revised by the Administrator under such subsection.

(e) Notice to Administrator; reasons for exemption

Each State which grants an exemption under subsection (a) of this section shall promptly notify the Administrator of the granting of such exemption. Such notification shall contain the reasons for the exemption (including the basis for the finding required by subsection (a)(3) of this section before the exemption may be granted) and document the need for the exemption.

(f) Review of exemptions and schedules; publication in Federal Register, notice and results of review; notice to State; considerations respecting abuse of discretion in granting exemptions or failing to prescribe schedules; State corrective action

(1) Not later than 18 months after the effective date of the interim national primary drinking water regulations the Administrator shall complete a comprehensive review of the exemptions granted (and schedules prescribed pursuant thereto) by the States during the one-year period beginning on such effective date. The Administrator shall conduct such subsequent reviews of exemptions and schedules as he deems necessary to carry out the purposes of this subchapter, but each subsequent review shall be completed within each 3-year period following the completion of the first review under this subparagraph. Before conducting any review under this subparagraph, the Administrator shall publish notice of the proposed review in the Federal Register. Such notice shall (A) provide information respecting the location of data and other information respecting the exemptions to be reviewed (including data and other information concerning new scientific matters bearing on such exemptions), and (B) advise of the opportunity to submit comments on the exemptions reviewed and on the findings of the Administrator. Upon completion of any such review, the Administrator shall publish in the Federal Register the results of his review, together with findings responsive to comments submitted in connection with such review.

(2)(A) If the Administrator finds that a State has, in a substantial number of instances, abused its discretion in granting exemptions under subsection (a) of this section or failed to prescribe schedules in accordance with subsection (b) of this section, the Administrator shall notify the State of his findings. In determining if a State has abused its discretion in granting exemptions in a substantial number of instances, the Administrator shall consider the number of persons who are affected by the exemptions and if the requirements applicable to the granting of the exemptions were complied with. A notice under this subparagraph shall—

(i) identify each exempt public water system with respect to which the finding was made,

(ii) specify the reasons for the finding, and

(iii) as appropriate, propose revocations of specific exemptions or propose revised schedules for specific exempt public water systems, or both.

(B) The Administrator shall provide reasonable notice and public hearing on the provisions of each notice given pursuant to subparagraph (A). After a hearing on notice pursuant to paragraph (A), the Administrator shall (i) rescind the finding for which the notice was given and promptly notify the State of such rescission, or (ii) promulgate (with such modifications as he deems appropriate) such exemption revocations and revised schedules proposed in such notice as he deems appropriate. Not later than 180 days after the date a notice is given pursuant to subparagraph (A), the Administrator shall complete the hearing on the notice and take the action required by the preceding sentence.

(C) If a State is notified under subparagraph (A) of a finding of the Administrator made with respect to an exemption granted a public water system within that State or to a schedule prescribed pursuant to such an exemption and if before a revocation of such exemption or a revision of such schedule promulgated by the Administrator takes effect the State takes corrective action with respect to such exemption or schedule which the Administrator determines makes his finding inapplicable to such exemption or schedule, the Administrator shall re-
scind the application of his finding to that ex-
emption or schedule. No exemption revocation
or revised schedule may take effect before the
expiration of 90 days following the date of the
notice in which the revocation or revised sched-
ule was proposed.

(e) "Treatment technique requirement" defined

For purposes of this section, the term "treat-
ment technique requirement" means a require-
ment in a national primary drinking water regu-
lation which specifies for a contaminant (in ac-
cordance with section 300F(1)(C)(ii) of this title)
each treatment technique known to the Admin-
istrator which leads to a reduction in the level
of such contaminant sufficient to satisfy the re-
quirements of section 300g–1(b) of this title.

(f) Authority of Administrator in a State without
primary enforcement responsibility

If a State does not have primary enforcement
responsibility for public water systems, the Ad-
ministrator shall have the same authority to ex-
empt public water systems in such State from
maximum contaminant level requirements and
treatment technique requirements under the
same conditions and in the same manner as the
State would be authorized to grant exemptions
under this section if it had primary enforcement
responsibility.

(g) Applications for exemptions; regulations; rea-
sonable time for acting

If an application for an exemption under this
section is made, the State receiving the applica-
tion or the Administrator, as the case may be,
shall act upon such application within a reason-
able period (as determined under regulations
prescribed by the Administrator) after the date
of its submission.


AMENDMENTS

1996—Subsec. (a)(1). Pub. L. 104–182, § 117(a)(1), inserted "(1) including qualification of the public water system as a system serving a disadvantaged com-
munity pursuant to section 300–12(d) of this title" after "(which may include economic factors" and "or to im-
plement measures to develop an alternative source of water supply," after "treatment technique require-
ment,"


tuted "not later than 12 months after June 19, 1986" for "not later than January 1, 1984".

tuted "other than a regulation referred to in section 300g–1(a) of this title, 12 months after the date of the
issuance of the exemption" for "not later than seven years after the date such requirement takes effect".

read as follows: "Notwithstanding clauses (i) and (ii) of subparagraph (A) of this paragraph, the final date for
compliance prescribed in a schedule prescribed pursuant to this subsection for an exemption granted for a
public water system which (as determined by the State granting the exemption) has entered into an enforce-
able agreement to become a part of a regional public water system shall—

(i) in the case of a schedule prescribed for an ex-
emption granted with respect to a contaminant level or treatment technique requirement prescribed by re-
vised national primary drinking water regulations, be not later than January 1, 1986; and

(ii) in the case of a schedule prescribed for an ex-
emption granted with respect to a contaminant level or treatment technique requirement prescribed by re-
vised national primary drinking water regulations, be not later than nine years after such requirement takes effect."
§ 300g–6. Prohibition on use of lead pipes, solder, and flux

(a) In general

(1) Prohibitions

(A) In general

No person may use any pipe, any pipe or plumbing fitting or fixture, any solder, or any flux, after June 19, 1986, in the installation or repair of—

(i) any public water system; or

(ii) any plumbing in a residential or nonresidential facility providing water for human consumption,

that is not lead free (within the meaning of subsection (d) of this section).

(B) Leaded joints

Subparagraph (A) shall not apply to leaded joints necessary for the repair of cast iron pipes.

(2) Public notice requirements

(A) In general

Each owner or operator of a public water system shall identify and provide notice to persons that may be affected by lead contamination of their drinking water where such contamination results from either or both of the following:

(i) The lead content in the construction materials of the public water distribution system,

(ii) Corrosivity of the water supply sufficient to cause leaching of lead.

The notice shall be provided in such manner and form as may be reasonably required by the Administrator. Notice under this paragraph shall be provided notwithstanding the absence of a violation of any national drinking water standard.

(B) Contents of notice

Notice under this paragraph shall provide a clear and readily understandable explanation of—

(i) the potential sources of lead in the drinking water,

(ii) potential adverse health effects,

(iii) reasonably available methods of mitigating known or potential lead content in drinking water,

(iv) any steps the system is taking to mitigate lead content in drinking water, and

(v) the necessity for seeking alternative water supplies, if any.

(3) Unlawful acts

Effective 2 years after August 6, 1996, it shall be unlawful—

(A) for any person to introduce into commerce any pipe, or any pipe or plumbing fitting or fixture, that is not lead free, except for a pipe that is used in manufacturing or industrial processing;

(B) for any person engaged in the business of selling plumbing supplies, except manufacturers, to sell solder or flux that is not lead free; or

(C) for any person to introduce into commerce any solder or flux that is not lead free unless the solder or flux bears a prominent label stating that it is illegal to use the solder or flux in the installation or repair of any plumbing providing water for human consumption.

(b) State enforcement

(1) Enforcement of prohibition

The requirements of subsection (a)(1) of this section shall be enforced in all States effective 24 months after June 19, 1986. States shall enforce such requirements through State or local plumbing codes, or such other means of enforcement as the State may determine to be appropriate.

(2) Enforcement of public notice requirements

The requirements of subsection (a)(2) of this section shall apply in all States effective 24 months after June 19, 1986.

(c) Penalties

If the Administrator determines that a State is not enforcing the requirements of subsection (a) of this section as required pursuant to subsection (b) of this section, the Administrator may withhold up to 5 percent of Federal funds available to that State for State program grants under section 300j-2(a) of this title.

(d) “Lead free” defined

For purposes of this section, the term “lead free”—

(1) when used with respect to solders and flux refers to solders and flux containing not more than 0.2 percent lead;

(2) when used with respect to pipes and pipe fittings refers to pipes and pipe fittings containing not more than 0.0 percent lead; and

(3) when used with respect to plumbing fittings and fixtures, refers to plumbing fittings and fixtures in compliance with standards established in accordance with subsection (e) of this section.

(e) Plumbing fittings and fixtures

(1) In general

The Administrator shall provide accurate and timely technical information and assistance to qualified third-party certifiers in the development of voluntary standards and testing protocols for the leaching of lead from new plumbing fittings and fixtures that are intended by the manufacturer to dispense water for human ingestion.

(2) Standards

(A) In general

If a voluntary standard for the leaching of lead is not established by the date that is 1 year after August 6, 1996, the Administrator shall, not later than 2 years after August 6, 1996, promulgate regulations setting a health-effects-based performance standard establishing maximum leaching levels from new plumbing fittings and fixtures that are intended by the manufacturer to dispense water for human ingestion. The standard
shall become effective on the date that is 5 years after the date of promulgation of the standard.

(B) Alternative requirement

If regulations are required to be promulgated under subparagraph (A) and have not been promulgated by the date that is 5 years after August 6, 1996, no person may import, manufacture, process, or distribute in commerce a new plumbing fitting or fixture, intended by the manufacturer to dispense water for human ingestion, that contains more than 4 percent lead by dry weight.

(71) Definition of lead free

For purposes of this section, the term “lead free” means—

(A) not containing more than 0.2 percent lead when used with respect to solder and flux; and

(B) not more than a weighted average of 0.25 percent lead when used with respect to the wetted surfaces of pipes, pipe fittings, plumbing fittings, and fixtures.

(2) Calculation

The weighted average lead content of a pipe, pipe fitting, plumbing fitting, or fixture shall be calculated by using the following formula: For each wetted component, the percentage of lead in the component shall be multiplied by the ratio of the wetted surface area of that component to the total wetted surface area of the entire product to arrive at the weighted percentage of lead of the component. The weighted percentage of lead of each wetted component shall be added together, and the sum of these weighted percentages shall constitute the weighted average lead content of the product. The lead content of the material used to produce wetted components shall be used to determine compliance with paragraph (1)(B). For lead content of materials that are provided as a range, the maximum content of the range shall be used.

AMENDMENTS


Subsec. (a)(1). Pub. L. 104–182, §118(1), substituted “Prohibitions” for “Prohibition” in heading and amended text generally. Prior to amendment, text read as follows: “Any pipe, solder, or flux, which is used after June 19, 1986, in the installation or repair of—

(A) any public water system, or

(B) any plumbing in a residential or nonresidential facility providing water for human consumption which is connected to a public water system, shall be lead free (within the meaning of subsection (d) of this section). This paragraph shall not apply to leaded joints necessary for the repair of cast iron pipes.”


EFFECTIVE DATE OF 2011 AMENDMENT

Pub. L. 111–380, §2(b), Jan. 4, 2011, 124 Stat. 4132, provided that: “The provisions of subsections (a)(4) and (d) of section 1417 of the Safe Drinking Water Act [42 U.S.C. 300g–6(a)(4), (d)], as added by this section, apply beginning on the day that is 36 months after the date of enactment of this Act [Jan. 4, 2011].”

NOTIFICATION TO STATES

Section 109(b) of Pub. L. 99–339 provided that: “The Administrator of the Environmental Protection Agency shall notify all States with respect to the requirements of section 1417 of the Public Health Service Act [this section] within 90 days after the enactment of this Act [June 19, 1986].”

BAN ON LEAD WATER PIPES, SOLDER, AND FLUX IN VA AND HUD INSURED OR ASSISTED PROPERTY


“(1) PROHIBITION.—The Secretary of Housing and Urban Development and the Secretary of Veterans Affairs may not insure or guarantee a mortgage or furnish assistance with respect to newly constructed residential property which contains a potable water system unless such system uses only lead free pipe, solder, and flux.

“(2) DEFINITION OF LEAD FREE.—For purposes of paragraph (1) the term ‘lead free’—

“A. when used with respect to solders and flux refers to solders and flux containing not more than 0.2 percent lead, and

“B. when used with respect to pipes and pipe fittings contains not more than 8.0 percent lead.

“(3) EFFECTIVE DATE.—Paragraph (1) shall become effective 24 months after the enactment of this Act [June 19, 1986].”

§ 300g–7. Monitoring of contaminants

(a) Interim monitoring relief authority

(1) In general

A State exercising primary enforcement responsibility for public water systems may modify the monitoring requirements for any regulated or unregulated contaminants for which monitoring is required other than mi-
crobial contaminants (or indicators thereof), disinfectants and disinfection byproducts or corrosion byproducts for an interim period to provide that any public water system serving 10,000 persons or fewer shall not be required to conduct additional quarterly monitoring during an interim relief period for such contaminants if—

(A) monitoring, conducted at the beginning of the period for the contaminant concerned, fails to detect the presence of the contaminant in the ground or surface water supplying the public water system; and

(B) the State, considering the hydrogeology of the area and other relevant factors, determines in writing that the contaminant is unlikely to be detected by further monitoring during such period.

(2) Termination; timing of monitoring

The interim relief period referred to in paragraph (1) shall terminate when permanent monitoring relief is adopted and approved for such State, or at the end of 36 months after August 6, 1996, whichever comes first. In order to serve as a basis for interim relief, the monitoring conducted at the beginning of the period must occur at the time determined by the State to be the time of the public water system’s greatest vulnerability to the contaminant concerned in the relevant ground or surface water, taking into account in the case of pesticides the time of application of the pesticide for the source water area and the travel time for the pesticide to reach such waters and taking into account, in the case of other contaminants, seasonality of precipitation and contaminant travel time.

(b) Permanent monitoring relief authority

(1) In general

Each State exercising primary enforcement responsibility for public water systems under this subchapter and having an approved source water assessment program may adopt, in accordance with guidance published by the Administrator, tailored alternative monitoring requirements for public water systems in such State (as an alternative to the monitoring requirements for chemical contaminants set forth in the applicable national primary drinking water regulations) where the State concludes that (based on data available at the time of adoption concerning susceptibility, use, occurrence, or wellhead protection, or from the State’s drinking water source water assessment program) such alternative monitoring would provide assurance that it complies with the Administrator’s guidelines. The State program must be adequate to assure compliance with, and enforcement of, applicable national primary drinking water regulations. Alternative monitoring shall not apply to regulated microbiological contaminants (or indicators thereof), disinfectants and disinfection byproducts, or corrosion byproducts. The preceding sentence is not intended to limit other authority of the Administrator under other provisions of this subchapter to grant monitoring flexibility.

(2) Guidelines

(A) In general

The Administrator shall issue, after notice and comment and at the same time as guidelines are issued for source water assessment under section 300–13 of this title, guidelines for States to follow in proposing alternative monitoring requirements under paragraph (1) for chemical contaminants. The Administrator shall publish such guidelines in the Federal Register. The guidelines shall assure that the public health will be protected from drinking water contamination. The guidelines shall require that a State alternative monitoring program apply on a contaminant-by-contaminant basis, to be eligible for such alternative monitoring program, a public water system must show the State that the contaminant is not present in the drinking water supply or, if present, it is reliably and consistently below the maximum contaminant level.

(B) Definition

For purposes of subparagraph (A), the phrase “reliably and consistently below the maximum contaminant level” means that, although contaminants have been detected in a water supply, the State has sufficient knowledge of the contamination source and extent of contamination to predict that the maximum contaminant level will not be exceeded. In determining that a contaminant is reliably and consistently below the maximum contaminant level, States shall consider the quality and completeness of data, the length of time covered and the volatility or stability of monitoring results during that time, and the probability of such results to the maximum contaminant level. Wide variations in the analytical results, or analytical results close to the maximum contaminant level, shall not be considered to be reliably and consistently below the maximum contaminant level.

(3) Effect of detection of contaminants

The guidelines issued by the Administrator under paragraph (2) shall require that if, after the monitoring program is in effect and operating, a contaminant covered by the alternative monitoring program is detected at levels at or above the maximum contaminant level or is no longer reliably or consistently below the maximum contaminant level, the public water system must either—

(A) demonstrate that the contamination source has been removed or that other action has been taken to eliminate the contamination problem; or

(B) test for the detected contaminant pursuant to the applicable national primary drinking water regulation.

(4) States not exercising primary enforcement responsibility

The Governor of any State not exercising primary enforcement responsibility under section 300g–2 of this title on August 6, 1996, may submit to the Administrator a request that the Administrator modify the monitoring re-
requirements established by the Administrator and applicable to public water systems in that State. After consultation with the Governor, the Administrator shall modify the requirements for public water systems in that State if the request of the Governor is in accordance with each of the requirements of this subsection that apply to alternative monitoring requirements established by States that have primary enforcement responsibility. A decision by the Administrator to approve a request under this clause shall be for a period of 3 years and may subsequently be extended for periods of 5 years.

(c) Treatment as NPDWR

All monitoring relief granted by a State to a public water system for a regulated contaminant under subsection (a) or (b) of this section shall be treated as part of the national primary drinking water regulation for that contaminant.

(d) Other monitoring relief

Nothing in this section shall be construed to affect the authority of the States under applicable national primary drinking water regulations to alter monitoring requirements through waivers or other existing authorities. The Administrator shall periodically review and, as appropriate, revise such authorities.

(July 1, 1944, ch. 373, title XIV, § 1418, as added Pub. L. 104–182, title I, § 125(b), Aug. 6, 1996, 110 Stat. 1654.)

§ 300g–8. Operator certification

(a) Guidelines

Not later than 30 months after August 6, 1996, and in cooperation with the States, the Administrator shall publish guidelines in the Federal Register, after notice and opportunity for comment from interested persons, including States and public water systems, specifying minimum standards for certification (and recertification) of the operators of community and nontransient noncommunity public water systems. Such guidelines shall take into account existing State programs, the complexity of the system, and other factors aimed at providing an effective program at reasonable cost to States and public water systems, taking into account the size of the system.

(b) State programs

Beginning 2 years after the date on which the Administrator publishes guidelines under subsection (a) of this section, the Administrator shall withhold 20 percent of the funds a State is otherwise entitled to receive under section 300j–12 of this title unless the State has adopted and is implementing a program for the certification of operators of community and nontransient noncommunity public water systems that meets the requirements of the guidelines published pursuant to subsection (a) of this section or that has been submitted in compliance with subsection (c) of this section and that has not been disapproved.

(c) Existing programs

For any State exercising primary enforcement responsibility for public water systems or any other State which has an operator certification program, the guidelines under subsection (a) of this section shall allow the State to enforce such program in lieu of the guidelines under subsection (a) of this section if the State submits the program to the Administrator within 18 months after the publication of the guidelines unless the Administrator determines (within 9 months after the State submits the program to the Administrator) that such program is not substantially equivalent to such guidelines. In making this determination, an existing State program shall be presumed to be substantially equivalent to the guidelines, notwithstanding program differences, based on the size of systems or the quality of source water, providing the State program meets the overall public health objectives of the guidelines. If disapproved, the program may be resubmitted within 6 months after receipt of notice of disapproval.

(d) Expense reimbursement

(1) In general

The Administrator shall provide reimbursement for the costs of training, including an appropriate per diem for unsalaried operators, and certification for persons operating systems serving 3,300 persons or fewer that are required to undergo training pursuant to this section.

(2) State grants

The reimbursement shall be provided through grants to States with each State receiving an amount sufficient to cover the reasonable costs for training all such operators in the State, as determined by the Administrator, to the extent required by this section. Grants received by a State pursuant to this paragraph shall first be used to provide reimbursement for training and certification costs of persons operating systems serving 3,300 persons or fewer. If a State has reimbursed all such costs, the State may, after notice to the Administrator, use any remaining funds from the grant for any of the other purposes authorized for grants under section 300j–12 of this title.

(3) Authorization

There are authorized to be appropriated to the Administrator to provide grants for reimbursement under this section $30,000,000 for each of fiscal years 1997 through 2003.

(4) Reservation

If the appropriation made pursuant to paragraph (3) for any fiscal year is not sufficient to satisfy the requirements of paragraph (1), the Administrator shall, prior to any other allocation or reservation, reserve such sums as necessary from the funds appropriated pursuant to section 300j–12(m) of this title to provide reimbursement for the training and certification costs mandated by this subsection.

(July 1, 1944, ch. 373, title XIV, § 1419, as added Pub. L. 104–182, title I, § 123, Aug. 6, 1996, 110 Stat. 1652.)
§ 300g–9. Capacity development

(a) State authority for new systems

A State shall receive only 80 percent of the allotment that the State is otherwise entitled to receive under section 300j–12 of this title (relating to State loan funds) unless the State has obtained the legal authority or other means to ensure that all new community water systems and new nontransient, noncommunity water systems commencing operation after October 1, 1999, demonstrate technical, managerial, and financial capacity with respect to each national primary drinking water regulation in effect, or likely to be in effect, on the date of commencement of operations.

(b) Systems in significant noncompliance

(1) List

Beginning not later than 1 year after August 6, 1996, each State shall prepare, periodically update, and submit to the Administrator a list of community water systems and nontransient, noncommunity water systems that have a history of significant noncompliance with this subchapter (as defined in guidelines issued prior to August 6, 1996, or any revisions of the guidelines that have been made in consultation with the States) and, to the extent practicable, the reasons for noncompliance.

(2) Report

Not later than 5 years after August 6, 1996, and as part of the capacity development strategy of the State, each State shall report to the Administrator on the success of enforcement mechanisms and initial capacity development efforts in assisting the public water systems listed under paragraph (1) to improve technical, managerial, and financial capacity.

(c) Capacity development strategy

(1) In general

Beginning 4 years after August 6, 1996, a State shall receive only—

(A) 90 percent in fiscal year 2001;
(B) 85 percent in fiscal year 2002; and
(C) 80 percent in each subsequent fiscal year,

of the allotment that the State is otherwise entitled to receive under section 300j–12 of this title (relating to State loan funds), unless the State is developing and implementing a strategy to assist public water systems in acquiring and maintaining technical, managerial, and financial capacity.

(2) Content

In preparing the capacity development strategy, the State shall consider, solicit public comment on, and include as appropriate—

(A) the methods or criteria that the State will use to identify and prioritize the public

water systems most in need of improving technical, managerial, and financial capacity;
(B) a description of the institutional, regulatory, financial, tax, or legal factors at the Federal, State, or local level that encourage or impair capacity development;
(C) a description of how the State will use the authorities and resources of this subchapter or other means to—

(i) assist public water systems in complying with national primary drinking water regulations;
(ii) encourage the development of partnerships between public water systems to enhance the technical, managerial, and financial capacity of the systems; and
(iii) assist public water systems in the training and certification of operators;
(D) a description of how the State will establish a baseline and measure improvements in capacity with respect to national primary drinking water regulations and State drinking water law; and
(E) an identification of the persons that have an interest in and are involved in the development and implementation of the capacity development strategy (including all appropriate agencies of Federal, State, and local governments, private and nonprofit public water systems, and public water system customers).

(3) Report

Not later than 2 years after the date on which a State first adopts a capacity development strategy under this subsection, and every 3 years thereafter, the head of the State agency that has primary responsibility to carry out this subchapter in the State shall submit to the Governor a report that shall also be available to the public on the efficacy of the strategy and progress made toward improving the technical, managerial, and financial capacity of public water systems in the State.

(4) Review

The decisions of the State under this section regarding any particular public water system are not subject to review by the Administrator and may not serve as the basis for withholding funds under section 300j–12 of this title.

(d) Federal assistance

(1) In general

The Administrator shall support the States in developing capacity development strategies.

(2) Informational assistance

(A) In general

Not later than 180 days after August 6, 1996, the Administrator shall—

(i) conduct a review of State capacity development efforts in existence on August 6, 1996, and publish information to assist States and public water systems in capacity development efforts; and
(ii) initiate a partnership with States, public water systems, and the public to de-
develop information for States on recommended operator certification requirements.

(B) Publication of information

The Administrator shall publish the information developed through the partnership under subparagraph (A)(ii) not later than 18 months after August 6, 1996.

(3) Promulgation of drinking water regulations

In promulgating a national primary drinking water regulation, the Administrator shall include an analysis of the likely effect of compliance with the regulation on the technical, financial, and managerial capacity of public water systems.

(4) Guidance for new systems

Not later than 2 years after August 6, 1996, the Administrator shall publish guidance developed in consultation with the States describing legal authorities and other means to ensure that all new community water systems and new nontransient, noncommunity water systems demonstrate technical, managerial, and financial capacity with respect to national primary drinking water regulations.

(e) Variances and exemptions

Based on information obtained under subsection (c)(3) of this section, the Administrator shall, as appropriate, modify regulations concerning variances and exemptions for small public water systems to ensure flexibility in the use of the variances and exemptions. Nothing in this subsection shall be interpreted, construed, or applied to affect or alter the requirements of section 300g–4 of this title.

(f) Small public water systems technology assistance centers

(1) Grant program

The Administrator is authorized to make grants to institutions of higher learning to establish and operate small public water system technology assistance centers in the United States.

(2) Responsibilities of the centers

The responsibilities of the small public water system technology assistance centers established under this subsection shall include the conduct of training and technical assistance relating to the information, performance, and technical needs of small public water systems or public water systems that serve Indian Tribes.

(3) Applications

Any institution of higher learning interested in receiving a grant under this subsection shall submit to the Administrator an application in such form and containing such information as the Administrator may require by regulation.

(4) Selection criteria

The Administrator shall select recipients of grants under this subsection on the basis of the following criteria:

(A) The small public water system technology assistance center shall be located in a State that is representative of the needs of the region in which the State is located for addressing the drinking water needs of small and rural communities or Indian Tribes.

(B) The grant recipient shall be located in a region that has experienced problems, or may reasonably be foreseen to experience problems, with small and rural public water systems.

(C) The grant recipient shall have access to expertise in small public water system technology management.

(D) The grant recipient shall have the capability to disseminate the results of small public water system technology and training programs.

(E) The projects that the grant recipient proposes to carry out under the grant are necessary and appropriate.

(F) The grant recipient has regional support beyond the host institution.

(5) Consortia of States

At least 2 of the grants under this subsection shall be made to consortia of States with low population densities.

(6) Authorization of appropriations

There are authorized to be appropriated to make grants under this subsection $2,000,000 for each of the fiscal years 1997 through 1999, and $5,000,000 for each of the fiscal years 2000 through 2003.

(g) Environmental finance centers

(1) In general

The Administrator shall provide initial funding for one or more university-based environmental finance centers for activities that provide technical assistance to State and local officials in developing the capacity of public water systems. Any such funds shall be used only for activities that are directly related to this subchapter.

(2) National capacity development clearinghouse

The Administrator shall establish a national public water system capacity development clearinghouse to receive and disseminate information with respect to developing, improving, and maintaining financial and managerial capacity at public water systems. The Administrator shall ensure that the clearinghouse does not duplicate other federally supported clearinghouse activities.

(3) Capacity development techniques

The Administrator may request an environmental finance center funded under paragraph (1) to develop and test managerial, financial, and institutional techniques for capacity development. The techniques may include capacity assessment methodologies, manual and computer based public water system rate models and capital planning models, public water system consolidation procedures, and regionalization models.

(4) Authorization of appropriations

There are authorized to be appropriated to carry out this subsection $1,500,000 for each of the fiscal years 1997 through 2003.
§ 300h. Regulations for State programs

(a) Publication of proposed regulations; promulgation; amendments; public hearings; administrative consultations

(1) The Administrator shall publish proposed regulations for State underground injection control programs within 180 days after December 16, 1974. Within 180 days after publication of such proposed regulations, he shall promulgate such regulations with such modifications as he deems appropriate. Any regulation under this subsection may be amended from time to time.

(2) Any regulation under this section shall be proposed and promulgated in accordance with section 533 of title 5 (relating to rulemaking), except that the Administrator shall provide opportunity for public hearing prior to promulgation of such regulations. In proposing and promulgating regulations under this section, the Administrator shall consult with the Secretary, the National Drinking Water Advisory Council, and other appropriate Federal entities and with interested State entities.

(b) Minimum requirements; restrictions

(1) Regulations under subsection (a) of this section for State underground injection control programs shall contain minimum requirements for effective programs to prevent underground injection which endangers drinking water sources within the meaning of subsection (d)(2) of this section. Such regulations shall require that a State program, in order to be approved under section 300h–1 of this title—

(A) shall prohibit, effective on the date on which the applicable underground injection control program takes effect, any underground injection in such State which is not authorized by a permit issued by the State (except that the regulations may permit a State to authorize underground injection by rule);

(B) shall require (i) in the case of a program which provides for authorization of underground injection by permit, that the applicant for the permit to inject must satisfy the State that the underground injection will not endanger drinking water sources, and (ii) in the case of a program which provides for such an authorization by rule, that no rule may be promulgated which authorizes any underground injection which endangers drinking water sources;

(C) shall include inspection, monitoring, recordkeeping, and reporting requirements; and

(D) shall apply (i) as prescribed by section 300j–6(b) (1) of this title, to underground injections by Federal agencies, and (ii) to underground injections by any other person whether or not occurring on property owned or leased by the United States.

(2) Regulations of the Administrator under this section for State underground injection control programs may not prescribe requirements which interfere with or impede—

(A) the underground injection of brine or other fluids which are brought to the surface in connection with oil or natural gas production or natural gas storage operations, or

(B) any underground injection for the secondary or tertiary recovery of oil or natural gas, unless such requirements are essential to assure that underground sources of drinking water will not be endangered by such injection.

(3)(A) The regulations of the Administrator under this section shall permit or provide for consideration of varying geologic, hydrological, or historical conditions in different States and in different areas within a State.

(B)(i) In prescribing regulations under this section the Administrator shall, to the extent feasible, avoid promulgation of requirements which would unnecessarily disrupt State underground injection control programs which are in effect and being enforced in a substantial number of States.

(ii) For the purpose of this subparagraph, a regulation prescribed by the Administrator under this section shall be deemed to disrupt a State underground injection control program only if it would be infeasible to comply with both such regulation and the State underground injection control program.

(iii) For the purpose of this subparagraph, a regulation prescribed by the Administrator under this section shall be deemed unnecessary only if, without such regulation, underground sources of drinking water will not be endangered by an underground injection.

(C) Nothing in this section shall be construed to alter or affect the duty to assure that underground sources of drinking water will not be endangered by any underground injection.

(c) Temporary permits; notice and hearing

(1) The Administrator may, upon application of the Governor of a State which authorizes underground injection by means of permits, authorize such State to issue (without regard to subsection (b)(1)(B)(i) of this section) temporary permits for underground injection which may be effective until the expiration of four years after December 16, 1974, if—

(A) the Administrator finds that the State has demonstrated that it is unable and could not reasonably have been able to process all permit applications within the time available;

(B) the Administrator determines the adverse effect on the environment of such temporary permits is not unwarranted;

(C) such temporary permits will be issued only with respect to injection wells in operation on the date on which such State’s permit program approved under this part first takes effect and for which there was inadequate time to process its permit application; and

(D) the Administrator determines the temporary permits require the use of adequate

1 See References in Text note below.
safeguards established by rules adopted by him.

(2) The Administrator may, upon application of the Governor of a State which authorizes underground injection by means of permits, authorize such State to issue (without regard to subsection (b)(1)(B)(i) of this section), but after reasonable notice and hearing, one or more temporary permits each of which is applicable to a particular injection well and to the underground injection of a particular fluid and which may be effective until the expiration of four years after December 16, 1974, if the State finds, on the record of such hearing—

(A) that technology (or other means) to permit safe injection of the fluid in accordance with the applicable underground injection control program is not generally available (taking costs into consideration); and

(B) that injection of the fluid would be less harmful to health than the use of other available means of disposing of waste or producing the desired product; and

(C) that available technology or other means have been employed (and will be employed) to reduce the volume and toxicity of the fluid and to minimize the potentially adverse effect of the injection on the public health.

(d) “Underground injection” defined; underground injection endangerment of drinking water sources

For purposes of this part:

(1) UNDERGROUND INJECTION.—The term “underground injection”—

(A) means the subsurface emplacement of fluids by well injection; and

(B) excludes—

(i) the underground injection of natural gas for purposes of storage; and

(ii) the underground injection of fluids or propping agents (other than diesel fuels) pursuant to hydraulic fracturing operations related to oil, gas, or geothermal production activities.

(2) Underground injection endangers drinking water sources if such injection may result in the presence in underground water supplies that are reasonably expected to supply any public water system of any contaminant, and if the presence of such contaminant may result in such system's not complying with any national primary drinking water regulation or may otherwise adversely affect the health of persons.

(3) Notice under paragraph (1) shall be made by the Administrator to the State, and at such time as the Administrator determines that a State underground injection control program may be necessary to assure that underground injection will not endanger drinking water sources. Such list may be amended from time to time.

(b) State applications; notice to Administrator of compliance with revised or added requirements; approval or disapproval by Administrator; duration of State primary enforcement responsibility; public hearing

(1) (A) Each State listed under subsection (a) of this section shall within 270 days after the date of promulgation of any regulation under section 300h of this title (or, if later, within 270 days after such State is first listed under subsection (a) of this section) submit to the Administrator an application which contains a showing satisfactory to the Administrator that the State—

(i) has adopted after reasonable notice and public hearings, and will implement, an underground injection control program as the Administrator may require by regulation.

(ii) will keep such records and make such reports with respect to its activities under its underground injection control program meets the revised or added requirements of regulations in effect under section 300h of this title; and

(2) Within 270 days of any amendment of a regulation under section 300h of this title revising or adding any requirement respecting State underground injection control programs, each State listed under subsection (a) of this section shall submit (in such form and manner as the Administrator may require) a notice to the Administrator containing a showing satisfactory to him that the State underground injection control program meets the revised or added requirement.

(b) Within ninety days after the State's application under paragraph (1)(A) or notice under
paragraph (1)(B) and after reasonable opportunity for presentation of views, the Administrator shall by rule either approve, disapprove, or approve in part and disapprove in part, the State's underground injection control program.

(3) If the Administrator approves the State's program under paragraph (2), the State shall have primary enforcement responsibility for underground water sources until such time as the Administrator determines, by rule, that such State no longer meets the requirements of clause (i) or (ii) of paragraph (1)(A) of this subsection.

(4) Before promulgating any rule under paragraph (2) or (3) of this subsection, the Administrator shall provide opportunity for public hearing respecting such rule.

(e) Program by Administrator for State without primary enforcement responsibility; restrictions

If the Administrator disapproves a State's program (or part thereof) under subsection (b)(2) of this section, if the Administrator determines under subsection (b)(3) of this section that a State no longer meets the requirements of clause (i) or (ii) of subsection (b)(1)(A) of this section or if a State fails to submit an application or notice before the date of expiration of the period specified in subsection (b)(1) of this section, the Administrator shall by regulation within 90 days after the date of such disapproval, determination, or expiration (as the case may be) prescribe (and may from time to time by regulation revise) a program applicable underground injection control program in such State not to exceed 270 days after June 19, 1986, unless an Indian Tribe first obtains approval to assume primary enforcement responsibility for underground injection control.


AMENDMENTS

1986—Subsec. (c)(1). Pub. L. 99–339, § 201(a), inserted “or natural gas storage operations, or” after “production”.


§ 300h–2. Enforcement of program

(a) Notice to State and violator; issuance of administrative order; civil action

(1) Whenever the Administrator finds during a period during which a State has primary enforcement responsibility for underground water sources (within the meaning of section 300h–1(b)(3) of this title or section 300h–4(c) of this title) that any person who is subject to a requirement of an applicable underground injection control program in such State is violating such requirement, he shall so notify the State and the person violating such requirement. If beyond the thirtieth day after the Administrator's notification the State has not commenced appropriate enforcement action, the Administrator shall issue an order under subsection (c) of this section requiring the person to comply with such requirement or the Administrator shall commence a civil action under subsection (b) of this section.

(2) Whenever the Administrator finds during a period during which a State does not have primary enforcement responsibility for underground water sources that any person subject to any requirement of any applicable underground injection control program in such State is violating such requirement, the Administrator shall issue an order under subsection (c) of this section requiring the person to comply with such requirement or the Administrator shall commence a civil action under subsection (b) of this section.
(b) Civil and criminal actions

Civil actions referred to in paragraphs (1) and (2) of subsection (a) of this section shall be brought in the appropriate United States district court. Such court shall have jurisdiction to require compliance with any requirement of an applicable underground injection program or order issued under subsection (c) of this section. The court may enter such judgment as protection of public health may require. Any person who violates any requirement of an applicable underground injection control program or an order requiring compliance under subsection (c) of this section—

(1) shall be subject to a civil penalty of not more than $25,000 for each day of such violation, and

(2) if such violation is willful, such person may, in addition to or in lieu of the civil penalty authorized by paragraph (1), be imprisoned for not more than 3 years, or fined in accordance with title 18, or both.

c) Administrative orders

(1) In any case in which the Administrator is authorized to bring a civil action under this section with respect to any regulation or other requirement of this part other than those relating to—

(A) the underground injection of brine or other fluids which are brought to the surface in connection with oil or natural gas production, or

(B) any underground injection for the secondary or tertiary recovery of oil or natural gas,

the Administrator may also issue an order under this subsection either assessing a civil penalty of not more than $10,000 for each day of violation for any past or current violation, up to a maximum administrative penalty of $125,000, or requiring compliance with such regulation or other requirement, or both.

(2) In any case in which the Administrator is authorized to bring a civil action under this section with respect to any regulation, or other requirement of this part relating to—

(A) the underground injection of brine or other fluids which are brought to the surface in connection with oil or natural gas production, or

(B) any underground injection for the secondary or tertiary recovery of oil or natural gas,

the Administrator may also issue an order under this subsection either assessing a civil penalty of not more than $5,000 for each day of violation for any past or current violation, up to a maximum administrative penalty of $125,000, or requiring compliance with such regulation or other requirement, or both.

(3) An order under this subsection shall be issued by the Administrator after opportunity (provided in accordance with this subparagraph) for a hearing. Before issuing the order, the Administrator shall give to the person to whom it is directed written notice of the Administrator's proposal to issue such order and the opportunity to request, within 30 days of the date the notice is received by such person, a hearing on the order. Such hearing shall not be subject to section 554 or 556 of title 5, but shall provide a reasonable opportunity to be heard and to present evidence.

(B) The Administrator shall provide public notice of, and reasonable opportunity to comment on, any proposed order.

(C) Any citizen who comments on any proposed order under subparagraph (B) shall be given notice of any hearing under this subsection and of any order. In any hearing held under subparagraph (A), such citizen shall have a reasonable opportunity to be heard and to present evidence.

(D) Any order issued under this subsection shall become effective 30 days following its issuance unless an appeal is taken pursuant to paragraph (6).

(4) (A) Any order issued under this subsection shall state with reasonable specificity the nature of the violation and may specify a reasonable time for compliance.

(B) In assessing any civil penalty under this subsection, the Administrator shall take into account appropriate factors, including (i) the seriousness of the violation; (ii) the economic benefit (if any) resulting from the violation; (iii) any history of such violations; (iv) any good-faith efforts to comply with the applicable requirements; (v) the economic impact of the penalty on the violator; and (vi) such other matters as justice may require.

(5) Any violation with respect to which the Administrator has commenced and is diligently prosecuting an action, or has issued an order under this subsection assessing a penalty, shall not be subject to an action under subsection (b) of this section or section 300h–3(c) or 300j–8 of this title, except that the foregoing limitation on civil actions under section 300j–8 of this title shall not apply with respect to any violation for which—

(A) a civil action under section 300j–8(a)(1) of this title has been filed prior to commencement of an action under this subsection, or

(B) a notice of violation under section 300j–8(b)(1) of this title has been given before commencement of an action under this subsection and an action under section 300j–8(a)(1) of this title is filed before 120 days after such notice is given.

(6) Any person against whom an order is issued or who commented on a proposed order pursuant to paragraph (3) may file an appeal of such order with the United States District Court for the District of Columbia or the district in which the violation is alleged to have occurred. Such an appeal may only be filed within the 30-day period beginning on the date the order is issued. Appellant shall simultaneously send a copy of the appeal by certified mail to the Administrator and to the Attorney General. The Administrator shall promptly file in such court a certified copy of the record on which such order was imposed. The district court shall not set aside or remand such order unless there is a substantial question of the record, taken as a whole, to support the finding of a violation or, unless the Administrator's assessment of penalty or requirement for compliance constitutes an abuse of discretion. The district court shall
not impose additional civil penalties for the same violation unless the Administrator’s assessment of a penalty constitutes an abuse of discretion. Notwithstanding section 300–7(a)(2) of this title, any order issued under paragraph (3) shall be subject to judicial review exclusively under this paragraph.

(7) If any person fails to pay an assessment of a civil penalty—

(A) after the order becomes effective under paragraph (3), or

(B) after a court, in an action brought under paragraph (6), has entered a final judgment in favor of the Administrator,

the Administrator may request the Attorney General to bring a civil action in an appropriate district court to recover the amount assessed (plus costs, attorneys’ fees, and interest at currently prevailing rates from the date the order is effective or the date of such final judgment, as the case may be). In such an action, the validity, amount, and appropriateness of such penalty shall not be subject to review.

(8) The Administrator may, in connection with administrative proceedings under this subsection, issue subpoenas compelling the attendance and testimony of witnesses and subpoenas duces tecum, and may request the Attorney General to bring an action to enforce any subpoena under this section. The district courts shall have jurisdiction to enforce such subpoenas and impose sanction.

(d) State authority to adopt or enforce laws or regulations respecting underground injection

Nothing in this subchapter shall diminish any authority of a State or political subdivision to adopt or enforce any law or regulation respecting underground injection but no such law or regulation shall relieve any person of any requirement otherwise applicable under this subchapter.


AMENDMENTS


Subsec. (a)(1). Pub. L. 99–339, §202(a)(1), substituted provisions which related to issuance of an order of compliance or commencement of a civil action by the Administrator if the State has not commenced enforcement against the violator for provisions directing the Administrator to give public notice and request that the State report within 15 days thereafter as to steps taken to enforce compliance and authorizing the Administrator to commence a civil action upon failure by the State to comply timely.

Subsec. (a)(2). Pub. L. 99–339, §202(a)(2), substituted provision that the Administrator issue an order under subsec. (c) of this section or commence a civil action under subsec. (b) of this section for provision that he commence a civil action under subsec. (b)(1) of this section.

Subsec. (b). Pub. L. 99–339, §202(b), amended subsec. (b) generally, substituting provisions relating to jurisdiction of the appropriate Federal district court, entry of judgment, civil penalty of $25,000 per day, criminal liability and fine for willful violation for provisions which related to judicial determinations in appropriate Federal district courts, civil penalties of $5,000 per day, and fines of $10,000 per day for willful violations.

Subsecs. (c), (d). Pub. L. 99–339, §202(c), added subsec. (c) and redesignated former subsec. (c) as (d).


§300h–3. Interim regulation of underground injections

(a) Necessity for well operation permit; designation of one aquifer areas

(1) Any person may petition the Administrator to have an area of a State (or States) designated as an area in which no new underground injection well may be operated during the period beginning on the date of the designation and ending on the date on which the applicable underground injection control program covering such area takes effect unless a permit for the operation of such well has been issued by the Administrator under subsection (b) of this section. The Administrator may so designate an area within a State if he finds that the area has one aquifer which is the sole or principal drinking water source for the area and which, if contaminated, would create a significant hazard to public health.

(2) Upon receipt of a petition under paragraph (1) of this subsection, the Administrator shall publish it in the Federal Register and shall provide an opportunity to interested persons to submit written data, views, or arguments thereon. Not later than the 30th day following the date of the publication of a petition under this paragraph in the Federal Register, the Administrator shall either make the designation for which the petition is submitted or deny the petition.

(b) Well operation permits; publication in Federal Register; notice and hearing; issuance or denial; conditions for issuance

(1) During the period beginning on the date an area is designated under subsection (a) of this section and ending on the date the applicable underground injection control program covering such area takes effect, no new underground injection well may be operated in such area unless the Administrator has issued a permit for such operation.

(2) Any person may petition the Administrator for the issuance of a permit for the operation of such a well in such an area. A petition submitted under this paragraph shall be submitted in such manner and contain such information as the Administrator may require by regulation. Upon receipt of such a petition, the Administrator shall publish it in the Federal Register. The Administrator shall give notice of any proceeding on a petition and shall provide opportunity for agency hearing. The Administrator shall act upon such petition on the record of any hearing held pursuant to the preceding sentence respecting such petition. Within 120 days of the publication in the Federal Register of a petition submitted under this paragraph, the Administrator shall either issue the permit for which the petition was submitted or deny its issuance.

(3) The Administrator may issue a permit for the operation of a new underground injection...
well in an area designated under subsection (a) of this section only, if he finds that the operation of such well will not cause contamination of the aquifer of such area so as to create a significant hazard to public health. The Administrator may condition the issuance of such a permit upon the use of such control measures in connection with the operation of such well, for which the permit is to be issued, as he deems necessary to assure that the operation of the well will not contaminate the aquifer of the designated area in which the well is located so as to create a significant hazard to public health.

(c) Civil penalties; separate violations; penalties for willful violations; temporary restraining order or injunction

Any person who operates a new underground injection well in violation of subsection (b) of this section, (1) shall be subject to a civil penalty of not more than $5,000 for each day in which such violation occurs, or (2) if such violation is willful, such person may, in lieu of the civil penalty authorized by clause (1), be fined not more than $10,000 for each day in which such violation occurs. If the Administrator has reason to believe that any person is violating or will violate subsection (b) of this section, he may petition the United States district court to issue a temporary restraining order or injunction (including a mandatory injunction) to enforce such subsection.

(d) “New underground injection well” defined

For purposes of this section, the term “new underground injection well” means an underground injection well whose operation was not approved by appropriate State and Federal agencies before December 16, 1974.

(e) Areas with one aquifer; publication in Federal Register; commitments for Federal financial assistance

If the Administrator determines, on his own initiative or upon petition, that an area has an aquifer which is the sole or principal drinking water source for the area and which, if contaminated, would create a significant hazard to public health, he shall publish notice of that determination in the Federal Register. After the publication of any such notice, no commitment for Federal financial assistance (through a grant, contract, loan guarantee, or otherwise) may be entered into for any project which the Administrator determines may contaminate such aquifer through a recharge zone so as to create a significant hazard to public health, but a commitment for Federal financial assistance may, if authorized under another provision of law, be entered into to plan or design the project to assure that it will not so contaminate the aquifer.

(July 1, 1944, ch. 373, title XIV, §1424, as added Pub. L. 93-523, §2(a), Dec. 16, 1974, 88 Stat. 1678.)

§ 300h–4. Optional demonstration by States relating to oil or natural gas

(a) Approval of State underground injection control program; alternative showing of effectiveness of program by State

For purposes of the Administrator’s approval or disapproval under section 300h–1 of this title of that portion of any State underground injection control program which relates to—

(1) the underground injection of brine or other fluids which are brought to the surface in connection with oil or natural gas production or natural gas storage operations; or

(2) any underground injection for the secondary or tertiary recovery of oil or natural gas, in lieu of the showing required under subparagraph (A) of section 300h–1(b)(1) of this title the State may demonstrate that such portion of the State program meets the requirements of subparagraphs (A) through (D) of section 300h(b)(1) of this title and represents an effective program (including adequate recordkeeping and reporting) to prevent underground injection which endangers drinking water sources.

(b) Revision or amendment of requirements of regulation; showing of effectiveness of program by State

If the Administrator revises or amends any requirement of a regulation under section 300h of this title relating to any aspect of the underground injection referred to in subsection (a) of this section, in the case of that portion of a State underground injection control program for which the demonstration referred to in subsection (a) of this section has been made, in lieu of the showing required under section 300h–1(b)(1)(B) of this title the State may demonstrate that, with respect to that aspect of such underground injection, the State program meets the requirements of subparagraphs (A) through (D) of section 300h(b)(1) of this title and represents an effective program (including adequate recordkeeping and reporting) to prevent underground injection which endangers drinking water sources.

(c) Primary enforcement responsibility of State; voiding by Administrator under duly promulgated rule

(1) Section 300h–1(b)(3) of this title shall not apply to that portion of any State underground injection control program approved by the Administrator pursuant to a demonstration under subsection (a) of this section (and under subsection (b) of this section where applicable).

(2) If pursuant to such a demonstration, the Administrator approves such portion of the State program, the State shall have primary enforcement responsibility with respect to that portion until such time as the Administrator determines, by rule, that such demonstration is no longer valid. Following such a determination, the Administrator may exercise the authority of subsection (c) of section 300h–1 of this title in the same manner as provided in such subsection with respect to a determination described in such subsection.

(3) Before promulgating any rule under paragraph (2), the Administrator shall provide opportunity for public hearing respecting such rule.

(Amendment


1986—Pub. L. 99–339 substituted “the underground injection of brine or other fluids which are brought to the surface in connection with oil or natural gas production or natural gas storage operations” for “the underground injection of brine or other fluids which are brought to the surface in connection with oil or natural gas production”.
§ 300h–5. Regulation of State programs

Not later than 18 months after June 19, 1986, the Administrator shall modify regulations issued under this chapter for Class I injection wells to identify monitoring methods, in addition to those in effect on November 1, 1985, including groundwater monitoring. In accordance with such regulations, the Administrator, or delegated State authority, shall determine the applicability of such monitoring methods, wherever appropriate, at locations and in such a manner as to provide the earliest possible detection of fluid migration into, or in the direction of, underground sources of drinking water from such wells, based on its assessment of the potential for fluid migration from the injection zone that may be harmful to human health or the environment. For purposes of this subsection, a class I injection well is defined in accordance with 40 CFR 146.05 as in effect on November 1, 1985.


AMENDMENTS

1996—Pub. L. 104–182 directed technical amendment of section catchline and subsec. (a) designation. The provision directing amendment of subsec. (a) designation could not be executed because section does not contain a subsec. (a).

1995—Pub. L. 104–66 struck out subsec. (a) designation and heading before “Not later than” and struck out heading and text of subsec. (b). Text read as follows: “The Administrator shall submit a report to Congress, no later than September 1987, summarizing the results of State surveys required by the Administrator under this section. The report shall include each of the following items of information:

1. The numbers and categories of class V wells which discharge nonhazardous waste into or above an underground source of drinking water.

2. The primary contamination problems associated with different categories of these disposal wells.

3. Recommendations for minimum design, construction, installation, and siting requirements that should be applied to protect underground sources of drinking water from such contamination wherever necessary.”

§ 300h–6. Sole source aquifer demonstration program

(a) Purpose

The purpose of this section is to establish procedures for development, implementation, and assessment of demonstration programs designed to protect critical aquifer protection areas located within areas designated as sole or principal source aquifers under section 300h–3(e) of this title.

(b) “Critical aquifer protection area” defined

For purposes of this section, the term “critical aquifer protection area” means either of the following:

1. All or part of an area located within an area for which an application or designation as a sole or principal source aquifer pursuant to section 300h–3(e) of this title, has been submitted and approved by the Administrator and which satisfies the criteria established by the Administrator under subsection (d) of this section.

2. All or part of an area which is within an aquifer designated as a sole source aquifer as of June 19, 1986, and for which an area wide ground water quality protection plan has been approved under section 208 of the Clean Water Act [33 U.S.C. 1288] prior to June 19, 1986.

(c) Application

Any State, municipal or local government or political subdivision thereof or any planning entity (including any interstate regional planning entity) that identifies a critical aquifer protection area over which it has authority or jurisdiction may apply to the Administrator for the selection of such area for a demonstration program under this section. Any applicant shall consult with other government or planning entities with authority or jurisdiction in such area prior to application. Applicants, other than the Governor, shall submit the application for a demonstration program jointly with the Governor.

(d) Criteria

Not later than 1 year after June 19, 1986, the Administrator shall, by rule, establish criteria for identifying critical aquifer protection areas under this section. In establishing such criteria, the Administrator shall consider each of the following:

1. The vulnerability of the aquifer to contamination due to hydrogeologic characteristics.

2. The number of persons or the proportion of population using the ground water as a drinking water source.

3. The economic, social and environmental benefits that would result to the area from maintenance of ground water of high quality.

4. The economic, social and environmental costs that would result from degradation of the quality of the ground water.

(e) Contents of application

An application submitted to the Administrator by any applicant for a demonstration program under this section shall meet each of the following requirements:

1. The application shall propose boundaries for the critical aquifer protection area within its jurisdiction.

2. The application shall designate or, if necessary, establish a planning entity (which shall be a public agency and which shall include representation of elected local and State governmental officials) to develop a comprehensive management plan (hereinafter in this section referred to as the “plan”) for the critical protection area. Where a local government planning agency exists with adequate authority to carry out this section with respect to any proposed critical protection area, such agency shall be designated as the planning entity.

3. The application shall establish procedures for public participation in the development of the plan, for review, approval, and adoption of the plan, and for assistance to mu-
ment plan submitted by an applicant under this section shall be to maintain the quality of the ground water in the critical protection area in a manner reasonably expected to protect human health, the environment and ground water resources. In order to achieve such objective, the plan may be designed to maintain, to the maximum extent possible, the natural vegetative and hydrogeological conditions. Each of the following elements shall be included in such a protection plan:

(A) A map showing the detailed boundary of the critical protection area.

(B) An identification of existing and potential point and nonpoint sources of ground water degradation.

(C) An assessment of the relationship between activities on the land surface and ground water quality.

(D) Specific actions and management practices to be implemented in the critical protection area to prevent adverse impacts on ground water quality.

(E) Identification of authority adequate to implement the plan, estimates of program costs, and sources of State matching funds.

(2) Such plan may also include the following:

(A) A determination of the quality of the existing ground water recharged through the special protection area and the natural recharge capabilities of the special protection area watershed.

(B) Requirements designed to maintain existing underground drinking water quality or improve underground drinking water quality if prevailing conditions fail to meet drinking water standards, pursuant to this chapter and State law.

(C) Limits on Federal, State, and local government, financially assisted activities and projects which may contribute to degradation of such ground water or any loss of natural surface and subsurface infiltration of purification capability of the special protection watershed.

(D) A comprehensive statement of land use management including emergency contingency planning as it pertains to the maintenance of the quality of underground sources of drinking water or to the improvement of such sources if necessary to meet drinking water standards pursuant to this chapter and State law.

(E) Actions in the special protection area which would avoid adverse impacts on water quality, recharge capabilities, or both.

(F) Consideration of specific techniques, which may include clustering, transfer of development rights, and other innovative measures sufficient to achieve the objectives of this section.

(G) Consideration of the establishment of a State institution to facilitate and assist funding a development transfer credit system.

(H) A program for State and local implementation of the plan described in this subsection in a manner that will insure the continued, uniform, consistent protection of the critical protection area in accord with the purposes of this section.

(I) Pollution abatement measures, if appropriate.

(g) Plans under section 208 of Clean Water Act

A plan approved before June 19, 1986, under section 208 of the Clean Water Act [33 U.S.C. 1288] to protect a sole source aquifer designated under section 300h-3(e) of this title shall be considered a comprehensive management plan for the purposes of this section.

(h) Consultation and hearings

During the development of a comprehensive management plan under this section, the planning entity shall consult with, and consider the comments of, appropriate officials of any municipality and State or Federal agency which has jurisdiction over lands and waters within the special protection area, other concerned organizations and technical and citizen advisory committees. The planning entity shall conduct public hearings at places within the special protection area for the purpose of providing the opportunity to comment on any aspect of the plan.

(i) Approval or disapproval

Within 120 days after receipt of an application under this section, the Administrator shall approve or disapprove the application. The approval or disapproval shall be based on a determination that the critical protection area satisfies the criteria established under subsection (d) of this section and that a demonstration program for the area would provide protection for ground water quality consistent with the objectives stated in subsection (f) of this section. The Administrator shall provide to the Governor a written explanation of the reasons for the disapproval of any such application. Any petitioner may modify and resubmit any application which is not approved. Upon approval of an application, the Administrator may enter into a cooperative agreement with the applicant to establish a demonstration program under this section.

(j) Grants and reimbursement

Upon entering a cooperative agreement under subsection (i) of this section, the Administrator may provide to the applicant, on a matching basis, a grant of 50 per centum of the costs of implementing the plan established under this section. The Administrator may also reimburse the applicant of an approved plan up to 50 per centum of the costs of developing such plan, except for plans approved under section 208 of the Clean Water Act [33 U.S.C. 1288]. The total amount of grants under this section for any one
aqurifer, designated under section 300h-3(e) of this title, shall not exceed $4,000,000 in any one fiscal year.

(k) Activities funded under other law

No funds authorized under this section may be used to fund activities funded under other sections of this chapter or the Clean Water Act [33 U.S.C. 1251 et seq.], the Solid Waste Disposal Act [42 U.S.C. 6901 et seq.], the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 [42 U.S.C. 9601 et seq.] or other environmental laws.

(l) Savings provision

Nothing under this section shall be construed to amend, supersede or abrogate rights to quantities of water which have been established by interstate water compacts, Supreme Court decrees, or State water laws; or any requirement imposed or right provided under any Federal or State environmental or public health statute.

(m) Authorization of appropriations

There are authorized to be appropriated to carry out this section more than the following amounts:

<table>
<thead>
<tr>
<th>Fiscal year</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>1987</td>
<td>$10,000,000</td>
</tr>
<tr>
<td>1988</td>
<td>15,000,000</td>
</tr>
<tr>
<td>1989</td>
<td>17,500,000</td>
</tr>
<tr>
<td>1990</td>
<td>17,500,000</td>
</tr>
<tr>
<td>1991</td>
<td>17,500,000</td>
</tr>
<tr>
<td>1992-1993</td>
<td>15,000,000</td>
</tr>
</tbody>
</table>

Matching grants under this section may also be used to implement or update any water quality management plan for a sole or principal source aquifer approved (before June 19, 1986) by the Administrator under section 208 of the Federal Water Pollution Control Act [33 U.S.C. 1288].

The Solid Waste Disposal Act, referred to in subsec. (k), is act June 30, 1948, ch. 758, as amended generally by Pub. L. 92-500, §2, Oct. 18, 1972, 88 Stat. 816, also known as the Federal Water Pollution Control Act, which is classified generally to chapter 103 of Title 33, Navigation and Navigable Waters. For complete classification of this Act to the Code, see Short Title note set out under section 1251 of Title 33 and Tables.

The Comprehensive Environmental Response, Compensation, and Liability Act of 1980, referred to in subsec. (k), is Pub. L. 96-510, Dec. 11, 1980, 94 Stat. 2767, as amended, which is classified principally to chapter 103 of Title 42 and text of former subsec. (m) as (l) and (m), respectively, and struck out heading and text of former subsec. (l). Text read as follows: “Not later than December 31, 1989, each State shall submit to the Administrator a report assessing the impact of the program on ground water quality and identifying those measures found to be effective in protecting ground water resources. No later than September 30, 1990, the Administrator shall submit to Congress a report summarizing the State reports, and assessing the accomplishments of the sole source aquifer demonstration program including an identification of protection methods found to be most effective and recommendations for their application to protect ground water resources from contamination whenever necessary.”

REFERENCES IN TEXT

The Clean Water Act, referred to in subsec. (k), is act June 30, 1948, ch. 758, as amended generally by Pub. L. 92-500, §2, Oct. 18, 1972, 88 Stat. 816, also known as the Federal Water Pollution Control Act, which is classified generally to chapter 14 of Title 33, Navigation and Navigable Waters. For complete classification of this Act to the Code, see Short Title note set out under section 1251 of Title 33 and Tables.

The Governor or Governor’s designee of each State shall, within 3 years of June 19, 1986, adopt and submit to the Administrator a State program to protect wellhead areas within their jurisdiction from contaminants which may have any adverse effect on the health of persons. Each State program under this section shall, at a minimum—

1. Specify the duties of State agencies, local governmental entities, and public water supply systems with respect to the development and implementation of programs required by this section;

2. For each wellhead, determine the wellhead protection area as defined in subsection (e) of this section based on all reasonably available hydrogeologic information on ground water flow, recharge and discharge and other information the State deems necessary to adequately determine the wellhead protection area;

3. Identify within each wellhead protection area all potential anthropogenic sources of contaminants which may have any adverse effect on the health of persons;

4. Describe a program that contains, as appropriate, technical assistance, financial assistance, implementation of control measures, education, training, and demonstration projects to protect the water supply within wellhead protection areas from such contaminants;

5. Include contingency plans for the location and provision of alternate drinking water supplies for each public water system in the event of well or wellfield contamination by such contaminants; and

6. Include a requirement that consideration be given to all potential sources of such contaminants within the expected wellhead area of a new water well which serves a public water supply system.

(b) Public participation

To the maximum extent possible, each State shall establish procedures, including but not
limited to the establishment of technical and citizens’ advisory committees, to encourage the public to participate in developing the protection program for wellhead areas and source water assessment programs under section 300j–13 of this title. Such procedures shall include notice and opportunity for public hearing on the State program before it is submitted to the Administrator.

(c) Disapproval

(1) In general

If, in the judgment of the Administrator, a State program or portion thereof under subsection (a) of this section is not adequate to protect public water systems as required by subsection (a) of this section or a State program under section 300j–13 of this title or section 300g–7(b) of this title does not meet the applicable requirements of section 300j–13 of this title or section 300g–7(b) of this title, the Administrator shall disapprove such program or portion thereof. A State program developed pursuant to subsection (a) of this section shall be deemed to be adequate unless the Administrator determines, within 9 months of the receipt of a State program, that such program (or portion thereof) is inadequate for the purpose of protecting public water systems as required by this section from contaminants that may have any adverse effect on the health of persons. A State program developed pursuant to section 300j–13 of this title or section 300g–7(b) of this title shall be deemed to be adequate unless the Administrator determines within 9 months of the receipt of the program that such program (or portion thereof) does not meet such requirements. If the Administrator determines that a proposed State program (or any portion thereof) is disapproved, the Administrator shall submit a written statement of the reasons for such determination to the Governor of the State.

(2) Modification and resubmission

Within 6 months after receipt of the Administrator’s written notice under paragraph (1) that any proposed State program (or portion thereof) is disapproved, the Governor or Governor’s designee, shall modify the program based upon the recommendations of the Administrator and resubmit the modified program to the Administrator.

(d) Federal assistance

After the date 3 years after June 19, 1986, no State shall receive funds authorized to be appropriated under this section except for the purpose of implementing the program and requirements of paragraphs (4) and (6) of subsection (a) of this section.

(e) “Wellhead protection area” defined

As used in this section, the term “wellhead protection area” means the surface and subsurface area surrounding a water well or wellfield, supplying a public water system, through which contaminants are reasonably likely to move toward and reach such water well or wellfield. The extent of a wellhead protection area, within a State, necessary to provide protection from contaminants which may have any adverse effect on the health of persons is to be determined by the State in the program submitted under subsection (a) of this section. Not later than one year after June 19, 1986, the Administrator shall issue technical guidance which States may use in making such determinations. Such guidance may reflect such factors as the radius of influence around a well or wellfield, the depth of drawdown of the water table by such well or wellfield at any given point, the time or rate of travel of various contaminants in various hydrologic conditions, distance from the well or wellfield, or other factors affecting the likelihood of contaminants reaching the well or wellfield, taking into account available engineering pump tests or comparable data, field reconnaissance, topographic information, and the geology of the formation in which the well or wellfield is located.

(f) Prohibitions

(1) Activities under other laws

No funds authorized to be appropriated under this section may be used to support activities authorized by the Federal Water Pollution Control Act [33 U.S.C. 1251 et seq.], the Solid Waste Disposal Act [42 U.S.C. 6901 et seq.], the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 [42 U.S.C. 9601 et seq.], or other sections of this chapter.

(2) Individual sources

No funds authorized to be appropriated under this section may be used to bring individual sources of contamination into compliance.

(g) Implementation

Each State shall make every reasonable effort to implement the State wellhead area protection program under this section within 2 years of submitting the program to the Administrator. Each State shall submit to the Administrator a biennial status report describing the State’s progress in implementing the program. Such report shall include amendments to the State program for water wells sited during the biennial period.

(h) Federal agencies

Each department, agency, and instrumentality of the executive, legislative, and judicial branches of the Federal Government having jurisdiction over any potential source of contaminants identified by a State program pursuant to the provisions of subsection (a)(3) of this section shall be subject to and comply with all requirements of the State program developed according to subsection (a)(4) of this section applicable to such potential source of contaminants, both substantive and procedural, in the same manner, and to the same extent, as any other person is subject to such requirements, including payment of reasonable charges and fees. The President may exempt any potential source under the jurisdiction of any department, agency, or instrumentality in the executive branch if the President determines it to be in the paramount interest of the United States to do so. No such
exemption shall be granted due to the lack of an appropriation unless the President shall have specifically requested such appropriation as part of the budgetary process and the Congress shall have failed to make available such requested appropriations.

(i) Additional requirement

(1) In general

In addition to the provisions of subsection (a) of this section, States in which there are more than 2,500 active wells at which annular injection is used as of January 1, 1986, shall include in their State program a certification that a State program exists and is being adequately enforced that provides protection from contaminants which may have an adverse effect on the health of persons and which are associated with the annular injection or surface disposal of brines associated with oil and gas production.

(2) “Annular injection” defined

For purposes of this subsection, the term “annular injection” means the reinjection of brines associated with the production of oil or gas between the production and surface casings of a conventional oil or gas producing well.

(3) Review

The Administrator shall conduct a review of each program certified under this subsection.

(4) Disapproval

If a State fails to include the certification required by this subsection or if in the judgment of the Administrator the State program certified under this subsection is not being adequately enforced, the Administrator shall disapprove the State program submitted under subsection (a) of this section.

(j) Coordination with other laws

Nothing in this section shall authorize or require any department, agency, or other instrumentality of the Federal Government or State or local government to apportion, allocate or otherwise regulate the withdrawal or beneficial use of ground or surface waters, so as to abrogate or modify any existing rights to water established pursuant to State or Federal law, including interstate compacts.

(k) Authorization of appropriations

Unless the State program is disapproved under this section, the Administrator shall make grants to the State for not less than 50 or more than 90 percent of the costs incurred by a State (as determined by the Administrator) in developing and implementing each State program under this section. For purposes of making such grants there is authorized to be appropriated not more than the following amounts:

<table>
<thead>
<tr>
<th>Fiscal year</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>1987</td>
<td>$20,000,000</td>
</tr>
<tr>
<td>1988</td>
<td>20,000,000</td>
</tr>
<tr>
<td>1989</td>
<td>35,000,000</td>
</tr>
<tr>
<td>1990</td>
<td>35,000,000</td>
</tr>
<tr>
<td>1991</td>
<td>35,000,000</td>
</tr>
<tr>
<td>1992–1993</td>
<td>30,000,000</td>
</tr>
</tbody>
</table>


REFERENCES IN TEXT

The Federal Water Pollution Control Act, referred to in subsec. (f)(1), is act June 30, 1948, ch. 758, as amended generally by Pub. L. 92–500, §2, Oct. 18, 1972, 86 Stat. 816, which is classified generally to chapter 26 (§1251 et seq.) of Title 33, Navigation and Navigable Waters. For complete classification of this Act to the Code, see Short Title note set out under section 1251 of Title 33 and Tables.


AMENDMENTS


Subsec. (b), Pub. L. 104–182, §132(b)(4), inserted before period at end of first sentence “and source water assessment programs under section 300j–13 of this title”.

Subsec. (c)(1), Pub. L. 104–182, §132(b)(3), which directed substitution of “is disapproved” for “is inadequate” in third sentence, was executed by making the substitution in fourth sentence to reflect the probable intent of Congress and the amendment by Pub. L. 104–182, §122(b)(2). See below.

Pub. L. 104–182, §132(b)(2), inserted after second sentence “A State program developed pursuant to section 300j–13 of this title or section 300g–7(b) of this title shall be deemed to meet the applicable requirements of section 300j–13 of this title or section 300g–7(b) of this title unless the Administrator determines within 9 months of the receipt of the program that such program (or portion thereof) does not meet such requirements.”

Pub. L. 104–182, §132(b)(1), amended first sentence generally. Prior to amendment, first sentence read as follows: “If, in the judgment of the Administrator, a State program (or portion thereof), including the definition of a wellhead protection area, is not adequate to protect public water systems as required by this section, the Administrator shall disapprove such program (or portion thereof).”

Subsec. (c)(2), Pub. L. 104–182, §132(b)(3), substituted “is disapproved” for “is inadequate”.

Subsec. (k), Pub. L. 104–182, §120(b), inserted table item relating to fiscal years 1992 through 2003.


§ 300h–8. State ground water protection grants

(a) In general

The Administrator may make a grant to a State for the development and implementation of a State program to ensure the coordinated and comprehensive protection of ground water resources within the State.

(b) Guidance

Not later than 1 year after August 6, 1996, and annually thereafter, the Administrator shall publish guidance that establishes procedures for application for State ground water protection
program assistance and that identifies key elements of State ground water protection programs.

(c) Conditions of grants
(1) In general
The Administrator shall award grants to States that submit an application that is approved by the Administrator. The Administrator shall determine the amount of a grant awarded pursuant to this paragraph on the basis of an assessment of the extent of ground water resources in the State and the likelihood that awarding the grant will result in sustained and reliable protection of ground water quality.

(2) Innovative program grants
The Administrator may also award a grant pursuant to this subsection for innovative programs proposed by a State for the prevention of ground water contamination.

(3) Allocation of funds
The Administrator shall, at a minimum, ensure that, for each fiscal year, not less than 1 percent of funds made available to the Administrator by appropriations to carry out this section are allocated to each State that submits an application that is approved by the Administrator pursuant to this section.

(4) Limitation on grants
No grant awarded by the Administrator may be used for a project to remediate ground water contamination.

(d) Amount of grants
The amount of a grant awarded pursuant to paragraph (1) shall not exceed 50 percent of the eligible costs of carrying out the ground water protection program that is the subject of the grant (as determined by the Administrator) for the 1-year period beginning on the date that the grant is awarded. The State shall pay a State share to cover the costs of the ground water protection program that is the subject of the grant (as determined by the Administrator) for the 1-year period beginning on the date that the grant is awarded. The share to be paid by the State is not less than 50 percent of the cost of conducting the program.

(e) Evaluations and reports
Not later than 3 years after August 6, 1996, and every 3 years thereafter, the Administrator shall evaluate the State ground water protection programs that are the subject of grants awarded pursuant to this section and report to the Congress on the status of ground water quality in the United States and the effectiveness of State programs for ground water protection.

(f) Authorization of appropriations
There are authorized to be appropriated to carry out this section $15,000,000 for each of fiscal years 1997 through 2003.

PART D—EMERGENCY POWERS

§ 300i. Emergency powers

(a) Actions authorized against imminent and substantial endangerment to health
Notwithstanding any other provision of this subchapter the Administrator, upon receipt of information that a contaminant which is present in or is likely to enter a public water system or an underground source of drinking water, or that there is a threatened or potential terrorist attack (or other intentional act designed to disrupt the provision of safe drinking water or to impact adversely the safety of drinking water supplied to communities and individuals), which may present an imminent and substantial endangerment to the health of persons, and that appropriate State and local authorities have not acted to protect the health of such persons, may take such actions as he may deem necessary in order to protect the health of such persons. To the extent he determines it to be practicable in light of such imminent endangerment, he shall consult with the State and local authorities in order to confirm the correctness of the information on which action proposed to be taken under this subsection is based and to ascertain the action which such authorities are or will be taking. The action which the Administrator may take may include (but shall not be limited to) (1) issuing such orders as may be necessary to protect the health of persons who are or may be users of such system (including travelers), including orders requiring the provision of alternative water supplies by persons who caused or contributed to the endangerment, and (2) commencing a civil action for appropriate relief, including a restraining order or permanent or temporary injunction.

(b) Penalties for violations; separate offenses
Any person who violates or fails or refuses to comply with any order issued by the Administrator under subsection (a)(1) of this section may, in an action brought in the appropriate United States district court to enforce such order, be subject to a civil penalty of not to exceed $15,000 for each day in which such violation occurs or failure to comply continues.

AMENDMENTS
2002—Subsec. (a). Pub. L. 107–188, in first sentence, inserted “, or that there is a threatened or potential terrorist attack (or other intentional act designed to disrupt the provision of safe drinking water or to impact adversely the safety of drinking water supplied to communities and individuals), which” after “drinking water”.

1996—Subsec. (b). Pub. L. 104–182 substituted “$15,000” for “$5,000”.

1986—Subsec. (a). Pub. L. 99–339, § 204(1), (2), inserted “or an underground source of drinking water” after “to enter a public water system” and “including orders requiring the provision of alternative water supplies by persons who caused or contributed to the endangerment,” after “including travelers.”

Subsec. (b). Pub. L. 99–339, § 204(3), struck out “willfully” after “person who” and substituted “subject to a civil penalty of not to exceed” for “fined not more than”.

§ 300i–1. Tampering with public water systems

(a) Tampering
Any person who tampers with a public water system shall be imprisoned for not more than 20
§300i–2. Terrorist and other intentional acts
(a) Vulnerability assessments
(1) Each community water system serving a population of greater than 3,300 persons shall conduct an assessment of the vulnerability of its system to a terrorist attack or other intentional acts intended to substantially disrupt the ability of the system to provide a safe and reliable supply of drinking water. The vulnerability assessment shall include, but not be limited to, a review of pipes and constructed conveyances, physical barriers, water collection, pretreatment, treatment, storage and distribution facilities, electronic, computer or other automated systems which are utilized by the public water system, the use, storage, or handling of various chemicals, and the operation and maintenance of such system. The assessment shall be made prior to:
(A) March 31, 2003, in the case of systems serving a population of 100,000 or more.
(B) December 31, 2003, in the case of systems serving a population of 50,000 or more but less than 100,000.
(C) June 30, 2004, in the case of systems serving a population greater than 3,300 but less than 50,000.
(2) Each community water system referred to in paragraph (1) shall certify to the Administrator that it has conducted an assessment complying with paragraph (1) and shall submit to the Administrator a written copy of the assessment. Such certification and submission shall be made prior to:
(A) March 31, 2003, in the case of systems serving a population of 100,000 or more.
(B) December 31, 2003, in the case of systems serving a population of 50,000 or more but less than 100,000.
(C) June 30, 2004, in the case of systems serving a population greater than 3,300 but less than 50,000.

(b) Attempt or threat
Any person who attempts to tamper, or makes a threat to tamper, with a public drinking water system be imprisoned for not more than 10 years, or fined in accordance with title 18, or both.

(c) Civil penalty
The Administrator may bring a civil action in the appropriate United States district court (as determined under the provisions of title 28) against any person who tampers, attempts to tamper, or makes a threat to tamper with a public water system. The court may impose on such person a civil penalty of not more than $1,000,000 for such tampering or not more than $100,000 for such attempt or threat.

(d) “Tamper” defined
For purposes of this section, the term “tamper” means—
(1) to introduce a contaminant into a public water system with the intention of harming persons; or
(2) to otherwise interfere with the operation of a public water system with the intention of harming persons.

AMENDMENTS
2002—Subsec. (a). Pub. L. 107–188, §403(3)(A), substituted “20 years” for “5 years”.
Subsec. (b). Pub. L. 107–188, §403(3)(B), substituted “10 years” for “3 years”.
Subsec. (c). Pub. L. 107–188, §403(3)(C), (D), substituted “$1,000,000” for “$50,000” and “$100,000” for “$20,000”.
1996—Pub. L. 104–182 made technical amendment to section catchline and subsec. (a) designation.

§300i–3. Nonpublic water systems
(a) Certification
(1) Each nonpublic water system serving a population of 100 or more shall conduct an assessment of its system to meet the requirements of section 300f–1(b) of title 20 years, or fined in accordance with title 18, or

(b) Attempt or threat
Any person who attempts to tamper, or makes a threat to tamper, with a public drinking water system be imprisoned for not more than 10 years, or fined in accordance with title 18, or both.

(c) Civil penalty
The Administrator may bring a civil action in the appropriate United States district court (as determined under the provisions of title 28) against any person who tampers, attempts to tamper, or makes a threat to tamper with a public water system. The court may impose on such person a civil penalty of not more than $1,000,000 for such tampering or not more than $100,000 for such attempt or threat.

(d) “Tamper” defined
For purposes of this section, the term “tamper” means—
(1) to introduce a contaminant into a public water system with the intention of harming persons; or
(2) to otherwise interfere with the operation of a public water system with the intention of harming persons.

AMENDMENTS
2002—Subsec. (a). Pub. L. 107–188, §403(3)(A), substituted “20 years” for “5 years”.
Subsec. (b). Pub. L. 107–188, §403(3)(B), substituted “10 years” for “3 years”.
Subsec. (c). Pub. L. 107–188, §403(3)(C), (D), substituted “$1,000,000” for “$50,000” and “$100,000” for “$20,000”.
1996—Pub. L. 104–182 made technical amendment to section catchline and subsec. (a) designation.

(ii) for purposes of section 300j–4 of this title or for actions under section 300i of this title, or
(iii) for use in any administrative or judicial proceeding to impose a penalty for failure to comply with this section,
shall upon conviction be imprisoned for not more than one year or fined in accordance with the provisions of chapter 227 of title 18 applicable to class A misdemeanors, or both, and shall be removed from Federal office or employment.
(B) Notwithstanding subparagraph (A), an individual referred to in paragraph (5)(B) who is an officer or employee of the United States may discuss the contents of a vulnerability assessment submitted under this section with a State or local official.
(7) Nothing in this section authorizes any person to withhold any information from Congress or from any committee or subcommittee of Congress.

(b) Emergency response plan

Each community water system serving a population greater than 3,300 shall prepare or revise, where necessary, an emergency response plan that incorporates the results of vulnerability assessments that have been completed. Each such community water system shall certify to the Administrator, as soon as reasonably possible after the enactment of this section, but not later than 6 months after the completion of the vulnerability assessment under subsection (a) of this section, that the system has completed such plan. The emergency response plan shall include, but not be limited to, plans, procedures, and identification of equipment that can be implemented or utilized in the event of a terrorist or other intentional attack on the public water system. The emergency response plan shall also include actions, procedures, and identification of equipment which can obviate or significantly lessen the impact of terrorist attacks or other intentional actions on the public health and the safety and supply of drinking water provided to communities and individuals. Community water systems shall, to the extent possible, coordinate with existing Local Emergency Planning Committees established under the Emergency Planning and Community Right-to-Know Act (42 U.S.C. 11001 et seq.) when preparing or revising an emergency response plan under this subsection.

(c) Record maintenance

Each community water system shall maintain a copy of the emergency response plan completed pursuant to subsection (b) of this section for 5 years after such plan has been certified to the Administrator under this section.

(d) Guidance to small public water systems

The Administrator shall provide guidance to community water systems serving a population of less than 3,300 persons on how to conduct vulnerability assessments, prepare emergency response plans, and address threats from terrorist attacks or other intentional actions designed to disrupt the provision of safe drinking water or significantly affect the public health or significantly affect the safety or supply of drinking water provided to communities and individuals.

(e) Funding

(1) There are authorized to be appropriated to carry out this section not more than $160,000,000 for the fiscal year 2002 and such sums as may be necessary for the fiscal years 2003 through 2005.
(2) The Administrator, in coordination with State and local governments, may use funds made available under paragraph (1) to provide financial assistance to community water systems for purposes of compliance with the requirements of subsections (a) and (b) of this section and to community water systems for expenses and contracts designed to address basic security enhancements of critical importance and significant threats to public health and the supply of drinking water as determined by a vulnerability assessment conducted under subsection (a) of this section. Such basic security enhancements may include, but shall not be limited to the following:
   (A) the purchase and installation of equipment for detection of intruders;
   (B) the purchase and installation of fencing, gating, lighting, or security cameras;
   (C) the tamper-proofing of manhole covers, fire hydrants, and valve boxes;
   (D) the rekeying of doors and locks;
   (E) improvements to electronic, computer, or other automated systems and remote security systems;
   (F) participation in training programs, and the purchase of training manuals and guidance materials, relating to security against terrorist attacks;
   (G) improvements in the use, storage, or handling of various chemicals; and
   (H) security screening of employees or contractor support services.

Funding under this subsection for basic security enhancements shall not include expenditures for personnel costs, or monitoring, operation, or maintenance of facilities, equipment, or systems.

(3) The Administrator may use not more than $5,000,000 from the funds made available under paragraph (1) to make grants to community water systems to assist in responding to and alleviating any vulnerability to a terrorist attack or other intentional acts intended to substantially disrupt the ability of the system to provide a safe and reliable supply of drinking water (including sources of water for such systems) which the Administrator determines to present an immediate and urgent security need.

(4) The Administrator may use not more than $5,000,000 from the funds made available under paragraph (1) to make grants to community water systems serving a population of less than 3,300 persons for activities and projects undertaken in accordance with the guidance provided to such systems under subsection (d) of this section.

(2002-07-12)
§ 300i–3. Contaminant prevention, detection and response

(a) In general

The Administrator, in consultation with the Centers for Disease Control and, after consultation with appropriate departments and agencies of the Federal Government and with State and local governments, shall review (or enter into contracts or cooperative agreements to provide for a review of) current and future methods to prevent, detect and respond to the intentional introduction of chemical, biological or radiological contaminants into community water systems and source water for community water systems, including each of the following:

(1) Methods, means and equipment, including real time monitoring systems, designed to monitor and detect various levels of chemical, biological, and radiological contaminants or indicators of contaminants and reduce the likelihood that such contaminants can be successfully introduced into public water systems and source water intended to be used for drinking water.

(2) Methods and means to provide sufficient notice to operators of public water systems, and individuals served by such systems, of the introduction of chemical, biological or radiological contaminants and the possible effect of such introduction on public health and the safety and supply of drinking water.

(3) Methods and means for developing educational and awareness programs for community water systems.

(4) Procedures and equipment necessary to prevent the flow of contaminated drinking water to individuals served by public water systems.

(5) Methods, means, and equipment which could negate or mitigate deleterious effects on public health and the safety and supply caused by the introduction of contaminants into water intended to be used for drinking water, including an examination of the effectiveness of various drinking water technologies in removing, inactivating, or neutralizing biological, chemical, and radiological contaminants.

(6) Biomedical research into the short-term and long-term impact on public health of various chemical, biological and radiological contaminants that may be introduced into public water systems through terrorist or other intentional acts.

(b) Funding

For the authorization of appropriations to carry out this section, see section 300i–4(e) of this title.


Change of Name


§ 300i–4. Supply disruption prevention, detection and response

(a) Disruption of supply or safety

The Administrator, in coordination with the appropriate departments and agencies of the Federal Government, shall review (or enter into contracts or cooperative agreements to provide for a review of) methods and means by which terrorists or other individuals or groups could disrupt the supply of safe drinking water or take other actions against water collection, pretreatment, treatment, storage and distribution facilities which could render such water significantly less safe for human consumption, including each of the following:

(1) Methods and means by which pipes and other constructed conveyances utilized in public water systems could be destroyed or otherwise prevented from providing adequate supplies of drinking water meeting applicable public health standards.

(2) Methods and means by which collection, pretreatment, treatment, storage and distribution facilities utilized or used in connection with public water systems and collection and pretreatment storage facilities used in connection with public water systems could be destroyed or otherwise prevented from providing adequate supplies of drinking water meeting applicable public health standards.

(3) Methods and means by which pipes, constructed conveyances, collection, pretreatment, treatment, storage and distribution systems that are utilized in connection with public water systems could be altered or affected so as to be subject to cross-contamination of drinking water supplies.

(4) Methods and means by which pipes, constructed conveyances, collection, pretreatment, treatment, storage and distribution systems that are utilized in connection with public water systems could be reasonably protected from terrorist attacks or other acts intended to disrupt the supply or affect the safety of drinking water.

(5) Methods and means by which information systems, including process controls and supervisory control and data acquisition and cyber systems at community water systems could be disrupted by terrorists or other groups.

(b) Alternative sources

The review under this section shall also include a review of the methods and means by which alternative supplies of drinking water could be provided in the event of the destruction, impairment or contamination of public water systems.

(c) Requirements and considerations

In carrying out this section and section 300i–3 of this title—

(1) the Administrator shall ensure that reviews carried out under this section reflect the needs of community water systems of various sizes and various geographic areas of the United States; and

(2) the Administrator may consider the vulnerability of, or potential for forced interruption of service for, a region or service area, including community water systems that provide service to the National Capital area.
(d) Information sharing

As soon as practicable after reviews carried out under this section or section 300i–3 of this title have been evaluated, the Administrator shall disseminate, as appropriate as determined by the Administrator, to community water systems information on the results of the project through the Information Sharing and Analysis Center, or other appropriate means.

(e) Funding

There are authorized to be appropriated to carry out this section and section 300i–3 of this title not more than $15,000,000 for the fiscal year 2002 and such sums as may be necessary for the fiscal years 2003 through 2005.

(July 1, 1944, ch. 373, title XIV, §1435, as added Pub. L. 107–188, title IV, §402, June 12, 2002, 116 Stat 686.)

PART E—GENERAL PROVISIONS

§300j. Assurances of availability of adequate supplies of chemicals necessary for treatment of water

(a) Certification of need application

If any person who uses chlorine, activated carbon, lime, ammonia, soda ash, potassium permanganate, caustic soda, or other chemical or substance for the purpose of treating water in any public water system or in any public treatment works determines that the amount of such chemical or substance necessary to effectively treat such water is not reasonably available to him or will not be so available to him when required for the effective treatment of such water, such person may apply to the Administrator for a certification (hereinafter in this section referred to as a “certification of need”) that the amount of such chemical or substance which such person requires to effectively treat such water is not reasonably available to him or will not be so available when required for the effective treatment of such water.

(b) Application requirements; publication in Federal Register; waiver; certification, issuance or denial

(1) An application for a certification of need shall be in such form and submitted in such manner as the Administrator may require and shall (A) specify the persons the applicant determines are able to provide the chemical or substance with respect to which the application is submitted, (B) specify the persons from whom the applicant has sought such chemical or substance, and (C) contain such other information as the Administrator may require.

(2) Upon receipt of an application under this section, the Administrator shall (A) publish in the Federal Register a notice of the receipt of the application and a brief summary of it, (B) notify in writing each person whom the President or his delegate (after consultation with the Administrator) determines could be made subject to an order required to be issued upon the issuance of the certification of need applied for in such application, and (C) provide an opportunity for the submission of written comments on such application. The requirements of the preceding sentence of this paragraph shall not apply when the Administrator for good cause finds (and incorporates the finding with a brief statement of reasons therefor in the order issued) that waiver of such requirements is necessary in order to protect the public health.

(3) Within 30 days after—

(A) the date a notice is published under paragraph (2) in the Federal Register with respect to an application submitted under this section for the issuance of a certification of need, or

(B) the date on which such application is received if as authorized by the second sentence of such paragraph no notice is published with respect to such application,

the Administrator shall take action either to issue or deny the issuance of a certification of need.

(c) Certification of need; issuance; executive orders; implementation of orders; equitable apportionment of orders; factors considered

(1) If the Administrator finds that the amount of a chemical or substance necessary for an applicant under an application submitted under this section to effectively treat water in a public water system or in a public treatment works is not reasonably available to the applicant or will not be so available to him when required for the effective treatment of such water, the Administrator shall issue a certification of need. Not later than seven days following the issuance of such certification, the President or his delegate shall issue an order requiring the provision of such chemical or substance as the Administrator deems necessary in the certification of need issued for such person. Such order shall apply to such manufacturer, producer, or processor of such chemical or substance who manufactures, produces, or processes (as the case may be) such chemical or substance solely for its own use. Persons subject to an order issued under this paragraph shall be given a reasonable opportunity to consult with the President or his delegate with respect to the implementation of the order.

(2) Orders which are to be issued under paragraph (1) to manufacturers, producers, and processors of a chemical or substance shall be equitably apportioned, as far as practicable, among all manufacturers, producers, and processors of such chemical or substance; and orders which are to be issued under paragraph (1) to distributors and repackagers of a chemical or substance shall be equitably apportioned, as far as practicable, among all distributors and repackagers of such chemical or substance. In apportioning orders issued under paragraph (1) to manufacturers, producers, distributors, and repackagers of chlorine, the President or his delegate shall, in carrying out the requirements of the preceding sentence, consider—

(A) the geographical relationships and established commercial relationships between such manufacturers, producers, distributors, dis-
tributors, and repackagers and the persons for whom the orders are issued;

(B) in the case of orders to be issued to producers of chlorine, the (i) amount of chlorine historically supplied by each such producer to treat water in public water systems and public treatment works, and (ii) share of each such producer of the total annual production of chlorine in the United States; and

(C) such other factors as the President or his delegate may determine are relevant to the apportionment of orders in accordance with the requirements of the preceding sentence.

(3) Subject to subsection (f) of this section, any person for whom a certification of need has been issued under this subsection may upon the expiration of the order issued under paragraph (1) upon such certification apply under this section for additional certifications.

(d) Breach of contracts; defense

There shall be available as a defense to any action brought for breach of contract in a Federal or State court arising out of delay or failure to provide, sell, or offer for sale or exchange a chemical or substance subject to an order issued pursuant to subsection (c)(1) of this section, that such delay or failure was caused solely by compliance with such order.

(e) Penalties for noncompliance with orders; temporary restraining orders and preliminary or permanent injunctions

(1) Whoever knowingly fails to comply with any order issued pursuant to subsection (c)(1) of this section shall be fined not more than $5,000 for each such failure to comply.

(2) Whoever fails to comply with any order issued pursuant to subsection (c)(1) of this section shall be subject to a civil penalty of not more than $2,500 for each such failure to comply.

(3) Whenever the Administrator or the President or his delegate has reason to believe that any person is violating or will violate any order issued pursuant to subsection (c)(1) of this section, that such delay or failure was caused solely by compliance with such order.

(f) Termination date

There shall be available as a defense to any action brought for breach of contract in a Federal or State court arising out of delay or failure to provide, sell, or offer for sale or exchange a chemical or substance subject to an order issued pursuant to subsection (c)(1) of this section, that such delay or failure was caused solely by compliance with such order.

(a) Specific powers and duties of Administrator

(1) The Administrator may conduct research, studies, and demonstrations relating to the causes, diagnosis, treatment, control, and prevention of physical and mental diseases and other impairments of man resulting directly or indirectly from contaminants in water, or to the provision of a dependably safe supply of drinking water, including—

(A) improved methods (i) to identify and measure the existence of contaminants in drinking water (including methods which may be used by State and local health and water officials), and (ii) to identify the source of such contaminants;

(B) improved methods to identify and measure the health effects of contaminants in drinking water;

(C) new methods of treating raw water to prepare it for drinking, so as to improve the efficiency of water treatment and to remove contaminants from water;

(D) improved methods for providing a dependably safe supply of drinking water, including improvements in water purification and distribution, and methods of assessing the health related hazards of drinking water; and

(E) improved methods of protecting underground water sources of public water systems from contamination.

(2) INFORMATION AND RESEARCH FACILITIES.—In carrying out this subchapter, the Administrator is authorized to—

(A) collect and make available information pertaining to research, investigations, and demonstrations with respect to providing a dependably safe supply of drinking water, together with appropriate recommendations in connection with the information; and

(B) make available research facilities of the Agency to appropriate public authorities, institutions, and individuals engaged in studies and research relating to this subchapter.
(3) The Administrator shall carry out a study of polychlorinated biphenyl contamination of actual or potential sources of drinking water, contamination of such sources by other substances known or suspected to be harmful to public health, the effects of such contamination, and means of removing, treating, or otherwise controlling such contamination. To assist in carrying out this paragraph, the Administrator is authorized to make grants to public agencies and private nonprofit institutions.

(4) The Administrator shall conduct a survey and study of—
(A) disposal of waste (including residential waste) which may endanger underground water which supplies, or can reasonably be expected to supply, any public water systems; and
(B) means of control of such waste disposal.

Not later than one year after December 16, 1974, he shall transmit to the Congress the results of such survey and study, together with such recommendations as he deems appropriate.

(5) The Administrator shall carry out a study of methods of underground injection which do not result in the degradation of underground drinking water sources.

(6) The Administrator shall carry out a study of methods of preventing, detecting, and dealing with surface spills of contaminants which may degrade underground water sources for public water systems.

(7) The Administrator shall carry out a study of virus contamination of drinking water sources and means of control of such contamination.

(8) The Administrator shall carry out a study of the nature and extent of the impact on underground water which supplies or can reasonably be expected to supply public water systems of (A) abandoned injection or extraction wells; (B) intensive application of pesticides and fertilizers in underground water recharge areas; and (C) ponds, pools, lagoons, pits, or other surface disposal of contaminants in underground water recharge areas.

(9) The Administrator shall conduct a comprehensive study of public water supplies and drinking water sources to determine the nature, extent, sources of and means of control of contamination by chemicals or other substances suspected of being carcinogenic. Not later than six months after December 16, 1974, he shall transmit to the Congress the initial results of such study, together with such recommendations for further review and corrective action as he deems appropriate.

(10) The Administrator shall carry out a study of the reaction of chlorine and humic acids and the effects of the contaminants which result from such reaction on public health and on the safety of drinking water, including any carcinogenic effect.

(b) Emergency situations

The Administrator is authorized to provide technical assistance and to make grants to States, or publicly owned water systems to assist in responding to and alleviating any emergency situation affecting public water systems (including sources of water for such systems) which the Administrator determines to present substantial danger to the public health. Grants provided under this subsection shall be used only to support those actions which (i) are necessary for preventing, limiting or mitigating danger to the public health in such emergency situation and (ii) would not, in the judgment of the Administrator, be taken without such emergency assistance. The Administrator may carry out the program authorized under this subsection as part of, and in accordance with the terms and conditions of, any other program of assistance for environmental emergencies which the Administrator is authorized to carry out under any other provision of law. No limitation on appropriations for any such other program shall apply to amounts appropriated under this subsection.

(c) Establishment of training programs and grants for training; training fees

The Administrator shall—
(1) provide training for, and make grants for training (including postgraduate training) of (A) personnel of State agencies which have primary enforcement responsibility and of agencies or units of local government to which enforcement responsibilities have been delegated by the State, and (B) personnel who manage or operate public water systems, and
(2) make grants for postgraduate training of individuals (including grants to educational institutions for traineeships) for purposes of qualifying such individuals to work as personnel referred to in paragraph (1).
(3) make grants to, and enter into contracts with, any public agency, educational institution, and any other organization, in accordance with procedures prescribed by the Administrator, under which he may pay all or part of the costs (as may be determined by the Administrator) of any project or activity which is designed—
(A) to develop, expand, or carry out a program (which may combine training education and employment) for training persons for occupations involving the public health aspects of providing safe drinking water; and
(B) to train inspectors and supervisory personnel to train or supervise persons in occupations involving the public health aspects of providing safe drinking water; or
(C) to develop and expand the capability of programs of States and municipalities to carry out the purposes of this subchapter (other than by carrying out State programs of public water system supervision or underground water source protection (as defined in section 300j–2(c) of this title)).

Reasonable fees may be charged for training provided under paragraph (1)(B) to persons other than personnel of State or local agencies but such training shall be provided to personnel of State or local agencies without charge.

(d) Authorization of appropriations

There are authorized to be appropriated to carry out subsection (b) of this section not more than $35,000,000 for the fiscal year 2002 and such sums as may be necessary for each fiscal year thereafter.
(e) Technical assistance

The Administrator may provide technical assistance to small public water systems to enable such systems to achieve and maintain compliance with applicable national primary drinking water regulations. Such assistance may include circuit-rider and multi-State regional technical assistance programs, training, and preliminary engineering evaluations. The Administrator shall ensure that technical assistance pursuant to this subsection is available in each State. Each nonprofit organization receiving assistance under this subsection shall consult with the State in which the assistance is to be expended or otherwise made available before using assistance to undertake activities to carry out this subsection. There are authorized to be appropriated to the Administrator to be used for such technical assistance $15,000,000 for each of the fiscal years 1997 through 2003. No portion of any State loan fund established under section 300j–12 of this title (relating to State loan funds) and no portion of any funds made available under this subsection may be used for lobbying expenses. Of the total amount appropriated under this subsection, 3 percent shall be used for technical assistance to public water systems owned or operated by Indian Tribes.

(2) Of the total amount appropriated under this subsection, 3 percent shall be utilized for technical assistance to public water systems owned or operated by Indian Tribes.

AMENDMENTS

2002—Subsec. (b). Pub. L. 107–188, § 403(4)(A), which directed substitution of “this subsection” for “this subparagrap1944h”, was executed by making the substitution in three places to reflect the probable intent of Congress.

Subsec. (d). Pub. L. 107–188, § 403(4)(B), amended subsec. (d) generally, substituting provisions relating to authorization of appropriations to carry out subsec. (b) in fiscal year 2002 and subsequent fiscal years for provisions relating to authorization of appropriations to carry out this section in fiscal year 1991 and earlier.

1996—Subsec. (a)(2). Pub. L. 104–182, § 121(4)(A), added heading and text of par. (2) and struck out former par. (2) which read as follows: “(2)(A) The Administrator shall, to the maximum extent feasible, provide technical assistance to the States and municipalities in the establishment and administration of public water system supervision programs (as defined in section 300j–2(c)(1) of this title).”

Subsec. (a)(2)(B). Pub. L. 104–182, § 121(3), redesignated subpar. (B) as subsec. (b) and transferred that subsec. to appear after subsec. (a).

Subsec. (a)(3), (11). Pub. L. 104–182, § 121(4)(B), redesignated par. (11) as (3), transferred that par. to appear before par. (4), and struck out former par. (3) which provided that the Administrator was to conduct studies, and make periodic reports to Congress, on the costs of carrying out regulations prescribed under section 300g–1 of this title.

Subsec. (b). Pub. L. 104–182, § 121(2), (3), redesignated subsec. (a)(2)(B) as subsec. (b), transferred that subsec. to appear after subsec. (a), and struck out former subsec. (b) which read as follows: “In carrying out this subchapter, the Administrator is authorized to—

(1) collect and make available information pertaining to research, investigations, and demonstrations with respect to providing a dependably safe supply of drinking water together with appropriate recommendations in connection therewith;

(2) make available research facilities of the Agency to appropriate public authorities, institutions, and individuals engaged in studies and research relating to the purposes of this subchapter.”

Subsecs. (b)(1), (c)(9). Pub. L. 104–182, § 121(1), which directed redesignation of subsec. (b)(3) as par. (3) of subsec. (d) and transfer of that par. to follow par. (2) of subsec. (d), was executed by redesignating subsec. (b)(3) as par. (3) of subsec. (c) and transferring that par. to follow par. (2) of subsec. (c) to reflect the probable intent of Congress and the redesignation of subsec. (d) as (c) by Pub. L. 104–66. See 1995 Amendment note below.

Moreover, subsec. (d) does not have any pars.

Subsec. (e). Pub. L. 104–182, § 122, amended subsec. (e) generally. Prior to amendment, subsec. (e) read as follows: “The Administrator is authorized to provide technical assistance to public water systems owned or operated by Indian Tribes.”

1995—Subsecs. (c) to (g). Pub. L. 104–66 redesignated subsecs. (d), (f), and (g) as (c), (d), and (e), respectively, and struck out former subsec. (c) which read as follows: “Not later than eighteen months after November 16, 1977, the Administrator shall submit a report to Congress on the present and projected future availability of an adequate and dependable supply of safe drinking water to meet present and projected future need. Such report shall include an analysis of the future demand for drinking water and other competing uses of water, the availability and use of methods to conserve water or reduce demand, the adequacy of present measures to assure adequate and dependable supplies of safe drinking water, and the problems (financial, legal, or other) which need to be resolved in order to assure the availability of such supplies for the future. Existing information and data compiled by the National Water Commission and others shall be utilized to the extent possible.”

1986—Subsec. (e). Pub. L. 99–339, § 301(a), struck out subsec. (e) which authorized the Administrator to make grants to public water systems which are required, under State or local law, to meet standards relating to drinking turbidity which are more stringent than the standards in effect under this subchapter.

Subsec. (f). Pub. L. 99–339, § 301(a), authorized appropriations to carry out subsec. (a)(2)(B) of this section for fiscal years 1987 to 1991 and to carry out provisions of this section other than subsecs. (a)(2)(B) and (g) and provisions relating to research for fiscal years 1987 to 1991.

Subsec. (g). Pub. L. 99–339, § 301(g), authorized appropriations to carry out this subsection of $10,000,000 for each of fiscal years 1987 through 1991 and specified amount to be utilized for public water systems owned or operated by Indian tribes.


1986—Subsec. (e). Pub. L. 99–339, § 301(a), struck out subsec. (e) which authorized the Administrator to make grants to public water systems which are required, under State or local law, to meet standards relating to drinking turbidity which are more stringent than the standards in effect under this subchapter.

Subsec. (f). Pub. L. 99–339, § 301(a), authorized appropriations to carry out subsec. (a)(2)(B) of this section for fiscal years 1987 to 1991 and to carry out provisions of this section other than subsecs. (a)(2)(B) and (g) and provisions relating to research for fiscal years 1987 to 1991.

Subsec. (g). Pub. L. 99–339, § 301(g), authorized appropriations to carry out this subsection of $10,000,000 for each of fiscal years 1987 through 1991 and specified amount to be utilized for public water systems owned or operated by Indian tribes.
§ 300j–2. Grants for State programs

(a) Public water systems supervision programs; applications for grants; allotment of sums; waiver of grant restrictions; notice of approval or disapproval of application; authorization of appropriations

(1) From allotments made pursuant to paragraph (4), the Administrator may make grants to States to carry out public water system supervision programs.

(2) No grant may be made under paragraph (1) unless an application therefor has been submitted to the Administrator in such form and manner as he may require. The Administrator may not approve an application of a State for its first grant under paragraph (1) unless he determines that the State—

(A) has established or will establish within one year from the date of such grant a public water system supervision program, and

(B) will, within that one year, assume primary enforcement responsibility for public water systems within the State.

No grant may be made to a State under paragraph (1) for any period beginning more than one year after the date of the State's first grant unless the State has assumed and maintains primary enforcement responsibility for public water systems within the State.

(3) A grant under paragraph (1) shall be made to cover not more than 75 per centum of the grant recipient's costs (as determined under regulations of the Administrator) in carrying out, during the one-year period beginning on the date the grant is made, a public water system supervision program.

(4) In each fiscal year the Administrator shall, in accordance, with regulations, allot the sums appropriated for such year under paragraph (5) among the States on the basis of population, geographical area, number of public water systems, and other relevant factors. No State shall receive less than 1 per centum of the annual appropriation for grants under paragraph (1): Provided, That the Administrator may, by regulation, reduce such percentage in accordance with the criteria specified in this paragraph: And provided further, That such percentage shall not apply to grants allotted to Guam, American Samoa, or the Virgin Islands.

(5) The prohibition contained in the last sentence of paragraph (2) may be waived by the Administrator with respect to a grant to a State through fiscal year 1979 but such prohibition may only be waived if, in the judgment of the Administrator—

(A) the State is making a diligent effort to assume and maintain primary enforcement responsibility for public water systems within the State;

(B) the State has made significant progress toward assuming and maintaining such primary enforcement responsibility; and

(C) there is reason to believe the State will assume such primary enforcement responsibility by October 1, 1979.

The amount of any grant awarded for the fiscal years 1978 and 1979 pursuant to a waiver under

\[\text{Page 1015 TITLE 42—THE PUBLIC HEALTH AND WELFARE} \]
this paragraph may not exceed 75 per centum of the allotment which the State would have received for such fiscal year if it had assumed and maintained such primary enforcement responsibility. The remaining 25 per centum of the amount allotted to such State for such fiscal year shall be retained by the Administrator, and the Administrator may award such amount to such State at such time as the State assumes such responsibility before the beginning of fiscal year 1980. At the beginning of each fiscal years 1979 and 1980 the amounts retained by the Administrator for any preceding fiscal year and not awarded by the beginning of fiscal year 1979 or 1980 to the States to which such amounts were originally allotted may be removed from the original allotment and reallocated for fiscal year 1979 or 1980 (as the case may be) to States which have assumed primary enforcement responsibility by the beginning of such fiscal year.

(6) The Administrator shall notify the State of the approval or disapproval of any application for a grant under this section—

(A) within ninety days after receipt of such application, or

(B) not later than the first day of the fiscal year for which the grant application is made, whichever is later.

(7) Authorization.—For the purpose of making grants under paragraph (1), there are authorized to be appropriated $100,000,000 for each of fiscal years 1997 through 2003.

(8) Reservation of funds by the Administrator.—If the Administrator assumes the primary enforcement responsibility of a State public water system supervision program, the Administrator may reserve from funds made available pursuant to this subsection an amount equal to the amount that would otherwise have been provided to the State pursuant to this subsection. The Administrator shall use the funds reserved pursuant to this paragraph to ensure the full and effective administration of a public water system supervision program in the State.

(9) State loan funds.—

(A) Reservation of funds.—For any fiscal year for which the amount made available to the Administrator by appropriations to carry out this subsection is less than the amount that the Administrator determines is necessary to supplement funds made available pursuant to paragraph (8) to ensure the full and effective administration of a public water system supervision program in a State, the Administrator may reserve from the funds made available to the State under section 300j–12 of this title relating to State loan funds an amount that is equal to the amount of the shortfall. This paragraph shall not apply to any State not exercising primary enforcement responsibility for public water systems as of August 6, 1996.

(B) Duty of Administrator.—If the Administrator reserves funds from the allocation of an amount allotted to such State under subparagraph (A), the Administrator shall carry out in the State each of the activities that would be required of the State if the State had primary enforcement authority under section 300g–2 of this title.

(b) Underground water source protection programs; applications for grants; allotment of sums; authorization of appropriations

(1) From allotments made pursuant to paragraph (4), the Administrator may make grants to States to carry out underground water source protection programs.

(2) No grant may be made under paragraph (1) unless an application therefor has been submitted to the Administrator in such form and manner as he may require. No grant may be made to any State under paragraph (1) unless the State has assumed primary enforcement responsibility within two years after the date the Administrator promulgates regulations for State underground injection control programs under section 300h of this title. The prohibition contained in the preceding sentence shall not apply to such grants when made to Indian Tribes.

(3) A grant under paragraph (1) shall be made to cover not more than 75 per centum of the grant recipient’s cost (as determined under regulations of the Administrator) during the one-year period beginning on the date the grant is made, and underground water source protection program.

(4) In each fiscal year the Administrator shall, in accordance with regulations, allot the sums appropriated for such year under paragraph (5) among the States on the basis of population, geographical area, and other relevant factors.

(5) For purposes of making grants under paragraph (1) there are authorized to be appropriated $5,000,000 for the fiscal year ending June 30, 1976, $7,500,000 for the fiscal year ending June 30, 1977, $10,000,000 for each of the fiscal years 1978 and 1979, $7,765,000 for the fiscal year ending December 31, 1980, $18,000,000 for the fiscal year ending September 30, 1981, and $21,000,000 for the fiscal year ending September 30, 1982. For the purpose of making grants under paragraph (1) there are authorized to be appropriated not more than the following amounts:

<table>
<thead>
<tr>
<th>Fiscal year</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>1987</td>
<td>$19,700,000</td>
</tr>
<tr>
<td>1988</td>
<td>19,700,000</td>
</tr>
<tr>
<td>1989</td>
<td>20,850,000</td>
</tr>
<tr>
<td>1990</td>
<td>20,850,000</td>
</tr>
<tr>
<td>1991</td>
<td>20,850,000</td>
</tr>
<tr>
<td>1992–2003</td>
<td>15,000,000</td>
</tr>
</tbody>
</table>

(c) Definitions

For purposes of this section:

(1) The term “public water system supervision program” means a program for the adoption and enforcement of drinking water regulations (with such variances and exemptions from such regulations under conditions and in a manner which is not less stringent than the conditions under, and the manner in which variances and exemptions may be granted under sections 300g–4 and 300g–5 of this title) which are no less stringent than the national primary drinking water regulations under section 300g–1 of this title, and for keeping records and making reports required by section 300g–2(a)3 of this title.

(2) The term “underground water source protection program” means a program for the adoption and enforcement of a program which meets the requirements of regulations under
section 300h of this title, and for keeping records and making reports required by section 300h–1(b)(1)A(i) of this title. Such term includes, where applicable, a program which meets the requirements of section 300h–4 of this title.

(d) New York City watershed protection program

(1) In general

The Administrator is authorized to provide financial assistance to the State of New York for demonstration projects implemented as part of the watershed program for the protection and enhancement of the quality of source waters of the New York City water supply system, including projects that demonstrate, assess, or provide for comprehensive monitoring and surveillance and projects necessary to comply with the criteria for avoiding filtration contained in 40 CFR 141.71. Demonstration projects which shall be eligible for financial assistance shall be certified to the Administrator by the State of New York as satisfying the purposes of this subsection. In certifying projects to the Administrator, the State of New York shall give priority to monitoring projects that have undergone peer review.

(2) Report

Not later than 5 years after the date on which the Administrator first provides assistance pursuant to this paragraph, the Governor of the State of New York shall submit a report to the Administrator on the results of projects assisted.

(3) Matching requirements

Federal assistance provided under this subsection shall not exceed 50 percent of the total cost of the protection program being carried out for any particular watershed or ground water recharge area.

(4) Authorization

There are authorized to be appropriated to the Administrator to carry out this subsection for each of fiscal years 2003 through 2010, $15,000,000 for the purpose of providing assistance to the State of New York to carry out paragraph (1).


AMENDMENTS


1996—Subsec. (a)(7). Pub. L. 104–182, §124(1), inserted heading and amended text generally. Prior to amendment, text read as follows: “For purposes of making grants under paragraph (1) there are authorized to be appropriated $15,000,000 for the fiscal year ending June 30, 1976, $25,000,000 for the fiscal year ending June 30, 1977, $35,000,000 for fiscal year 1978, $45,000,000 for fiscal year 1979, $39,450,000 for the fiscal year ending September 30, 1980, $32,000,000 for the fiscal year ending September 30, 1981, and $34,000,000 for the fiscal year ending September 30, 1982. For the purposes of making grants under paragraph (1) there are authorized to be appropriated not more than the following amounts:

<table>
<thead>
<tr>
<th>Fiscal year</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>1987</td>
<td>$37,200,000</td>
</tr>
<tr>
<td>1988</td>
<td>$37,200,000</td>
</tr>
<tr>
<td>1989</td>
<td>$40,150,000</td>
</tr>
<tr>
<td>1990</td>
<td>$40,150,000</td>
</tr>
<tr>
<td>1991</td>
<td>$40,150,000</td>
</tr>
</tbody>
</table>

Subsec. (a)(8), (9). Pub. L. 104–182, §124(2), added pars. (8) and (9).

Subsec. (b)(5). Pub. L. 104–182, §120(c), added subpars. (8) and (9).


1986—Subsec. (a)(2). Pub. L. 99–339, §302(d)(1), inserted provision that limitations contained in preceding two sentences not apply to such grants when made to Indian Tribes.

Subsec. (a)(7). Pub. L. 99–339, §301(b), authorized appropriations for grants under par. (1) of not more than $37,200,000 for fiscal years 1987 and 1988 and of not more than $40,150,000 for fiscal years 1989 to 1991.

Subsec. (b)(2). Pub. L. 99–339, §302(d)(2), inserted provision that limitations contained in preceding sentence not apply to such grants when made to Indian Tribes.

Subsec. (b)(5). Pub. L. 99–339, §301(c), authorized appropriations for grants under par. (1) of not more than $19,700,000 for fiscal years 1987 and 1988 and of not more than $20,850,000 for fiscal years 1989 to 1991.

1980—Subsec. (b)(2). Pub. L. 96–502, §4(d), substituted provisions that no grant may be made to any State under par. (1) unless the State has assumed primary enforcement responsibility within two years after the date the Administrator promulgates regulations for State underground injection control programs under section 300h of this title for provisions that the Administrator may not approve an application of a State for its first grant under par. (1) unless he determines that the State has established or will establish within two years from the date of such grant an underground water source protection, and, within such two years, assume primary enforcement responsibility for underground water sources within the State and that no grant may be made to a State under par. (1) for any period beginning more than two years after the date of the State’s first grant unless the State has assumed and maintains primary enforcement responsibility for underground water sources within the State.

Subsec. (c)(2). Pub. L. 96–502, §2(c), inserted provision that such term includes, where applicable, a program which meets requirements of section 300h–4 of this title.

1979—Subsec. (a)(7). Pub. L. 96–63, §2(a), authorized appropriation of $29,450,000, $32,000,000, and $34,000,000 for fiscal years ending Sept. 30, 1980, 1980, through 1982, respectively.

Subsec. (b)(5). Pub. L. 96–63, §2(b), authorized appropriation of $7,795,000, $18,000,000, and $21,000,000 for fiscal years ending Sept. 30, 1980, through 1982, respectively.


Subsec. (a)(7). Pub. L. 95–190, §§2(b), 5(a), redesignated former par. (6) as (7) and authorized appropriations for fiscal years 1978 and 1979.


§300j–3. Special project grants and guaranteed loans

(a) Special study and demonstration project grants

The Administrator may make grants to any person for the purposes of—

(1) assisting in the development and demonstration (including construction) of any
project which will demonstrate a new or improved method, approach, or technology, for providing a dependably safe supply of drinking water to the public; and

(2) assisting in the development and demonstration (including construction) of any project which will investigate and demonstrate health implications involved in the reclamation, recycling, and reuse of waste waters for drinking and the processes and methods for the preparation of safe and acceptable drinking water.

(b) Limitations

Grants made by the Administrator under this section shall be subject to the following limitations:

(1) Grants under this section shall not exceed 66⅔ per centum of the total cost of construction of any facility and 75 per centum of any other costs, as determined by the Administrator.

(2) Grants under this section shall not be made for any project involving the construction or modification of any facilities for any public water system in a State unless such project has been approved by the State agency charged with the responsibility for safety of drinking water (or if there is no such agency in a State, by the State health authority).

(3) Grants under this section shall not be made for any project unless the Administrator determines, after consulting the National Drinking Water Advisory Council, that such project will serve a useful purpose relating to the development and demonstration of new or improved techniques, methods, or technologies for the provision of safe water to the public for drinking.

(4) Priority for grants under this section shall be given where there are known or potential public health hazards which require advanced technology for the removal of particles which are too small to be removed by ordinary treatment technology.

(c) Authorization of appropriations

For the purposes of making grants under subsections (a) and (b) of this section there are authorized to be appropriated $7,500,000 for the fiscal year ending June 30, 1975; and $7,500,000 for the fiscal year ending June 30, 1976.

(d) Loan guarantees to public water systems; conditions; indebtedness limitation; regulations

The Administrator during the fiscal years ending June 30, 1975, and June 30, 1976, shall carry out a program of guaranteeing loans made by private lenders to small public water systems for the purpose of enabling such systems to meet national primary drinking water regulations prescribed under section 300g–1 of this title. No such guarantee may be made with respect to a system unless (1) such system cannot reasonably obtain financial assistance necessary to comply with such regulations from any other source, and (2) the Administrator determines that any facilities constructed with a loan guaranteed under this subsection is not likely to be made obsolete by subsequent changes in primary regulations. The aggregate amount of indebtedness guaranteed with respect to any system may not exceed $50,000. The aggregate amount of indebtedness guaranteed under this subsection may not exceed $50,000,000. The Administrator shall prescribe regulations to carry out this subsection.


AMENDMENTS


§ 300j–3a. Grants to public sector agencies

(a) Assistance for development and demonstration projects

The Administrator of the Environmental Protection Agency shall offer grants to public sector agencies for the purposes of—

(1) assisting in the development and demonstration (including construction) of any project which will demonstrate a new or improved method, approach, or technology for providing a dependably safe supply of drinking water to the public; and

(2) assisting in the development and demonstration (including construction) of any project which will investigate and demonstrate health and conservation implications involved in the reclamation, recycling, and reuse of wastewaters for drinking and agricultural use or the processes and methods for the preparation of safe and acceptable drinking water.

(b) Limitations

Grants made by the Administrator under this section shall be subject to the following limitations:

(1) Grants under this section shall not exceed 66⅔ per centum of the total cost of construction of any facility and 75 per centum of any other costs, as determined by the Administrator.

(2) Grants under this section shall not be made for any project involving the construction or modification of any facilities for any public water system in a State unless such project has been approved by the State agency charged with the responsibility for safety of drinking water (or if there is no such agency in a State, by the State health authority).

(3) Grants under this section shall not be made for any project unless the Administrator determines, after consultation, that such project will serve a useful purpose relating to the development and demonstration of new or improved techniques, methods, or technologies for the provision of safe water to the public for drinking.

(4) Priority for grants under this section shall be given where there are known or potential public health hazards which require advanced technology for the removal of particles which are too small to be removed by ordinary treatment technology.

(c) Authorization of appropriations

For the purposes of making grants under subsections (a) and (b) of this section there are authorized to be appropriated $25,000,000 for fiscal year 1978.

§ 300j–3b. Contaminant standards or treatment technique guidelines

(1) Not later than nine months after October 18, 1978, the Administrator shall promulgate guidelines establishing supplemental standards or treatment technique requirements for microbiological, viral, radiological, organic, and inorganic contaminants, which guidelines shall be conditions, as provided in paragraph (2), of any grant for a demonstration project for water reclamation, recycling, and reuse funded under section 300j–3a of this title or under section 300j–3(a)(2) of this title, where such project involves direct human consumption of treated wastewater. Such guidelines shall provide for sufficient control of each such contaminant, such that in the Administrator’s judgment, no adverse effects on the health of persons may reasonably be anticipated to occur, allowing an adequate margin of safety.

(2) A grant referred to in paragraph (1) for a project which involves direct human consumption of treated wastewater may be awarded on or after the date of promulgation of guidelines under this section only if the applicant demonstrates to the satisfaction of the Administrator that the project—

(A) will comply with all national primary drinking water regulations under section 300g–1 of this title;

(B) will comply with all guidelines under this section; and

(C) will in other respects provide safe drinking water.

Any such grant awarded before the date of promulgation of such guidelines shall be conditioned on the applicant’s agreement to comply to the maximum feasible extent with such guidelines as expeditiously as practicable following the date of promulgation thereof.

(3) Guidelines under this section may, in the discretion of the Administrator—

(A) be nationally and uniformly applicable to all projects funded under section 300j–3a of this title or section 300j–1(a)(2);

(B) vary for different classes or categories of such projects (as determined by the Administrator);

(C) be established and applicable on a project-by-project basis; or

(D) any combination of the above.

(4) Nothing in this section shall be construed to prohibit or delay the award of any grant referred to in paragraph (1) prior to the date of promulgation of such guidelines.


REFERENCES IN TEXT

Section 300j–1(a)(2) of this title, referred to in par. (3)(A), was amended by Pub. L. 104–182, title I, §121(3), (4)(A), Aug. 6, 1996, 110 Stat. 1651, to redesignate par. (2)(B) as subsec. (b) of section 300j–1, strike par. (2)(A), and add a new par. (2) relating to information and research facilities.

§ 300j–3c. National assistance program for water infrastructure and watersheds

(a) Technical and financial assistance

The Administrator of the Environmental Protection Agency may provide technical and financial assistance in the form of grants to States (1) for the construction, rehabilitation, and improvement of water supply systems, and (2) consistent with nonpoint source management programs established under section 1329 of title 33, for source water quality protection programs to address pollutants in navigable waters for the purpose of making such waters usable by water supply systems.

(b) Limitation

Not more than 30 percent of the amounts appropriated to carry out this section in a fiscal year may be used for source water quality protection programs described in subsection (a)(2).

(c) Condition

As a condition to receiving assistance under this section, a State shall ensure that such assistance is carried out in the most cost-effective manner, as determined by the State.

(d) Authorization of appropriations

(1) Unconditional authorization

There are authorized to be appropriated to carry out this section $25,000,000 for each of fiscal years 1997 through 2003. Such sums shall remain available until expended.

(2) Conditional authorization

In addition to amounts authorized under paragraph (1), there are authorized to be appropriated to carry out this section $25,000,000 for each of fiscal years 1997 through 2003, provided that such authorization shall be in effect for a fiscal year only if at least 75 percent of the total amount of funds authorized to be appropriated for such fiscal year by section 300j–12(m) of this title are appropriated.

(e) Acquisition of lands

Assistance provided with funds made available under this section may be used for the acquisition of lands and other interests in lands; however, nothing in this section authorizes the acquisition of lands or other interests in lands from other than willing sellers.

(f) Federal share

The Federal share of the cost of activities for which grants are made under this section shall be 50 percent.
§ 300j–4. Records and inspections

(a) Provision of information to Administrator; monitoring program for unregulated contaminants

(1)(A) Every person who is subject to any requirement of this subchapter or who is a grantee, shall establish and maintain such records, make such reports, conduct such monitoring, and provide such information as the Administrator may reasonably require by regulation to assist the Administrator in establishing regulations under this subchapter, in determining whether such person has acted or is acting in compliance with this subchapter, in determining whether such person is located if such State has primary enforcement responsibility for public water systems and to be included in the national drinking water occurrence data base maintained pursuant to subsection (g) of this section.

(B) Every person who is subject to a national primary drinking water regulation under section 300g–1 of this title shall provide such information as the Administrator may reasonably require to assist the Administrator in establishing regulations under section 300g–1 of this title, after consultation with States and suppliers of water.

(2) Monitoring program for unregulated contaminants

(A) Establishment. The Administrator shall promulgate regulations establishing the criteria for a monitoring program for unregulated contaminants. The regulations shall require monitoring of drinking water supplied by public water systems serving 10,001 persons or fewer, and shall vary the frequency and schedule for monitoring requirements for systems based on the number of persons served by the system, the source of supply, and the contaminants likely to be found, ensuring that only a representative sample of systems serving 10,000 persons or fewer are required to monitor.

(B) Monitoring plan for certain unregulated contaminants.

(i) Initial list. Not later than 3 years after August 6, 1996, and every 5 years thereafter, the Administrator shall issue a list pursuant to subparagraph (A) of not more than 30 unregulated contaminants to be monitored by public water systems and to be included in the national drinking water occurrence data base maintained pursuant to subsection (g) of this section.

(ii) Governors’ petition. The Administrator shall include among the list of contaminants for which monitoring is required under this paragraph each contaminant recommended in a petition signed by the Governor of each of 7 or more States, unless the Administrator determines that the action would prevent the listing of other contaminants of a higher public health concern.

(C) Monitoring plan for small and medium systems.

(i) In general. Based on the regulations promulgated by the Administrator, each State may develop a representative monitoring plan to assess the occurrence of unregulated contaminants in public water systems that serve a population of 10,000 or fewer in that State. The plan shall require monitoring for systems representative of different sizes, types, and geographic locations in the State.

(ii) Grants for small system costs. From funds reserved under section 300j–12(o)
of this title or appropriated under subpara-
graph (H), the Administrator shall pay the
reasonable cost of such testing and labora-
tory analysis as are necessary to carry out
monitoring under the plan.

(D) Monitoring Results.—Each public water
system that conducts monitoring of unregu-
lated contaminants pursuant to this para-
graph shall provide the results of the monitor-
ing to the primary enforcement authority for
the system.

(E) Notification.—Notification of the avail-
ability of the results of monitoring programs
required under paragraph (D) shall be given
in accordance with 

(F) Waiver of Monitoring Requirement.—
The Administrator shall waive the require-
ment for monitoring for a contaminant under
this paragraph in a State, if the State dem-
onstrates that the criteria for listing the con-
taminant do not apply in that State.

(G) Analytical Methods.—The State may
use screening methods approved by the Ad-
ministrator under subsection (i) of this section
in lieu of monitoring for particular contami-
nants under this paragraph.

(H) Authorization of Appropriations.—
There are authorized to be appropriated to
carry out this paragraph $10,000,000 for each of
the fiscal years 1997 through 2003.

(b) Entry of establishments, facilities, or other
property; inspections; conduct of certain
tests; audit, and examination of records;
entry restrictions; prohibition against in-
forming of a proposed entry

(1) Except as provided in paragraph (2), the Ad-
ministrator, or representatives of the Admin-
istrator duly designated by him, upon presenting
appropriate credentials and a written notice to
any supplier of water or other person subject to
(A) a national primary drinking water regula-
tion prescribed under section 300g–1 of this title,
(B) an applicable underground injection control
program, or (C) any requirement to monitor an
unregulated contaminant pursuant to sub-
section (a) of this section, or person in charge of
any of the property of such supplier or other
person referred to in clause (A), (B), or (C), is au-
thorized to enter any establishment, facility, or
other property of such supplier or other person
in order to determine whether such supplier or
other person has acted or is acting in compli-
ance with this subchapter, including for this
purpose, inspection, at reasonable times, of
records, files, papers, processes, controls, and fa-
cilities, or in order to test any feature of a pub-
lic water system, including its raw water source.
The Administrator or the Comptroller General
(or any representative designated by either)
shall have access for the purpose of audit and
examination to any records, reports, or informa-
tion of a grantee which are required to be main-
tained under subsection (a) of this section or
which are pertinent to any financial assistance
under this subchapter.

(2) No entry may be made under the first
sentence of paragraph (1) in an establishment, faci-
ility, or other property of a supplier of water or
other person subject to a national primary
drinking water regulation if the establishment,
facility, or other property is located in a State
which has primary enforcement responsibility
for public water systems unless, before written
notice of such entry is made, the Administrator
(or his representative) notifies the State agency
charged with responsibility for safe drinking
water of the reasons for such entry. The Admin-
istrator shall, upon a showing by the State
agency that such an entry will be detrimental to
the administration of the State’s program of
primary enforcement responsibility, take such
showing into consideration in determining
whether to make such entry. No State agency
which receives notice under this paragraph of an
entry proposed to be made under paragraph (1)
may use the information contained in the notice
to inform the person whose property is proposed
to be entered of the proposed entry; and if a State
agency so uses such information, notice to
the agency under this paragraph is not required
until such time as the Administrator determines
the agency has provided him satisfactory assur-
ances that it will no longer so use information
contained in a notice under this paragraph.

(c) Penalty

Whoever fails or refuses to comply with any
requirement of subsection (a) of this section or
to allow the Administrator, the Comptroller
General, or representatives of either, to enter
and conduct any audit or inspection authorized
by subsection (b) of this section shall be subject
to a civil penalty of not to exceed $50,000.

(d) Confidential information; trade secrets
and secret processes; information disclosure; “in-
formation required under this section” de-

ified

(1) Subject to paragraph (2), upon a showing
satisfactory to the Administrator by any person
that any information required under this section
from such person, if made public, would divulge
trade secrets or secret processes of such person,
the Administrator shall consider such informa-
tion confidential in accordance with the pur-
poses of section 1905 of title 18. If the applicant
fails to make a showing satisfactory to the Ad-
ministrator, the Administrator shall give such
applicant thirty days’ notice before releasing the
information to which the application relates
(unless the public health or safety requires an
earlier release of such information).

(2) Any information required under this sec-
tion (A) may be disclosed to other officers, em-
ployees, or authorized representatives of the
United States concerned with carrying out this
subchapter or to committees of the Congress, or
when relevant in any proceeding under this sub-
chapter, and (B) shall be disclosed to the extent
it deals with the level of contaminants in drink-
ing water. For purposes of this subsection the
term “information required under this section”
means any papers, books, documents, or informa-
tion, or any particular part thereof, reported to
or otherwise obtained by the Administrator
under this section.

(e) “Grantee” and “person” defined

For purposes of this section, (1) the term
“grantee” means any person who applies for or
receives financial assistance, by grant, contract,
or loan guarantee under this subchapter, and (2)
the term “person” includes a Federal agency.
§ 300j–4

(f) Information regarding drinking water coolers

The Administrator may utilize the authorities of this section for purposes of part F of this subchapter. Any person who manufactures, imports, sells, or distributes drinking water coolers in interstate commerce shall be treated as a supplier of water for purposes of applying the provisions of this section in the case of persons subject to part F of this subchapter.

(g) Occurrence data base

(1) In general

Not later than 3 years after August 6, 1996, the Administrator shall assemble and maintain a national drinking water contaminant occurrence data base, using information on the occurrence of both regulated and unregulated contaminants in public water systems obtained under subsection (a)(1)(A) of this section or subsection (a)(2) of this section and reliable information from other public and private sources.

(2) Public input

In establishing the occurrence data base, the Administrator shall solicit recommendations from the Science Advisory Board, the States, and other interested parties concerning the development and maintenance of a national drinking water contaminant occurrence data base, including such issues as the structure and design of the data base, data input parameters and requirements, and the use and interpretation of data.

(3) Use

The data shall be used by the Administrator in making determinations under section 300g–1(b)(1) of this title with respect to the occurrence of a contaminant in drinking water at a level of public health concern.

(4) Public recommendations

The Administrator shall periodically solicit recommendations from the appropriate officials of the National Academy of Sciences and the States, and any person may submit recommendations to the Administrator, with respect to contaminants that should be included in the national drinking water contaminant occurrence data base, including recommendations with respect to additional unregulated contaminants that should be listed under subsection (a)(2) of this section. Any recommendation submitted under this clause shall be accompanied by reasonable documentation that—

(A) the contaminant occurs or is likely to occur in drinking water; and

(B) the contaminant poses a risk to public health.

(5) Public availability

The information from the data base shall be available to the public in readily accessible form.

(6) Regulated contaminants

With respect to each contaminant for which a national primary drinking water regulation has been established, the data base shall include information on the detection of the contaminant at a quantifiable level in public water systems (including detection of the contaminant at levels not constituting a violation of the maximum contaminant level for the contaminant).

(7) Unregulated contaminants

With respect to contaminants for which a national primary drinking water regulation has not been established, the data base shall include—

(A) monitoring information collected by public water systems that serve a population of more than 10,000, as required by the Administrator under subsection (a) of this section;

(B) monitoring information collected from a representative sampling of public water systems that serve a population of 10,000 or fewer; and

(C) other reliable and appropriate monitoring information on the occurrence of the contaminants in public water systems that is available to the Administrator.

(h) Availability of information on small system technologies

For purposes of sections 300g–1(b)(4)(E) and 300g–4(e) of this title (relating to small system variance program), the Administrator may request information on the characteristics of commercially available treatment systems and technologies, including the effectiveness and performance of the systems and technologies under various operating conditions. The Administrator may specify the form, content, and submission date of information to be submitted by manufacturers, States, and other interested persons for the purpose of considering the systems and technologies in the development of regulations or guidance under sections 300g–1(b)(4)(E) and 300g–4(e) of this title.

(i) Screening methods

The Administrator shall review new analytical methods to screen for regulated contaminants and may approve such methods as are more accurate or cost-effective than established reference methods for use in compliance monitoring.

-Amendments-

1996—Subsec. (a)(1). Pub. L. 104–182, § 125(a), amended par. (1) generally. Prior to amendment, par. (1) read as follows: ‘‘Every person who is a supplier of water, who is or may be otherwise subject to a primary drinking water regulation prescribed under section 300g–1 of this title or to an applicable underground injection control program (as defined in section 300h–1(c) of this title), who is or may be subject to the permit requirement of section 300h–3 of this title, or to an order issued under section 300j of this title, or who is a grantee, shall establish and maintain such records, make such reports, conduct such monitoring, and provide such information as the Administrator may reasonably require by regul-
lation to assist him in establishing regulations under this subchapter, in determining whether such person has acted or is acting in compliance with this subchapter, and in administering any program of financial assistance under this subchapter, in evaluating the health risks of unregulated contaminants, or in advising the public of such risks. In requiring a public water system to monitor under this subsection, the Administrator may take into consideration the system size and the contaminants likely to be found in the system’s drinking water. The members of the Council shall be eligible for reappointment.

(b) Functions

The Council shall advise, consult with, and make recommendations to, the Administrator on matters relating to activities, functions, and policies of the Agency under this subchapter.

(c) Compensation and allowances; travel expenses

Members of the Council appointed under this section shall, while attending meetings or conferences of the Council or otherwise engaged in business of the Council, receive compensation and allowances at a rate to be fixed by the Administrator, but not exceeding the daily equivalent of the annual rate of basic pay in effect for grade GS–18 of the General Schedule for each day (including traveltime in lieu of subsistence, in the same manner as persons employed intermittently in the Government service) on which they are engaged in the actual performance of duties vested in the Council. While away from their homes or regular places of business in the performance of services for the Council, members of the Council shall be allowed travel expenses, including per diem in lieu of subsistence, in the same manner as persons employed intermittently in the Government service are allowed expenses under section 5703(b) of title 5.

(d) Advisory committee termination provision inapplicable

Section 14(a) of the Federal Advisory Committee Act (relating to termination) shall not apply to the Council.


References in Text

Section 5703 of title 5, referred to in subsec. (c), was amended generally by Pub. L. 94–22, § 4, May 19, 1973, 87 Stat. 85, and, as so amended, does not contain a subsec. (b).

Section 14(a) of the Federal Advisory Committee Act, referred to in subsec. (d), is section 14(a) of Pub. L. 92–463, which is set out as a note under section 14(a) of the Federal Advisory Committee Act (relating to termination) shall not apply to the Council.

AMENDMENTS

1996—Subsec. (a). Pub. L. 104–182 inserted “, of which two such members shall be associated with small, rural public water systems” before period at end of second sentence.

Termination of Advisory Committees

Pub. L. 93–641, § 6, Jan. 4, 1975, 88 Stat. 2275, set out as a note under section 27a of this title, provided that an advisory committee established pursuant to the Public Health Service Act shall terminate at such time as may be specifically prescribed by an Act of Congress enacted after Jan. 4, 1975.

References in Other Laws

References in laws to the rates of pay for GS–16, 17, or 18 pay rates

References in laws to the rates of pay for GS–16, 17, or 18, or to maximum rates of pay under the General Schedule, to be considered references to rates payable under specified sections of Title 5, Government Organization and Employees, see section 5309 of Title 5.

1 See References in Text note below.
§ 300j–6. Federal agencies

(a) In general

Each department, agency, and instrumental-ity of the executive, legislative, and judicial branches of the Federal Government—

(1) owning or operating any facility in a wellhead protection area;
(2) engaged in any activity at such facility resulting, or which may result, in the contamination of water supplies in any such area;
(3) owning or operating any public water sys-
tem; or

(4) engaged in any activity resulting, or which may result in, underground injection which endangers drinking water (within the meaning of section 300h(d)(2) of this title),

shall be subject to, and comply with, all Fed-
eral, State, interstate, and local substantive and procedural (including any requirement for permits or reporting or any pro-
visions for injunctive relief and such sanctions as may be imposed by a court to enforce such relief), respecting the protection of such wellhead areas, respecting such public water systems, and respecting any underground injection in the same manner and to the same extent as any person is subject to such requirements, including the payment of reasonable service charges. The Federal, State, interstate, and local substantive and procedural requirements referred to in this subsection include, but are not limited to, all Federal, State, interstate, or local regulatory program respecting or which may result in, underground injection with respect to any wellhead protection area;

(b) Administrative penalty orders

(1) In general

If the Administrator finds that a Federal agency has violated an applicable requirement under this subchapter, the Administrator may issue a penalty order assessing a penalty against the Federal agency.

(2) Penalties

The Administrator may, after notice to the agency, assess a civil penalty against the agency in an amount not to exceed $25,000 per day per violation.

(3) Procedure

Before an administrative penalty order issued under this subsection becomes final, the Administrator shall provide the agency the opportunity to confer with the Administrator and shall provide the agency notice and an opportunity for a hearing on the record in accordance with chapters 5 and 7 of title 5.

(4) Public review

(A) In general

Any interested person may obtain review of an administrative penalty order issued under this subsection. The review may be obtained in the United States District Court for the District of Columbia or in the United States District Court for the district in which the violation is alleged to have occurred by the filing of a complaint with the court within the 30-day period beginning on the date the penalty order becomes final. The person filing the complaint shall simultaneously send a copy of the complaint by certified mail to the Administrator and the Attorney General.

(B) Record

The Administrator shall promptly file in the court a certified copy of the record on which the order was issued.

1 So in original. Probably should not be capitalized.
(C) Standard of review

The court shall not set aside or remand the order unless the court finds that there is not substantial evidence in the record, taken as a whole, to support the finding of a violation or that the assessment of the penalty by the Administrator constitutes an abuse of discretion.

(D) Prohibition on additional penalties

The court may not impose an additional civil penalty for a violation that is subject to the order unless the court finds that the assessment constitutes an abuse of discretion by the Administrator.

(c) Limitation on State use of funds collected from Federal Government

Unless a State law in effect on August 6, 1996, or a State constitution requires the funds to be used in a different manner, all funds collected by a State from the Federal Government from penalties and fines imposed for violation of any substantive or procedural requirement referred to in subsection (a) of this section shall be used by the State only for projects designed to improve or protect the environment or to defray the costs of environmental protection or enforcement.

(d) Indian rights and sovereignty as unaffected; "Federal agency" defined

(1) Nothing in the Safe Drinking Water Amendments of 1977 shall be construed to alter or affect the status of American Indian lands or water rights nor to waive any sovereignty over Indian lands guaranteed by treaty or statute.

(2) For the purposes of this chapter, the term "Federal agency" shall not be construed to refer to or include any American Indian tribe, nor to the Secretary of the Interior in his capacity as trustee of Indian lands.

(e) Washington Aqueduct

The Secretary of the Army shall not pass the cost of any penalty assessed under this subchapter on to any customer, user, or other purchaser of drinking water from the Washington Aqueduct system, including finished water from the Dalecarlia or McMillan treatment plant.

(1) For the purposes of this chapter, the term "Federal agency" shall be construed to include the United States Environmental Protection Agency, the United States Army Corps of Engineers, and the United States Bureau of Reclamation, their respective employees, and the District of Columbia Water and Sewer Authority.

(2) Nothing in this chapter shall be construed to alter, amend, or affect the status of tribal land or water rights or to waive any sovereignty over Indian lands guaranteed by treaty or statute.

(3) Nothing in this chapter shall be construed to alter, amend, or affect the status of any Federal agency having jurisdiction over federally owned or maintained public water systems, or engaged in underground injection activities with Federal, State, and local requirements, etc., for provisions relating to compliance by Federal agencies having jurisdiction over federally owned or maintained public water systems with national primary drinking water regulations.

§300j–7. Judicial review

(a) Courts of appeals; petition for review: actions respecting regulations; filing period; grounds arising after expiration of filing period; exclusiveness of remedy

A petition for review of—

(1) actions pertaining to the establishment of national primary drinking water regulations (including maximum contaminant level goals) may be filed only in the United States Court of Appeals for the District of Columbia circuit; and

(2) any other final action of the Administrator under this chapter may be filed in the circuit in which the petitioner resides or transacts business which is directly affected by the action.

Any such petition shall be filed within the 45-day period beginning on the date of the promulgation of the regulation or any other final Agency action with respect to which review is sought or on the date of the determination with respect to which review is sought, and may be filed after the expiration of such 45-day period if the petition is based solely on grounds arising after the expiration of such period. Action of the Administrator with respect to which review could have been obtained under this subsection shall not be subject to judicial review in any civil or criminal proceeding for enforcement or in any civil action to enjoin enforcement. In any petition concerning the assessment of a civil penalty pursuant to section 300g–3(g)(3)(B) of this title, the petitioner shall simultaneously send a copy of the complaint by certified mail to the Administrator and to the Attorney General. The court shall set aside and remand the penalty order if the court finds that there is not substantial evidence in the record to support the finding of a violation or that the assessment of the penalty by the Administrator constitutes an abuse of discretion.

(b) District courts; petition for review: actions respecting variances or exemptions; filing period; grounds arising after expiration of filing period; exclusiveness of remedy

The United States district courts shall have jurisdiction of actions brought to review (1) the granting of, or the refusing to grant, a variance or exemption under section 300g–4 or 300g–5 of this title or (2) the requirements of any schedule prescribed for a variance or exemption under such section or the failure to prescribe such a schedule. Such an action may only be brought upon a petition for review filed with the court within the 45-day period beginning on the date the action sought to be reviewed is taken or, in the case of a petition to review the refusal to...
§ 300j–8  TITLE 42—THE PUBLIC HEALTH AND WELFARE  Page 1026

grant a variance or exemption or the failure to prescribe a schedule, within the 45-day period beginning on the date action is required to be taken on the variance, exemption, or schedule, as the case may be. A petition for such review may be filed after the expiration of such period if the petition is based solely on grounds arising after the expiration of such period. Action with respect to which review could have been obtained under this subsection shall not be subject to judicial review in any civil or criminal proceeding for enforcement or in any civil action to enjoin enforcement.

(c) Judicial order for additional evidence before Administrator; modified or new findings; recommendation for modification or setting aside of original determination

In any judicial proceeding in which review is sought of a determination under this subchapter required to be made on the record after notice and opportunity for hearing, if any party applies to the court for leave to adduce additional evidence and shows to the satisfaction of the court that such additional evidence is material and that there were reasonable grounds for the failure to adduce such evidence in the proceeding before the Administrator, the court may order such additional evidence (and evidence in rebuttal thereof) to be taken before the Administrator, in such manner and upon such term and conditions as the court may deem proper. The Administrator may modify his findings as to the facts, or make new findings, by reason of the additional evidence so taken, and he shall file such modified or new findings, and his recommendation, if any, for the modification or setting aside of his original determination, with the return of such additional evidence. (July 1, 1944, ch. 373, title XIV, §1448, as added Pub. L. 93–523, §2(a), Dec. 16, 1974, 88 Stat. 1689; amended Pub. L. 99–339, title III, §303, June 19, 1986, 100 Stat. 667; Pub. L. 104–182, title I, §113(c), Aug. 6, 1996, 110 Stat. 1636.)

AMENDMENTS

1996—Subsec. (a). Pub. L. 104–182, §113(c)(2), (3), in concluding provisions, substituted “or any other final Agency action” for “or issuance of the order” and inserted at end “In any petition concerning the assessment of a civil penalty pursuant to section 300g–1 of this title, any regulation under section 300g–3(g)(3)(B) of this title, the petitioner shall simultaneously send a copy of the complaint by certified mail to the Administrator and the Attorney General. The court shall set aside and remand the penalty order if the court finds that there is not substantial evidence in the record to support the finding of a violation or that the assessment of the penalty by the Administrator constitutes an abuse of discretion.”

Subsec. (a)(2). Pub. L. 104–182, §113(c)(1), substituted “any other final action” for “any other action”.

1986—Subsec. (a)(1). Pub. L. 99–339, §303(1), amended par. (1) generally. Prior to amendment, par. (1) read as follows: “action of the Administrator in promulgating any national primary drinking water regulation under section 300g–1 of this title, any regulation under section 300g–2(b)(1) of this title, any regulation under section 300g–3(b) of this title, any regulation for State underground injection control programs under section 300h of this title, or any general regulation for the administration of this subchapter may be filed only in the United States Court of Appeals for the District of Columbia Circuit; and”.

Subsec. (a)(2). Pub. L. 99–339, §303(2), amended par. (2) generally. Prior to amendment, par. (2) read as follows:

“action of the Administrator in promulgating any other regulation under this subchapter, issuing any order under this subchapter, or making any determination under this subchapter may be filed only in the United States court of appeals for the appropriate circuit.”

§ 300j–8. Citizen’s civil action

(a) Persons subject to civil action; jurisdiction of enforcement proceedings

Except as provided in subsection (b) of this section, any person may commence a civil action on his own behalf—

(1) against any person (including (A) the United States, and (B) any other governmental instrumentality or agency to the extent permitted by the eleventh amendment to the Constitution) who is alleged to be in violation of any requirement prescribed by or under this subchapter;

(2) against the Administrator where there is alleged a failure of the Administrator to perform any act or duty under this subchapter which is not discretionary with the Administrator; or

(3) for the collection of a penalty by the United States Government (and associated costs and interest) against any Federal agency that fails, by the date that is 18 months after the effective date of a final order to pay a penalty assessed by the Administrator under section 300h–8(b)1 of this title, to pay the penalty.

No action may be brought under paragraph (1) against a public water system for a violation of a requirement prescribed by or under this subchapter which occurred within the 27-month period beginning on the first day of the month in which this subchapter is enacted. The United States district courts shall have jurisdiction, without regard to the amount in controversy or the citizenship of the parties, to enforce in an action brought under this subsection any requirement prescribed by or under this subchapter or to order the Administrator to perform an act or duty described in paragraph (2), as the case may be.

(b) Conditions for commencement of civil action; notice

No civil action may be commenced—

(1) under subsection (a)(1) of this section respecting violation of a requirement prescribed by or under this subchapter—

(A) prior to sixty days after the plaintiff has given notice of such violation (i) to the Administrator, (ii) to any alleged violator of such requirement and (iii) to the State in which the violation occurs, or

(B) if the Administrator, the Attorney General, or the State has commenced and is diligently prosecuting a civil action in a court of the United States to require compliance with such requirement, but in any such action in a court of the United States any person may intervene as a matter of right;

or

(2) under subsection (a)(2) of this section prior to sixty days after the plaintiff has given notice of such action to the Administrator; or

1 So in original. Probably should be section “300j–6(b)”.
Notice required by this subsection shall be given in such manner as the Administrator shall prescribe by regulation. No person may commence a civil action under subsection (a) of this section to require a State to prescribe a schedule under section 300q–4 or 300q–5 of this title for a variance or exemption, unless such person shows to the satisfaction of the court that the State has in a substantial number of cases failed to prescribe such schedules.

(c) Intervention of right

In any action under this section, the Administrator or the Attorney General, if not a party, may intervene as a matter of right.

(d) Costs; attorney fees; expert witness fees; filing of bond

The court, in issuing any final order in any action brought under subsection (a) of this section, may award costs of litigation (including reasonable attorney and expert witness fees) to any party whenever the court determines such an award is appropriate. The court may, if a temporary restraining order or preliminary injunction is sought, require the filing of a bond or equivalent security in accordance with the Federal Rules of Civil Procedure.

(e) Availability of other relief

Nothing in this section shall restrict any right which any person (or class of persons) may have under any statute or common law to seek enforcement of any requirement prescribed by or under this subchapter or to seek any other relief. Nothing in this section or in any other law of the United States shall be construed to prohibit, exclude, or restrict any State or local government from—

(1) bringing any action or obtaining any remedy or sanction in any State or local court, or

(2) bringing any administrative action or obtaining any administrative remedy or sanction, against any agency of the United States under State or local law to enforce any requirement respecting the provision of safe drinking water or respecting any underground injection control program. Nothing in this section shall be construed to authorize judicial review of regulations or orders of the Administrator under this subchapter, except as provided in section 300j–7 of this title. For provisions providing for application of certain requirements to such agencies in the same manner as to nongovernmental entities, see section 300j–6 of this title.


References in Text

The Federal Rules of Civil Procedure, referred to in subsec. (d), are set out in the Appendix to Title 28, Judiciary and Judicial Procedure.
the Administrator is a party. Unless, within a reasonable time, the Attorney General notifies the Administrator that he will appear in such action, attorneys appointed by the Administrator shall appear and represent him.

(g) Authority of Administrator under other provisions unaffected

The provisions of this subchapter shall not be construed as affecting any authority of the Administrator under part G of subchapter II of this chapter.

(h) Reports to Congressional committees; review by Office of Management and Budget: submittal of comments to Congressional committees

Not later than April 1 of each year, the Administrator shall submit to the Committee on Commerce, Science, and Transportation of the Senate and the Committee on Energy and Commerce of the House of Representatives a report respecting the activities of the Agency under this subchapter and containing such recommendations for legislation as he considers necessary. The report of the Administrator under this subsection which is due not later than April 1, 1975, and each subsequent report of the Administrator under this subsection shall include a statement on the actual and anticipated cost to public water systems in each State of compliance with the requirements of this subchapter. The Office of Management and Budget may review any report required by this subsection before its submission to such committees of Congress, but the Office may not revise any such report, require any revision in any such report, or delay its submission beyond the day prescribed for its submission, and may submit to such committees of Congress its comments respecting any such report.

(i) Discrimination prohibition; filing of complaint; investigation; orders of Secretary; notice and hearing; settlements; attorneys’ fees; judicial review; filing of petition; procedural requirements; stay of orders; exclusiveness of remedy; civil actions for enforcement of orders; appropriate relief; mandamus proceedings; prohibition inapplicable to undirected but deliberate violations

(1) No employer may discharge any employee or otherwise discriminate against any employee with respect to his compensation, terms, conditions, or privileges of employment because the employee (or any person acting pursuant to a request of the employee) has—

(A) commenced, caused to be commenced, or is about to commence or cause to be commenced a proceeding under this subchapter or a proceeding for the administration or enforcement of drinking water regulations or underground injection control programs of a State,

(B) testified or is about to testify in any such proceeding, or

(C) assisted or participated or is about to assist or participate in any manner in such a proceeding or in any other action to carry out the purposes of this subchapter.

(2)(A) Any employee who believes that he has been discharged or otherwise discriminated against by any person in violation of paragraph (1) may, within 30 days after such violation occurs, file (or have any person file on his behalf) a complaint with the Secretary of Labor (hereinafter in this subsection referred to as the "Secretary") alleging such discharge or discrimination. Upon receipt of such a complaint, the Secretary shall notify the person named in the complaint of the filing of the complaint.

(B)(i) Upon receipt of a complaint filed under subparagraph (A), the Secretary shall conduct an investigation of the violation alleged in the complaint. Within 30 days of the receipt of such complaint, the Secretary shall complete such investigation and shall notify in writing the complainant (and any person acting in his behalf) and the person alleged to have committed such violation of the results of the investigation conducted pursuant to this subparagraph. Within 90 days of the receipt of such complaint the Secretary shall, unless the proceeding on the complaint is terminated by the Secretary on the basis of a settlement entered into by the Secretary and the person alleged to have committed such violation, issue an order either providing the relief prescribed by clause (ii) or denying the complaint. An order of the Secretary shall be made on the record after notice and opportunity for agency hearing. The Secretary may not enter into a settlement terminating a proceeding on a complaint without the participation and consent of the complainant.

(ii) If in response to a complaint filed under subparagraph (A) the Secretary determines that a violation of paragraph (1) has occurred, the Secretary shall order (I) the person who committed such violation to take affirmative action to abate the violation, (II) such person to reinstate the complainant to his former position together with the compensation (including back pay), terms, conditions, and privileges of his employment, (III) compensatory damages, and (IV) where appropriate, exemplary damages. If such an order is issued, the Secretary, at the request of the complainant, shall assess against the person against whom the order is issued a sum equal to the aggregate amount of all costs and expenses (including attorneys’ fees) reasonably incurred, as determined by the Secretary, by the complainant for, or in connection with, the bringing of the complaint upon which the order was issued.

(3)(A) Any person adversely affected or aggrieved by an order issued under paragraph (2) may obtain review of the order in the United States Court of Appeals for the circuit in which the violation, with respect to which the order was issued, allegedly occurred. The petition for review must be filed within sixty days from the issuance of the Secretary’s order. Review shall conform to chapter 7 of title 5. The commencement of proceedings under this subparagraph shall not, unless ordered by the court, operate as a stay of the Secretary’s order.

(B) An order of the Secretary with respect to which review could have been obtained under subparagraph (A) shall not be subject to judicial review in any criminal or other civil proceeding.

(4) Whenever a person has failed to comply with an order issued under paragraph (2)(B), the Secretary shall file a civil action in the United
§ 300j-11. Indian Tribes

(a) In general

Subject to the provisions of subsection (b) of this section, the Administrator—

(1) is authorized to treat Indian Tribes as States under this subchapter,

(2) may delegate to such Tribes primary enforcement responsibility for public water systems and for underground injection control, and

(3) may provide such Tribes grant and contract assistance to carry out functions provided by this subchapter.

(b) EPA regulations

(1) Specific provisions

The Administrator shall, within 18 months after June 19, 1996, promulgate final regulations specifying those provisions of this subchapter for which it is appropriate to treat Indian Tribes as States. Such treatment shall be authorized only if:
(A) the Indian Tribe is recognized by the Secretary of the Interior and has a governing body carrying out substantial governmental duties and powers;

(B) the functions to be exercised by the Indian Tribe are within the area of the Tribal Government’s jurisdiction; and

(C) the Indian Tribe is reasonably expected to be capable, in the Administrator’s judgment, of carrying out the functions to be exercised in a manner consistent with the terms and purposes of this subchapter and of all applicable regulations.

(2) Provisions where treatment as State inappropriate

For any provision of this subchapter where treatment of Indian Tribes as identical to States is inappropriate, administratively infeasible or otherwise inconsistent with the purposes of this subchapter, the Administrator may include in the regulations promulgated under this section, other means for administering such provision in a manner that will achieve the purpose of the provision. Nothing in this section shall be construed to allow Indian Tribes to assume or maintain primary enforcement responsibility for public water systems or for underground injection control in a manner less protective of the health of persons than such responsibility may be assumed or maintained by a State. An Indian tribe shall not be required to exercise criminal enforcement jurisdiction for purposes of complying with the preceding sentence.

(300j-12) State revolving loan funds

(a) General authority

The Administrator shall offer to enter into agreements with eligible States to make capitalization grants, including letters of credit, to the States under this subsection to further the health protection objectives of this subchapter, promote the efficient use of fund resources, and for other purposes as are specified in this subchapter.

(b) Establishment of fund

To be eligible to receive a capitalization grant under this section, a State shall establish a drinking water treatment revolving loan fund (referred to in this section as a “State loan fund”) and comply with the other requirements of this section. Each grant to a State under this section shall be deposited in the State loan fund established by the State, except as otherwise provided in this section and in other provisions of this subchapter. No funds authorized by other provisions of this subchapter to be used for other purposes specified in this subchapter shall be deposited in any State loan fund.

(C) Extended period

The grant to a State shall be available to the State for obligation during the fiscal year for which the funds are authorized and during the following fiscal year, except that grants made available from funds provided prior to fiscal year 1997 shall be available for obligation during each of the fiscal years 1997 and 1998.

(D) Allotment formula

Except as otherwise provided in this section, funds made available to carry out this section shall be allotted to States that have entered into an agreement pursuant to this section (other than the District of Columbia) in accordance with—

(i) for each of fiscal years 1995 through 1997, a formula that is the same as the formula used to distribute public water system supervision grant funds under section 300j-2 of this title in fiscal year 1995, except that the minimum proportionate share established in the formula shall be 1 percent of available funds and the formula shall be adjusted to include a minimum proportionate share for the State of Wyoming and the District of Columbia, and

(ii) for fiscal year 1998 and each subsequent fiscal year, a formula that allocates to each State the proportional share of the State needs identified in the most recent survey conducted pursuant to subsection (b) of this section, except that the minimum proportionate share provided to each State shall be the same as the minimum proportionate share provided under clause (i).

(E) Reallocation

The grants not obligated by the last day of the period for which the grants are available shall be reallocated according to the appropriate criteria set forth in subparagraph (D), except that the Administrator may reserve and allocate 10 percent of the remaining amount for financial assistance to Indian Tribes in addition to the amount allotted under subsection (i) of this section and none of the funds reallocated by the Administrator shall be reallocated to any State that has not obligated all sums allotted to the State pursuant to this section during the period in which the sums were available for obligation.

(F) Nonprimacy States

The State allotment for a State not exercising primary enforcement responsibility for public water systems shall not be deposited in any such fund but shall be allotted by the Administrator under this subparagraph. Pursuant to section 300j-2(a)(9)(A) of this title such sums allotted under this subparagraph shall be reserved as needed by the Administrator to exercise primary enforcement responsibility.
responsibility under this subchapter in such State and the remainder shall be reallocated to States exercising primary enforcement responsibility for public water systems for deposit in such funds. Whenever the Administrator makes a final determination pursuant to section 300g–2(b) of this title that the requirements of section 300g–2(a) of this title are no longer being met by a State, additional grants for such State under this subchapter shall be immediately terminated by the Administrator. This subparagraph shall not apply to any State not exercising primary enforcement responsibility for public water systems as of August 6, 1996.

(G) Other programs

(i) New system capacity

Beginning in fiscal year 1999, the Administrator shall withhold 20 percent of each capitalization grant made pursuant to this section to a State unless the State has met the requirements of section 300g–9(a) of this title (relating to capacity development) and shall withhold 10 percent for fiscal years 2001, 15 percent for fiscal year 2002, and 20 percent for fiscal year 2003 if the State has not complied with the provisions of section 300g–9(c) of this title (relating to capacity development strategies). Not more than a total of 20 percent of the capitalization grants made to a State in any fiscal year may be withheld under the preceding provisions of this clause. All funds withheld by the Administrator pursuant to this clause shall be reallocated by the Administrator on the basis of the same ratio as is applicable to funds allotted under subparagraph (D). None of the funds reallocated by the Administrator pursuant to this paragraph shall be allotted to a State unless the State has met the requirements of section 300g–9 of this title (relating to capacity development).

(ii) Operator certification

The Administrator shall withhold 20 percent of each capitalization grant made pursuant to this section unless the State has met the requirements of section 300g–8 of this title (relating to operator certification). All funds withheld by the Administrator pursuant to this clause shall be reallocated by the Administrator on the basis of the same ratio as applicable to funds allotted under subparagraph (D). None of the funds reallocated by the Administrator pursuant to this paragraph shall be allotted to a State unless the State has met the requirements of section 300g–8 of this title (relating to operator certification).

(2) Use of funds

Except as otherwise authorized by this subchapter, amounts deposited in a State loan fund, including loan repayments and interest earned on such amounts, shall be used only for providing loans or loan guarantees, or as a source of reserve and security for leveraged loans, the proceeds of which are deposited in a State loan fund established under paragraph (1), or other financial assistance authorized under this section to community water systems and nonprofit noncommunity water systems, other than systems owned by Federal agencies. Financial assistance under this section may be used by a public water system only for expenditures (not including monitoring, operation, and maintenance expenditures) of a type or category which the Administrator has determined, through guidance, will facilitate compliance with national primary drinking water regulations applicable to the system under section 300g–1 of this title or otherwise significantly further the health protection objectives of this subchapter. The funds may also be used to provide loans to a system referred to in section 300f(4)(B) of this title for the purpose of providing the treatment described in section 300f(4)(B)(1)(III) of this title. The funds shall not be used for the acquisition of real property or interests therein, unless the acquisition is integral to a project authorized by this paragraph and the purchase is from a willing seller. Of the amount credited to any State loan fund established under this section in any fiscal year, 15 percent shall be available solely for providing loan assistance to public water systems which regularly serve fewer than 10,000 persons to the extent such funds can be obligated for eligible projects of public water systems.

(3) Limitation

(A) In general

Except as provided in subparagraph (B), no assistance under this section shall be provided to a public water system that—

(i) does not have the technical, managerial, and financial capability to ensure compliance with the requirements of this subchapter; or

(ii) is in significant noncompliance with any requirement of a national primary drinking water regulation or variance.

(B) Restructuring

A public water system described in subparagraph (A) may receive assistance under this section if—

(i) the use of the assistance will ensure compliance; and

(ii) if subparagraph (A)(i) applies to the system, the owner or operator of the system agrees to undertake feasible and appropriate changes in operations (including ownership, management, accounting, rates, maintenance, consolidation, alternative water supply, or other procedures) if the State determines that the measures are necessary to ensure that the system has the technical, managerial, and financial capability to comply with the requirements of this subchapter over the long term.

(C) Review

Prior to providing assistance under this section to a public water system that is in significant noncompliance with any requirement of a national primary drinking water regulation or variance, the State shall con-
§ 300j–12

(3) “Disadvantaged community” defined

In this subsection, the term “disadvantaged community” means the service area of a public water system that meets affordability criteria established after public review and comment by the State in which the public water system is located. The Administrator may publish information to assist States in establishing affordability criteria.

(e) State contribution

Each agreement under subsection (a) of this section shall require that the State deposit in the State loan fund from State moneys an amount equal to at least 20 percent of the total amount of the grant to be made to the State on or before the date on which the grant payment is made to the State, except that a State shall not be required to deposit such amount into the fund prior to the date on which each grant payment is made for fiscal years 1994, 1995, 1996, and 1997 if the State deposits the State contribution amount into the State loan fund prior to September 30, 1999.

(f) Types of assistance

Except as otherwise limited by State law, the amounts deposited into a State loan fund under this section may be used only—

(1) to make loans, on the condition that—

(A) the interest rate for each loan is less than or equal to the market interest rate, including an interest-free loan;

(B) principal and interest payments on each loan will commence not later than 1 year after completion of the project for which the loan was made, and each loan will be fully amortized not later than 20 years after the completion of the project, except that in the case of a disadvantaged community (as defined in subsection (d)(3) of this section), a State may provide an extended term for a loan, if the extended term—

(i) terminates not later than the date that is 30 years after the date of project completion; and

(ii) does not exceed the expected design life of the project;

(C) the recipient of each loan will establish a dedicated source of revenue (or, in the case of a privately owned system, demonstrate that there is adequate security) for the repayment of the loan; and

(D) the State loan fund will be credited with all payments of principal and interest on each loan;

(2) to buy or refinance the debt obligation of a municipality or an intermunicipal or interstate agency within the State at an interest rate that is less than or equal to the market interest rate in any case in which a debt obligation is incurred after July 1, 1993;

(3) to guarantee, or purchase insurance for, a local obligation (all of the proceeds of which finance a project eligible for assistance under this section) if the guarantee or purchase would improve credit market access or reduce the interest rate applicable to the obligation;
(4) as a source of revenue or security for the payment of principal and interest on revenue or general obligation bonds issued by the State if the proceeds of the sale of the bonds will be deposited into the State loan fund; and
(5) to earn interest on the amounts deposited into the State loan fund.

(g) Administration of State loan funds

(1) Combined financial administration

Notwithstanding subsection (c) of this section, a State may (as a convenience and to avoid unnecessary administrative costs) combine, in accordance with State law, the financial administration of a State loan fund established under this section with the financial administration of any other revolving fund established by the State if otherwise not prohibited by the law under which the State loan fund was established and if the Administrator determines that—
(A) the grants under this section, together with loan repayments and interest, will be separately accounted for and used solely for the purposes specified in subsection (a) of this section; and
(B) the authority to establish assistance priorities and carry out oversight and related activities (other than financial administration) with respect to assistance remains with the State agency having primary responsibility for administration of the State program under section 300g–2 of this title, after consultation with other appropriate State agencies (as determined by the State); Provided, That in nonprimacy States eligible for assistance under this section, the Governor shall determine which State agency will have authority to establish priorities for financial assistance from the State loan fund.

(2) Cost of administering fund

Each State may annually use up to 4 percent of the funds allotted to the State under this section to cover the reasonable costs of administration of the programs under this section, including the recovery of reasonable costs expended to establish a State loan fund which are incurred after August 6, 1996, and to provide technical assistance to public water systems within the State. For fiscal year 1995 and each fiscal year thereafter, each State may use up to an additional 10 percent of the funds allotted to the State under this section—
(A) for public water system supervision programs under section 300j–2(a) of this title; (B) to administer or provide technical assistance through source water protection programs;
(C) to develop and implement a capacity development strategy under section 300g–9(c) of this title; and
(D) for an operator certification program for purposes of meeting the requirements of section 300g–8 of this title.

if the State matches the expenditures with at least an equal amount of State funds. At least half of the match must be additional to the amount expended by the State for public water supervision in fiscal year 1993. An additional 2 percent of the funds annually allotted to each State under this section may be used by the State to provide technical assistance to public water systems serving 10,000 or fewer persons in the State. Funds utilized under subparagraph (B) shall not be used for enforcement actions.

(3) Guidance and regulations

The Administrator shall publish guidance and promulgate regulations as may be necessary to carry out the provisions of this section, including—
(A) provisions to ensure that each State commits and expends funds allotted to the State under this section as efficiently as possible in accordance with this subchapter and applicable State laws;
(B) guidance to prevent waste, fraud, and abuse; and
(C) guidance to avoid the use of funds made available under this section to finance the expansion of any public water system in anticipation of future population growth.

The guidance and regulations shall also ensure that the States, and public water systems receiving assistance under this section, use accounting, audit, and fiscal procedures that conform to generally accepted accounting standards.

(4) State report

Each State administering a loan fund and assistance program under this subsection shall publish and submit to the Administrator a report every 2 years on its activities under this section, including the findings of the most recent audit of the fund and the entire State allotment. The Administrator shall periodically audit all State loan funds established by, and all other amounts allotted to, the States pursuant to this section in accordance with procedures established by the Comptroller General.

(h) Needs survey

The Administrator shall conduct an assessment of water system capital improvement needs of all eligible public water systems in the United States and submit a report to the Congress containing the results of the assessment within 180 days after August 6, 1996, and every 4 years thereafter.

(i) Indian Tribes

(1) In general

1½ percent of the amounts appropriated annually to carry out this section may be used by the Administrator to make grants to Indian Tribes and Alaska Native villages that have not otherwise received either grants from the Administrator under this section or assistance from State loan funds established under this section. The grants may only be used for expenditures by tribes and villages for public water system expenditures referred to in subsection (a)(2) of this section.

(2) Use of funds

Funds reserved pursuant to paragraph (1) shall be used to address the most significant threats to public health associated with public water systems that serve Indian Tribes, as de-
§ 300j–12  TITLE 42—THE PUBLIC HEALTH AND WELFARE

(d) Other areas

Other areas may be provided by the Administrator to the governments in such areas, or to both, to be used for the public water systems allotted as provided in this subsection in the Commonwealth of the Northern Mariana Islands, American Samoa, and Guam. The allotments under this section for the Virgin Islands, the Commonwealth of the Northern Marianas, Guam, and the District of Columbia, shall not exceed 0.33 percent of the aggregate deposits in State loan funds. The total allotments for the District of Columbia, shall not exceed 0.33 percent of the aggregate deposits for the District of Columbia, and the grants for the District of Columbia, shall not be deposited in State loan funds. The total allotments for grants under this section for all areas described in this subsection in any fiscal year shall not exceed 0.33 percent of the aggregate amount of deposits made available to carry out this section in that fiscal year.

(k) Other authorized activities

(1) In general

Notwithstanding subsection (a)(2) of this section, a State may take each of the following actions:

(A) Provide assistance, only in the form of a loan, to one or more of the following:

(i) Any public water system described in subsection (a)(2) of this section to acquire land or a conservation easement from a willing seller or grantor, if the purpose of the acquisition is to protect the source water of the system from contamination and to ensure compliance with national primary drinking water regulations.

(ii) Any community water system to implement local, voluntary source water protection measures to protect source water in areas delineated pursuant to section 300j–13 of this title, in order to facilitate compliance with national primary drinking water regulations applicable to the system under section 300g–1 of this title or otherwise significantly further the health protection objectives of this subchapter.

(B) Provide assistance, including technical and financial assistance, to any public water system as part of a capacity development strategy developed and implemented in accordance with section 300g–9(c) of this title.

(C) Make expenditures from the capitalization grant of the State for fiscal years 1996 and 1997 to delineate and assess source water protection areas in accordance with section 300j–13 of this title, except that funds set aside for such expenditure shall be obligated within 4 fiscal years.

(D) Make expenditures from the fund for the establishment and implementation of wellhead protection programs under section 300h–7 of this title.

(2) Limitation

For each fiscal year, the total amount of assistance provided and expenditures made by a State under this subsection may not exceed 15 percent of the amount of the capitalization grant received by the State for that year and may not exceed 10 percent of that amount for any one of the following activities:

(A) To acquire land or conservation easements pursuant to paragraph (1)(A)(i).

(B) To provide funding to implement voluntary, incentive-based source water quality protection measures pursuant to clauses (ii) and (iii) of paragraph (1)(A).

(C) To provide assistance through a capacity development strategy pursuant to paragraph (1)(B).

(D) To make expenditures to delineate or assess source water protection areas pursuant to paragraph (1)(C).

(E) To make expenditures to establish and implement wellhead protection programs pursuant to paragraph (1)(D).

(3) Statutory construction

Nothing in this section creates or conveys any new authority to a State, political subdivision of a State, or community water system for any new regulatory measure, or limits any authority of a State, political subdivision of a State or community water system.

(l) Savings

The failure or inability of any public water system to receive funds under this section or any other loan or grant program, or any delay in obtaining the funds, shall not alter the obligation of the system to comply in a timely manner with all applicable drinking water standards and requirements of this subchapter.

(m) Authorization of appropriations

There are authorized to be appropriated to carry out the purposes of this section $599,000,000 for the fiscal year 1994 and $1,000,000,000 for each of the fiscal years 1995 through 2003. To the extent amounts authorized to be appropriated under this subsection in any fiscal year are not appropriated in that fiscal year, such amounts are authorized to be appropriated in a subse-
quent fiscal year (prior to the fiscal year 2004). Such sums shall remain available until expended.

(n) Health effects studies

From funds appropriated pursuant to this section for each fiscal year, the Administrator shall reserve $10,000,000 for health effects studies on drinking water contaminants authorized by the Safe Drinking Water Act Amendments of 1996. In allocating funds made available under this subsection, the Administrator shall give priority to studies concerning the health effects of cryptosporidium (as authorized by section 300j–18(c) of this title), disinfection byproducts (as authorized by section 300j–18(e) of this title), and arsenic (as authorized by section 300j–1(b)(12)(A) of this title), and the implementation of a plan for studies of subpopulations at greater risk of adverse effects (as authorized by section 300j–18(a) of this title).

(o) Monitoring for unregulated contaminants

From funds appropriated pursuant to this section for each fiscal year beginning with fiscal year 1998, the Administrator shall reserve $2,000,000 to pay the costs of monitoring for unregulated contaminants under section 300j–4(a)(2)(C) of this title.

(p) Demonstration project for State of Virginia

Notwithstanding the other provisions of this section limiting the use of funds deposited in a State loan fund from any State allotment, the State of Virginia may, as a single demonstration and with the approval of the Virginia General Assembly and the Administrator, conduct a program to demonstrate alternative approaches to intergovernmental coordination to assist in the financing of new drinking water facilities in the following rural communities in southwestern Virginia where none exists on August 6, 1996, and where such communities are experiencing economic hardship: Lee County, Wise County, Scott County, Dickenson County, Russell County, Buchanan County, Tazewell County, and the city of Norton, Virginia. The funds allotted to the State and deposited in the State loan fund pursuant to section 1452 of the Safe Drinking Water Act Amendments of 1996, (Public Law 104–182) for each fiscal year beginning in fiscal year 1998 and thereafter, States may combine the assets of State Revolving Funds (SRFs) established under section 1452 of the Safe Drinking Water Act, as amended, and title VI of the Federal Water Pollution Control Act (33 U.S.C. 1381 et seq.), as amended, as security for bond issues to enhance the lending capacity of one or both SRFs, but not to acquire the state match for either program, provided that revenues from the bonds are allocated to the purposes of the Safe Drinking Water Act [this subchapter] and the Federal Water Pollution Control Act [33 U.S.C. 1251 et seq.] in the same portion as the funds are used as security for the bonds’.

(f) Small system technical assistance

The Administrator may reserve up to 2 percent of the total funds appropriated pursuant to subsection (m) of this section for each of the fiscal years 1997 through 2003 to carry out the provisions of section 300j–1(e) of this title (relating to technical assistance for small systems), except that the total amount of funds made available for such purpose in any fiscal year through appropriations (as authorized by section 300j–1(e) of this title) and reservations made pursuant to this subsection shall not exceed the amount authorized by section 300j–1(e) of this title.

(r) Evaluation

The Administrator shall conduct an evaluation of the effectiveness of the State loan funds through fiscal year 2001. The evaluation shall be submitted to the Congress at the same time as the President submits to the Congress, pursuant to section 1108 of title 31, an appropriations request for fiscal year 2003 relating to the budget of the Environmental Protection Agency.
§ 300j–13. Source water quality assessment

(a) Source water assessment

(1) Guidance

Within 12 months after August 6, 1996, after notice and comment, the Administrator shall publish guidance for States exercising primary enforcement responsibility for public water systems to carry out directly or through delegation (for the protection and benefit of public water systems and for the support of monitoring flexibility) a source water assessment program within the State’s boundaries. Each State adopting modifications to monitoring requirements pursuant to section 300g–7(b) of this title shall, prior to adopting such modifications, have an approved source water assessment program under this section and shall carry out the program either directly or through delegation.

(2) Program requirements

A source water assessment program under this subsection shall—

(A) delineate the boundaries of the assessment areas in such State from which one or more public water systems in the State receive supplies of drinking water, using all reasonably available hydrogeologic information on the sources of the supply of drinking water in the State and the water flow, recharge, and discharge and any other reliable information as the State deems necessary to adequately determine such areas; and

(B) identify for contaminants regulated under this subchapter for which monitoring is required under this subchapter (or any unregulated contaminants selected by the State, in its discretion, which the State, for the purposes of this subsection, has determined may present a threat to public health), to the extent practical, the origins within each delineated area of such contaminants to determine the susceptibility of the public water systems in the delineated area to such contaminants.

(3) Approval, implementation, and monitoring relief

A State source water assessment program under this subsection shall be submitted to the Administrator within 18 months after the Administrator’s guidance is issued under this subsection and shall be deemed approved 9 months after the date of such submittal unless the Administrator disapproves the program as provided in section 300h–7(c) of this title. States shall begin implementation of the program immediately after its approval. The Administrator’s approval of a State program under this subsection shall include a timetable, established in consultation with the State, allowing not more than 2 years for completion after approval of the program. Public water systems seeking monitoring relief in addition to the interim relief provided under section 300g–7(a) of this title shall be eligible for monitoring relief, consistent with section 300g–7(b) of this title, upon completion of the assessment in the delineated source water assessment area or areas concerned.

(4) Timetable

The timetable referred to in paragraph (3) shall take into consideration the availability to the State of funds under section 300j–12 of this title (relating to State loan funds) for assessments and other relevant factors. The Administrator may extend any timetable included in a State program approved under paragraph (3) to extend the period for completion by an additional 18 months.

(5) Demonstration project

The Administrator shall, as soon as practicable, conduct a demonstration project, in consultation with other Federal agencies, to demonstrate the most effective and protective means of assessing and protecting source waters serving large metropolitan areas and located on Federal lands.

(6) Use of other programs

To avoid duplication and to encourage efficiency, the program under this section may make use of any of the following:

(A) Vulnerability assessments, sanitary surveys, and monitoring programs.

(B) Delineations or assessments of ground water sources under a State wellhead protection program developed pursuant to this section.

(C) Delineations or assessments of surface or ground water sources under a State pesticide management plan developed pursuant to the Pesticide and Ground Water State Management Plan Regulation (subparts I and J of part 152 of title 40, Code of Federal Regulations), promulgated under section 136a(d) of title 7.

(D) Delineations or assessments of surface water sources under a State watershed initiative or to satisfy the watershed criterion for determining if filtration is required under the Surface Water Treatment Rule (section 141.70 of title 40, Code of Federal Regulations).

(E) Delineations or assessments of surface or ground water sources under programs or plans pursuant to the Federal Water Pollution Control Act [33 U.S.C. 1251 et seq.].

(7) Public availability

The State shall make the results of the source water assessments conducted under this subsection available to the public.

(b) Approval and disapproval

For provisions relating to program approval and disapproval, see section 300h–7(c) of this title.
§ 300j-14. Source water petition program

(a) Petition program

(1) In general

(A) Establishment

A State may establish a program under which an owner or operator of a community water system in the State, or a municipal or local government or political subdivision of a State, may submit a source water quality protection partnership petition to the State requesting that the State assist in the local development of a voluntary, incentive-based partnership, among the owner, operator, or government and other persons likely to be affected by the recommendations of the partnership, to—

(i) reduce the presence in drinking water of contaminants that may be addressed by a petition by considering the origins of the contaminants, including to the maximum extent practicable the specific activities that affect the drinking water supply of a community;

(ii) obtain financial or technical assistance necessary to facilitate establishment of a partnership, or to develop and implement recommendations of a partnership for the protection of source water to assist in the provision of drinking water that complies with national primary drinking water regulations with respect to contaminants, including to the maximum extent practicable the specific activities contributing to the presence of the contaminants addressed by a petition; and

(iii) develop recommendations regarding voluntary and incentive-based strategies for the long-term protection of the source water of community water systems.

(B) Funding

Each State may—

(i) use funds set aside pursuant to section 300j–12(k)(1)(A)(iii) of this title by the State to carry out a program described in subparagraph (A), including assistance to voluntary local partnerships for the development and implementation of partnership recommendations for the protection of source water such as source water quality assessment, contingency plans, and demonstration projects for partners within a source water area delineated under section 300j–13(a) of this title; and

(ii) provide assistance in response to a petition submitted under this subsection using funds referred to in subsection (b)(2)(B) of this section.

(2) Objectives

The objectives of a petition submitted under this subsection shall be to—

(A) facilitate the local development of voluntary, incentive-based partnerships among owners and operators of community water systems, governments, and other persons in source water areas; and

(B) obtain assistance from the State in identifying resources which are available to implement the recommendations of the partnerships to address the origins of drinking water contaminants that may be addressed by a petition (including to the maximum extent practicable the specific activities contributing to the presence of the contaminants) that affect the drinking water supply of a community.

(3) Contaminants addressed by a petition

A petition submitted to a State under this subsection may address only those contaminants—

(A) that are pathogenic organisms for which a national primary drinking water regulation has been established or is required under section 300g–1 of this title; or

(B) for which a national primary drinking water regulation has been promulgated or proposed and that are detected by adequate monitoring methods in the source water at the intake structure or in any collection, treatment, storage, or distribution facilities by the community water systems at levels—

(i) above the maximum contaminant level; or

(ii) that are not reliably and consistently below the maximum contaminant level.

(4) Contents

A petition submitted under this subsection shall, at a minimum—

(A) include a delineation of the source water area in the State that is the subject of the petition;

(B) identify, to the maximum extent practicable, the origins of the drinking water contaminants that may be addressed by a petition (including to the maximum extent practicable the specific activities contributing to the presence of the contaminants) in the source water area delineated under section 300j–13 of this title;

(C) identify any deficiencies in information that will impair the development of recommendations by the voluntary local partnership to address drinking water contaminants that may be addressed by a petition;

(D) specify the efforts made to establish the voluntary local partnership and obtain the participation of—

(i) the municipal or local government or other political subdivision of the State with jurisdiction over the source water area delineated under section 300j–13 of this title; and

(ii) each person in the source water area delineated under section 300j–13 of this title—

(I) who is likely to be affected by recommendations of the voluntary local partnership; and

(II) whose participation is essential to the success of the partnership;

(E) outline how the voluntary local partnership has or will, during development and
(b) Approval or disapproval of petitions

(1) In general

After providing notice and an opportunity for public comment on a petition submitted under subsection (a) of this section, the State shall approve or disapprove the petition, in whole or in part, not later than 120 days after the date of submission of the petition.

(2) Approval

The State may approve a petition if the petition meets the requirements established under subsection (a) of this section. The notice of approval shall, at a minimum, include for informational purposes—

(A) an identification of technical, financial, or other assistance that the State will provide to assist in addressing the drinking water contaminants that may be addressed by a petition based on—

(i) the relative priority of the public health concern identified in the petition with respect to the other water quality needs identified by the State;

(ii) any necessary coordination that the State will perform of the program established under this section with programs implemented or planned by other States under this section; and

(iii) funds available (including funds available from a State revolving loan fund established under title VI of the Federal Water Pollution Control Act (33 U.S.C. 1381 et seq.)) or section 300j–12 of this title;

(B) a description of technical or financial assistance pursuant to Federal and State programs that is available to assist in implementing recommendations of the partnership in the petition, including—

(i) any program established under the Federal Water Pollution Control Act (33 U.S.C. 1251 et seq.);

(ii) the program established under section 1455b of title 16;

(iii) the agricultural water quality protection program established under chapter 2 of subtitle D of title XII of the Food Security Act of 1985 (16 U.S.C. 3838 et seq.);

(iv) the sole source aquifer protection program established under section 300h–6 of this title;

(v) the community wellhead protection program established under section 300h–7 of this title;

(vi) any pesticide or ground water management plan;

(vii) any voluntary agricultural resource management plan or voluntary whole farm or whole ranch management plan developed and implemented under a process established by the Secretary of Agriculture; and

(viii) any abandoned well closure program; and

(C) a description of activities that will be undertaken to coordinate Federal and State programs to respond to the petition.

(3) Disapproval

If the State disapproves a petition submitted under subsection (a) of this section, the State shall notify the entity submitting the petition in writing of the reasons for disapproval. A petition may be resubmitted at any time if—

(A) new information becomes available;

(B) conditions affecting the source water that is the subject of the petition change; or

(C) modifications are made in the type of assistance being requested.

(c) Grants to support State programs

(1) In general

The Administrator may make a grant to each State that establishes a program under this section that is approved under paragraph (2). The amount of each grant shall not exceed 50 percent of the cost of administering the program for the year in which the grant is available.

(2) Approval

In order to receive grant assistance under this subsection, a State shall submit to the Administrator for approval a plan for a source water quality protection partnership program that is consistent with the guidance published under subsection (d) of this section. The Administrator shall approve the plan if the plan is consistent with the guidance published under subsection (d) of this section.

(d) Guidance

(1) In general

Not later than 1 year after August 6, 1996, the Administrator, in consultation with the States, shall publish guidance to assist—

(A) States in the development of a source water quality protection partnership program; and

(B) municipal or local governments or political subdivisions of a State and community water systems in the development of source water quality protection partnerships and in the assessment of source water quality.

(2) Contents of the guidance

The guidance shall, at a minimum—

(A) recommend procedures for the approval or disapproval by a State of a petition submitted under subsection (a) of this section;

(B) recommend procedures for the submission of petitions developed under subsection (a) of this section;

(C) recommend criteria for the assessment of source water areas within a State; and

(D) describe technical or financial assistance pursuant to Federal and State pro-
grams that is available to address the contamination of sources of drinking water and to develop and respond to petitions submitted under subsection (a) of this section.

(e) Authorization of appropriations

There are authorized to be appropriated to carry out this section $5,000,000 for each of the fiscal years 1997 through 2003. Each State with a plan for a program approved under subsection (b) of this section shall receive an equitable portion of the funds available for any fiscal year.

(f) Statutory construction

Nothing in this section—

(1) (A) creates or conveys new authority to a State, political subdivision of a State, or community water system for any new regulatory measure; or

(B) limits any authority of a State, political subdivision, or community water system; or

(2) precludes a community water system, municipal or local government, or political subdivision of a government from locally developing and carrying out a voluntary, incentive-based, source water quality protection partnership to address the origins of drinking water contaminants of public health concern.

(july 1, 1944, ch. 373, title xiv, § 1454, as added pub. l. 104–182, title i, § 133(a), aug. 6, 1996, 110 stat. 1675.)

References in Text

The Federal Water Pollution Control Act, referred to in subsection (b)(2)(A)(iii), is act june 30, 1948, ch. 758, as amended generally by pub. l. 92–500, § 2, oct. 18, 1972, 86 stat. 816, which is classified generally to chapter 26 (§ 1251 et seq.) of title 33. navigation and navigable waters. title vi of the act is classified generally to subchapter vi (§ 1381 et seq.) of chapter 26 of title 33. for complete classification of this act to the code, see short title note set out under section 1251 of title 33 and tables.

The Food Security Act of 1985, referred to in subsection (b)(2)(B)(iii), is pub. l. 99–198, dec. 23, 1985, 99 stat. 1354, as amended. chapter 2 of subtitle d of title xii of the act was classified generally to part ii (§ 5838 et seq.) of subchapter iv of chapter 58 of title 21, conservation, prior to repeal by pub. l. 104–127, title iii, § 3396(b), apr. 4, 1996, 110 stat. 1307. for complete classification of this act to the code, see short title of 1985 amendment note set out under section 1281 of title 7, agriculture, and tables.

§ 300j–15. Water conservation plan

(a) Guidelines

Not later than 2 years after August 6, 1996, the Administrator shall publish in the Federal Register guidelines for water conservation plans for public water systems serving fewer than 3,300 persons, public water systems serving between 3,300 and 10,000 persons, and public water systems serving more than 10,000 persons, taking into consideration such factors as water availability and climate.

(b) Loans or grants

Within 1 year after publication of the guidelines under subsection (a) of this section, a State exercising primary enforcement responsibility for public water systems may require a public water system, as a condition of receiving a loan or grant from a State loan fund under section 300j–12 of this title, to submit with its application for such loan or grant a water conservation plan consistent with such guidelines.

(july 1, 1944, ch. 373, title xiv, § 1455, as added pub. l. 104–182, title i, § 134, aug. 6, 1996, 110 stat. 1679.)

§ 300j–16. Assistance to colonias

(a) Definitions

As used in this section:

(1) Border State

The term "border State" means Arizona, California, New Mexico, and Texas.

(2) Eligible community

The term "eligible community" means a low-income community with economic hardship that—

(A) is commonly referred to as a colonia;

(B) is located along the United States-Mexico border (generally in an unincorporated area); and

(C) lacks a safe drinking water supply or adequate facilities for the provision of safe drinking water for human consumption.

(b) Grants to alleviate health risks

The Administrator of the Environmental Protection Agency and the heads of other appropriate Federal agencies are authorized to award grants to a border State to provide assistance to eligible communities to facilitate compliance with national primary drinking water regulations or otherwise significantly further the health protection objectives of this subchapter.

(c) Use of funds

Each grant awarded pursuant to subsection (b) of this section shall be used to provide assistance to one or more eligible communities with respect to which the residents are subject to a significant health risk (as determined by the Administrator or the head of the Federal agency making the grant) attributable to the lack of access to an adequate and affordable drinking water supply system.

(d) Cost sharing

The amount of a grant awarded pursuant to this section shall not exceed 50 percent of the costs of carrying out the project that is the subject of the grant.

(e) Authorization of appropriations

There are authorized to be appropriated to carry out this section $25,000,000 for each of the fiscal years 1997 through 1999.

(july 1, 1944, ch. 373, title xiv, § 1456, as added pub. l. 104–182, title i, § 135, aug. 6, 1996, 110 stat. 1679.)

§ 300j–17. Estrogenic substances screening program

In addition to the substances referred to in section 348a(p)(3)(B) of title 21 the Administrator may provide for testing under the screening program authorized by section 348a(p) of title 21, in accordance with the provisions of section 348a(p) of title 21, of any other substance that may be found in sources of drinking water.
§ 300j–18. Drinking water studies

(a) Subpopulations at greater risk

(1) In general

The Administrator shall conduct a continuing program of studies to identify groups within the general population that may be at greater risk than the general population of adverse health effects from exposure to contaminants in drinking water. The study shall examine whether and to what degree infants, children, pregnant women, the elderly, individuals with a history of serious illness, or other subpopulations that can be identified and characterized are likely to experience elevated health risks, including risks of cancer, from contaminants in drinking water.

(2) Report

Not later than 4 years after August 6, 1996, and periodically thereafter as new and significant information becomes available, the Administrator shall report to the Congress on the results of the studies.

(b) Biological mechanisms

The Administrator shall conduct biomedical studies to—

(1) understand the mechanisms by which chemical contaminants are absorbed, distributed, metabolized, and eliminated from the human body, so as to develop more accurate physiologically based models of the phenomena;

(2) understand the effects of contaminants and the mechanisms by which the contaminants cause adverse effects (especially noncancer and infectious effects) and the variations in the effects among humans, especially subpopulations at greater risk of adverse effects, and between test animals and humans; and

(3) develop new approaches to the study of complex mixtures, such as mixtures found in drinking water, especially to determine the prospects for synergistic or antagonistic interactions that may affect the shape of the dose-response relationship of the individual chemicals and microbes, and to examine noncancer endpoints and infectious diseases, and susceptible individuals and subpopulations.

(c) Studies on harmful substances in drinking water

(1) Development of studies

The Administrator shall, not later than 180 days after August 6, 1996, and after consultation with the Secretary of Health and Human Services, the Secretary of Agriculture, and, as appropriate, the heads of other Federal agencies, conduct the studies described in paragraph (2) to support the development and implementation of the most current version of each of the following:

(A) Enhanced Surface Water Treatment Rule (59 Fed. Reg. 38832 (July 29, 1994)).

(B) Disinfectant and Disinfection Byproducts Rule (59 Fed. Reg. 38668 (July 29, 1994)).

(C) Ground Water Disinfection Rule (availability of draft summary announced at (57 Fed. Reg. 33966; July 31, 1992)).

(2) Contents of studies

The studies required by paragraph (1) shall include, at a minimum, each of the following:

(A) Toxicological studies and, if warranted, epidemiological studies to determine what levels of exposure from disinfectants and disinfection byproducts, if any, may be associated with developmental and birth defects and other potential toxic end points.

(B) Toxicological studies and, if warranted, epidemiological studies to quantify the carcinogenic potential from exposure to disinfection byproducts resulting from different disinfectants.

(C) The development of dose-response curves for pathogens, including cryptosporidium and the Norwalk virus.

(3) Authorization of appropriations

There are authorized to be appropriated to carry out this subsection $12,500,000 for each of fiscal years 1997 through 2003.

(d) Waterborne disease occurrence study

(1) System

The Director of the Centers for Disease Control and Prevention, and the Administrator shall jointly—

(A) within 2 years after August 6, 1996, conduct pilot waterborne disease occurrence studies for at least 5 major United States communities or public water systems; and

(B) within 5 years after August 6, 1996, prepare a report on the findings of the pilot studies, and a national estimate of waterborne disease occurrence.

(2) Training and education

The Director and Administrator shall jointly establish a national health care provider training and public education campaign to inform both the professional health care provider community and the general public about waterborne disease and the symptoms that may be caused by infectious agents, including microbial contaminants. In developing such a campaign, they shall seek comment from interested groups and individuals, including scientists, physicians, State and local governments, environmental groups, public water systems, and vulnerable populations.

(3) Funding

There are authorized to be appropriated for each of the fiscal years 1997 through 2001 $3,000,000 to carry out this subsection. To the extent funds under this subsection are not fully appropriated, the Administrator may use not more than $2,000,000 of the funds from amounts reserved under section 300j–12(n) of this title for health effects studies for purposes of this subsection. The Administrator may transfer a portion of such funds to the Centers for Disease Control and Prevention for such purposes.

(July 1, 1944, ch. 373, title XIV, §1458, as added Pub. L. 104–182, title I, §137, Aug. 6, 1996, 110 Stat. 1680.)
Public Health Assessment of Exposure to Perchlorate


"(a) Epidemiological Study of Exposure to Perchlorate.—The Secretary of Defense shall provide for an independent epidemiological study of exposure to perchlorate in drinking water. The entity conducting the study shall—

"(1) assess the incidence of thyroid disease and measurable effects of thyroid function in relation to exposure to perchlorate;

"(2) ensure that the study is of sufficient scope and scale to permit the making of meaningful conclusions of the measurable public health threat associated with exposure to perchlorate, especially the threat to sensitive subpopulations; and

"(3) examine thyroid function, including measurements of urinary iodine and thyroid hormone levels, in a sufficient number of pregnant women, neonates, and infants exposed to perchlorate in drinking water and match measurements of perchlorate levels in the drinking water of each study participant in order to permit the development of meaningful conclusions on the public health threat to individuals exposed to perchlorate.

"(b) Review of Effects of Perchlorate on Endocrine System.—The Secretary shall provide for an independent review of the effects of perchlorate on the human endocrine system. The entity conducting the review shall assess—

"(1) available data on human exposure to perchlorate, including clinical data and data on exposure of sensitive subpopulations, and the levels at which health effects were observed; and

"(2) available data on other substances that have endocrine effects similar to perchlorate to which the public is frequently exposed.

"(c) Performance of Study and Review.—(1) The Secretary shall provide for the performance of the study under subsection (a) through the Centers for Disease Control and Prevention, the National Institutes of Health, or another Federal entity with experience in environmental toxicology selected by the Secretary.

"(2) The Secretary shall provide for the performance of the review under subsection (b) through the Centers for Disease Control and Prevention, the National Institutes of Health, or another appropriate Federal research entity with experience in human endocrinology selected by the Secretary. The Secretary shall ensure that the panel conducting the review is composed of individuals with expertise in human endocrinology.

"(d) Reporting Requirements.—Not later than June 1, 2005, the Federal entities conducting the study and review under this section shall submit to the Secretary reports containing the results of the study and review."

Part F—Additional Requirements To Regulate Safety of Drinking Water

§300j–21. Definitions

As used in this part—

(1) Drinking water cooler

The term “drinking water cooler” means any mechanical device affixed to drinking water supply plumbing which actively cools water for human consumption.

(2) Lead free

The term “lead free” means, with respect to a drinking water cooler, that each part or component of the cooler which may come in contact with drinking water contains not more than 8 percent lead, except that no drinking water cooler which contains any solvent, flux, or storage tank interior surface which may come in contact with drinking water shall be considered lead free if the solder, flux, or storage tank interior surface contains more than 0.2 percent lead. The Administrator may establish more stringent requirements for treating any part or component of a drinking water cooler as lead free for purposes of this part whenever he determines that any such part may constitute an important source of lead in drinking water.

(3) Local educational agency

The term “local educational agency” means—

(A) any local educational agency as defined in section 7801 of title 20;

(B) the owner of any private, nonprofit elementary or secondary school building, and

(C) the governing authority of any school operating under the defense dependent’s education system provided for under the Defense Dependent’s Education Act of 1978 (20 U.S.C. 921 and following).

(4) Repair

The term “repair”, with respect to a drinking water cooler, to take such corrective action as is necessary to ensure that water cooler is lead free.

(5) Replacement

The term “replacement”, when used with respect to a drinking water cooler, means the permanent removal of the water cooler and the installation of a lead free water cooler.

(6) School

The term “school” means any elementary school or secondary school as defined in section 7801 of title 20 and any kindergarten or day care facility.

(7) Lead-lined tank

The term “lead-lined tank” means a water reservoir contained in a drinking water cooler which container is constructed of lead or which has an interior surface which is not lead free.

References in Text


Amendments


§ 300j–22. Recall of drinking water coolers with lead-lined tanks

For purposes of the Consumer Product Safety Act [15 U.S.C. 2051 et seq.], all drinking water coolers identified by the Administrator on the list under section 300j–23 of this title as having a lead-lined tank shall be considered to be imminently hazardous consumer products within the meaning of section 12 of such Act (15 U.S.C. 2061). After notice and opportunity for comment, including a public hearing, the Consumer Product Safety Commission shall issue an order requiring the manufacturers and importers of such coolers to repair, replace, or recall and provide a refund for such coolers within 1 year after October 31, 1988. For purposes of enforcement, such order shall be treated as an order under section 15(d) of that Act (15 U.S.C. 2064(d)).


AMENDMENTS
1996—Pub. L. 104–182 made technical amendment to section catchline and subsec. (a) designation.

§ 300j–23. Drinking water coolers containing lead

(a) Publication of lists

The Administrator shall, after notice and opportunity for public comment, identify each brand and model of drinking water cooler which is not lead free, including each brand and model of drinking water cooler which has a lead-lined tank. For purposes of identifying the brand and model of drinking water coolers under this subsection, the Administrator shall use the best information available to the Environmental Protection Agency. Within 100 days after October 31, 1988, the Administrator shall publish a list of each brand and model of drinking water cooler identified under this subsection. Such list shall separately identify each brand and model of cooler which has a lead-lined tank. The Administrator shall continue to gather information regarding lead in drinking water coolers and shall revise and republish the list from time to time as may be appropriate as new information or analysis becomes available regarding lead contamination in drinking water coolers.

(b) Prohibition

No person may sell in interstate commerce, or manufacture for sale in interstate commerce, any drinking water cooler listed under subsection (a) of this section or any other drinking water cooler which is not lead free, including a lead-lined drinking water cooler.

(c) Criminal penalty

Any person who knowingly violates the prohibition contained in subsection (b) of this section shall be imprisoned for not more than 5 years, or fined in accordance with title 18, or both.

(d) Civil penalty

The Administrator may bring a civil action in the appropriate United States District Court (as determined under the provisions of title 28) to impose a civil penalty on any person who violates subsection (b) of this section. In any such action the court may impose on such person a civil penalty of not more than $5,000 ($50,000 in the case of a second or subsequent violation).


AMENDMENTS
1996—Pub. L. 104–182 made technical amendment to section catchline and first word of text.

§ 300j–24. Lead contamination in school drinking water

(a) Distribution of drinking water cooler list

Within 100 days after October 31, 1988, the Administrator shall distribute to the States a list of each brand and model of drinking water cooler identified and listed by the Administrator under section 300j–23(a) of this title.

(b) Guidance document and testing protocol

The Administrator shall publish a guidance document and a testing protocol to assist schools in determining the source and degree of lead contamination in school drinking water supplies and in remediating such contamination. The guidance document shall include guidelines for sample preservation. The guidance document shall also include guidance to assist States, schools, and the general public in ascertaining the levels of lead contamination in drinking water coolers and in taking appropriate action to reduce or eliminate such contamination. The guidance document shall contain a testing protocol for the identification of drinking water coolers which contribute to lead contamination in drinking water. Such document and protocol may be revised, republished and redistributed as the Administrator deems necessary. The Administrator shall distribute the guidance document and testing protocol to the States within 100 days after October 31, 1988.

(c) Dissemination to schools, etc.

Each State shall provide for the dissemination to local educational agencies, private nonprofit elementary or secondary schools and to day care centers of the guidance document and testing protocol published under subsection (b) of this section, together with the list of drinking water coolers published under section 300j–23(a) of this title.
§ 300j–25. Federal assistance for State programs regarding lead contamination in school drinking water

(a) School drinking water programs

The Administrator shall make grants to States to establish and carry out State programs under section 300j–24 of this title to assist local educational agencies in testing for, and remedying, lead contamination in drinking water from coolers and from other sources of lead contamination at schools under the jurisdiction of such agencies.

(b) Limits

Each grant under this section shall be used by the State for testing water coolers in accordance with section 300j–24 of this title, for testing for lead contamination in other drinking water supplies under section 300j–24 of this title, or for remedial action under State programs under section 300j–24 of this title. Not more than 5 percent of the grant may be used for program administration.

§ 300j–26. Certification of testing laboratories

The Administrator of the Environmental Protection Agency shall assure that programs for the certification of testing laboratories which test drinking water supplies for lead contamination certify only those laboratories which provide reliable accurate testing. The Administrator (or the State in the case of a State to which certification authority is delegated under this subsection) shall publish and make available to the public upon request the list of laboratories certified under this subsection.

AMENDMENTS


Subsec. (b). Pub. L. 104–182, § 501(d), substituted “by the State” for “as by the State”.

§ 300k. Establishment of program of grants to States

(a) In general

The Secretary, acting through the Director of the Centers for Disease Control and Prevention, may make grants to States on the basis of an established competitive review process for the purpose of carrying out programs—

(1) to screen women for breast and cervical cancer as a preventive health measure;

(2) to provide appropriate referrals for medical treatment of women screened pursuant to paragraph (1) and to ensure, to the extent practicable, the provision of appropriate follow-up services and support services such as case management;

(3) to develop and disseminate public information and education programs for the detection and control of breast and cervical cancer;

(4) to improve the education, training, and skills of health professionals (including allied health professionals) in the detection and control of breast and cervical cancer;

(5) to establish mechanisms through which the States can monitor the quality of screening procedures for breast and cervical cancer, including the interpretation of such procedures; and

(§ 300k

(c) Authorization of appropriations

There are authorized to be appropriated to carry out this section not more than $30,000,000 for fiscal year 1989, $30,000,000 for fiscal year 1990, and $30,000,000 for fiscal year 1991.

CHAPTER 82—SOLID WASTE DISPOSAL

SUBCHAPTER I—GENERAL PROVISIONS

Sec.
6901. Congressional findings.
6901a. Congressional findings: used oil recycling.
6902. Objectives and national policy.
6903. Definitions.
6904. Governmental cooperation.
6905. Application of chapter and integration with other Acts.
6906. Financial disclosure.
6907. Solid waste management information and guidelines.
6908. Small town environmental planning.
6908a. Agreements with Indian tribes.

SUBCHAPTER II—OFFICE OF SOLID WASTE; AUTHORITIES OF THE ADMINISTRATOR

6911. Office of Solid Waste and Interagency Coordinating Committee.
6911a. Assistant Administrator of Environmental Protection Agency; appointment, etc.
6912. Authorities of Administrator.
6914. Grants for discarded tire disposal.
6914a. Labeling of lubricating oil.
6914b. Degradable plastic ring carriers; definitions.
6914b-1. Regulation of plastic ring carriers.
6915. Annual report.
6916. General authorization.

SUBCHAPTER III—HAZARDOUS WASTE MANAGEMENT

6921. Identification and listing of hazardous waste.
6922. Standards applicable to generators of hazardous waste.
6923. Standards applicable to transporters of hazardous waste.
6924. Standards applicable to owners and operators of hazardous waste treatment, storage, and disposal facilities.
6925. Permits for treatment, storage, or disposal of hazardous waste.
6926. Authorized State hazardous waste programs.
6927. Inspections.
6928. Federal enforcement.
6929. Retention of State authority.
6930. Effective date.
6931. Authorization of assistance to States.
6932. Transferred.
6933. Hazardous waste site inventory.
6934. Monitoring, analysis, and testing.
6935. Restrictions on recycled oil.
6936. Expansion during interim status.
6937. Inventory of Federal agency hazardous waste facilities.
6938. Export of hazardous wastes.
6939. Domestic sewage.
6939a. Exposure information and health assessments.
6939b. Interim control of hazardous waste injection.
6939c. Mixed waste inventory reports and plan.
6939d. Public vessels.
6939e. Federally owned treatment works.
6939f. Long-term storage.
6939g. Hazardous waste electronic manifest system.

SUBCHAPTER IV—STATE OR REGIONAL SOLID WASTE PLANS

6941. Objectives of subchapter.
6941a. Energy and materials conservation and recovery; Congressional findings.
6942. Federal guidelines for plans.
6943. Requirements for approval of plans.
Criteria for sanitary landfills; sanitary landfills required for all disposal.
Upgrading of open dumps.
Procedure for development and implementation of State plan.
Approval of State plan; Federal assistance.
Federal assistance.
Rural communities assistance.
Adequacy of certain guidelines and criteria.

SUBCHAPTER V—DUTIES OF SECRETARY OF COMMERCE IN RESOURCE AND RECOVERY

Functions.
Development of specifications for secondary materials.
Development of markets for recovered materials.
Technology promotion.
Marketing policies, establishment; nondiscrimination requirement.
Authorization of appropriations.

SUBCHAPTER VI—FEDERAL RESPONSIBILITIES

Application of Federal, State, and local law to Federal facilities.
Federal procurement.
Cooperation with Environmental Protection Agency.
Applicability of solid waste disposal guidelines to Executive agencies.
Chief Financial Officer report.
Increased use of recovered mineral component in federally funded projects involving procurement of cement or concrete.
Increased use of recovered mineral component in federally funded projects involving procurement of cement or concrete.
Use of granular mine tailings.
Best practices for battery recycling and labeling guidelines.
Consumer recycling education and outreach grant program; Federal procurement.

SUBCHAPTER VII—MISCELLANEOUS PROVISIONS

Employee protection.
Citizen suits.
Imminent hazard.
Petition for regulations; public participation.
Separability.
Judicial review.
Grants or contracts for training projects.
Payments.
Labor standards.
Transferred.
Law enforcement authority.

SUBCHAPTER VIII—RESEARCH, DEVELOPMENT, DEMONSTRATION, AND INFORMATION

Research, demonstration, training, and other activities.
Special studies; plans for research, development, and demonstrations.
Coordination, collection, and dissemination of information.
Full-scale demonstration facilities.
Special study and demonstration projects on recovery of useful energy and materials.
Grants for resource recovery systems and improved solid waste disposal facilities.
Authorization of appropriations.

SUBCHAPTER IX—REGULATION OF UNDERGROUND STORAGE TANKS

Definitions and exemptions.
Notification.
Release detection, prevention, and correction regulations.
Approval of State programs.
Inspections, monitoring, testing, and corrective action.
Federal enforcement.
Federal facilities.
State authority.
Study of underground storage tanks.
Operator training.
Use of funds for release prevention and compliance.
Delivery prohibition.
Tanks on tribal lands.
Authorization of appropriations.

SUBCHAPTER X—DEMONSTRATION MEDICAL WASTE TRACKING PROGRAM

Scope of demonstration program for medical waste.
Listing of medical wastes.
Tracking of medical waste.
§6901. Congressional findings

(a) Solid waste
The Congress finds with respect to solid waste—
(1) that the continuing technological progress and improvement in methods of manufacture, packaging, and marketing of consumer products has resulted in an ever-mounting increase, and in a change in the characteristics, of the mass material discarded by the purchaser of such products;
(2) that the economic and population growth of our Nation, and the improvements in the standard of living enjoyed by our population, have required increased industrial production to meet our needs, and have made necessary the demolition of old buildings, the construction of new buildings, and the provision of highways and other avenues of transportation, which, together with related industrial, commercial, and agricultural operations, have resulted in a rising tide of scrap, discarded, and waste materials;
(3) that the continuing concentration of our population in expanding metropolitan and other urban areas has presented these communities with serious financial, management, intergovernmental, and technical problems in the disposal of solid wastes resulting from the industrial, commercial, domestic, and other activities carried on in such areas;
(4) that while the collection and disposal of solid wastes should continue to be primarily the function of State, regional, and local agencies, the problems of waste disposal as set forth above have become a matter national in scope and in concern and necessitate Federal action through financial and technical assistance and leadership in the development, demonstration, and application of new and improved methods and processes to reduce the amount of waste and unsalvageable materials and to provide for proper and economical solid waste disposal practices.

(b) Environment and health
The Congress finds with respect to the environment and health, that—
(1) although land is too valuable a national resource to be needlessly polluted by discarded materials, most solid waste is disposed of on land in open dumps and sanitary landfills;
(2) disposal of solid waste and hazardous waste in or on the land without careful planning and management can present a danger to human health and the environment;
(3) as a result of the Clean Air Act [42 U.S.C. 7401 et seq.], the Water Pollution Control Act [33 U.S.C. 1251 et seq.], and other Federal and State laws respecting public health and the environment, greater amounts of solid waste (in the form of sludge and other pollution treatment residues) have been created. Similarly, inadequate and environmentally unsound practices for the disposal or use of solid waste have created greater amounts of air and water pollution and other problems for the environment and for health;
(4) open dumping is particularly harmful to health, contaminates drinking water from underground and surface supplies, and pollutes the air and the land;
(5) the placement of inadequate controls on hazardous waste management will result in substantial risks to human health and the environment;
(6) if hazardous waste management is improperly performed in the first instance, corrective action is likely to be expensive, complex, and time consuming;
(7) certain classes of land disposal facilities are not capable of assuring long-term containment of certain hazardous wastes, and to avoid substantial risk to human health and the environment, reliance on land disposal should be minimized or eliminated, and land disposal, particularly landfill and surface impoundment, should be the least favored method for managing hazardous wastes; and
(8) alternatives to existing methods of land disposal must be developed since many of the cities in the United States will be running out of suitable solid waste disposal sites within five years unless immediate action is taken.

(c) Materials
The Congress finds with respect to materials, that—
(1) millions of tons of recoverable material which could be used are needlessly buried each year;
(2) methods are available to separate usable materials from solid waste; and
(3) the recovery and conservation of such materials can reduce the dependence of the United States on foreign resources and reduce the deficit in its balance of payments.

(d) Energy
The Congress finds with respect to energy, that—
(1) solid waste represents a potential source of solid fuel, oil, or gas that can be converted into energy;
(2) the need exists to develop alternative energy sources for public and private consumption in order to reduce our dependence on such sources as petroleum products, natural gas, nuclear and hydroelectric generation; and
(3) technology exists to produce usable energy from solid waste.


EDITORIAL NOTES

REFERENCES IN TEXT

The Clean Air Act, referred to in subsec. (b)(3), is act July 14, 1955, ch. 360, 69 Stat. 322, as amended, which is classified generally to chapter 85 (§7401 et seq.) of this title. For complete classification of this Act to the Code, see Short Title note set out under section 7401 of this title and Tables.


CODIFICATION


The act, as set out in this chapter, carries a statutory credit showing the sections as having been added by Pub. L. 94–580, without reference to amendments to the act between its original enactment in 1965 and its complete revision in 1976. The act, as originally enacted in 1965, was classified to section 3251 et seq. of this title. For a recapitulation of the provisions of the act as originally enacted, see notes in chapter 39 (§3251 et seq.) of this title where the act was originally set out.

PRIOR PROVISIONS

Provisions similar to those in this section were contained in section 3251 of this title prior to the general amendment of the Solid Waste Disposal Act by Pub. L. 94–580.

AMENDMENTS

1984—Subsec. (b)(5) to (8). Pub. L. 98–616 added pars. (5) to (7), struck out former par. (5) providing that "hazardous waste presents, in addition to the problems associated with non-hazardous solid waste, special dangers to health and requires a greater degree of regulation than does non-hazardous solid waste; and", redesignated former par. (6) as (8), and substituted a period for the semicolon at end.


STATUTORY NOTES AND RELATED SUBSIDIARIES

SHORT TITLE OF 2012 AMENDMENT

Pub. L. 112–195, §1, Oct. 5, 2012, 126 Stat. 1452, provided that: "This Act [enacting section 6939g of this title] may be cited as the 'Hazardous Waste Electronic Manifest Establishment Act'.”

SHORT TITLE OF 2005 AMENDMENT

Pub. L. 109–58, title XV, §1521, Aug. 8, 2005, 119 Stat. 1092, provided that: "This subtitle [subtitle B (§§1521–1533) of title XV of Pub. L. 109–58, enacting sections 6991j to 6991m of this title, amending sections 6991 to 6991f, 6991h, and 6991i of this title, and enacting provisions set out as notes under section 6991b of this title] may be cited as the 'Underground Storage Tank Compliance Act'.”

SHORT TITLE OF 1996 AMENDMENT

Pub. L. 104–119, §1, Mar. 26, 1996, 110 Stat. 830, provided that: "This Act [amending sections 6921, 6924, 6925, 6947, and 6949a of this title and enacting provisions set out as a note under section 6949a of this title] may be cited as the 'Land Disposal Program Flexibility Act of 1996'.”

SHORT TITLE OF 1992 AMENDMENT

Pub. L. 102–386, title I, §101, Oct. 6, 1992, 106 Stat. 1505, provided that: "This title [enacting sections 6908, 6939c to 6939e, and 6965 of this title, amending sections 6903, 6924, 6927, and 6961 of this title, and enacting provisions set out as notes under sections 6939c and 6961 of this title] may be cited as the 'Federal Facility Compliance Act of 1992'.”

4/151
SHORT TITLE OF 1988 AMENDMENT

Pub. L. 100–582, §1, Nov. 1, 1988, 102 Stat. 2950, provided that: "This Act [enacting sections 6992 to 6992k of this title and section 3063 of Title 18, Crimes and Criminal Procedure, and amending section 6903 of this title] may be cited as the 'Medical Waste Tracking Act of 1988'."

SHORT TITLE OF 1984 AMENDMENT

Pub. L. 98–616, §1, Nov. 8, 1984, 98 Stat. 3221, provided that: "This Act [enacting sections 6917, 6936 to 6939a, 6949a, 6979a, 6979b, and 6991 to 6991i of this title, amending this section and sections 6902, 6905, 6912, 6915, 6916, 6921 to 6933, 6935, 6941 to 6945, 6948, 6956, 6962, 6972, 6973, 6976, 6982 and 6984 of this title and enacting provisions set out as notes under sections 6905, 6921 and 6926 of this title] may be cited as 'The Hazardous and Solid Waste Amendments of 1984'."

SHORT TITLE OF 1980 AMENDMENTS

Pub. L. 96–482, §1, Oct. 21, 1980, 94 Stat. 2334, provided: "This Act [enacting sections 6933, 6934, 6941a, 6955, and 6956 of this title, amending sections 6903, 6905, 6911, 6912, 6916, 6921, 6922, 6924, 6925, 6927 to 6931, 6941 to 6943, 6945, 6946, 6948, 6949, 6952, 6953, 6962, 6963, 6964, 6971, 6973, 6974, 6976, 6979, and 6982 of this title; and enacting and repealing provisions set out as a note under section 6981 of this title] may be cited as the 'Solid Waste Disposal Act Amendments of 1980'."

Pub. L. 96–463, §1, Oct. 15, 1980, 94 Stat. 2055, provided: "This Act [enacting sections 6901a, 6914a and 6932 of this title, amending sections 6903, 6943 and 6948 of this title, and enacting provisions set out as notes under sections 6363 and 6932 of this title] may be cited as the 'Used Oil Recycling Act of 1980'."

SHORT TITLE OF 1976 AMENDMENT

Pub. L. 94–580, §1, Oct. 21, 1976, 90 Stat. 2795, provided that: "This Act [enacting this chapter and provisions set out as notes under this section and section 6981 of this title] may be cited as the 'Resource Conservation and Recovery Act of 1976'."

SHORT TITLE

Pub. L. 89–272, title II, §1001, as added by Pub. L. 94–580, §2, Oct. 21, 1976, 90 Stat. 2795, provided that: "This title (hereinafter in this title referred to as 'this Act'), together with the following table of contents, may be cited as the 'Solid Waste Disposal Act' " [table of contents omitted].

NATIONAL COMMISSION ON MATERIALS POLICY

Pub. L. 91–512, title II, §§201–206, Oct. 26, 1970, 84 Stat. 1234, known as the "National Materials Policy Act of 1970", provided for the establishment of the National Commission on Materials Policy to make a full investigation and study for the purpose of developing a national materials policy to utilize present resources and technology more efficiently and to anticipate the future materials requirements of the Nation and the world, the Commission to submit to the President and Congress a report on its findings and recommendations no later than June 30, 1973, ninety days after the submission of which it should cease to exist.

EXECUTIVE DOCUMENTS

FEDERAL COMPLIANCE WITH POLLUTION CONTROL STANDARDS

For provisions relating to the responsibility of the head of each Executive agency for compliance with applicable pollution control standards, see Ex. Ord. No. 12088, Oct. 13, 1978, 43 F.R. 47707, set out as a note under section 4321 of this title.

§6901a. Congressional findings: used oil recycling

The Congress finds and declares that—

(1) used oil is a valuable source of increasingly scarce energy and materials;

(2) technology exists to re-refine, reprocess, reclaim, and otherwise recycle used oil;

(3) used oil constitutes a threat to public health and the environment when reused or disposed of improperly; and

that, therefore, it is in the national interest to recycle used oil in a manner which does not constitute a threat to public health and the environment and which conserves energy and materials.


EDITORIAL NOTES
CODIFICATION

Section was enacted as part of the Used Oil Recycling Act of 1980, and not as part of the Solid Waste Disposal Act which comprises this chapter.

§6902. Objectives and national policy

(a) Objectives

The objectives of this chapter are to promote the protection of health and the environment and to conserve valuable material and energy resources by—

1. providing technical and financial assistance to State and local governments and interstate agencies for the development of solid waste management plans (including resource recovery and resource conservation systems) which will promote improved solid waste management techniques (including more effective organizational arrangements), new and improved methods of collection, separation, and recovery of solid waste, and the environmentally safe disposal of nonrecoverable residues;

2. providing training grants in occupations involving the design, operation, and maintenance of solid waste disposal systems;

3. prohibiting future open dumping on the land and requiring the conversion of existing open dumps to facilities which do not pose a danger to the environment or to health;

4. assuring that hazardous waste management practices are conducted in a manner which protects human health and the environment;

5. requiring that hazardous waste be properly managed in the first instance thereby reducing the need for corrective action at a future date;

6. minimizing the generation of hazardous waste and the land disposal of hazardous waste by encouraging process substitution, materials recovery, properly conducted recycling and reuse, and treatment;

7. establishing a viable Federal-State partnership to carry out the purposes of this chapter and insuring that the Administrator will, in carrying out the provisions of subchapter III of this chapter, give a high priority to assisting and cooperating with States in obtaining full authorization of State programs under subchapter III;

8. providing for the promulgation of guidelines for solid waste collection, transport, separation, recovery, and disposal practices and systems;

9. promoting a national research and development program for improved solid waste management and resource conservation techniques, more effective organizational arrangements, and new and improved methods of collection, separation, and recovery, and recycling of solid wastes and environmentally safe disposal of nonrecoverable residues;

10. promoting the demonstration, construction, and application of solid waste management, resource recovery, and resource conservation systems which preserve and enhance the quality of air, water, and land resources; and

11. establishing a cooperative effort among the Federal, State, and local governments and private enterprise in order to recover valuable materials and energy from solid waste.

(b) National policy

The Congress hereby declares it to be the national policy of the United States that, wherever feasible, the generation of hazardous waste is to be reduced or eliminated as expeditiously as possible. Waste that is nevertheless generated should be treated, stored, or disposed of so as to minimize the present and future threat to human health and the environment.


EDITORIAL NOTES

PRIOR PROVISIONS

Provisions similar to those in this section were contained in section 3251 of this title, prior to the general amendment of the Solid Waste Disposal Act by Pub. L. 94–580.

AMENDMENTS


Subsec. (a)(4) to (11). Pub. L. 98–616, §101(b)(2), struck out par. (4) which provided for regulating the treatment, storage, transportation, and disposal of hazardous wastes which have adverse effects on health and the environment, added pars. (4) to (7), and redesignated former pars. (5) to (8) as (8) to (11), respectively.


§6903. Definitions

As used in this chapter:

1. The term "Administrator" means the Administrator of the Environmental Protection Agency.
(2) The term "construction," with respect to any project of construction under this chapter, means (A) the erection or building of new structures and acquisition of lands or interests therein, or the acquisition, replacement, expansion, remodeling, alteration, modernization, or extension of existing structures, and (B) the acquisition and installation of initial equipment of, or required in connection with, new or newly acquired structures or the expanded, remodeled, altered, modernized or extended part of existing structures (including trucks and other motor vehicles, and tractors, cranes, and other machinery) necessary for the proper utilization and operation of the facility after completion of the project; and includes preliminary planning to determine the economic and engineering feasibility and the public health and safety aspects of the project, the engineering, architectural, legal, fiscal, and economic investigations and studies, and any surveys, designs, plans, working drawings, specifications, and other action necessary for the carrying out of the project, and (C) the inspection and supervision of the process of carrying out the project to completion.

(2A) The term "demonstration" means the initial exhibition of a new technology process or practice or a significantly new combination or use of technologies, processes or practices, subsequent to the development stage, for the purpose of proving technological feasibility and cost effectiveness.

(3) The term "disposal" means the discharge, deposit, injection, dumping, spilling, leaking, or placing of any solid waste or hazardous waste into or on any land or water so that such solid waste or hazardous waste or any constituent thereof may enter the environment or be emitted into the air or discharged into any waters, including ground waters.


(5) The term "hazardous waste" means a solid waste, or combination of solid wastes, which because of its quantity, concentration, or physical, chemical, or infectious characteristics may—

(A) cause, or significantly contribute to an increase in mortality or an increase in serious irreversible, or incapacitating reversible, illness; or

(B) pose a substantial present or potential hazard to human health or the environment when improperly treated, stored, transported, or disposed of, or otherwise managed.

(6) The term "hazardous waste generation" means the act or process of producing hazardous waste.

(7) The term "hazardous waste management" means the systematic control of the collection, source separation, storage, transportation, processing, treatment, recovery, and disposal of hazardous wastes.

(8) For purposes of Federal financial assistance (other than rural communities assistance), the term "implementation" does not include the acquisition, leasing, construction, or modification of facilities or equipment or the acquisition, leasing, or improvement of land.

(9) The term "intermunicipal agency" means an agency established by two or more municipalities with responsibility for planning or administration of solid waste.

(10) The term "Interstate agency" means an agency of two or more municipalities in different States, or an agency established by two or more States, with authority to provide for the management of solid wastes and serving two or more municipalities located in different States.

(11) The term "long-term contract" means, when used in relation to solid waste supply, a contract of sufficient duration to assure the viability of a resource recovery facility (to the extent that such viability depends upon solid waste supply).

(12) The term "manifest" means the form used for identifying the quantity, composition, and the origin, routing, and destination of hazardous waste during its transportation from the point of generation to the point of disposal, treatment, or storage.

(13) The term "municipality" (A) means a city, town, borough, county, parish, district, or other public body created by or pursuant to State law, with responsibility for the planning or administration of solid waste management, or an Indian tribe or authorized tribal organization or Alaska Native village or organization, and (B) includes any rural community or incorporated town or village or any other public entity for which an application for assistance is made by a State or political subdivision thereof.

(14) The term "open dump" means any facility or site where solid waste is disposed of which is not a sanitary landfill which meets the criteria promulgated under section 6944 of this title and which is not a facility for disposal of hazardous waste.

(15) The term "person" means an individual, trust, firm, joint stock company, corporation (including a government corporation), partnership, association, State, municipality, commission, political subdivision of a State, or any interstate body and shall include each department, agency, and instrumentality of the United States.

(16) The term "procurement item" means any device, good, substance, material, product, or other item whether real or personal property which is the subject of any purchase, barter, or other exchange made to procure such item.

(17) The term "procuring agency" means any Federal agency, or any State agency or agency of a political subdivision of a State which is using appropriated Federal funds for such procurement, or any person contracting with any such agency with respect to work performed under such contract.

(18) The term "recovered" refers to the capability and likelihood of being recovered from solid waste for a commercial or industrial use.

(19) The term "recovered material" means waste material and byproducts which have been recovered or diverted from solid waste, but such term does not include those materials and byproducts generated from, and commonly reused within, an original manufacturing process.

(20) The term "recovered resources" means material or energy recovered from solid waste.

(21) The term "resource conservation" means reduction of the amounts of solid waste that are generated, reduction of overall resource consumption, and utilization of recovered resources.

(22) The term "resource recovery" means the recovery of material or energy from solid waste.
(23) The term "resource recovery system" means a solid waste management system which provides for collection, separation, recycling, and recovery of solid wastes, including disposal of nonrecoverable waste residues.

(24) The term "resource recovery facility" means any facility at which solid waste is processed for the purpose of extracting, converting to energy, or otherwise separating and preparing solid waste for reuse.

(25) The term "regional authority" means the authority established or designated under section 6946 of this title.

(26) The term "sanitary landfill" means a facility for the disposal of solid waste which meets the criteria published under section 6944 of this title.

(26A) The term "sludge" means any solid, semisolid or liquid waste generated from a municipal, commercial, or industrial wastewater treatment plant, water supply treatment plant, or air pollution control facility or any other such waste having similar characteristics and effects.

(27) The term "solid waste" means any garbage, refuse, sludge from a waste treatment plant, water supply treatment plant, or air pollution control facility and other discarded material, including solid, liquid, semisolid, or contained gaseous material resulting from industrial, commercial, mining, and agricultural operations, and from community activities, but does not include solid or dissolved material in domestic sewage, or solid or dissolved materials in irrigation return flows or industrial discharges which are point sources subject to permits under section 1342 of title 33, or source, special nuclear, or byproduct material as defined by the Atomic Energy Act of 1954, as amended (68 Stat. 923) [42 U.S.C. 2011 et seq.].

(28) The term "solid waste management" means the systematic administration of activities which provide for the collection, source separation, storage, transportation, transfer, processing, treatment, and disposal of solid waste.

(29) The term "solid waste management facility" includes—

(A) any resource recovery system or component thereof,

(B) any system, program, or facility for resource conservation, and

(C) any facility for the collection, source separation, storage, transportation, transfer, processing, treatment or disposal of solid wastes, including hazardous wastes, whether such facility is associated with facilities generating such wastes or otherwise.

(30) The terms "solid waste planning" "solid waste management", and "comprehensive planning" include planning or management respecting resource recovery and waste conservation.

(31) The term "State" means any of the several States, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, Guam, American Samoa, and the Commonwealth of the Northern Mariana Islands.

(32) The term "State authority" means the agency established or designated under section 6947 of this title.

(33) The term "storage", when used in connection with hazardous waste, means the containment of hazardous waste, either on a temporary basis or for a period of years, in such a manner as not to constitute disposal of such hazardous waste.

(34) The term "treatment", when used in connection with hazardous waste, means any method, technique, or process, including neutralization, designed to change the physical, chemical, or biological character or composition of any hazardous waste so as to neutralize such waste or so as to render such waste nonhazardous, safer for transport, amenable for recovery, amenable for storage, or reduced in volume. Such term includes any activity or processing designed to change the physical form or chemical composition of hazardous waste so as to render it nonhazardous.

(35) The term "virgin material" means a raw material, including previously unused copper, aluminum, lead, zinc, iron, or other metal or metal ore, any undeveloped resource that is, or with new technology will become, a source of raw materials.

(36) The term "used oil" means any oil which has been—

(A) refined from crude oil,

(B) used, and

(C) as a result of such use, contaminated by physical or chemical impurities.

(37) The term "recycled oil" means any used oil which is reused, following its original use, for any purpose (including the purpose for which the oil was originally used). Such term includes oil which is re-refined, reclaimed, burned, or reprocessed.

(38) The term "lubricating oil" means the fraction of crude oil which is sold for purposes of reducing friction in any industrial or mechanical device. Such term includes re-refined oil.

(39) The term "re-refined oil" means used oil from which the physical and chemical contaminants acquired through previous use have been removed through a refining process.

(40) Except as otherwise provided in this paragraph, the term "medical waste" means any solid waste which is generated in the diagnosis, treatment, or immunization of human beings or animals, in research pertaining thereto, or in the production or testing of biologicals. Such term does not include any hazardous waste identified or listed under subchapter III or any household waste as defined in regulations under subchapter III.

(41) The term "mixed waste" means waste that contains both hazardous waste and source, special nuclear, or by-product material subject to the Atomic Energy Act of 1954 (42 U.S.C. 2011 et seq.).


**EDITORIAL NOTES**

**REFERENCES IN TEXT**

The Atomic Energy Act of 1954, referred to in pars. (27) and (41), is act Aug. 1, 1946, ch. 724, as added by act Aug. 30, 1954, ch. 1073, §1, 68 Stat. 919, which is classified principally to chapter 23 (§2011 et seq.) of this
title. For complete classification of this Act to the Code, see Short Title note set out under section 2011 of this title and Tables.

PRIOR PROVISIONS

Provisions similar to those in this section were contained in section 3252 of this title, prior to the general amendment of the Solid Waste Disposal Act by Pub. L. 94–580.

AMENDMENTS

1992—Par. (15). Pub. L. 102–386, §103, inserted before period at end "and shall include each department, agency, and instrumentality of the United States".


1980—Par. (14). Pub. L. 96–482, §2(a), defined "open dump" to include a facility, substituted requirement that disposal facility or site not be a sanitary landfill meeting section 6944 of this title criteria for prior requirement that disposal site not be a sanitary landfill within meaning of section 6944 of this title, and required that the disposal facility or site not be a facility for disposal of hazardous waste.

Par. (19). Pub. L. 96–482, §2(b), defined "recovered material" to cover byproducts, substituted provision for recovery or diversion of waste material and byproducts from solid waste for prior provision for collection or recovery of material from solid waste, and excluded materials and byproducts generated from and commonly reused within an original manufacturing process.


1978—Par. (8). Pub. L. 95–609, §7(b)(1), struck out provision stating that employees' salaries due pursuant to subchapter IV of this chapter would not be included after Dec. 31, 1979.

Par. (10). Pub. L. 95–609, §7(b)(2), substituted "management" for "disposal".

Par. (29)(C). Pub. L. 95–609, §7(b)(3), substituted "the collection, source separation, storage, transportation, transfer, processing, treatment or disposal" for "the treatment".

STATUTORY NOTES AND RELATED SUBSIDIARIES

CHANGE OF NAME


EXECUTIVE DOCUMENTS

TRANSFER OF FUNCTIONS

Enforcement functions of Administrator or other official of Environmental Protection Agency related to compliance with resource conservation and recovery permits used under this chapter with respect to pre-construction, construction, and initial operation of transportation system for Canadian and Alaskan natural gas transferred to Federal Inspector, Office of Federal Inspector for the Alaska Natural Gas Transportation System, until first anniversary of date of initial operation of Alaska Natural Gas Transportation System, see Reorg. Plan No. 1 of 1979, eff. July 1, 1979, §§102(a), 203(a), 44 F.R. 33663, 33666, 93 Stat. 1373, 1376, set out in the Appendix to Title 5, Government Organization and Employees. Office of Federal Inspector for the Alaska Natural Gas Transportation System abolished and functions and authority vested in Inspector transferred to Secretary of Energy by section 3012(b) of Pub. L. 102–486, set out as an Abolition of Office of Federal Inspector note under section 719e of Title 15, Commerce and Trade, Functions and authority vested in Secretary of Energy subsequently transferred to Federal Coordinator for Alaska Natural Gas Transportation Projects by section 720d(f) of Title 15.

§6904. Governmental cooperation

(a) Interstate cooperation

The provisions of this chapter to be carried out by States may be carried out by interstate agencies and provisions applicable to States may apply to interstate regions where such agencies and regions have been established by the respective States and approved by the Administrator. In any such case, action required to be taken by the Governor of a State, respecting regional designation shall be required to be taken by the Governor of each of the respective States with respect to so much of the interstate region as is within the jurisdiction of that State.

(b) Consent of Congress to compacts
The consent of the Congress is hereby given to two or more States to negotiate and enter into agreements or compacts, not in conflict with any law or treaty of the United States, for—

(1) cooperative effort and mutual assistance for the management of solid waste or hazardous waste (or both) and the enforcement of their respective laws relating thereto, and

(2) the establishment of such agencies, joint or otherwise, as they may deem desirable for making effective such agreements or compacts.

No such agreement or compact shall be binding or obligatory upon any State or a party thereto unless it is agreed upon by all parties to the agreement and until it has been approved by the Administrator and the Congress.


### Executive Documents

#### Transfer of Functions

For transfer of certain enforcement functions of Administrator or other official of Environmental Protection Agency under this chapter to Federal Inspector, Office of Federal Inspector for the Alaska Natural Gas Transportation System, and subsequent transfer to Secretary of Energy, then to Federal Coordinator for Alaska Natural Gas Transportation Projects, see note set out under section 6903 of this title.

### §6905. Application of chapter and integration with other Acts

(a) Application of chapter

Nothing in this chapter shall be construed to apply to (or to authorize any State, interstate, or local authority to regulate) any activity or substance which is subject to the Federal Water Pollution Control Act [33 U.S.C. 1251 et seq.], the Safe Drinking Water Act [42 U.S.C. 300f et seq.], the Marine Protection, Research and Sanctuaries Act of 1972 [16 U.S.C. 1431 et seq., 1447 et seq., 33 U.S.C. 1401 et seq., 2801 et seq.], or the Atomic Energy Act of 1954 [42 U.S.C. 2011 et seq.] except to the extent that such application (or regulation) is not inconsistent with the requirements of such Acts.

(b) Integration with other Acts

(1) The Administrator shall integrate all provisions of this chapter for purposes of administration and enforcement and shall avoid duplication, to the maximum extent practicable, with the appropriate provisions of the Clean Air Act [42 U.S.C. 7401 et seq.], the Federal Water Pollution Control Act [33 U.S.C. 1251 et seq.], the Federal Insecticide, Fungicide, and Rodenticide Act [7 U.S.C. 136 et seq.], the Safe Drinking Water Act [42 U.S.C. 300f et seq.], the Marine Protection, Research and Sanctuaries Act of 1972 [16 U.S.C. 1431 et seq., 1447 et seq., 33 U.S.C. 1401 et seq., 2801 et seq.], and such other Acts of Congress as grant regulatory authority to the Administrator. Such integration shall be effected only to the extent that it can be done in a manner consistent with the goals and policies expressed in this chapter and in the other acts referred to in this subsection.

(2)(A) As promptly as practicable after November 8, 1984, the Administrator shall submit a report describing—

(i) the current data and information available on emissions of polychlorinated dibenzo-p-dioxins from resource recovery facilities burning municipal solid waste;

(ii) any significant risks to human health posed by these emissions; and

(iii) operating practices appropriate for controlling these emissions.

(B) Based on the report under subparagraph (A) and on any future information on such emissions, the Administrator may publish advisories or guidelines regarding the control of dioxin emissions from such facilities. Nothing in this paragraph shall be construed to preempt or otherwise affect the authority of the Administrator to promulgate any regulations under the Clean Air Act [42 U.S.C. 7401 et seq.] regarding emissions of polychlorinated dibenzo-p-dioxins.

(3) Notwithstanding any other provisions of law, in developing solid waste plans, it is the intention of this chapter that in determining the size of a waste-to-energy facility, adequate provisions shall be given to the present and reasonably anticipated future needs, including those needs created by thorough implementation of section 6952(h) of this title, of the recycling and resource recovery interests within the area encompassed by the solid waste plan.

(c) Integration with the Surface Mining Control and Reclamation Act of 1977

(1) No later than 90 days after October 21, 1980, the Administrator shall review any regulations applicable to the treatment, storage, or disposal of any coal mining wastes or overburden promulgated by the Secretary of the Interior under the Surface Mining and Reclamation Act of 1977 [30 U.S.C. 1201 et seq.]. If the Administrator determines that any requirement of final regulations promulgated under any section of subchapter III relating to mining wastes or overburden is not adequately addressed in such regulations promulgated by the Secretary, the Administrator shall promptly transmit such determination, together with suggested revisions and supporting documentation, to the Secretary.

(2) The Secretary of the Interior shall have exclusive responsibility for carrying out any requirement of subchapter III of this chapter with respect to coal mining wastes or overburden for which a surface coal mining and reclamation permit is issued or approved under the Surface Mining Control and Reclamation Act of 1977 [30 U.S.C. 1201 et seq.]. The Secretary shall, with the concurrence of the Administrator, promulgate such regulations as may be necessary to carry out the purposes of this subsection and shall integrate such regulations with regulations promulgated under the Surface Mining Control and Reclamation Act of 1977.
EDITORIAL NOTES

REFERENCES IN TEXT

The Federal Water Pollution Control Act, referred to in subsecs. (a) and (b), is act June 30, 1948, ch. 758, as amended generally by Pub. L. 92–500, §2, Oct. 18, 1972, 86 Stat. 816, which is classified generally to chapter 26 (§1251 et seq.) of Title 33, Navigation and Navigable Waters. For complete classification of this Act to the Code, see Short Title note set out under section 1251 of Title 33 and Tables.


The Marine Protection, Research and Sanctuaries Act of 1972, referred to in subsecs. (a) and (b), is Pub. L. 92–532, Oct. 23, 1972, 86 Stat. 1052, as amended, which enacted chapters 32 (§1431 et seq.) and 32A (§1447 et seq.) of Title 16, Conservation, and chapters 27 (§1401 et seq.) and 41 (§2801 et seq.) of Title 33, Navigation and Navigable Waters. For complete classification of this Act to the Code, see Short Title note set out under section 1401 of Title 33 and Tables.

The Safe Drinking Water Act, referred to in subsecs. (a) and (b), is title XIV of act July 1, 1944, as added Dec. 16, 1974, Pub. L. 93–523, §2(a), 88 Stat. 1660, as amended, which is classified generally to subchapter XII (§300f et seq.) of chapter 6A of this title. For complete classification of this Act to the Code, see Short Title note set out under section 201 of this title and Tables.

The Clean Air Act, referred to in subsec. (b)(1), (2)(B), is act July 14, 1955, ch. 360, 69 Stat. 322, as amended, which is classified generally to chapter 85 (§7401 et seq.) of this title. For complete classification of this Act to the Code, see Short Title note set out under section 7401 of this title and Tables.


The Surface Mining Control and Reclamation Act of 1977, referred to in subsec. (c), is Pub. L. 95–87, Aug. 3, 1977, 91 Stat. 445, as amended, which is classified generally to chapter 25 (§1201 et seq.) of Title 30, Mineral Lands and Mining. For complete classification of this Act to the Code, see Short Title note set out under section 1201 of Title 30 and Tables.

PRIOR PROVISIONS

Provisions similar to those in this section were contained in section 3257 of this title, prior to the general amendment of the Solid Waste Disposal Act by Pub. L. 94–580.

AMENDMENTS

1984—Subsec. (b)(1), (2). Pub. L. 98–616, §102, designated existing provisions as par. (1) and added par. (2).


STATUTORY NOTES AND RELATED SUBSIDIARIES

URANIUM MILL TAILINGS


EXECUTIVE DOCUMENTS

TRANSFER OF FUNCTIONS

For transfer of certain enforcement functions of Administrator or other official of Environmental Protection Agency under this chapter to Federal Inspector, Office of Federal Inspector for the Alaska Natural Gas Transportation System, and subsequent transfer to Secretary of Energy, then to Federal Coordinator for Alaska Natural Gas Transportation Projects, see note set out under section 6903 of this title.
§6906. Financial disclosure

(a) Statement

Each officer or employee of the Administrator who—

(1) performs any function or duty under this chapter; and
(2) has any known financial interest in any person who applies for or receives financial assistance under this chapter

shall, beginning on February 1, 1977, annually file with the Administrator a written statement concerning all such interests held by such officer or employee during the preceding calendar year. Such statement shall be available to the public.

(b) Action by Administrator

The Administrator shall—

(1) act within ninety days after October 21, 1976—
   (A) to define the term "known financial interest" for purposes of subsection (a) of this section; and
   (B) to establish the methods by which the requirement to file written statements specified in subsection (a) of this section will be monitored and enforced, including appropriate provision for the filing by such officers and employees of such statements and the review by the Administrator of such statements; and
(2) report to the Congress on June 1, 1978, and of each succeeding calendar year with respect to such disclosures and the actions taken in regard thereto during the preceding calendar year.

(c) Exemption

In the rules prescribed under subsection (b) of this section, the Administrator may identify specific positions within the Environmental Protection Agency which are of a nonpolicy-making nature and provide that officers or employees occupying such positions shall be exempt from the requirements of this section.

(d) Penalty

Any officer or employee who is subject to, and knowingly violates, this section shall be fined not more than $2,500 or imprisoned not more than one year, or both.


STATUTORY NOTES AND RELATED SUBSIDIARIES

TERMINATION OF REPORTING REQUIREMENTS

For termination, effective May 15, 2000, of reporting provisions in subsec. (b)(2) of this section, see section 3003 of Pub. L. 104–66, as amended, set out as a note under section 1113 of Title 31, Money and Finance, and the 14th item on page 164 of House Document No. 103–7.

EXECUTIVE DOCUMENTS

TRANSFER OF FUNCTIONS

For transfer of certain enforcement functions of Administrator or other official of Environmental Protection Agency under this chapter to Federal Inspector, Office of Federal Inspector for the Alaska Natural Gas Transportation System, and subsequent transfer to Secretary of Energy, then to Federal Coordinator for Alaska Natural Gas Transportation Projects, see note set out under section 6903 of this title.

§6907. Solid waste management information and guidelines

(a) Guidelines

Within one year of October 21, 1976, and from time to time thereafter, the Administrator shall, in cooperation with appropriate Federal, State, municipal, and intermunicipal agencies, and in consultation with other interested persons, and after public hearings, develop and publish suggested guidelines for solid waste management. Such suggested guidelines shall—

(1) provide a technical and economic description of the level of performance that can be attained by various available solid waste management practices (including operating practices) which provide for the protection of public health and the environment;
(2) not later than two years after October 21, 1976, describe levels of performance, including appropriate methods and degrees of control, that provide at a minimum for (A) protection of public health and welfare; (B) protection of the quality of ground waters and surface waters from leachates; (C) protection of the quality of surface waters from runoff through compliance with effluent limitations under the Federal Water Pollution Control Act, as amended [33 U.S.C. 1251 et seq.]; (D) protection of ambient air quality through compliance with new source performance standards or requirements of air
quality implementation plans under the Clean Air Act, as amended [42 U.S.C. 7401 et seq.]; (E) disease and vector control; (F) safety; and (G) esthetics; and
(3) provide minimum criteria to be used by the States to define those solid waste management practices which constitute the open dumping of solid waste or hazardous waste and are to be prohibited under subchapter IV of this chapter.

Where appropriate, such suggested guidelines also shall include minimum information for use in deciding the adequate location, design, and construction of facilities associated with solid waste management practices, including the consideration of regional, geographic, demographic, and climatic factors.

(b) Notice
The Administrator shall notify the Committee on Environment and Public Works of the Senate and the Committee on Energy and Commerce of the House of Representatives a reasonable time before publishing any suggested guidelines or proposed regulations under this chapter of the content of such proposed suggested guidelines or proposed regulations under this chapter.

EDITORIAL NOTES

REFERENCES IN TEXT
The Federal Water Pollution Control Act, referred to in subsec. (a)(2), is act June 30, 1948, ch. 758, as amended generally by Pub. L. 92–500, §2, Oct. 18, 1972, 86 Stat. 816, which is classified generally to chapter 26 (§1251 et seq.) of Title 33, Navigation and Navigable Waters. For complete classification of this Act to the Code, see Short Title note set out under section 1251 of Title 33 and Tables.
The Clean Air Act, as amended, referred to in subsec. (a)(2), is act July 14, 1955, ch. 360, 69 Stat. 322, as amended, which is classified generally to chapter 85 (§7401 et seq.) of this title. For complete classification of this Act to the Code, see Short Title note set out under section 7401 of this title and Tables.

PRIOR PROVISIONS
Provisions similar to those in this section were contained in section 3254c of this title, prior to the general amendment of the Solid Waste Disposal Act by Pub. L. 94–580.

AMENDMENTS
1978—Subsec. (a)(3). Pub. L. 95–609, §7(c), substituted "subchapter IV of this chapter" for "title IV of this Act".
Subsec. (b). Pub. L. 95–609, §7(d), struck out "pursuant to this section" after "any suggested guidelines" and inserted "or proposed regulations under this chapter" after "suggested guidelines" in two places.

STATUTORY NOTES AND RELATED SUBSIDIARIES

CHANGE OF NAME

EXECUTIVE DOCUMENTS

TRANSFER OF FUNCTIONS
For transfer of certain enforcement functions of Administrator or other official of Environmental Protection Agency under this chapter to Federal Inspector, Office of Federal Inspector for the Alaska Natural Gas Transportation System, and subsequent transfer to Secretary of Energy, then to Federal Coordinator for Alaska Natural Gas Transportation Projects, see note set out under section 6903 of this title.
§6908. Small town environmental planning

(a) Establishment

The Administrator of the Environmental Protection Agency (hereafter referred to as the "Administrator") shall establish a program to assist small communities in planning and financing environmental facilities. The program shall be known as the "Small Town Environmental Planning Program".

(b) Small Town Environmental Planning Task Force

(1) The Administrator shall establish a Small Town Environmental Planning Task Force which shall be composed of representatives of small towns from different areas of the United States, Federal and State governmental agencies, and public interest groups. The Administrator shall terminate the Task Force not later than 2 years after the establishment of the Task Force.

(2) The Task Force shall—

(A) identify regulations developed pursuant to Federal environmental laws which pose significant compliance problems for small towns;

(B) identify means to improve the working relationship between the Environmental Protection Agency (hereafter referred to as the Agency) and small towns;

(C) review proposed regulations for the protection of the environmental and public health and suggest revisions that could improve the ability of small towns to comply with such regulations;

(D) identify means to promote regionalization of environmental treatment systems and infrastructure serving small towns to improve the economic condition of such systems and infrastructure; and

(E) provide such other assistance to the Administrator as the Administrator deems appropriate.

(c) Identification of environmental requirements

(1) Not later than 6 months after October 6, 1992, the Administrator shall publish a list of requirements under Federal environmental and public health statutes (and the regulations developed pursuant to such statutes) applicable to small towns. Not less than annually, the Administrator shall make such additions and deletions to and from the list as the Administrator deems appropriate.

(2) The Administrator shall, as part of the Small Town Environmental Planning Program under this section, implement a program to notify small communities of the regulations identified under paragraph (1) and of future regulations and requirements through methods that the Administrator determines to be effective to provide information to the greatest number of small communities, including any of the following:

(A) Newspapers and other periodicals.

(B) Other news media.

(C) Trade, municipal, and other associations that the Administrator determines to be appropriate.

(D) Direct mail.

(d) Small Town Ombudsman

The Administrator shall establish and staff an Office of the Small Town Ombudsman. The Office shall provide assistance to small towns in connection with the Small Town Environmental Planning Program and other business with the Agency. Each regional office shall identify a small town contact. The Small Town Ombudsman and the regional contacts also may assist larger communities, but only if first priority is given to providing assistance to small towns.

(e) Multi-media permits

(1) The Administrator shall conduct a study of establishing a multi-media permitting program for small towns. Such evaluation shall include an analysis of—

(A) environmental benefits and liabilities of a multi-media permitting program;

(B) the potential of using such a program to coordinate a small town's environmental and public health activities; and

(C) the legal barriers, if any, to the establishment of such a program.

(2) Within 3 years after October 6, 1992, the Administrator shall report to Congress on the results of the evaluation performed in accordance with paragraph (1). Included in this report shall be a description of the activities conducted pursuant to subsections (a) through (d).

(f) "Small town" defined

For purposes of this section, the term "small town" means an incorporated or unincorporated community (as defined by the Administrator) with a population of less than 2,500 individuals.

(g) Authorization

There is authorized to be appropriated the sum of $500,000 to implement this section.

Section was enacted as part of the Federal Facility Compliance Act of 1992, and not as part of the Solid Waste Disposal Act which comprises this chapter.

§6908a. Agreements with Indian tribes

On and after October 21, 1998, the Administrator is authorized to enter into assistance agreements with Federally 1 recognized Indian tribes on such terms and conditions as the Administrator deems appropriate for the development and implementation of programs to manage hazardous waste, and underground storage tanks.


EDITORIAL NOTES

CODIFICATION

Section was enacted as part of the Departments of Veterans Affairs and Housing and Urban Development, and Independent Agencies Appropriations Act, 1999, and not as part of the Solid Waste Disposal Act which comprises this chapter.

1 So in original. Probably should not be capitalized.

SUBCHAPTER II—OFFICE OF SOLID WASTE; AUTHORITIES OF THE ADMINISTRATOR

§6911. Office of Solid Waste and Interagency Coordinating Committee

(a) Office of Solid Waste

The Administrator shall establish within the Environmental Protection Agency an Office of Solid Waste (hereinafter referred to as the "Office") to be headed by an Assistant Administrator of the Environmental Protection Agency. The duties and responsibilities (other than duties and responsibilities relating to research and development) of the Administrator under this chapter (as modified by applicable reorganization plans) shall be carried out through the Office.

(b) Interagency Coordinating Committee

(1) There is hereby established an Interagency Coordinating Committee on Federal Resource Conservation and Recovery Activities which shall have the responsibility for coordinating all activities dealing with resource conservation and recovery from solid waste carried out by the Environmental Protection Agency, the Department of Energy, the Department of Commerce, and all other Federal agencies which conduct such activities pursuant to this chapter or any other Act. For purposes of this subsection, the term "resource conservation and recovery activities" shall include, but not be limited to, all research, development and demonstration projects on resource conservation or energy, or material, recovery from solid waste, and all technical or financial assistance for State or local planning for, or implementation of, projects related to resource conservation or energy or material, recovery from solid waste. The Committee shall be chaired by the Administrator of the Environmental Protection Agency or such person as the Administrator may designate. Members of the Committee shall include representatives of the Department of Energy, the Department of Commerce, the Department of the Treasury, and each other Federal agency which the Administrator determines to have programs or responsibilities affecting resource conservation or recovery.

(2) The Interagency Coordinating Committee shall include oversight of the implementation of

(A) the May 1979 Memorandum of Understanding on Energy Recovery from Municipal Solid Waste between the Environmental Protection Agency and the Department of Energy;


(C) any subsequent agreements between these agencies or other Federal agencies which address Federal resource recovery or conservation activities.


EDITORIAL NOTES

REFERENCES IN TEXT

CODIFICATION

Subsection (b)(3) of this section, which required the Interagency Coordinating Committee to submit to Congress on March 1 of each year, a five-year action plan for Federal resource conservation or recovery activities, terminated, effective May 15, 2000, pursuant to section 3003 of Pub. L. 104–66, as amended, set out as a note under section 1113 of Title 31, Money and Finance. See, also, the 2nd item on page 175 of House Document No. 103–7.

AMENDMENTS

Pub. L. 96–482 designated existing provisions as subsec. (a) and added subsec. (b).

STATUTORY NOTES AND RELATED SUBSIDIARIES

EFFECTIVE DATE OF 1980 AMENDMENT

Pub. L. 96–510, title III, §307(c), Dec. 11, 1980, 94 Stat. 2810, provided that: "The amendment made by subsection (a) [amending this section] shall become effective ninety days after the date of the enactment of this Act [Dec. 11, 1980]."

EXECUTIVE DOCUMENTS

TRANSFER OF FUNCTIONS

For transfer of certain enforcement functions of Administrator or other official of Environmental Protection Agency under this chapter to Federal Inspector, Office of Federal Inspector for the Alaska Natural Gas Transportation System, and subsequent transfer to Secretary of Energy, then to Federal Coordinator for Alaska Natural Gas Transportation Projects, see note set out under section 6903 of this title.

§6911a. Assistant Administrator of Environmental Protection Agency; appointment, etc.

The Assistant Administrator of the Environmental Protection Agency appointed to head the Office of Solid Waste shall be in addition to the five Assistant Administrators of the Environmental Protection Agency provided for in section 1(d) of Reorganization Plan Numbered 3 of 1970 and the additional Assistant Administrator provided by the Toxic Substances Control Act [15 U.S.C. 2601 et seq.], shall be appointed by the President by and with the advice and consent of the Senate. (Pub. L. 96–510, title III, §307(b), Dec. 11, 1980, 94 Stat. 2810; Pub. L. 98–80, §2(c)(2)(B), Aug. 23, 1983, 97 Stat. 485.)

EDITORIAL NOTES

REFERENCES IN TEXT

Reorganization Plan Numbered 3 of 1970, referred to in text, is set out in the Appendix to Title 5, Government Organization and Employees.

The Toxic Substances Control Act, referred to in text, is Pub. L. 94–469, Oct. 11, 1976, 90 Stat. 2003, as amended, which is classified generally to chapter 53 (§2601 et seq.) of Title 15, Commerce and Trade. For complete classification of this Act to the Code, see Short Title note set out under section 2601 of Title 15 and Tables.

CODIFICATION

Section was enacted as part of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, and not as part of the Solid Waste Disposal Act which comprises this chapter.

AMENDMENTS

1983—Pub. L. 98–80 struck out ",", and shall be compensated at the rate provided for Level IV of the Executive Schedule pay rates under section 5315 of title 5" after "advice and consent of the Senate".

STATUTORY NOTES AND RELATED SUBSIDIARIES

EFFECTIVE DATE

Section effective Dec. 11, 1980, see section 9652 of this title.
§6912. Authorities of Administrator

(a) Authorities

In carrying out this chapter, the Administrator is authorized to—

1. prescribe, in consultation with Federal, State, and regional authorities, such regulations as are necessary to carry out his functions under this chapter;

2. consult with or exchange information with other Federal agencies undertaking research, development, demonstration projects, studies, or investigations relating to solid waste;

3. provide technical and financial assistance to States or regional agencies in the development and implementation of solid waste plans and hazardous waste management programs;

4. consult with representatives of science, industry, agriculture, labor, environmental protection and consumer organizations, and other groups, as he deems advisable;

5. utilize the information, facilities, personnel and other resources of Federal agencies, including the National Institute of Standards and Technology and the National Bureau of the Census, on a reimbursable basis, to perform research and analyses and conduct studies and investigations related to resource recovery and conservation and to otherwise carry out the Administrator's functions under this chapter; and

6. to delegate to the Secretary of Transportation the performance of any inspection or enforcement function under this chapter relating to the transportation of hazardous waste where such delegation would avoid unnecessary duplication of activity and would carry out the objectives of this chapter and of chapter 51 of title 49.

(b) Revision of regulations

Each regulation promulgated under this chapter shall be reviewed and, where necessary, revised not less frequently than every three years.

(c) Criminal investigations

In carrying out the provisions of this chapter, the Administrator, and duly-designated agents and employees of the Environmental Protection Agency, are authorized to initiate and conduct investigations under the criminal provisions of this chapter, and to refer the results of these investigations to the Attorney General for prosecution in appropriate cases.


EDITORIAL NOTES

CODIFICATION


AMENDMENTS


EXECUTIVE DOCUMENTS

TRANSFER OF FUNCTIONS

For transfer of certain enforcement functions of Administrator or other official of Environmental Protection Agency under this chapter to Federal Inspector, Office of Federal Inspector for the Alaska Natural Gas Transportation System, and subsequent transfer to Secretary of Energy, then to Federal Coordinator for Alaska Natural Gas Transportation Projects, see note set out under section 6903 of this title.

§6913. Resource Recovery and Conservation Panels

The Administrator shall provide teams of personnel, including Federal, State, and local employees or contractors (hereinafter referred to as "Resource Conservation and Recovery Panels") to provide Federal agencies, States and local governments upon request with technical assistance on solid waste management, resource recovery, and resource conservation. Such teams shall include technical, marketing, financial, and institutional specialists, and the services of such teams shall be provided without charge to States or local governments.
EDITORIAL NOTES

AMENDMENTS

1978—Pub. L. 95–609 inserted "Federal agencies," after "to provide".

EXECUTIVE DOCUMENTS

TRANSFER OF FUNCTIONS

For transfer of certain enforcement functions of Administrator or other official of Environmental Protection Agency under this chapter to Federal Inspector, Office of Federal Inspector for the Alaska Natural Gas Transportation System, and subsequent transfer to Secretary of Energy, then to Federal Coordinator for Alaska Natural Gas Transportation Projects, see note set out under section 6903 of this title.

§6914. Grants for discarded tire disposal

(a) Grants

The Administrator shall make available grants equal to 5 percent of the purchase price of tire shredders (including portable shredders attached to tire collection trucks) to those eligible applicants best meeting criteria promulgated under this section. An eligible applicant may be any private purchaser, public body, or public-private joint venture. Criteria for receiving grants shall be promulgated under this section and shall include the policy to offer any private purchaser the first option to receive a grant, the policy to develop widespread geographic distribution of tire shredding facilities, the need for such facilities within a geographic area, and the projected risk and viability of any such venture. In the case of an application under this section from a public body, the Administrator shall first make a determination that there are no private purchasers interested in making an application before approving a grant to a public body.

(b) Authorization of appropriations

There is authorized to be appropriated $750,000 for each of the fiscal years 1978 and 1979 to carry out this section.


EXECUTIVE DOCUMENTS

TRANSFER OF FUNCTIONS

For transfer of certain enforcement functions of Administrator or other official of Environmental Protection Agency under this chapter to Federal Inspector, Office of Federal Inspector for the Alaska Natural Gas Transportation System, and subsequent transfer to Secretary of Energy, then to Federal Coordinator for Alaska Natural Gas Transportation Projects, see note set out under section 6903 of this title.

§6914a. Labeling of lubricating oil

For purposes of any provision of law which requires the labeling of commodities, lubricating oil shall be treated as lawfully labeled only if it bears the following statement, prominently displayed:

"DON'T POLLUTE—CONSERVE RESOURCES; RETURN USED OIL TO COLLECTION CENTERS".


EDITORIAL NOTES

PRIOR PROVISIONS

A prior section 2005 of Pub. L. 89–272 was renumbered section 2006 and is classified to section 6915 of this title.

§6914b. Degradable plastic ring carriers; definitions
As used in this title—
(1) the term "regulated item" means any plastic ring carrier device that contains at least one hole greater than 1¾ inches in diameter which is made, used, or designed for the purpose of packaging, transporting, or carrying multipackaged cans or bottles, and which is of a size, shape, design, or type capable, when discarded, of becoming entangled with fish or wildlife; and
(2) the term "naturally degradable material" means a material which, when discarded, will be reduced to environmentally benign subunits under the action of normal environmental forces, such as, among others, biological decomposition, photodegradation, or hydrolysis.


EDITORIAL NOTES

REFERENCES IN TEXT
This title, referred to in text, is title I of Pub. L. 100–556, Oct. 28, 1988, 102 Stat. 2779, which enacted sections 6914b and 6914b–1 of this title, and provisions set out as a note under section 6914b of this title. For complete classification of this title to the Code, see Tables.

CODIFICATION
Section was not enacted as part of the Solid Waste Disposal Act which comprises this chapter.

STATUTORY NOTES AND RELATED SUBSIDIARIES

CONGRESSIONAL FINDINGS
"(1) plastic ring carrier devices have been found in large quantities in the marine environment;
"(2) fish and wildlife have been known to have become entangled in plastic ring carriers;
"(3) nondegradable plastic ring carrier devices can remain intact in the marine environment for decades, posing a threat to fish and wildlife; and
"(4) 16 States have enacted laws requiring that plastic ring carrier devices be made from degradable material in order to reduce litter and to protect fish and wildlife."

§6914b–1. Regulation of plastic ring carriers
Not later than 24 months after October 28, 1988 (unless the Administrator of the Environmental Protection Agency determines that it is not feasible or that the byproducts of degradable regulated items present a greater threat to the environment than nondegradable regulated items), the Administrator of the Environmental Protection Agency shall require, by regulation, that any regulated item intended for use in the United States shall be made of naturally degradable material which, when discarded, decomposes within a period established by such regulation. The period within which decomposition must occur after being discarded shall be the shortest period of time consistent with the intended use of the item and the physical integrity required for such use. Such regulation shall allow a reasonable time for affected parties to come into compliance, including the use of existing inventories.


EDITORIAL NOTES

CODIFICATION
Section was not enacted as part of the Solid Waste Disposal Act which comprises this chapter.

§6915. Annual report
The Administrator shall transmit to the Congress and the President, not later than ninety days after the end of each fiscal year, a comprehensive and detailed report on all activities of the Office during the preceding fiscal year. Each such report shall include—
(1) a statement of specific and detailed objectives for the activities and programs conducted and assisted under this chapter;
(2) statements of the Administrator's conclusions as to the effectiveness of such activities and programs in meeting the stated objectives and the purposes of this chapter, measured through the end of such fiscal year;
(3) a summary of outstanding solid waste problems confronting the Administrator, in order of priority;
(4) recommendations with respect to such legislation which the Administrator deems necessary or desirable to assist in solving problems respecting solid waste;
(5) all other information required to be submitted to the Congress pursuant to any other provision of this chapter; and
(6) the Administrator’s plans for activities and programs respecting solid waste during the next fiscal year.

98 Stat. 3276.)

EDITORIAL NOTES

PRIOR PROVISIONS

A prior section 2006 of Pub. L. 89–272 was renumbered section 2007 and is classified to section 6916 of this
title.

AMENDMENTS

1984—Par. (1). Pub. L. 98–616 substituted "detailed" for "detail".

STATUTORY NOTES AND RELATED SUBSIDIARIES

TERMINATION OF REPORTING REQUIREMENTS

For termination, effective May 15, 2000, of provisions of this section relating to transmittal of annual report
to Congress, see section 3003 of Pub. L. 104–66, as amended, set out as a note under section 1113 of Title 31,

EXECUTIVE DOCUMENTS

TRANSFER OF FUNCTIONS

For transfer of certain enforcement functions of Administrator or other official of Environmental Protection
Agency under this chapter to Federal Inspector, Office of Federal Inspector for the Alaska Natural Gas
Transportation System, and subsequent transfer to Secretary of Energy, then to Federal Coordinator for
Alaska Natural Gas Transportation Projects, see note set out under section 6903 of this title.

§6916. General authorization

(a) General administration

There are authorized to be appropriated to the Administrator for the purpose of carrying out the provisions of this chapter,
$35,000,000 for the fiscal year ending September 30, 1977, $38,000,000 for the fiscal year ending September 30, 1978,
$42,000,000 for the fiscal year ending September 30, 1979, $70,000,000 for the fiscal year ending September 30, 1980,
$80,000,000 for the fiscal year ending September 30, 1981, $80,000,000 for the fiscal year ending September 30, 1982,
$70,000,000 for the fiscal year ending September 30, 1985, $80,000,000 for the fiscal year ending September 30, 1986,
$80,000,000 for the fiscal year ending September 30, 1987, and $80,000,000 for the fiscal year 1988.

(b) Resource Recovery and Conservation Panels

Not less than 20 percent of the amount appropriated under subsection (a), or $5,000,000 per fiscal year, whichever is
less, shall be used only for purposes of Resource Recovery and Conservation Panels established under section 6913 of this
title (including travel expenses incurred by such panels in carrying out their functions under this chapter).

(c) Hazardous waste

Not less than 30 percent of the amount appropriated under subsection (a) shall be used only for purposes of carrying out
subchapter III of this chapter (relating to hazardous waste) other than section 6931 of this title.

(d) State and local support

Not less than 25 percent of the total amount appropriated under this chapter, up to the amount authorized in section
6948(a)(1) of this title, shall be used only for purposes of support to State, regional, local, and interstate agencies in
accordance with subchapter IV of this chapter other than section 6948(a)(2) or 6949 of this title.

(e) Criminal investigators

There is authorized to be appropriated to the Administrator $3,246,000 for the fiscal year 1985, $2,408,300 for the fiscal
year 1986, $2,529,000 for the fiscal year 1987, and $2,529,000 for the fiscal year 1988 to be used—
(1) for additional officers or employees of the Environmental Protection Agency authorized by the Administrator to
conduct criminal investigations (to investigate, or supervise the investigation of, any activity for which a criminal penalty is
provided) under this chapter; and
(2) for support costs for such additional officers or employees.

(f) Underground storage tanks
(1) There are authorized to be appropriated to the Administrator for the purpose of carrying out the provisions of subchapter IX (relating to regulation of underground storage tanks), $10,000,000 for each of the fiscal years 1985 through 1988.

(2) There is authorized to be appropriated $25,000,000 for each of the fiscal years 1985 through 1988 to be used to make grants to the States for purposes of assisting the States in the development and implementation of approved State underground storage tank release detection, prevention, and correction programs under subchapter IX.


**EDITORIAL NOTES**

**AMENDMENTS**

1984—Subsec. (a). Pub. L. 98–616, §2(a), substituted "$80,000,000 for the fiscal year ending September 30, 1982, $70,000,000 for the fiscal year ending September 30, 1985, $80,000,000 for the fiscal year ending September 30, 1986, $80,000,000 for the fiscal year ending September 30, 1987, and $80,000,000 for the fiscal year 1988" for "and $80,000,000 for the fiscal year ending September 30, 1982".

Subsecs. (e), (f). Pub. L. 98–616, §2(i), added subsecs. (e) and (f).

1980—Subsec. (a). Pub. L. 96–482, §31(a), authorized appropriation of $70,000,000, $80,000,000, and $80,000,000 for fiscal years ending Sept. 30, 1980, through 1982, respectively.

Subsec. (b). Pub. L. 96–482, §6(a), inserted ", or $5,000,000 per fiscal year, whichever is less," after "subsection (a)".


**EXECUTIVE DOCUMENTS**

**TRANSFER OF FUNCTIONS**

For transfer of certain enforcement functions of Administrator or other official of Environmental Protection Agency under this chapter to Federal Inspector, Office of Federal Inspector for the Alaska Natural Gas Transportation System, and subsequent transfer to Secretary of Energy, then to Federal Coordinator for Alaska Natural Gas Transportation Projects, see note set out under section 6903 of this title.

§6917. Office of Ombudsman

(a) Establishment; functions

The Administrator shall establish an Office of Ombudsman, to be directed by an Ombudsman. It shall be the function of the Office of Ombudsman to receive individual complaints, grievances, requests for information submitted by any person with respect to any program or requirement under this chapter.

(b) Authority to render assistance

The Ombudsman shall render assistance with respect to the complaints, grievances, and requests submitted to the Office of Ombudsman, and shall make appropriate recommendations to the Administrator.

(c) Effect on procedures for grievances, appeals, or administrative matters

The establishment of the Office of Ombudsman shall not affect any procedures for grievances, appeals, or administrative matters in any other provision of this chapter, any other provision of law, or any Federal regulation.

(d) Termination

The Office of the Ombudsman shall cease to exist 4 years after November 8, 1984.


**SUBCHAPTER III—HAZARDOUS WASTE MANAGEMENT**

§6921. Identification and listing of hazardous waste

(a) Criteria for identification or listing

Not later than eighteen months after October 21, 1976, the Administrator shall, after notice and opportunity for public hearing, and after consultation with appropriate Federal and State agencies, develop and promulgate criteria for identifying the characteristics of hazardous waste, and for listing hazardous waste, which should be subject to the provisions of this
subchapter, taking into account toxicity, persistence, and degradability in nature, potential for accumulation in tissue, and other related factors such as flammability, corrosiveness, and other hazardous characteristics. Such criteria shall be revised from time to time as may be appropriate.

(b) Identification and listing

(1) Not later than eighteen months after October 21, 1976, and after notice and opportunity for public hearing, the Administrator shall promulgate regulations identifying the characteristics of hazardous waste, and listing particular hazardous wastes (within the meaning of section 6903(5) of this title), which shall be subject to the provisions of this subchapter. Such regulations shall be based on the criteria promulgated under subsection (a) and shall be revised from time to time thereafter as may be appropriate. The Administrator, in cooperation with the Agency for Toxic Substances and Disease Registry and the National Toxicology Program, shall also identify or list those hazardous wastes which shall be subject to the provisions of this subchapter solely because of the presence in such wastes of certain constituents (such as identified carcinogens, mutagens, or teratogens) at levels in excess of levels which endanger human health.

(2)(A) Notwithstanding the provisions of paragraph (1) of this subsection, drilling fluids, produced waters, and other wastes associated with the exploration, development, or production of crude oil or natural gas or geothermal energy shall be subject only to existing State or Federal regulatory programs in lieu of this subchapter until at least 24 months after October 21, 1980, and after promulgation of the regulations in accordance with subparagraphs (B) and (C) of this paragraph. It is the sense of the Congress that such State or Federal programs should include, for waste disposal sites which are to be closed, provisions requiring at least the following:

(i) The identification through surveying, platting, or other measures, together with recordation of such information on the public record, so as to assure that the location where such wastes are disposed of can be located in the future; except however, that no such surveying, platting, or other measure identifying the location of a disposal site for drilling fluids and associated wastes shall be required if the distance from the disposal site to the surveyed or platted location to the associated well is less than two hundred lineal feet; and

(ii) A chemical and physical analysis of a produced water and a composition of a drilling fluid suspected to contain a hazardous material, with such information to be acquired prior to closure and to be placed on the public record.

(B) Not later than six months after completion and submission of the study required by section 6982(m) of this title, the Administrator shall, after public hearings and opportunity for comment, determine either to promulgate regulations under this subchapter for drilling fluids, produced waters, and other wastes associated with the exploration, development, or production of crude oil or natural gas or geothermal energy or that such regulations are unwarranted. The Administrator shall publish his decision in the Federal Register accompanied by an explanation and justification of the reasons for it. In making the decision under this paragraph, the Administrator shall utilize the information developed or accumulated pursuant to the study required under section 6982(m) of this title.

(C) The Administrator shall transmit his decision, along with any regulations, if necessary, to both Houses of Congress. Such regulations shall take effect only when authorized by Act of Congress.

(3)(A) Notwithstanding the provisions of paragraph (1) of this subsection, each waste listed below shall, except as provided in subparagraph (B) of this paragraph, be subject only to regulation under other applicable provisions of Federal or State law in lieu of this subchapter until at least six months after the date of submission of the applicable study required to be conducted under subsection (f), (n), (o), or (p) of section 6982 of this title and after promulgation of regulations in accordance with subparagraph (C) of this paragraph:

(i) Fly ash waste, bottom ash waste, slag waste, and flue gas emission control waste generated primarily from the combustion of coal or other fossil fuels.

(ii) Solid waste from the extraction, beneficiation, and processing of ores and minerals, including phosphate rock and overburden from the mining of uranium ore.

(iii) Cement kiln dust waste.

(B)(i) Owners and operators of disposal sites for wastes listed in subparagraph (A) may be required by the Administrator, through regulations prescribed under authority of section 6912 of this title—

(I) as to disposal sites for such wastes which are to be closed, to identify the locations of such sites through surveying, platting, or other measures, together with recordation of such information on the public record, to assure that the locations where such wastes are disposed of are known and can be located in the future, and

(II) to provide chemical and physical analysis and composition of such wastes, based on available information, to be placed on the public record.

(ii) In conducting any study under subsection (f), (n), (o), or (p), of section 6982 of this title, any officer, employee, or authorized representative of the Environmental Protection Agency, duly designated by the Administrator, is authorized, at reasonable times and as reasonably necessary for the purposes of such study, to enter any establishment where any waste subject to such study is generated, stored, treated, disposed of, or transported from; to inspect, take samples, and conduct monitoring and testing; and to have access to and copy records relating to such waste. Each such inspection shall be commenced and completed with reasonable promptness. If the officer, employee, or authorized representative obtains any samples prior to leaving the premises, he shall give to the owner, operator, or agent in charge a receipt describing the sample obtained and if requested a portion of each such sample equal in volume or weight to the portion retained. If any analysis is made of such samples, or monitoring and testing performed, a copy of the results shall be furnished promptly to the owner, operator, or agent in charge.

(II) Any records, reports, or information obtained from any person under subclause (I) shall be available to the public, except that upon a showing satisfactory to the Administrator by any person that records, reports, or information, or particular
part thereof, to which the Administrator has access under this subparagraph is made public, would divulge information
entitled to protection under section 1905 of title 18, the Administrator shall consider such information or particular portion
thereof confidential in accordance with the purposes of that section, except that such record, report, document, or
information may be disclosed to other officers, employees, or authorized representatives of the United States concerned
with carrying out this chapter. Any person not subject to the provisions of section 1905 of title 18 who knowingly and willfully
divulges or discloses any information entitled to protection under this subparagraph shall, upon conviction, be subject to a
fine of not more than $5,000 or to imprisonment not to exceed one year, or both.

(iii) The Administrator may prescribe regulations, under the authority of this chapter, to prevent radiation exposure which
presents an unreasonable risk to human health from the use in construction or land reclamation (with or without
revegetation) of (I) solid waste from the extraction, beneficiation, and processing of phosphate rock or (II) overburden from
the mining of uranium ore.

(iv) Whenever on the basis of any information the Administrator determines that any person is in violation of any
requirement of this subparagraph, the Administrator shall give notice to the violator of his failure to comply with such
requirement. If such violation extends beyond the thirtieth day after the Administrator’s notification, the Administrator may
issue an order requiring compliance within a specified time period or the Administrator may commence a civil action in the
United States district court in the district in which the violation occurred for appropriate relief, including a temporary or
permanent injunction.

(C) Not later than six months after the date of submission of the applicable study required to be conducted under
subsections (f), (n), (o), or (p), of section 6982 of this title, the Administrator shall, after public hearings and opportunity for
comment, either determine to promulgate regulations under this subchapter for each waste listed in subparagraph (A) of this
paragraph or determine that such regulations are unwarranted. The Administrator shall publish his determination, which
shall be based on information developed or accumulated pursuant to such study, public hearings, and comment, in the
Federal Register accompanied by an explanation and justification of the reasons for it.

(c) Petition by State Governor

At any time after the date eighteen months after October 21, 1976, the Governor of any State may petition the
Administrator to identify or list a material as a hazardous waste. The Administrator shall act upon such petition within ninety
days following his receipt thereof and shall notify the Governor of such action. If the Administrator denies such petition
because of financial considerations, in providing such notice to the Governor he shall include a statement concerning such
considerations.

(d) Small quantity generator waste

(1) By March 31, 1986, the Administrator shall promulgate standards under sections 6922, 6923, and 6924 of this title for
hazardous waste generated by a generator in a total quantity of hazardous waste greater than one hundred kilograms but
less than one thousand kilograms during a calendar month.

(2) The standards referred to in paragraph (1), including standards applicable to the legitimate use, reuse, recycling, and
reclamation of such wastes, may vary from the standards applicable to hazardous waste generated by larger quantity
generators, but such standards shall be sufficient to protect human health and the environment.

(3) Not later than two hundred and seventy days after November 8, 1984, any hazardous waste which is part of a total
quantity generated by a generator generating greater than one hundred kilograms but less than one thousand kilograms
during one calendar month and which is shipped off the premises on which such waste is generated shall be accompanied
by a copy of the Environmental Protection Agency Uniform Hazardous Waste Manifest form signed by the generator. This
form shall contain the following information:

(A) the name and address of the generator of the waste;

(B) the United States Department of Transportation description of the waste, including the proper shipping name,
hazard class, and identification number (UN/NA), if applicable;

(C) the number and type of containers;

(D) the quantity of waste being transported; and

(E) the name and address of the facility designated to receive the waste.

If subparagraph (B) is not applicable, in lieu of the description referred to in such subparagraph (B), the form shall contain
the Environmental Protection Agency identification number, or a generic description of the waste, or a description of the
waste by hazardous waste characteristic. Additional requirements related to the manifest form shall apply only if determined
necessary by the Administrator to protect human health and the environment.

(4) The Administrator’s responsibility under this subchapter to protect human health and the environment may require the
promulgation of standards under this subchapter for hazardous wastes which are generated by any generator who does not
generate more than one hundred kilograms of hazardous waste in a calendar month.

(5) Until the effective date of standards required to be promulgated under paragraph (1), any hazardous waste identified
or listed under this section generated by any generator during any calendar month in a total quantity greater than one
hundred kilograms but less than one thousand kilograms, which is not treated, stored, or disposed of at a hazardous waste
treatment, storage, or disposal facility with a permit under section 6925 of this title, shall be disposed of only in a facility
which is permitted, licensed, or registered by a State to manage municipal or industrial solid waste.

(6) Standards promulgated as provided in paragraph (1) shall, at a minimum, require that all treatment, storage, or
disposal of hazardous wastes generated by generators referred to in paragraph (1) shall occur at a facility with interim status
or a permit under this subchapter, except that onsite storage of hazardous waste generated by a generator generating a
total quantity of hazardous waste greater than one hundred kilograms, but less than one thousand kilograms during a
calendar month, may occur without the requirement of a permit for up to one hundred and eighty days. Such onsite storage
may occur without the requirement of a permit for not more than six thousand kilograms for up to two hundred and seventy

days if such generator must ship or haul such waste over two hundred miles.

(7)(A) Nothing in this subsection shall be construed to affect or impair the validity of regulations promulgated by the

Secretary of Transportation pursuant to chapter 51 of title 49.

(B) Nothing in this subsection shall be construed to affect, modify, or render invalid any requirements in regulations

promulgated prior to January 1, 1983 applicable to any acutely hazardous waste identified or listed under this section which

is generated by any generator during any calendar month in a total quantity less than one thousand kilograms.

(8) Effective March 31, 1986, unless the Administrator promulgates standards as provided in paragraph (1) of this

subsection prior to such date, hazardous waste generated by any generator in a total quantity greater than one hundred

kilograms but less than one thousand kilograms during a calendar month shall be subject to the following requirements until

the standards referred to in paragraph (1) of this subsection have become effective:

(A) the notice requirements of paragraph (3) of this subsection shall apply and in addition, the information provided in

the form shall include the name of the waste transporters and the name and address of the facility designated to receive

the waste;

(B) except in the case of the onsite storage referred to in paragraph (6) of this subsection, the treatment, storage, or

disposal of such waste shall occur at a facility with interim status or a permit under this subchapter;

(C) generators of such waste shall file manifest exception reports as required of generators producing greater amounts

of hazardous waste per month except that such reports shall be filed by January 31, for any waste shipment occurring in

the last half of the preceding calendar year, and by July 31, for any waste shipment occurring in the first half of the

calendar year; and

(D) generators of such waste shall retain for three years a copy of the manifest signed by the designated facility that

has received the waste.

Nothing in this paragraph shall be construed as a determination of the standards appropriate under paragraph (1).

(9) The last sentence of section 6930(b) of this title shall not apply to regulations promulgated under this subsection.

(e) Specified wastes

(1) Not later than 6 months after November 8, 1984, the Administrator shall, where appropriate, list under subsection (b)
(1), additional wastes containing chlorinated dioxins or chlorinated-dibenzozenfurans. Not later than one year after November 8,
1984, the Administrator shall, where appropriate, list under subsection (b)(1) wastes containing remaining halogenated

dioxins and halogenated-dibenzozenfurans.

(2) Not later than fifteen months after November 8, 1984, the Administrator shall make a determination of whether or not

to list under subsection (b)(1) the following wastes: Chlorinated Aliphatics, Dioxin, Dimethyl Hydrazine, TDI (toluene
disocyanate), Carbamates, Bromacil, Linuron, Organo-bromines, solvents, refining wastes, chlorinated aromatics, dyes and

pigments, inorganic chemical industry wastes, lithium batteries, coke byproducts, paint production wastes, and coal slurry

pipeline effluent.

(f) Delisting procedures

(1) When evaluating a petition to exclude a waste generated at a particular facility from listing under this section, the

Administrator shall consider factors (including additional constituents) other than those for which the waste was listed if the

Administrator has a reasonable basis to believe that such additional factors could cause the waste to be a hazardous waste.

The Administrator shall provide notice and opportunity for comment on these additional factors before granting or denying

such petition.

(2)(A) To the maximum extent practicable the Administrator shall publish in the Federal Register a proposal to grant or
deny a petition referred to in paragraph (1) within twelve months after receiving a complete application to exclude a waste

generated at a particular facility from being regulated as a hazardous waste and shall grant or deny such a petition within

twenty-four months after receiving a complete application.

(B) The temporary granting of such a petition prior to November 8, 1984, without the opportunity for public comment and

the full consideration of such comments shall not continue for more than twenty-four months after November 8, 1984. If a

final decision to grant or deny such a petition has not been promulgated after notice and opportunity for public comment

within the time limit prescribed by the preceding sentence, any such temporary granting of such petition shall cease to be in

effect.

(g) EP toxicity

Not later than twenty-eight months after November 8, 1984, the Administrator shall examine the deficiencies of the

extrac tion procedure toxicity characteristic as a predictor of the leaching potential of wastes and make changes in the

extraction procedure toxicity characteristic, including changes in the leaching media, as are necessary to insure that it

accurately predicts the leaching potential of wastes which pose a threat to human health and the environment when

mism anaged.

(h) Additional characteristics

Not later than two years after November 8, 1984, the Administrator shall promulgate regulations under this section

identifying additional characteristics of hazardous waste, including measures or indicators of toxicity.

(i) Clarification of household waste exclusion

A resource recovery facility recovering energy from the mass burning of municipal solid waste shall not be deemed to be

treating, storing, disposing of, or otherwise managing hazardous wastes for the purposes of regulation under this

subchapter, if—

(1) such facility—
(A) receives and burns only—
   (i) household waste (from single and multiple dwellings, hotels, motels, and other residential sources), and
   (ii) solid waste from commercial or industrial sources that does not contain hazardous waste identified or listed
       under this section, and

(B) does not accept hazardous wastes identified or listed under this section, and

(2) the owner or operator of such facility has established contractual requirements or other appropriate notification or
inspection procedures to assure that hazardous wastes are not received at or burned in such facility.

(j) Methamphetamine production

Not later than every 24 months, the Administrator shall submit to the Committee on Energy and Commerce of the House
of Representatives and the Committee on Environment and Public Works of the Senate a report setting forth information
collected by the Administrator from law enforcement agencies, States, and other relevant stakeholders that identifies the
byproducts of the methamphetamine production process and whether the Administrator considers each of the byproducts to
be a hazardous waste pursuant to this section and relevant regulations.


EDITORIAL NOTES

CODIFICATION

In subsec. (d)(7)(A), "chapter 51 of title 49" substituted for "the Hazardous Materials Transportation Act [49
App. U.S.C. 1801 et seq."] on authority of Pub. L. 103–272, §6(b), July 5, 1994, 108 Stat. 1378, the first section of
which enacted subtitles II, III, and V to X of Title 49, Transportation.

AMENDMENTS

1996—Subsec. (d)(5). Pub. L. 104–119 made technical amendment to reference in original act which appears
in text as reference to this section.
1984—Subsec. (b)(1). Pub. L. 98–616, §222(b), inserted at end "The Administrator, in cooperation with the
Agency for Toxic Substances and Disease Registry and the National Toxology Program, shall also identify or
list those hazardous wastes which shall be subject to the provisions of this subchapter solely because of the
presence in such wastes of certain constituents (such as identified carcinogens, mutagens, or teratogens)
sic at levels in excess of levels which endanger human health."
Subsecs. (e) to (h). Pub. L. 98–616, §222(a), added subsecs. (e) to (h).
1980—Subsec. (b). Pub. L. 96–482 designated existing provisions as par. (1) and added pars. (2) and (3).

STATUTORY NOTES AND RELATED SUBSIDIARIES

REGULATION

Environmental Protection Agency promulgates regulations under subtitle C of the Solid Waste Disposal Act
[42 U.S.C. 6921 et seq.] addressing the extraction of wastes from landfills as part of the process of recovering
methane from such landfills, the owner and operator of equipment used to recover methane from a landfill
shall not be deemed to be managing, generating, transporting, treating, storing, or disposing of hazardous or
liquid wastes within the meaning of that subtitle. If the aqueous or hydrocarbon phase of the condensate or
any other waste material removed from the gas recovered from the landfill meets any of the characteristics
identified under section 3001 of subtitle C of the Solid Waste Disposal Act [42 U.S.C. 6921], the preceding
sentence shall not apply and such condensate phase or other waste material shall be deemed a hazardous
waste under that subtitle, and shall be regulated accordingly."

ASH MANAGEMENT AND DISPOSAL

ash from solid waste incineration units burning municipal waste would not be regulated by the Administrator of
the Environmental Protection Agency pursuant to this section.

SMALL QUANTITY GENERATOR WASTE; INFORM AND EDUCATE; WASTE GENERATORS
Pub. L. 98–616, title II, §221(b), Nov. 8, 1984, 98 Stat. 3249, directed Administrator of Environmental Protection Agency to undertake activities to inform and educate waste generators of their responsibilities under subsec. (d) of this section during the period within thirty months after Nov. 8, 1984, to help assure compliance.

**STUDY OF EXISTING MANIFEST SYSTEM FOR HAZARDOUS WASTES AS APPLICABLE TO SMALL QUANTITY GENERATORS; SUBMITAL TO CONGRESS**

Pub. L. 98–616, title II, §221(d), Nov. 8, 1984, 98 Stat. 3250, directed Administrator of Environmental Protection Agency to cause to be studied the existing manifest system for hazardous wastes as it applies to small quantity generators and recommend whether the current system should be retained or whether a new system should be introduced, such study to include an analysis of the cost versus the benefits of the system studied as well as an analysis of the ease of retrieving and collating information and identifying a given substance, with any new proposal to include a list of those standards that are necessary to protect human health and the environment, and with such study to be submitted to Congress not later than Apr. 1, 1987.

**ADMINISTRATIVE BURDENS; SMALL QUANTITY GENERATORS; RETENTION OF CURRENT SYSTEM; REPORT TO CONGRESS**

Pub. L. 98–616, title II, §221(e), Nov. 8, 1984, 98 Stat. 3250, directed Administrator of Environmental Protection Agency, in conjunction with Secretary of Transportation, to prepare and submit to Congress, not later than Apr. 1, 1987, a report on the feasibility of easing the administrative burden on small quantity generators, increasing compliance with statutory and regulatory requirements, and simplifying enforcement efforts through a program of licensing hazardous waste transporters to assume the responsibilities of small quantity generators relating to preparation of manifests and associated recordkeeping and reporting requirements, such report to examine the appropriate licensing requirements under such a program including the need for financial assurances by licensed transporters and to make recommendations on provisions and requirements for such a program including the appropriate division of responsibilities between Department of Transportation and Environmental Protection Administration.

**EDUCATIONAL INSTITUTIONS; ACCUMULATION, STORAGE AND DISPOSAL OF HAZARDOUS WASTES; STUDY**

Pub. L. 98–616, title II, §221(f), Nov. 8, 1984, 98 Stat. 3250, as amended by Pub. L. 107–110, title X, §1076(aa), Jan. 8, 2002, 115 Stat. 2093, directed Administrator of Environmental Protection Agency, in consultation with Secretary of Education, the States, and appropriate educational associations, to conduct a comprehensive study of problems associated with accumulation, storage, and disposal of hazardous wastes from educational institutions, such study to include an investigation of feasibility and availability of environmentally sound methods for treatment, storage, or disposal of hazardous waste from such institutions, taking into account the types and quantities of such waste which are generated by these institutions, and the nonprofit nature of these institutions, and directed Administrator to submit a report to Congress containing the findings of the study not later than Apr. 1, 1987.

**EXECUTIVE DOCUMENTS**

**TRANSFER OF FUNCTIONS**

For transfer of certain enforcement functions of Administrator or other official of Environmental Protection Agency under this chapter to Federal Inspector, Office of Federal Inspector for the Alaska Natural Gas Transportation System, and subsequent transfer to Secretary of Energy, then to Federal Coordinator for Alaska Natural Gas Transportation Projects, see note set out under section 6903 of this title.

1. *So in original. Probably should be “teratogens”.*

**§6922. Standards applicable to generators of hazardous waste**

(a) In general

Not later than eighteen months after October 21, 1976, and after notice and opportunity for public hearings and after consultation with appropriate Federal and State agencies, the Administrator shall promulgate regulations establishing such standards, applicable to generators of hazardous waste identified or listed under this subchapter, as may be necessary to protect human health and the environment. Such standards shall establish requirements respecting—

1. recordkeeping practices that accurately identify the quantities of such hazardous waste generated, the constituents thereof which are significant in quantity or in potential harm to human health or the environment, and the disposition of such wastes;
(2) labeling practices for any containers used for the storage, transport, or disposal of such hazardous waste such as will identify accurately such waste;
(3) use of appropriate containers for such hazardous waste;
(4) furnishing of information on the general chemical composition of such hazardous waste to persons transporting, treating, storing, or disposing of such wastes;
(5) use of a manifest system and any other reasonable means necessary to assure that all such hazardous waste generated is designated for treatment, storage, or disposal in, and arrives at, treatment, storage, or disposal facilities (other than facilities on the premises where the waste is generated) for which a permit has been issued as provided in this subchapter, or pursuant to title I of the Marine Protection, Research, and Sanctuaries Act (86 Stat. 1052) [33 U.S.C. 1411 et seq.]; and

(6) submission of reports to the Administrator (or the State agency in any case in which such agency carries out a permit program pursuant to this subchapter) at least once every two years, setting out—
(A) the quantities and nature of hazardous waste identified or listed under this subchapter that he has generated during the year;
(B) the disposition of all hazardous waste reported under subparagraph (A);
(C) the efforts undertaken during the year to reduce the volume and toxicity of waste generated; and
(D) the changes in volume and toxicity of waste actually achieved during the year in question in comparison with previous years, to the extent such information is available for years prior to November 8, 1984.

(b) Waste minimization

Effective September 1, 1985, the manifest required by subsection (a)(5) shall contain a certification by the generator that—

(1) the generator of the hazardous waste has a program in place to reduce the volume or quantity and toxicity of such waste to the degree determined by the generator to be economically practicable; and
(2) the proposed method of treatment, storage, or disposal is that practicable method currently available to the generator which minimizes the present and future threat to human health and the environment.


EDITORIAL NOTES

REFERENCES IN TEXT


AMENDMENTS

Subsec. (a)(6). Pub. L. 98–616, §224(a)(2), amended par. (6) generally. Prior to amendment, par. (6) read as follows: "submission of reports to the Administrator (or the State agency in any case in which such agency carries out an authorized permit program pursuant to this subchapter) at such times as the Administrator (or the State agency if appropriate) deems necessary, setting out—
"(A) the quantities of hazardous waste identified or listed under this subchapter that he has generated during a particular time period; and
"(B) the disposition of all hazardous waste reported under subparagraph (A)."
1980—Par. (5). Pub. L. 95–482 inserted "and any other reasonable means necessary" and ", and arrives at,"
after "use of a manifest system" and "disposal in", respectively.
Research, and Sanctuaries Act.
Par. (6). Pub. L. 95–609, §7(f)(2), closed the parenthetical after "to this subchapter".

EXECUTIVE DOCUMENTS

TRANSFER OF FUNCTIONS

For transfer of certain enforcement functions of Administrator or other official of Environmental Protection Agency under this chapter to Federal Inspector, Office of Federal Inspector for the Alaska Natural Gas Transportation System, and subsequent transfer to Secretary of Energy, then to Federal Coordinator for Alaska Natural Gas Transportation Projects, see note set out under section 6903 of this title.
§6923. Standards applicable to transporters of hazardous waste

(a) Standards
Not later than eighteen months after October 21, 1976, and after opportunity for public hearings, the Administrator, after consultation with the Secretary of Transportation and the States, shall promulgate regulations establishing such standards, applicable to transporters of hazardous waste identified or listed under this subchapter, as may be necessary to protect human health and the environment. Such standards shall include but need not be limited to requirements respecting—

1. recordkeeping concerning such hazardous waste transported, and their source and delivery points;
2. transportation of such waste only if properly labeled;
3. compliance with the manifest system referred to in section 6922(5) of this title; and
4. transportation of all such hazardous waste only to the hazardous waste treatment, storage, or disposal facilities which the shipper designates on the manifest form to be a facility holding a permit issued under this subchapter, or pursuant to title I of the Marine Protection, Research, and Sanitation Act (86 Stat. 1052) [33 U.S.C. 1411 et seq.].

(b) Coordination with regulations of Secretary of Transportation
In case of any hazardous waste identified or listed under this subchapter which is subject to chapter 51 of title 49, the regulations promulgated by the Administrator under this section shall be consistent with the requirements of such Act and the regulations thereunder. The Administrator is authorized to make recommendations to the Secretary of Transportation respecting the regulations of such hazardous waste under the Hazardous Materials Transportation Act and for addition of materials to be covered by such Act.

(c) Fuel from hazardous waste
Not later than two years after November 8, 1984, and after opportunity for public hearing, the Administrator shall promulgate regulations establishing standards, applicable to transporters of fuel produced (1) from any hazardous waste identified or listed under section 6921 of this title, or (2) from any hazardous waste identified or listed under section 6921 of this title and any other material, as may be necessary to protect human health and the environment. Such standards may include any of the requirements set forth in paragraphs (1) through (4) of subsection (a) as may be appropriate.


EDITORIAL NOTES

REFERENCES IN TEXT


CODIFICATION

AMENDMENTS
Subsec. (b). Pub. L. 95–609, §7(g)(2), substituted "Administrator under this section" for "Administrator under this subchapter".

EXECUTIVE DOCUMENTS

TRANSFER OF FUNCTIONS
For transfer of certain enforcement functions of Administrator or other official of Environmental Protection Agency under this chapter to Federal Inspector, Office of Federal Inspector for the Alaska Natural Gas Transportation System, and subsequent transfer to Secretary of Energy, then to Federal Coordinator for Alaska Natural Gas Transportation Projects, see note set out under section 6903 of this title.
§6924. Standards applicable to owners and operators of hazardous waste treatment, storage, and disposal facilities

(a) In general
   Not later than eighteen months after October 21, 1976, and after opportunity for public hearings and after consultation with appropriate Federal and State agencies, the Administrator shall promulgate regulations establishing such performance standards, applicable to owners and operators of facilities for the treatment, storage, or disposal of hazardous waste identified or listed under this subchapter, as may be necessary to protect human health and the environment. In establishing such standards the Administrator shall, where appropriate, distinguish in such standards between requirements appropriate for new facilities and for facilities in existence on the date of promulgation of such regulations. Such standards shall include, but need not be limited to, requirements respecting—
   (1) maintaining records of all hazardous wastes identified or listed under this chapter which is treated, stored, or disposed of, as the case may be, and the manner in which such wastes were treated, stored, or disposed of;
   (2) satisfactory reporting, monitoring, and inspection and compliance with the manifest system referred to in section 6922(5) of this title;
   (3) treatment, storage, or disposal of all such waste received by the facility pursuant to such operating methods, techniques, and practices as may be satisfactory to the Administrator;
   (4) the location, design, and construction of such hazardous waste treatment, disposal, or storage facilities;
   (5) contingency plans for effective action to minimize unanticipated damage from any treatment, storage, or disposal of any such hazardous waste;
   (6) the maintenance of operation of such facilities and requiring such additional qualifications as to ownership, continuity of operation, training for personnel, and financial responsibility (including financial responsibility for corrective action) as may be necessary or desirable; and
   (7) compliance with the requirements of section 6925 of this title respecting permits for treatment, storage, or disposal.

No private entity shall be precluded by reason of criteria established under paragraph (6) from the ownership or operation of facilities providing hazardous waste treatment, storage, or disposal services where such entity can provide assurances of financial responsibility and continuity of operation consistent with the degree and duration of risks associated with the treatment, storage, or disposal of specified hazardous waste.

(b) Salt dome formations, salt bed formations, underground mines and caves
   (1) Effective on November 8, 1984, the placement of any noncontainerized or bulk liquid hazardous waste in any salt dome formation, salt bed formation, underground mine, or cave is prohibited until such time as—
      (A) the Administrator has determined, after notice and opportunity for hearings on the record in the affected areas, that such placement is protective of human health and the environment;
      (B) the Administrator has promulgated performance and permitting standards for such facilities under this subchapter, and;
      (C) a permit has been issued under section 6925(c) of this title for the facility concerned.
   
   (2) Effective on November 8, 1984, the placement of any hazardous waste other than a hazardous waste referred to in paragraph (1) in a salt dome formation, salt bed formation, underground mine, or cave is prohibited until such time as a permit has been issued under section 6925(c) of this title for the facility concerned.
   
   (3) No determination made by the Administrator under subsection (d), (e), or (g) of this section regarding any hazardous waste to which such subsection (d), (e), or (g) applies shall affect the prohibition contained in paragraph (1) or (2) of this subsection.
   
   (4) Nothing in this subsection shall apply to the Department of Energy Waste Isolation Pilot Project in New Mexico.

(c) Liquids in landfills
   (1) Effective 6 months after November 8, 1984, the placement of bulk or noncontainerized liquid hazardous waste or free liquids contained in hazardous waste (whether or not absorbents have been added) in any landfill is prohibited. Prior to such date the requirements (as in effect on April 30, 1983) promulgated under this section by the Administrator regarding liquid hazardous waste shall remain in force and effect to the extent such requirements are applicable to the placement of bulk or noncontainerized liquid hazardous waste, or free liquids contained in hazardous waste, in landfills.
   
   (2) Not later than fifteen months after November 8, 1984, the Administrator shall promulgate final regulations which—
      (A) minimize the disposal of containerized liquid hazardous waste in landfills, and
      (B) minimize the presence of free liquids in containerized hazardous waste to be disposed of in landfills.

Such regulations shall also prohibit the disposal in landfills of liquids that have been absorbed in materials that biodegrade or that release liquids when compressed as might occur during routine landfill operations. Prior to the date on which such final regulations take effect, the requirements (as in effect on April 30, 1983) promulgated under this section by the Administrator shall remain in force and effect to the extent such requirements are applicable to the disposal of containerized liquid hazardous waste, or free liquids contained in hazardous waste, in landfills.
(3) Effective twelve months after November 8, 1984, the placement of any liquid which is not a hazardous waste in a landfill for which a permit is required under section 6925(c) of this title or which is operating pursuant to interim status granted under section 6925(e) of this title is prohibited unless the owner or operator of such landfill demonstrates to the Administrator, or the Administrator determines, that—

(A) the only reasonably available alternative to the placement in such landfill is placement in a landfill or unlined surface impoundment, whether or not permitted under section 6925(c) of this title or operating pursuant to interim status under section 6925(e) of this title, which contains, or may reasonably be anticipated to contain, hazardous waste; and

(B) placement in such owner or operator's landfill will not present a risk of contamination of any underground source of drinking water.

As used in subparagraph (B), the term "underground source of drinking water" has the same meaning as provided in regulations under the Safe Drinking Water Act (title XIV of the Public Health Service Act) [42 U.S.C. 300f et seq.].

(4) No determination made by the Administrator under subsection (d), (e), or (g) of this section regarding any hazardous waste to which such subsection (d), (e), or (g) applies shall affect the prohibition contained in paragraph (1) of this subsection.

(d) Prohibitions on land disposal of specified wastes

(1) Effective 32 months after November 8, 1984 (except as provided in subsection (f) with respect to underground injection into deep injection wells), the land disposal of the hazardous wastes referred to in paragraph (2) is prohibited unless the Administrator determines the prohibition on one or more methods of land disposal of such waste is not required in order to protect human health and the environment for as long as the waste remains hazardous, taking into account—

(A) the long-term uncertainties associated with land disposal,

(B) the goal of managing hazardous waste in an appropriate manner in the first instance, and

(C) the persistence, toxicity, mobility, and propensity to bioaccumulate of such hazardous wastes and their hazardous constituents.

For the purposes of this paragraph, a method of land disposal may not be determined to be protective of human health and the environment for a hazardous waste referred to in paragraph (2) (other than a hazardous waste which has complied with the pretreatment regulations promulgated under subsection (m)), unless, upon application by an interested person, it has been demonstrated to the Administrator, to a reasonable degree of certainty, that there will be no migration of hazardous constituents from the disposal unit or injection zone for as long as the wastes remain hazardous.

(2) Paragraph (1) applies to the following hazardous wastes listed or identified under section 6921 of this title:

(A) Liquid hazardous wastes, including free liquids associated with any solid or sludge, containing free cyanides at concentrations greater than or equal to 1,000 mg/l.

(B) Liquid hazardous wastes, including free liquids associated with any solid or sludge, containing the following metals (or elements) or compounds of these metals (or elements) at concentrations greater than or equal to those specified below:

   (i) arsenic and/or compounds (as As) 500 mg/l;
   (ii) cadmium and/or compounds (as Cd) 100 mg/l;
   (iii) chromium (VI and/or compounds (as Cr VI)) 500 mg/l;
   (iv) lead and/or compounds (as Pb) 500 mg/l;
   (v) mercury and/or compounds (as Hg) 20 mg/l;
   (vi) nickel and/or compounds (as Ni) 134 mg/l;
   (vii) selenium and/or compounds (as Se) 100 mg/l; and
   (viii) thallium and/or compounds (as Th) 130 mg/l.

(C) Liquid hazardous waste having a pH less than or equal to two (2.0).

(D) Liquid hazardous wastes containing polychlorinated biphenyls at concentrations greater than or equal to 50 ppm.

(E) Hazardous wastes containing halogenated organic compounds in total concentration greater than or equal to 1,000 mg/kg.

When necessary to protect human health and the environment, the Administrator shall substitute more stringent concentration levels than the levels specified in subparagraphs (A) through (E).

(3) During the period ending forty-eight months after November 8, 1984, this subsection shall not apply to any disposal of contaminated soil or debris resulting from a response action taken under section 9004 or 9006 of this title or a corrective action required under this subchapter.

(e) Solvents and dioxins

(1) Effective twenty-four months after November 8, 1984 (except as provided in subsection (f) with respect to underground injection into deep injection wells), the land disposal of the hazardous wastes referred to in paragraph (2) is prohibited unless the Administrator determines the prohibition of one or more methods of land disposal of such waste is not required in order to protect human health and the environment for as long as the waste remains hazardous, taking into account the factors referred to in subparagraph (A) through (C) of subsection (d)(1). For the purposes of this paragraph, a method of land disposal may not be determined to be protective of human health and the environment for a hazardous waste referred to in paragraph (2) (other than a hazardous waste which has complied with the pretreatment regulations promulgated under subsection (m)), unless upon application by an interested person it has been demonstrated to the Administrator, to a
reasonable degree of certainty, that there will be no migration of hazardous constituents from the disposal unit or injection zone for as long as the wastes remain hazardous.

(2) The hazardous wastes to which the prohibition under paragraph (1) applies are as follows—

(A) dioxin-containing hazardous wastes numbered F020, F021, F022, and F023 as referred to in the proposed rule published in the Federal Register for April 4, 1983, and

(B) those hazardous wastes numbered F001, F002, F003, F004, and F005 in regulations promulgated by the Administrator under section 6921 of this title (40 C.F.R. 261.31 (July 1, 1983)), as those regulations are in effect on July 1, 1983.

(3) During the period ending forty-eight months after November 8, 1984, this subsection shall not apply to any disposal of contaminated soil or debris resulting from a response action taken under section 9604 or 9606 of this title or a corrective action required under this subchapter.

(f) Disposal into deep injection wells; specified subsection (d) wastes; solvents and dioxins

(1) Not later than forty-five months after November 8, 1984, the Administrator shall complete a review of the disposal of all hazardous wastes referred to in paragraph (2) of subsection (d) and in paragraph (2) of subsection (e) by underground injection into deep injection wells.

(2) Within forty-five months after November 8, 1984, the Administrator shall make a determination regarding the disposal by underground injection into deep injection wells of the hazardous wastes referred to in paragraph (2) of subsection (d) and the hazardous wastes referred to in paragraph (2) of subsection (e). The Administrator shall promulgate final regulations prohibiting the disposal of such wastes into such wells if it may reasonably be determined that such disposal may not be protective of human health and the environment for as long as the waste remains hazardous, taking into account the factors referred to in subparagraphs (A) through (C) of subsection (d)(1). In promulgating such regulations, the Administrator shall consider each hazardous waste referred to in paragraph (2) of subsection (d) or in paragraph (2) of subsection (e) which is prohibited from disposal into such wells by any State.

(3) If the Administrator fails to make a determination under paragraph (2) for any hazardous waste referred to in paragraph (2) of subsection (d) or in paragraph (2) of subsection (e) within forty-five months after November 8, 1984, such hazardous waste shall be prohibited from disposal into any deep injection well.

(4) As used in this subsection, the term "deep injection well" means a well used for the underground injection of hazardous waste other than a well to which section 6979a(a) of this title applies.

(g) Additional land disposal prohibition determinations

(1) Not later than twenty-four months after November 8, 1984, the Administrator shall submit to Congress for

(A) reviewing all hazardous wastes listed (as of November 8, 1984) under section 6921 of this title other than those wastes which are referred to in subsection (d) or (e); and

(B) taking action under paragraph (5) of this subsection with respect to each such hazardous waste.

(2) The Administrator shall base the schedule on a ranking of such listed wastes considering their intrinsic hazard and their volume such that decisions regarding the land disposal of high volume hazardous wastes with high intrinsic hazard shall, to the maximum extent possible, be made by the date forty-five months after November 8, 1984. Decisions regarding low volume hazardous wastes with lower intrinsic hazard shall be made by the date sixty-six months after November 8, 1984.

(3) The preparation and submission of the schedule under this subsection shall not be subject to the Paperwork Reduction Act of 1980. No hearing on the record shall be required for purposes of preparation or submission of the schedule. The schedule shall not be subject to judicial review.

(4) The schedule under this subsection shall require that the Administrator shall promulgate regulations in accordance with paragraph (5) or make a determination under paragraph (5)—

(A) for at least one-third of all hazardous wastes referred to in paragraph (1) by the date forty-five months after November 8, 1984;

(B) for at least two-thirds of all such listed wastes by the date fifty-five months after November 8, 1984; and

(C) for all such listed wastes and for all hazardous wastes identified under section 6921 of this title by the date sixty-six months after November 8, 1984.

In the case of any hazardous waste identified or listed under section 6921 of this title after November 8, 1984, the Administrator shall determine whether such waste shall be prohibited from one or more methods of land disposal in accordance with paragraph (5) within six months after the date of such identification or listing.

(5) Not later than the date specified in the schedule published under this subsection, the Administrator shall promulgate final regulations prohibiting one or more methods of land disposal of the hazardous wastes listed on such schedule except for methods of land disposal which the Administrator determines will be protective of human health and the environment for as long as the waste remains hazardous, taking into account the factors referred to in subparagraphs (A) through (C) of subsection (d)(1). For the purposes of this paragraph, a method of land disposal may not be determined to be protective of human health and the environment (except with respect to a hazardous waste which has complied with the pretreatment regulations promulgated under subsection (m)) unless, upon application by an interested person, it has been demonstrated to the Administrator, to a reasonable degree of certainty, that there will be no migration of hazardous constituents from the disposal unit or injection zone for as long as the wastes remain hazardous.
(6)(A) If the Administrator fails (by the date forty-five months after November 8, 1984) to promulgate regulations or make a determination under paragraph (5) for any hazardous waste which is included in the first one-third of the schedule published under this subsection, such hazardous waste may be disposed of in a landfill or surface impoundment only if—

(i) such facility is in compliance with the requirements of subsection (o) which are applicable to new facilities (relating to minimum technological requirements); and

(ii) prior to such disposal, the generator has certified to the Administrator that such generator has investigated the availability of treatment capacity and has determined that the use of such landfill or surface impoundment is the only practical alternative to treatment currently available to the generator.

The prohibition contained in this subparagraph shall continue to apply until the Administrator promulgates regulations or makes a determination under paragraph (5) for the waste concerned.

(B) If the Administrator fails (by the date 55 months after November 8, 1984) to promulgate regulations or make a determination under paragraph (5) for any hazardous waste which is included in the first two-thirds of the schedule published under this subsection, such hazardous waste may be disposed of in a landfill or surface impoundment only if—

(i) such facility is in compliance with the requirements of subsection (o) which are applicable to new facilities (relating to minimum technological requirements); and

(ii) prior to such disposal, the generator has certified to the Administrator that such generator has investigated the availability of treatment capacity and has determined that the use of such landfill or surface impoundment is the only practical alternative to treatment currently available to the generator.

The prohibition contained in this subparagraph shall continue to apply until the Administrator promulgates regulations or makes a determination under paragraph (5) for the waste concerned.

(C) If the Administrator fails to promulgate regulations, or make a determination under paragraph (5) for any hazardous waste referred to in paragraph (1) within 66 months after November 8, 1984, such hazardous waste shall be prohibited from land disposal.

(7) Solid waste identified as hazardous based solely on one or more characteristics shall not be subject to this subsection, any prohibitions under subsection (d), (e), or (f), or any requirement promulgated under subsection (m) (other than any applicable specific methods of treatment, as provided in paragraph (8)) if the waste—

(A) is treated in a treatment system that subsequently discharges to waters of the United States pursuant to a permit issued under section 1342 of title 33, treated for the purposes of the pretreatment requirements of section 1317 of title 33, or treated in a zero discharge system that, prior to any permanent land disposal, engages in treatment that is equivalent to treatment required under section 1342 of title 33 for discharges to waters of the United States, as determined by the Administrator; and

(B) no longer exhibits a hazardous characteristic prior to management in any land-based solid waste management unit.

(8) Solid waste that otherwise qualifies under paragraph (7) shall nevertheless be required to meet any applicable specific methods of treatment specified for such waste by the Administrator under subsection (m), including those specified in the rule promulgated by the Administrator June 1, 1990, prior to management in a land-based unit as part of a treatment system specified in paragraph (7)(A). No solid waste may qualify under paragraph (7) that would generate toxic gases, vapors, or fumes due to the presence of cyanide when exposed to pH conditions between 2.0 and 12.5.

(9) Solid waste identified as hazardous based on one or more characteristics alone shall not be subject to this subsection, any prohibitions under subsection (d), (e), or (f), or any requirement promulgated under subsection (m) if the waste no longer exhibits a hazardous characteristic at the point of injection in any Class I injection well permitted under section 300h-1 of this title.

(10) Not later than five years after March 26, 1996, the Administrator shall complete a study of hazardous waste managed pursuant to paragraph (7) or (9) to characterize the risks to human health or the environment associated with such management. In conducting this study, the Administrator shall evaluate the extent to which risks are adequately addressed under existing State or Federal programs and whether unaddressed risks could be better addressed under such laws or programs. Upon receipt of additional information or upon completion of such study and as necessary to protect human health and the environment, the Administrator may impose additional requirements under existing Federal laws, including subsection (m)(1), or rely on other State or Federal programs or authorities to address such risks. In promulgating any treatment standards pursuant to subsection (m)(1) under the previous sentence, the Administrator shall take into account the extent to which treatment is occurring in land-based units as part of a treatment system specified in paragraph (7)(A).

(11) Nothing in paragraph (7) or (9) shall be interpreted or applied to restrict any inspection or enforcement authority under the provisions of this chapter.

(h) Variance from land disposal prohibitions

(1) A prohibition in regulations under subsection (d), (e), (f), or (g) shall be effective immediately upon promulgation.

(2) The Administrator may establish an effective date different from the effective date which would otherwise apply under subsection (d), (e), (f), or (g) with respect to a specific hazardous waste which is subject to a prohibition under subsection (d), (e), (f), or (g) or under regulations under subsection (d), (e), (f), or (g) of this section. Any such other effective date shall be established on the basis of the earliest date on which adequate alternative treatment, recovery, or disposal capacity which protects human health and the environment will be available. Any such other effective date shall in no event be later than 2 years after the effective date of the prohibition which would otherwise apply under subsection (d), (e), (f), or (g).

(3) The Administrator, after notice and opportunity for comment and after consultation with appropriate State agencies in all affected States, may on a case-by-case basis grant an extension of the effective date which would otherwise apply under subsection (d), (e), (f), or (g) under paragraph (2) for up to one year, where the applicant demonstrates that there is a
binding contractual commitment to construct or otherwise provide such alternative capacity but due to circumstances beyond the control of such applicant such alternative capacity cannot reasonably be made available by such effective date. Such extension shall be renewable once for no more than one additional year.

(4) Whenever another effective date (hereinafter referred to as a "variance") is established under paragraph (2), or an extension is granted under paragraph (3), with respect to any hazardous waste, during the period for which such variance or extension is in effect, such hazardous waste may be disposed of in a landfill or surface impoundment only if such facility is in compliance with the requirements of subsection (o).

(i) Publication of determination

If the Administrator determines that a method of land disposal will be protective of human health and the environment, he shall promptly publish in the Federal Register notice of such determination, together with an explanation of the basis for such determination.

(j) Storage of hazardous waste prohibited from land disposal

In the case of any hazardous waste which is prohibited from one or more methods of land disposal under this section (or under regulations promulgated by the Administrator under any provision of this section) the storage of such hazardous waste is prohibited unless such storage is solely for the purpose of the accumulation of such quantities of hazardous waste as are necessary to facilitate proper recovery, treatment or disposal.

(k) "Land disposal" defined

For the purposes of this section, the term "land disposal", when used with respect to a specified hazardous waste, shall be deemed to include, but not be limited to, any placement of such hazardous waste in a landfill, surface impoundment, waste pile, injection well, land treatment facility, salt dome formation, salt bed formation, or underground mine or cave.

(l) Ban on dust suppression

The use of waste or used oil or other material, which is contaminated or mixed with dioxin or any other hazardous waste identified or listed under section 6921 of this title (other than a waste identified solely on the basis of ignitability), for dust suppression or road treatment is prohibited.

(m) Treatment standards for wastes subject to land disposal prohibition

(1) Simultaneously with the promulgation of regulations under subsection (d), (e), (f), or (g) prohibiting one or more methods of land disposal of a particular hazardous waste, and as appropriate thereafter, the Administrator shall, after notice and an opportunity for hearings and after consultation with appropriate Federal and State agencies, promulgate regulations specifying those levels or methods of treatment, if any, which substantially diminish the toxicity of the waste or substantially reduce the likelihood of migration of hazardous constituents from the waste so that short-term and long-term threats to human health and the environment are minimized.

(2) If such hazardous waste has been treated to the level or by a method specified in regulations promulgated under this subsection, such waste or residue thereof shall not be subject to any prohibition promulgated under subsection (d), (e), (f), or (g) and may be disposed of in a land disposal facility which meets the requirements of this subchapter. Any regulation promulgated under this subsection for a particular hazardous waste shall become effective on the same date as any applicable prohibition promulgated under subsection (d), (e), (f), or (g).

(n) Air emissions

Not later than thirty months after November 8, 1984, the Administrator shall promulgate such regulations for the monitoring and control of air emissions at hazardous waste treatment, storage, and disposal facilities, including but not limited to open tanks, surface impoundments, and landfills, as may be necessary to protect human health and the environment.

(o) Minimum technological requirements

(1) The regulations under subsection (a) of this section shall be revised from time to time to take into account improvements in the technology of control and measurement. At a minimum, such regulations shall require, and a permit issued pursuant to section 6925(c) of this title after November 8, 1984, by the Administrator or a State shall require—

(A) for each new landfill or surface impoundment, each new landfill or surface impoundment unit at an existing facility, each replacement of an existing landfill or surface impoundment unit, and each lateral expansion of an existing landfill or surface impoundment unit, for which an application for a final determination regarding issuance of a permit under section 6925(c) of this title is received after November 8, 1984—

(i) the installation of two or more liners and a leachate collection system above (in the case of a landfill) and between such liners; and

(ii) ground water monitoring; and

(B) for each incinerator which receives a permit under section 6925(c) of this title after November 8, 1984, the attainment of the minimum destruction and removal efficiency required by regulations in effect on June 24, 1982.

The requirements of this paragraph shall apply with respect to all waste received after the issuance of the permit.

(2) Paragraph (1)(A)(i) shall not apply if the owner or operator demonstrates to the Administrator, and the Administrator finds for such landfill or surface impoundment, that alternative design and operating practices, together with location characteristics, will prevent the migration of any hazardous constituents into the ground water or surface water at least as effectively as such liners and leachate collection systems.

(3) The double-liner requirement set forth in paragraph (1)(A)(i) may be waived by the Administrator for any monofil, if—
(A) such monofill contains only hazardous wastes from foundry furnace emission controls or metal casting molding sand,
(B) such wastes do not contain constituents which would render the wastes hazardous for reasons other than the Extraction Procedure ("EP") toxicity characteristics set forth in regulations under this subchapter, and
(C) such monofill meets the same requirements as are applicable in the case of a waiver under section 6925(j)(2) or (4) of this title.

(4)(A) Not later than thirty months after November 8, 1984, the Administrator shall promulgate standards requiring that new landfill units, surface impoundment units, waste piles, underground tanks and land treatment units for the storage, treatment, or disposal of hazardous waste identified or listed under section 6921 of this title shall be required to utilize approved leak detection systems.
(B) For the purposes of subparagraph (A)—
   (i) the term "approved leak detection system" means a system or technology which the Administrator determines to be capable of detecting leaks of hazardous constituents at the earliest practicable time; and
   (ii) the term "new units" means units on which construction commences after the date of promulgation of regulations under this paragraph.

(5)(A) The Administrator shall promulgate regulations or issue guidance documents implementing the requirements of paragraph (1)(A) within two years after November 8, 1984.
(B) Until the effective date of such regulations or guidance documents, the requirement for the installation of two or more liners may be satisfied by the installation of a top liner designed, operated, and constructed of materials to prevent the migration of any constituent into such liner during the period such facility remains in operation (including any post-closure monitoring period), and a lower liner designed, operated 3 and constructed to prevent the migration of any constituent through such liner during such period. For the purpose of the preceding sentence, a lower liner shall be deemed to satisfy such requirement if it is constructed of at least a 3-foot thick layer of recompacted clay or other natural material with a permeability of no more than 1×10⁻⁷ centimeter per second.
(6) Any permit under section 6925 of this title which is issued for a landfill located within the State of Alabama shall require the installation of two or more liners and a leachate collection system above and between such liners, notwithstanding any other provision of this chapter.
(7) In addition to the requirements set forth in this subsection, the regulations referred to in paragraph (1) shall specify criteria for the acceptable location of new and existing treatment, storage, or disposal facilities as necessary to protect human health and the environment. Within 18 months after November 8, 1984, the Administrator shall publish guidance criteria identifying areas of vulnerable hydrogeology.

(p) Ground water monitoring
   The standards under this section concerning ground water monitoring which are applicable to surface impoundments, waste piles, land treatment units, and landfills shall apply to such a facility whether or not—
   (1) the facility is located above the seasonal high water table;
   (2) two liners and a leachate collection system have been installed at the facility; or
   (3) the owner or operator inspects the liner (or liners) which has been installed at the facility.

This subsection shall not be construed to affect other exemptions or waivers from such standards provided in regulations in effect on November 8, 1984, or as may be provided in revisions to those regulations, to the extent consistent with this subsection. The Administrator is authorized on a case-by-case basis to exempt from ground water monitoring requirements under this section (including subsection (o)) any engineered structure which the Administrator finds does not receive or contain liquid waste (nor waste containing free liquids), is designed and operated to exclude liquid from precipitation or other runoff, utilizes multiple leak detection systems within the outer layer of containment, and provides for continuing operation and maintenance of these leak detection systems during the operating period, closure, and the period required for post-closure monitoring and for which the Administrator concludes on the basis of such findings that there is a reasonable certainty hazardous constituents will not migrate beyond the outer layer of containment prior to the end of the period required for post-closure monitoring.

(q) Hazardous waste used as fuel
   (1) Not later than two years after November 8, 1984, and after notice and opportunity for public hearing, the Administrator shall promulgate regulations establishing such—
      (A) standards applicable to the owners and operators of facilities which produce a fuel—
         (i) from any hazardous waste identified or listed under section 6921 of this title, or
         (ii) from any hazardous waste identified or listed under section 6921 of this title and any other material;
      (B) standards applicable to the owners and operators of facilities which burn, for purposes of energy recovery, any fuel produced as provided in subparagraph (A) or any fuel which otherwise contains any hazardous waste identified or listed under section 6921 of this title; and
      (C) standards applicable to any person who distributes or markets any fuel which is produced as provided in subparagraph (A) or any fuel which otherwise contains any hazardous waste identified or listed under section 6921 of this title;
as may be necessary to protect human health and the environment. Such standards may include any of the requirements set forth in paragraphs (1) through (7) of subsection (a) as may be appropriate. Nothing in this subsection shall be construed to affect or impair the provisions of section 6921(b)(3) of this title. For purposes of this subsection, the term "hazardous waste listed under section 6921 of this title" includes any commercial chemical product which is listed under section 6921 of this title and which, in lieu of its original intended use, is (i) produced for use as (or as a component of) a fuel, (ii) distributed for use as a fuel, or (iii) burned as a fuel.

(2)(A) This subsection, subsection (r), and subsection (s) shall not apply to petroleum refinery wastes containing oil which are converted into petroleum coke at the same facility at which such wastes were generated, unless the resulting coke product would exceed one or more characteristics by which a substance would be identified as a hazardous waste under section 6921 of this title.

(B) The Administrator may exempt from the requirements of this subsection, subsection (r), or subsection (s) facilities which burn de minimis quantities of hazardous waste as fuel, as defined by the Administrator, if the wastes are burned at the same facility at which such wastes are generated; the waste is burned to recover useful energy, as determined by the Administrator on the basis of the design and operating characteristics of the facility and the heating value and other characteristics of the waste; and the waste is burned in a type of device determined by the Administrator to be designed and operated at a destruction and removal efficiency sufficient such that protection of human health and environment is assured.

(C)(i) After November 8, 1984, and until standards are promulgated and in effect under paragraph (2) of this subsection, no fuel which contains any hazardous waste may be burned in any cement kiln which is located within the boundaries of any incorporated municipality with a population greater than five hundred thousand (based on the most recent census statistics) unless such kiln fully complies with regulations (as in effect on November 8, 1984) under this subchapter which are applicable to incinerators.

(ii) Any person who knowingly violates the prohibition contained in clause (i) shall be deemed to have violated section 6928(d)(2) of this title.

(r) Labeling

(1) Notwithstanding any other provision of law, until such time as the Administrator promulgates standards under subsection (q) specifically superseding this requirement, it shall be unlawful for any person who is required to file a notification in accordance with paragraph (1) or (3) of section 6930 of this title to distribute or market any fuel which is produced from any hazardous waste identified or listed under section 6921 of this title, or any fuel which otherwise contains any hazardous waste identified or listed under section 6921 of this title if the invoice or the bill of sale fails—

(A) to bear the following statement: "WARNING: THIS FUEL CONTAINS HAZARDOUS WASTES", and

(B) to list the hazardous wastes contained therein.

Beginning ninety days after November 8, 1984, such statement shall be located in a conspicuous place on every such invoice or bill of sale and shall appear in conspicuous and legible type in contrast by typography, layouts, or color with other printed matter on the invoice or bill of sale.

(2) Unless the Administrator determines otherwise as may be necessary to protect human health and the environment, this subsection shall not apply to fuels produced from petroleum refining waste containing oil if—

(A) such materials are generated and reinserted onsite into the refining process;

(B) contaminants are removed; and

(C) such refining waste containing oil is converted along with normal process streams into petroleum-derived fuel products at a facility at which crude oil is refined into petroleum products and which is classified as a number SIC 2911 facility under the Office of Management and Budget Standard Industrial Classification Manual.

(3) Unless the Administrator determines otherwise as may be necessary to protect human health and the environment, this subsection shall not apply to fuels produced from oily materials, resulting from normal petroleum refining, production and transportation practices, if (A) contaminants are removed; and (B) such oily materials are converted along with normal process streams into petroleum-derived fuel products at a facility at which crude oil is refined into petroleum products and which is classified as a number SIC 2911 facility under the Office of Management and Budget Standard Industrial Classification Manual.

(s) Recordkeeping

Not later than fifteen months after November 8, 1984, the Administrator shall promulgate regulations requiring that any person who is required to file a notification in accordance with subparagraph (1), (2), or (3), of section 6930(a) of this title shall maintain such records regarding fuel blending, distribution, or use as may be necessary to protect human health and the environment.

(t) Financial responsibility provisions

(1) Financial responsibility required by subsection (a) of this section may be established in accordance with regulations promulgated by the Administrator by any one, or any combination, of the following: insurance, guarantee, surety bond, letter of credit, or qualification as a self-insurer. In promulgating requirements under this section, the Administrator is authorized to specify policy or other contractual terms, conditions, or defenses which are necessary or are unacceptable in establishing such evidence of financial responsibility in order to effectuate the purposes of this chapter.

(2) In any case where the owner or operator is in bankruptcy, reorganization, or arrangement pursuant to the Federal Bankruptcy Code or where (with reasonable diligence) jurisdiction in any State court or any Federal Court cannot be obtained over an owner or operator likely to be solvent at the time of judgment, any claim arising from conduct for which evidence of financial responsibility must be provided under this section may be asserted directly against the guarantor providing such evidence of financial responsibility. In the case of any action pursuant to this subsection, such guarantor shall
be entitled to invoke all rights and defenses which would have been available to the owner or operator if any action had been brought against the owner or operator by the claimant and which would have been available to the guarantor if an action had been brought against the guarantor by the owner or operator.

(3) The total liability of any guarantor shall be limited to the aggregate amount which the guarantor has provided as evidence of financial responsibility to the owner or operator under this chapter. Nothing in this subsection shall be construed to limit any other State or Federal statutory, contractual or common law liability of a guarantor to its owner or operator including, but not limited to, the liability of such guarantor for bad faith either in negotiating or in failing to negotiate the settlement of any claim. Nothing in this subsection shall be construed to diminish the liability of any person under section 9607 or 9611 of this title or other applicable law.

(4) For the purpose of this subsection, the term "guarantor" means any person, other than the owner or operator, who provides evidence of financial responsibility for an owner or operator under this section.

(u) Continuing releases at permitted facilities

Standards promulgated under this section shall require, and a permit issued after November 8, 1984, by the Administrator or a State shall require, corrective action for all releases of hazardous waste or constituents from any solid waste management unit at a treatment, storage, or disposal facility seeking a permit under this subchapter, regardless of the time at which waste was placed in such unit. Permits issued under section 6925 of this title shall contain schedules of compliance for such corrective action (where such corrective action cannot be completed prior to issuance of the permit) and assurances of financial responsibility for completing such corrective action.

(v) Corrective action beyond facility boundary

As promptly as practicable after November 8, 1984, the Administrator shall amend the standards under this section regarding corrective action required at facilities for the treatment, storage, or disposal, of hazardous waste listed or identified under section 6921 of this title to require that corrective action be taken beyond the facility boundary where necessary to protect human health and the environment unless the owner or operator of the facility concerned demonstrates to the satisfaction of the Administrator that, despite the owner or operator's best efforts, the owner or operator was unable to obtain the necessary permission to undertake such action. Such regulations shall take effect immediately upon promulgation, notwithstanding section 6930(b) of this title, and shall apply to—

(1) all facilities operating under permits issued under subsection (c), and
(2) all landfills, surface impoundments, and waste pile units (including any new units, replacements of existing units, or lateral expansions of existing units) which receive hazardous waste after July 26, 1982.

Pending promulgation of such regulations, the Administrator shall issue corrective action orders for facilities referred to in paragraphs (1) and (2), on a case-by-case basis, consistent with the purposes of this subsection.

(w) Underground tanks

Not later than March 1, 1985, the Administrator shall promulgate final permitting standards under this section for underground tanks that cannot be entered for inspection. Within forty-eight months after November 8, 1984, such standards shall be modified, if necessary, to cover at a minimum all requirements and standards described in section 6991b of this title.

(x) Mining and other special wastes

If (1) solid waste from the extraction, beneficiation or processing of ores and minerals, including phosphate rock and overburden from the mining of uranium, (2) fly ash waste, bottom ash waste, slag waste, and flue gas emission control waste generated primarily from the combustion of coal or other fossil fuels, or (3) cement kiln dust waste, is subject to regulation under this subchapter, the Administrator is authorized to modify the requirements of subsections (c), (d), (e), (f), (g), (o), and (u) and section 6925(j) of this title, in the case of landfills or surface impoundments receiving such solid waste, to take into account the special characteristics of such wastes, the practical difficulties associated with implementation of such requirements, and site-specific characteristics, including but not limited to the climate, geology, hydrology and soil chemistry at the site, so long as such modified requirements assure protection of human health and the environment.

(y) Munitions

(1) Not later than 6 months after October 6, 1992, the Administrator shall propose, after consulting with the Secretary of Defense and appropriate State officials, regulations identifying when military munitions become hazardous waste for purposes of this subchapter and providing for the safe transportation and storage of such waste. Not later than 24 months after October 6, 1992, and after notice and opportunity for comment, the Administrator shall promulgate such regulations. Any such regulations shall assure protection of human health and the environment.

(2) For purposes of this subsection, the term "military munitions" includes chemical and conventional munitions.


**EDITORIAL NOTES**

**REFERENCES IN TEXT**

36/151

The Safe Drinking Water Act, referred to in subsec. (c)(3), is title XIV of act July 1, 1944, as added Dec. 16, 1974, Pub. L. 93–523, §2(a), 88 Stat. 1660, as amended, which is classified generally to subchapter XII (§300f et seq.) of chapter 6A of this title. For complete classification of this Act to the Code see Short Title note set out under section 201 of this title and Tables.


The Federal Bankruptcy Code, referred to in subsec. (t)(2), probably means a reference to Title 11, Bankruptcy.

**AMENDMENTS**

1996—Subsec. (g)(5). Pub. L. 104–119, §4(3), substituted "subparagraphs (A) through (C)" for "subparagraph (A) through (C)".

Subsec. (g)(7) to (11). Pub. L. 104–119, §2, added pars. (7) to (11).


Subsec. (a)(6). Pub. L. 98–616, §208, inserted "(including financial responsibility for corrective action)".

Subsecs. (b) to (n). Pub. L. 98–616, §201(a), added subsecs. (b) to (n).


Subsecs. (q) to (s). Pub. L. 98–616, §204(b)(1), added subsecs. (q) to (s).


Subsecs. (v), (w). Pub. L. 98–616, §207, added subsecs. (v) and (w).


1980—Pub. L. 96–482 required standards regulations to reflect distinction in requirements appropriate for new facilities and for facilities in existence on date of promulgation of the regulations.

**EXECUTIVE DOCUMENTS**

**TRANSFER OF FUNCTIONS**

For transfer of certain enforcement functions of Administrator or other official of Environmental Protection Agency under this chapter to Federal Inspector, Office of Federal Inspector for the Alaska Natural Gas Transportation System, and subsequent transfer to Secretary of Energy, then to Federal Coordinator for Alaska Natural Gas Transportation Projects, see note set out under section 6903 of this title.

1 See References in Text note below.

2 See References in Text note below.

3 So in original. Probably should be followed by a comma.

§6925. Permits for treatment, storage, or disposal of hazardous waste

(a) Permit requirements

Not later than eighteen months after October 21, 1976, the Administrator shall promulgate regulations requiring each person owning or operating an existing facility or planning to construct a new facility for the treatment, storage, or disposal of hazardous waste identified or listed under this subchapter to have a permit issued pursuant to this section. Such regulations shall take effect on the date provided in section 6930 of this title and upon and after such date the treatment, storage, or disposal of any such hazardous waste and the construction of any new facility for the treatment, storage, or disposal of any such hazardous waste is prohibited except in accordance with such a permit. No permit shall be required under this section
in order to construct a facility if such facility is constructed pursuant to an approval issued by the Administrator under section 2605(e) of title 15 for the incineration of polychlorinated biphenyls and any person owning or operating such a facility may, at any time after operation or construction of such facility has begun, file an application for a permit pursuant to this section authorizing such facility to incinerate hazardous waste identified or listed under this subchapter.

(b) Requirements of permit application

Each application for a permit under this section shall contain such information as may be required under regulations promulgated by the Administrator, including information respecting—

1) estimates with respect to the composition, quantities, and concentrations of any hazardous waste identified or listed under this subchapter, or combinations of any such hazardous waste and any other solid waste, proposed to be disposed of, treated, transported, or stored, and the time, frequency, or rate of which such waste is proposed to be disposed of, treated, transported, or stored; and

2) the site at which such hazardous waste or the products of treatment of such hazardous waste will be disposed of, treated, transported to, or stored.

(c) Permit issuance

1) Upon a determination by the Administrator (or a State, if applicable), of compliance by a facility for which a permit is applied for under this section with the requirements of this section and section 6924 of this title, the Administrator (or the State) shall issue a permit for such facilities. In the event permit applicants propose modification of their facilities, or in the event the Administrator (or the State) determines that modifications are necessary to conform to the requirements under this section and section 6924 of this title, the permit shall specify the time allowed to complete the modifications.

2) (A)(i) Not later than the date four years after November 8, 1984, in the case of each application under this subsection for a permit for a land disposal facility which was submitted before such date, the Administrator shall issue a final permit pursuant to such application or issue a final denial of such application.

(B) Not later than the date eight years after November 8, 1984, in the case of each application for a permit under this subsection for any facility (other than a facility referred to in subparagraph (A)) which was submitted before such date, the Administrator shall issue a final permit pursuant to such application or issue a final denial of such application.

(C) The time periods specified in this paragraph shall also apply in the case of any State which is administering an authorized hazardous waste program under section 6926 of this title. Interim status under subsection (e) shall terminate for each facility referred to in subparagraph (A)(ii) or (B) on the expiration of the five- or eight-year period referred to in subparagraph (A) or (B), whichever is applicable, unless the owner or operator of the facility applies for a final determination regarding the issuance of a permit under this subsection within—

(i) two years after November 8, 1984 (in the case of a facility referred to in subparagraph (A)(ii)), or

(ii) four years after November 8, 1984 (in the case of a facility referred to in subparagraph (B)).

3) Any permit under this section shall be for a fixed term, not to exceed 10 years in the case of any land disposal facility, storage facility, or incinerator or other treatment facility. Each permit for a land disposal facility shall be reviewed five years after date of issuance or reissuance and shall be modified as necessary to assure that the facility continues to comply with the currently applicable requirements of this section and section 6924 of this title. Nothing in this subsection shall preclude the Administrator from reviewing and modifying a permit at any time during its term. Review of any application for a permit renewal shall consider improvements in the state of control and measurement technology as well as changes in applicable regulations. Each permit issued under this section shall contain such terms and conditions as the Administrator (or the State) determines necessary to protect human health and the environment.

(d) Permit revocation

Upon a determination by the Administrator (or by a State, in the case of a State having an authorized hazardous waste program under section 6926 of this title) of noncompliance by a facility having a permit under this chapter with the requirements of this section or section 6924 of this title, the Administrator (or State, in the case of a State having an authorized hazardous waste program under section 6926 of this title) shall revoke such permit.

(e) Interim status

1) Any person who—

(A) owns or operates a facility required to have a permit under this section which facility—

(i) was in existence on November 19, 1980, or

(ii) is in existence on the effective date of statutory or regulatory changes under this chapter that render the facility subject to the requirement to have a permit under this section,

(B) has complied with the requirements of section 6930(a) of this title, and

(C) has made an application for a permit under this section,

shall be treated as having been issued such permit until such time as final administrative disposition of such application is made, unless the Administrator or other plaintiff proves that final administrative disposition of such application has not been made because of the failure of the applicant to furnish information reasonably required or requested in order to process the application. This paragraph shall not apply to any facility which has been previously denied a permit under this section or if authority to operate the facility under this section has been previously terminated.
(2) In the case of each land disposal facility which has been granted interim status under this subsection before November 8, 1984, interim status shall terminate on the date twelve months after November 8, 1984, unless the owner or operator of such facility—

(A) applies for a final determination regarding the issuance of a permit under subsection (c) for such facility before the date twelve months after November 8, 1984; and

(B) certifies that such facility is in compliance with all applicable groundwater monitoring and financial responsibility requirements.

(3) In the case of each land disposal facility which is in existence on the effective date of statutory or regulatory changes under this chapter that render the facility subject to the requirement to have a permit under this section and which is granted interim status under this subsection, interim status shall terminate on the date twelve months after the date on which the facility first becomes subject to such permit requirement unless the owner or operator of such facility—

(A) applies for a final determination regarding the issuance of a permit under subsection (c) for such facility before the date twelve months after the date on which the facility first becomes subject to such permit requirement; and

(B) certifies that such facility is in compliance with all applicable groundwater monitoring and financial responsibility requirements.

(f) Coal mining wastes and reclamation permits

Notwithstanding subsection (a) through (e) of this section, any surface coal mining and reclamation permit covering any coal mining wastes or overburden which has been issued or approved under the Surface Mining Control and Reclamation Act of 1977 [30 U.S.C. 1201 et seq.] shall be deemed to be a permit issued pursuant to this section with respect to the treatment, storage, or disposal of such wastes or overburden. Regulations promulgated by the Administrator under this subchapter shall not be applicable to treatment, storage, or disposal of coal mining wastes and overburden which are covered by such a permit.

(g) Research, development, and demonstration permits

(1) The Administrator may issue a research, development, and demonstration permit for any hazardous waste treatment facility which proposes to utilize an innovative and experimental hazardous waste treatment technology or process for which permit standards for such experimental activity have not been promulgated under this subchapter. Any such permit shall include such terms and conditions as will assure protection of human health and the environment. Such permits—

(A) shall provide for the construction of such facilities, as necessary, and for operation of the facility for not longer than one year (unless renewed as provided in paragraph (4)); and

(B) shall provide for the receipt and treatment by the facility of only those types and quantities of hazardous waste which the Administrator deems necessary for purposes of determining the efficacy and performance capabilities of the technology or process and the effects of such technology or process on human health and the environment, and

(C) shall include such requirements as the Administrator deems necessary to protect human health and the environment (including, but not limited to, requirements regarding monitoring, operation, insurance or bonding, financial responsibility, closure, and remedial action), and such requirements as the Administrator deems necessary regarding testing and providing of information to the Administrator with respect to the operation of the facility.

The Administrator may apply the criteria set forth in this paragraph in establishing the conditions of each permit without separate establishment of regulations implementing such criteria.

(2) For the purpose of expediting review and issuance of permits under this subsection, the Administrator may, consistent with the protection of human health and the environment, modify or waive permit application and permit issuance requirements established in the Administrator's general permit regulations except that there may be no modification or waiver of regulations regarding financial responsibility (including insurance) or of procedures established under section 6974(b)(2) of this title regarding public participation.

(3) The Administrator may order an immediate termination of all operations at the facility at any time he determines that termination is necessary to protect human health and the environment.

(4) Any permit issued under this subsection may be renewed not more than three times. Each such renewal shall be for a period of not more than 1 year.

(h) Waste minimization

Effective September 1, 1985, it shall be a condition of any permit issued under this section for the treatment, storage, or disposal of hazardous waste on the premises where such waste was generated that the permittee certify, no less often than annually, that—

(1) the generator of the hazardous waste has a program in place to reduce the volume or quantity and toxicity of such waste to the degree determined by the generator to be economically practicable; and

(2) the proposed method of treatment, storage, or disposal is that practicable method currently available to the generator which minimizes the present and future threat to human health and the environment.

(i) Interim status facilities receiving wastes after July 26, 1982

The standards concerning ground water monitoring, unsaturated zone monitoring, and corrective action, which are applicable under section 6924 of this title to new landfills, surface impoundments, land treatment units, and waste-pile units required to be permitted under subsection (c) shall also apply to any landfill, surface impoundment, land treatment unit, or waste-pile unit qualifying for the authorization to operate under subsection (e) which receives hazardous waste after July 26, 1982.

(j) Interim status surface impoundments
(1) Except as provided in paragraph (2), (3), or (4), each surface impoundment in existence on November 8, 1984, and qualifying for the authorization to operate under subsection (e) of this section shall not receive, store, or treat hazardous waste after the date four years after November 8, 1984, unless such surface impoundment is in compliance with the requirements of section 6924(o)(1)(A) of this title which would apply to such impoundment if it were new.

(2) Paragraph (1) of this subsection shall not apply to any surface impoundment which (A) has at least one liner, for which there is no evidence that such liner is leaking; (B) is located more than one-quarter mile from an underground source of drinking water; and (C) is in compliance with generally applicable ground water monitoring requirements for facilities with permits under subsection (c) of this section.

(3) Paragraph (1) of this subsection shall not apply to any surface impoundment which (A) contains treated waste water during the secondary or subsequent phases of an aggressive biological treatment facility subject to a permit issued under section 1342 of title 33 (or which holds such treated waste water after treatment and prior to discharge); (B) is in compliance with generally applicable ground water monitoring requirements for facilities with permits under subsection (c) of this section; and (C)(i) is part of a facility in compliance with section 1311(b)(2) of title 33, or (ii) in the case of a facility for which no effluent guidelines required under section 1314(b)(2) of title 33 are in effect and no permit under section 1342(a)(1) of title 33 implementing section 1311(b)(2) of title 33 has been issued, is part of a facility in compliance with a permit under section 1342 of title 33, which is achieving significant degradation of toxic pollutants and hazardous constituents contained in the untreated waste stream and which has identified those toxic pollutants and hazardous constituents in the untreated waste stream to the appropriate permitting authority.

(4) The Administrator (or the State, in the case of a State with an authorized program), after notice and opportunity for comment, may modify the requirements of paragraph (1) for any surface impoundment if the owner or operator demonstrates that such surface impoundment is located, designed and operated so as to assure that there will be no migration of any hazardous constituent into ground water or surface water at any future time. The Administrator or the State shall take into account locational criteria established under section 6924(o)(7) of this title.

(5) The owner or operator of any surface impoundment potentially subject to paragraph (1) who has reason to believe that on the basis of paragraph (2), (3), or (4) such surface impoundment is not required to comply with the requirements of paragraph (1), shall apply to the Administrator (or the State, in the case of a State with an authorized program) not later than twenty-four months after November 8, 1984, for a determination of the applicability of paragraph (1) (in the case of paragraph (2) or (3)) or for a modification of the requirements of paragraph (1) (in the case of paragraph (4)), with respect to such surface impoundment. Such owner or operator shall provide, with such application, evidence pertinent to such decision, including:

(A) an application for a final determination regarding the issuance of a permit under subsection (c) of this section for such facility, if not previously submitted;

(B) evidence as to compliance with all applicable ground water monitoring requirements and the information and analysis from such monitoring;

(C) all reasonably ascertainable evidence as to whether such surface impoundment is leaking; and

(D) in the case of applications under paragraph (2) or (3), a certification by a registered professional engineer with academic training and experience in ground water hydrology that—

(i) under paragraph (2), the liner of such surface impoundment is designed, constructed, and operated in accordance with applicable requirements, such surface impoundment is more than one-quarter mile from an underground source of drinking water and there is no evidence such liner is leaking; or

(ii) under paragraph (3), based on analysis of those toxic pollutants and hazardous constituents that are likely to be present in the untreated waste stream, such impoundment satisfies the conditions of paragraph (3).

In the case of any surface impoundment for which the owner or operator fails to apply under this paragraph within the time provided by this paragraph or paragraph (6), such surface impoundment shall comply with paragraph (1) notwithstanding paragraph (2), (3), or (4). Within twelve months after receipt of such application and evidence and not later than thirty-six months after November 8, 1984, and after notice and opportunity to comment, the Administrator (or, if appropriate, the State) shall advise such owner or operator on the applicability of paragraph (1) to such surface impoundment so as to whether and how the requirements of paragraph (1) shall be modified and applied to such surface impoundment.

(6)(A) In any case in which a surface impoundment becomes subject to paragraph (1) after November 8, 1984, due to the promulgation of additional listings or characteristics for the identification of hazardous waste under section 6921 of this title, the period for compliance in paragraph (1) shall be four years after the date of such promulgation, the period for demonstrations under paragraph (4) and for submission of evidence under paragraph (5) shall be not later than twenty-four months after the date of promulgation, and the period for the Administrator (or, if appropriate, the State) to advise such owners or operators under paragraph (5) shall be not later than thirty-six months after the date of promulgation.

(B) In any case in which a surface impoundment is initially determined to be excluded from the requirements of paragraph (1) but due to a change in condition (including the existence of a leak) no longer satisfies the provisions of paragraph (2), (3), or (4) and therefore becomes subject to paragraph (1), the period for compliance in paragraph (1) shall be two years after the date of discovery of such change of condition, or in the case of a surface impoundment excluded under paragraph (3) three years after such date of discovery.

(7)(A) The Administrator shall study and report to the Congress on the number, range of size, construction, likelihood of hazardous constituents migrating into ground water, and potential threat to human health and the environment of existing surface impoundments excluded by paragraph (3) from the requirements of paragraph (1). Such report shall address the need, feasibility, and estimated costs of subjecting such existing surface impoundments to the requirements of paragraph (1).

(B) In the case of any existing surface impoundment or class of surface impoundments from which the Administrator (or the State, in the case of a State with an authorized program) determines hazardous constituents are likely to migrate into
ground water, the Administrator (or if appropriate, the State) is authorized to impose such requirements as may be necessary to protect human health and the environment, including the requirements of section 6924(o) of this title which would apply to such impoundments if they were new.

(C) In the case of any surface impoundment excluded by paragraph (3) from the requirements of paragraph (1) which is subsequently determined to be leaking, the Administrator (or, if appropriate, the State) shall require compliance with paragraph (1), unless the Administrator (or, if appropriate, the State) determines that such compliance is not necessary to protect human health and the environment.

(8) In the case of any surface impoundment in which the liners and leak detection system have been installed pursuant to the requirements of paragraph (1) and in good faith compliance with section 6924(o) of this title and the Administrator's regulations and guidance documents governing liners and leak detection systems, no liner or leak detection system which is different from that which was so installed pursuant to paragraph (1) shall be required for such unit by the Administrator when issuing the first permit under this section to such facility. Nothing in this paragraph shall preclude the Administrator from requiring installation of a new liner when the Administrator has reason to believe that any liner installed pursuant to the requirements of this subsection is leaking.

(9) In the case of any surface impoundment which has been excluded by paragraph (2) on the basis of a liner meeting the definition under paragraph (12)(A)(ii), at the closure of such impoundment the Administrator shall require the owner or operator of such impoundment to remove or decontaminate all waste residues, all contaminated liner material, and contaminated soil to the extent practicable. If all contaminated soil is not removed or decontaminated, the owner or operator of such impoundment shall be required to comply with appropriate post-closure requirements, including but not limited to ground water monitoring and corrective action.

(10) Any incremental cost attributable to the requirements of this subsection or section 6924(o) of this title shall not be considered by the Administrator (or the State, in the case of a State with an authorized program under section 1342 of title 33)—

(A) in establishing effluent limitations and standards under section 1311, 1314, 1316, 1317, or 1342 of title 33 based on effluent limitations guidelines and standards promulgated any time before twelve months after November 8, 1984; or

(B) in establishing any other effluent limitations to carry out the provisions of section 1311, 1317, or 1342 of title 33 on or before October 1, 1986.

(11)(A) If the Administrator allows a hazardous waste which is prohibited from one or more methods of land disposal under subsection (d), (e), or (g) of section 6924 of this title (or under regulations promulgated by the Administrator under such subsections) to be placed in a surface impoundment (which is operating pursuant to interim status) for storage or treatment, such impoundment shall meet the requirements that are applicable to new surface impoundments under section 6924(o)(1) of this title, unless such impoundment meets the requirements of paragraph (2) or (4).

(B) In the case of any hazardous waste which is prohibited from one or more methods of land disposal under subsection (d), (e), or (g) of section 6924 of this title (or under regulations promulgated by the Administrator under such subsection) the placement or maintenance of such hazardous waste in a surface impoundment for treatment is prohibited as of the effective date of such prohibition unless the treatment residues which are hazardous are, at a minimum, removed for subsequent management within one year of the entry of the waste into the surface impoundment.

(12)(A) For the purposes of paragraph (2)(A) of this subsection, the term "liner" means—

(i) a liner designed, constructed, installed, and operated to prevent hazardous waste from passing into the liner at any time during the active life of the facility; or

(ii) a liner designed, constructed, installed, and operated to prevent hazardous waste from migrating beyond the liner to adjacent subsurface soil, ground water, or surface water at any time during the active life of the facility.

(B) For the purposes of this subsection, the term "aggressive biological treatment facility" means a system of surface impoundments in which the initial impoundment of the secondary treatment segment of the facility utilizes intense mechanical aeration to enhance biological activity to degrade waste water pollutants and

(i) the hydraulic retention time in such initial impoundment is no longer than 5 days under normal operating conditions, on an annual average basis;

(ii) the hydraulic retention time in such initial impoundment is no longer than thirty days under normal operating conditions, on an annual average basis: Provided, That the sludge in such impoundment does not constitute a hazardous waste as identified by the extraction procedure toxicity characteristic in effect on November 8, 1984; or

(iii) such system utilizes activated sludge treatment in the first portion of secondary treatment.

(C) For the purposes of this subsection, the term "underground source or drinking water" has the same meaning as provided in regulations under the Safe Drinking Water Act (title XIV of the Public Health Service Act [42 U.S.C. 300f et seq.]).

(13) The Administrator may modify the requirements of paragraph (1) in the case of a surface impoundment for which the owner or operator, prior to October 1, 1984, has entered into, and is in compliance with, a consent order, decree, or agreement with the Administrator or a State with an authorized program mandating corrective action with respect to such surface impoundment that provides a degree of protection of human health and the environment which is at a minimum equivalent to that provided by paragraph (1).

EDITORIAL NOTES

REFERENCES IN TEXT


The Safe Drinking Water Act, referred to in subsec. (j)(12)(C), is title XIV of act July 1, 1944, as added Dec. 16, 1974, Pub. L. 93–523, §2(a), 88 Stat. 1660, as amended, which is classified generally to subchapter XII (§300f et seq.) of chapter 6A of this title. For complete classification of this Act to the Code see Short Title note set out under section 201 of this title and Tables.

Amendments


1984—Subsec. (a). Pub. L. 98–616, §211, substituted "an existing facility or planning to construct a new" for "a", inserted "and the construction of any new facility for the treatment, storage, or disposal of any such hazardous waste", and inserted at end "No permit shall be required under this section in order to construct a facility if such facility is constructed pursuant to an approval issued by the Administrator under section 2605(e) of title 15 for the incineration of polychlorinated [sic] biphenyls and any person owning or operating such a facility may, at any time after operation or construction of such facility has begun, file an application for a permit pursuant to this section authorizing such facility to incinerate hazardous waste identified or listed under this subchapter."

Subsec. (c)(1), (2). Pub. L. 98–616, §213(c), designated existing provisions as par. (1) and added par. (2).


Subsec. (e). Pub. L. 98–616, §213(a), designated existing provisions as par. (1), redesignated former pars. (1), (2), and (3) thereof as subpars. (A), (B), and (C), respectively, designated existing provisions of previously redesignated subpar. (A) as cl. (i) and added cl. (ii), inserted "This paragraph shall not apply to any facility which has been previously denied a permit under this section or if authority to operate the facility under this section has been previously terminated." to closing provisions of par. (1), and added pars. (2) and (3).

Subsec. (g). Pub. L. 98–616, §214(a), added subsec. (g).


1978—Subsec (a). Pub. L. 95–609 inserted "treatment, storage, or" after "and after such date the".

Executive Documents

TRANSFER OF FUNCTIONS

For transfer of certain enforcement functions of Administrator or other official of Environmental Protection Agency under this chapter to Federal Inspector, Office of Federal Inspector for the Alaska Natural Gas Transportation System, and subsequent transfer to Secretary of Energy, then to Federal Coordinator for Alaska Natural Gas Transportation Projects, see note set out under section 6903 of this title.

1 So in original. Probably should be "responsibility".

2 So in original. Probably should be "constituent".

3 So in original. Probably should be "of".

§6926. Authorized State hazardous waste programs

(a) Federal guidelines

Not later than eighteen months after October 21, 1976, the Administrator, after consultation with State authorities, shall promulgate guidelines to assist States in the Development of State hazardous waste programs.

(b) Authorization of State program
Any State which seeks to administer and enforce a hazardous waste program pursuant to this subchapter may develop and, after notice and opportunity for public hearing, submit to the Administrator an application, in such form as he shall require, for authorization of such program. Within ninety days following submission of an application under this subsection, the Administrator shall issue a notice as to whether or not he expects such program to be authorized, and within ninety days following such notice (and after opportunity for public hearing) he shall publish his findings as to whether or not the conditions listed in items (1), (2), and (3) below have been met. Such State is authorized to carry out such program in lieu of the Federal program under this subchapter in such State and to issue and enforce permits for the storage, treatment, or disposal of hazardous waste (and to enforce permits deemed to have been issued under section 6935(d)(1) of this title) unless, within ninety days following submission of the application the Administrator notifies such State that such program may not be authorized and, within ninety days following such notice and after opportunity for public hearing, he finds that (1) such State program is not equivalent to the Federal program under this subchapter, (2) such program is not consistent with the Federal or State programs applicable in other States, or (3) such program does not provide adequate enforcement of compliance with the requirements of this subchapter. In authorizing a State program, the Administrator may base his findings on the Federal program in effect one year prior to submission of a State’s application or in effect on January 26, 1983, whichever is later.

(c) Interim authorization

(1) Any State which has in existence a hazardous waste program pursuant to State law before the date ninety days after the date of promulgation of regulations under sections 6922, 6923, 6924, and 6925 of this title, may submit to the Administrator evidence of such existing program and may request a temporary authorization to carry out such program under this subchapter. The Administrator shall, if the evidence submitted shows the existing State program to be substantially equivalent to the Federal program under this subchapter, grant an interim authorization to the State to carry out such program in lieu of the Federal program pursuant to this subchapter for a period ending no later than January 31, 1986.

(2) The Administrator shall, by rule, establish a date for the expiration of interim authorization under this subsection.

(3) Pending interim or final authorization of a State program for any State which reflects the amendments made by the Hazardous and Solid Waste Amendments of 1984, the State may enter into an agreement with the Administrator under which the State may assist in the administration of the requirements and prohibitions which take effect pursuant to such Amendments.

(4) In the case of a State permit program for any State which is authorized under subsection (b) or under this subchapter, until such program is amended to reflect the amendments made by the Hazardous and Solid Waste Amendments of 1984 and such program amendments receive interim or final authorization, the Administrator shall have the authority in such State to issue or deny permits or those portions of permits affected by the requirements and prohibitions established by the Hazardous and Solid Waste Amendments of 1984. The Administrator shall coordinate with States the procedures for issuing such permits.

(d) Effect of State permit

Any action taken by a State under a hazardous waste program authorized under this section shall have the same force and effect as action taken by the Administrator under this subchapter.

(e) Withdrawal of authorization

Whenever the Administrator determines after public hearing that a State is not administering and enforcing a program authorized under this section in accordance with requirements of this section, he shall so notify the State and, if appropriate corrective action is not taken within a reasonable time, not to exceed ninety days, the Administrator shall withdraw authorization of such program and establish a Federal program pursuant to this subchapter. The Administrator shall not withdraw authorization of any such program unless he shall first have notified the State, and made public, in writing, the reasons for such withdrawal.

(f) Availability of information

No State program may be authorized by the Administrator under this section unless—

(1) such program provides for the public availability of information obtained by the State regarding facilities and sites for the treatment, storage, and disposal of hazardous waste; and

(2) such information is available to the public in substantially the same manner, and to the same degree, as would be the case if the Administrator was carrying out the provisions of this subchapter in such State.

(g) Amendments made by 1984 act

(1) Any requirement or prohibition which is applicable to the generation, transportation, treatment, storage, or disposal of hazardous waste and which is imposed under this subchapter pursuant to the amendments made by the Hazardous and Solid Waste Amendments of 1984 shall take effect in each State having an interim or finally authorized State program on the same date as such requirement takes effect in other States. The Administrator shall carry out such requirement directly in each such State unless the State program is finally authorized (or is granted interim authorization as provided in paragraph (2)) with respect to such requirement.

(2) Any State which, before November 8, 1984, has an existing hazardous waste program which has been granted interim or final authorization under this section may submit to the Administrator evidence that such existing program contains (or has been amended to include) any requirement which is substantially equivalent to a requirement referred to in paragraph (1) and may request interim authorization to carry out that requirement under this subchapter. The Administrator shall, if the evidence submitted shows the State requirement to be substantially equivalent to the requirement referred to in paragraph (1), grant an interim authorization to the State to carry out such requirement in lieu of direct administration in the State by the Administrator of such requirement.
(h) State programs for used oil

In the case of used oil which is not listed or identified under this subchapter as a hazardous waste but which is regulated under section 6935 of this title, the provisions of this section regarding State programs shall apply in the same manner and to the same extent as such provisions apply to hazardous waste identified or listed under this subchapter.


EDITORIAL NOTES

REFERENCES IN TEXT

Section 6935(d)(1) of this title, referred to in subsec. (b), was in the original a reference to section 3012(d)(1) of Pub. L. 89–272, which was renumbered section 3014(d)(1) of Pub. L. 98–616 and is classified to section 6935(d)(1) of this title.

The Hazardous and Solid Waste Amendments of 1984, referred to in subsecs. (c)(3), (4), and (g), is Pub. L. 98–616, Nov. 8, 1984, 98 Stat. 3221, which amended this chapter. For complete classification of this Act to the Code, see Short Title of 1984 Amendment note set out under section 6901 of this title and Tables.

AMENDMENTS


1984—Subsec. (b). Pub. L. 98–616, §§225, 241(b)(2), inserted "(and to enforce permits deemed to have been issued under section 6935(d)(1) of this title)", and inserted provision at end that in authorizing a State program, the Administrator may base his findings on the Federal program in effect one year prior to submission of a State's application or in effect on January 26, 1983, whichever is later.

Subsec. (c)(1). Pub. L. 98–616, §227(1), (2), designated existing provisions as par. (1) and substituted "period ending no later than January 31, 1986" for "twenty-four month period beginning on the date six months after the date of promulgation of regulations under sections 6922 through 6925 of this title".

Subsec. (c)(2) to (4). Pub. L. 98–616, §227(3), added par. (2) to (4).


Subsec. (g). Pub. L. 98–616, §228, added subsec. (g).

1978—Subsec. (c). Pub. L. 95–609 substituted "of" for "required for" wherever appearing and "may submit" for "submit".

STATUTORY NOTES AND RELATED SUBSIDIARIES

EFFECTIVE DATE OF 1984 AMENDMENT

Pub. L. 98–616, title II, §226(b), Nov. 8, 1984, 98 Stat. 3254, provided that: "The amendment made by subsection (a) [enacting subsec. (f) of this section] shall apply with respect to State programs authorized under section 3006 [this section] before, on, or after the date of enactment of the Hazardous and Solid Waste Amendments of 1984 [Nov. 8, 1984]."

EXECUTIVE DOCUMENTS

TRANSFER OF FUNCTIONS

For transfer of certain enforcement functions of Administrator or other official of Environmental Protection Agency under this chapter to Federal Inspector, Office of Federal Inspector for the Alaska Natural Gas Transportation System, and subsequent transfer to Secretary of Energy, then to Federal Coordinator for Alaska Natural Gas Transportation Projects, see note set out under section 6903 of this title.

1 See References in Text note below.

§6927. Inspections

(a) Access entry

For purposes of developing or assisting in the development of any regulation or enforcing the provisions of this chapter, any person who generates, stores, treats, transports, disposes of, or otherwise handles or has handled hazardous wastes shall, upon request of any officer, employee or representative of the Environmental Protection Agency, duly designated by the Administrator, or upon request of any duly designated officer, employee or representative of a State having an authorized hazardous waste program, furnish information relating to such wastes and permit such person at all reasonable times to have access to, and to copy all records relating to such wastes. For the purposes of developing or assisting in the
development of any regulation or enforcing the provisions of this chapter, such officers, employees or representatives are authorized—

(1) to enter at reasonable times any establishment or other place where hazardous wastes are or have been generated, stored, treated, disposed of, or transported from;

(2) to inspect and obtain samples from any person of any such wastes and samples of any containers or labeling for such wastes.

Each such inspection shall be commenced and completed with reasonable promptness. If the officer, employee or representative obtains any samples, prior to leaving the premises, he shall give to the owner, operator, or agent in charge a receipt describing the sample obtained and if requested a portion of each such sample equal in volume or weight to the portion retained. If any analysis is made of such samples, a copy of the results of such analysis shall be furnished promptly to the owner, operator, or agent in charge.

(b) Availability to public

(1) Any records, reports, or information (including records, reports, or information obtained by representatives of the Environmental Protection Agency) obtained from any person under this section shall be available to the public, except that upon a showing satisfactory to the Administrator (or the State, as the case may be) by any person that records, reports, or information, or particular part thereof, to which the Administrator (or the State, as the case may be) or any officer, employee or representative thereof has access under this section if made public, would divulge information entitled to protection under section 1905 of title 18, such information or particular portion thereof shall be considered confidential in accordance with the purposes of that section, except that such record, report, document, or information may be disclosed to other officers, employees, or authorized representatives of the United States concerned with carrying out this chapter, or when relevant in any proceeding under this chapter.

(2) Any person not subject to the provisions of section 1905 of title 18 who knowingly and willfully divulges or discloses any information entitled to protection under this subsection shall, upon conviction, be subject to a fine of not more than $5,000 or to imprisonment not to exceed one year, or both.

(3) In submitting data under this chapter, a person required to provide such data may—

(A) designate the data which such person believes is entitled to protection under this subsection, and

(B) submit such designated data separately from other data submitted under this chapter.

A designation under this paragraph shall be made in writing and in such manner as the Administrator may prescribe.

(4) Notwithstanding any limitation contained in this section or any other provision of law, all information reported to, or otherwise obtained by, the Administrator (or any representative of the Administrator) under this chapter shall be made available, upon written request of any duly authorized committee of the Congress, to such committee.

(c) Federal facility inspections

The Administrator shall undertake on an annual basis a thorough inspection of each facility for the treatment, storage, or disposal of hazardous waste which is owned or operated by a department, agency, or instrumentality of the United States to enforce its compliance with this subchapter and the regulations promulgated thereunder. Any State with an authorized hazardous waste program also may conduct an inspection of any such facility for purposes of enforcing the facility’s compliance with the State hazardous waste program. The records of such inspections shall be available to the public as provided in subsection (b). The department, agency, or instrumentality owning or operating each such facility shall reimburse the Environmental Protection Agency for the costs of the inspection of the facility. With respect to the first inspection of each such facility occurring after October 6, 1992, the Administrator shall conduct a comprehensive ground water monitoring evaluation at the facility, unless such an evaluation was conducted during the 12-month period preceding October 6, 1992.

(d) State-operated facilities

The Administrator shall annually undertake a thorough inspection of every facility for the treatment, storage, or disposal of hazardous waste which is operated by a State or local government for which a permit is required under section 6925 of this title. The records of such inspection shall be available to the public as provided in subsection (b).

(e) Mandatory inspections

(1) The Administrator (or the State in the case of a State having an authorized hazardous waste program under this subchapter) shall commence a program to thoroughly inspect every facility for the treatment, storage, or disposal of hazardous waste for which a permit is required under section 6925 of this title no less often than every two years as to its compliance with this subchapter (and the regulations promulgated under this subchapter). Such inspections shall commence not later than twelve months after November 8, 1984. The Administrator shall, after notice and opportunity for public comment, promulgate regulations governing the minimum frequency and manner of such inspections, including the manner in which records of such inspections shall be maintained and the manner in which reports of such inspections shall be filed. The Administrator may distinguish between classes and categories of facilities commensurate with the risks posed by each class or category.

(2) Not later than six months after November 8, 1984, the Administrator shall submit to the Congress a report on the potential for inspections of hazardous waste treatment, storage, or disposal facilities by nongovernmental inspectors as a supplement to inspections conducted by officers, employees, or representatives of the Environmental Protection Agency or States having authorized hazardous waste programs or operating under a cooperative agreement with the Administrator. Such report shall be prepared in cooperation with the States, insurance companies offering environmental impairment insurance, independent companies providing inspection services, and other such groups as appropriate. Such report shall
contain recommendations on provisions and requirements for a program of private inspections to supplement governmental inspections.


EDITORIAL NOTES

AMENDMENTS

1992—Subsec. (c). Pub. L. 102–386 in first sentence substituted "The Administrator shall undertake" for "Beginning twelve months after November 8, 1984, the Administrator shall, or in the case of a State with an authorized hazardous waste program the State may, undertake" and "department, agency, or instrumentality of the United States" for "Federal agency", inserted after first sentence "Any State with an authorized hazardous waste program also may conduct an inspection of any such facility for purposes of enforcing the facility's compliance with the State hazardous waste program.", and inserted at end "The department, agency, or instrumentality owning or operating each such facility shall reimburse the Environmental Protection Agency for the costs of the inspection of the facility. With respect to the first inspection of each such facility occurring after October 6, 1992, the Administrator shall conduct a comprehensive ground water monitoring evaluation at the facility, unless such an evaluation was conducted during the 12-month period preceding October 6, 1992."


1980—Subsec. (a). Pub. L. 96–482, §12(a), substituted "chapter" for "subchapter", "any officer, employee or representative" for "any officer or employee", "duly designated officer, employee or representative" for "duly designated officer employee", "such officers, employees or representatives" for "such officers or employees", "furnish information relating to such wastes and permit" for "furnish or permit", and "officer, employee or representative obtains" for "officer or employee obtains", struck out "maintained by any person" after "establishment or other place", substituted "officer, employee or representative obtains" for "officer or employee obtains", and inserted "or has handled" after "otherwise handles" and "or have been" after "where hazardous wastes are".

Subsec. (b)(1). Pub. L. 96–482, §12(b)(1)–(3), designated existing provisions as par. (1), inserted "or any officer, employee or representative thereof before "has access under this section" and substituted "such information or particular portion thereof shall be considered" for "the Administrator (or the State, as the case may be) shall consider such information or portion thereof"

Pub. L. 96–482, §12(b)(4), as modified by Pub. L. 98–616, §502(a), inserted "(including records, reports, or information obtained by representatives of the Environmental Protection Agency)" after "information".

Subsec. (b)(2) to (4). Pub. L. 96–482, §12(b)(3), added pars. (2) to (4).

1978—Subsec. (a)(1). Pub. L. 95–609 substituted "disposed of, or transported from" for "or disposed of".

EXECUTIVE DOCUMENTS

TRANSFER OF FUNCTIONS

For transfer of certain enforcement functions of Administrator or other official of Environmental Protection Agency under this chapter to Federal Inspector, Office of Federal Inspector for the Alaska Natural Gas Transportation System, and subsequent transfer to Secretary of Energy, then to Federal Coordinator for Alaska Natural Gas Transportation Projects, see note set out under section 6903 of this title.

§6928. Federal enforcement

(a) Compliance orders

(1) Except as provided in paragraph (2), whenever on the basis of any information the Administrator determines that any person has violated or is in violation of any requirement of this subchapter, the Administrator may issue an order assessing a civil penalty for any past or current violation, requiring compliance immediately or within a specified time period, or both, or the Administrator may commence a civil action in the United States district court in the district in which the violation occurred for appropriate relief, including a temporary or permanent injunction.

(2) In the case of a violation of any requirement of this subchapter where such violation occurs in a State which is authorized to carry out a hazardous waste program under section 6926 of this title, the Administrator shall give notice to the State in which such violation has occurred prior to issuing an order or commencing a civil action under this section.
(3) Any order issued pursuant to this subsection may include a suspension or revocation of any permit issued by the Administrator or a State under this subchapter and shall state with reasonable specificity the nature of the violation. Any penalty assessed in the order shall not exceed $25,000 per day of noncompliance for each violation of a requirement of this subchapter. In assessing such a penalty, the Administrator shall take into account the seriousness of the violation and any good faith efforts to comply with applicable requirements.

(b) Public hearing

Any order issued under this section shall become final unless, no later than thirty days after the order is served, the person or persons named therein request a public hearing. Upon such request the Administrator shall promptly conduct a public hearing. In connection with any proceeding under this section the Administrator may issue subpoenas for the attendance and testimony of witnesses and the production of relevant papers, books, and documents, and may promulgate rules for discovery procedures.

(c) Violation of compliance orders

If a violator fails to take corrective action within the time specified in a compliance order, the Administrator may assess a civil penalty of not more than $25,000 for each day of continued noncompliance with the order and the Administrator may suspend or revoke any permit issued to the violator (whether issued by the Administrator or the State).

(d) Criminal penalties

Any person who—

1. knowingly transports or causes to be transported any hazardous waste identified or listed under this subchapter to a facility which does not have a permit under this subchapter, or pursuant to title I of the Marine Protection, Research, and Sanctuaries Act (86 Stat. 1052) [33 U.S.C. 1411 et seq.;

2. knowingly treats, stores, or disposes of any hazardous waste identified or listed under this subchapter—

   (A) without a permit under this subchapter or pursuant to title I of the Marine Protection, Research, and Sanctuaries Act (86 Stat. 1052) [33 U.S.C. 1411 et seq.; or

   (B) in knowing violation of any material condition or requirement of such permit; or

   (C) in knowing violation of any material condition or requirement of any applicable interim status regulations or standards;

3. knowingly omits material information or makes any false material statement or representation in any application, label, manifest, record, report, permit, or other document filed, maintained, or used for purposes of compliance with regulations promulgated by the Administrator (or by a State in the case of an authorized State program) under this subchapter;

4. knowingly generates, stores, treats, transports, disposes of, exports, or otherwise handles any hazardous waste or any used oil not identified or listed as a hazardous waste under this subchapter (whether such activity took place before or takes place after November 8, 1984) and who knowingly destroys, alters, conceals, or fails to file any record, application, manifest, report, or other document required to be maintained or filed for purposes of compliance with regulations promulgated by the Administrator (or by a State in the case of an authorized State program) under this subchapter;

5. knowingly transports without a manifest, or causes to be transported without a manifest, any hazardous waste or any used oil not identified or listed as a hazardous waste under this subchapter required by regulations promulgated under this subchapter (or by a State in the case of a State program authorized under this subchapter) to be accompanied by a manifest;

6. knowingly exports a hazardous waste identified or listed under this subchapter (A) without the consent of the receiving country or, (B) where there exists an international agreement between the United States and the government of the receiving country establishing notice, export, and enforcement procedures for the transportation, treatment, storage, and disposal of hazardous wastes, in a manner which is not in conformance with such agreement; or

7. knowingly stores, treats, transports, or causes to be transported, disposes of, or otherwise handles any used oil not identified or listed as a hazardous waste under this subchapter—

   (A) in knowing violation of any material condition or requirement of a permit under this subchapter; or

   (B) in knowing violation of any material condition or requirement of any applicable regulations or standards under this chapter;

shall, upon conviction, be subject to a fine of not more than $50,000 for each day of violation, or imprisonment not to exceed two years (five years in the case of a violation of paragraph (1) or (2)), or both. If the conviction is for a violation committed after a first conviction of such person under this paragraph, the maximum punishment under the respective paragraph shall be doubled with respect to both fine and imprisonment.

(e) Knowing endangerment

Any person who knowingly transports, treats, stores, disposes of, or exports any hazardous waste identified or listed under this subchapter or used oil not identified or listed as a hazardous waste under this subchapter in violation of paragraph (1), (2), (3), (4), (5), (6), or (7) of subsection (d) of this section who knows at that time that he thereby places another person in imminent danger of death or serious bodily injury, shall, upon conviction, be subject to a fine of not more than $250,000 or imprisonment for not more than fifteen years, or both. A defendant that is an organization shall, upon conviction of violating this subsection, be subject to a fine of not more than $1,000,000.

(f) Special rules

For the purposes of subsection (e)—
(1) A person's state of mind is knowing with respect to—
   (A) his conduct, if he is aware of the nature of his conduct;
   (B) an existing circumstance, if he is aware or believes that the circumstance exists; or
   (C) a result of his conduct, if he is aware or believes that his conduct is substantially certain to cause danger of death or serious bodily injury.

(2) In determining whether a defendant who is a natural person knew that his conduct placed another person in imminent danger of death or serious bodily injury—
   (A) the person is responsible only for actual awareness or actual belief that he possessed; and
   (B) knowledge possessed by a person other than the defendant but not by the defendant himself may not be attributed to the defendant;

Provided. That in proving the defendant's possession of actual knowledge, circumstantial evidence may be used, including evidence that the defendant took affirmative steps to shield himself from relevant information.

(3) It is an affirmative defense to a prosecution that the conduct charged was consented to by the person endangered and that the danger and conduct charged were reasonably foreseeable hazards of—
   (A) an occupation, a business, or a profession; or
   (B) medical treatment or medical or scientific experimentation conducted by professionally approved methods and such other person had been made aware of the risks involved prior to giving consent.

The defendant may establish an affirmative defense under this subsection by a preponderance of the evidence.

(4) All general defenses, affirmative defenses, and bars to prosecution that may apply with respect to other Federal criminal offenses may apply under subsection (e) and shall be determined by the courts of the United States according to the principles of common law as they may be interpreted in the light of reason and experience. Concepts of justification and excuse applicable under this section may be developed in the light of reason and experience.

(5) The term "organization" means a legal entity, other than a government, established, or organized for any purpose, and such term includes a corporation, company, association, firm, partnership, joint stock company, foundation, institution, trust, society, union, or any other association of persons.

(6) The term "serious bodily injury" means—
   (A) bodily injury which involves a substantial risk of death;
   (B) unconsciousness;
   (C) extreme physical pain;
   (D) protracted and obvious disfigurement; or
   (E) protracted loss or impairment of the function of a bodily member, organ, or mental faculty.

(g) Civil penalty
Any person who violates any requirement of this subchapter shall be liable to the United States for a civil penalty in an amount not to exceed $25,000 for each such violation. Each day of such violation shall, for purposes of this subsection, constitute a separate violation.

(h) Interim status corrective action orders
(1) Whenever on the basis of any information the Administrator determines that there is or has been a release of hazardous waste into the environment from a facility authorized to operate under section 6925(e) of this title, the Administrator may issue an order requiring corrective action or such other response measure as he deems necessary to protect human health or the environment or the Administrator may commence a civil action in the United States district court in the district in which the facility is located for appropriate relief, including a temporary or permanent injunction.

(2) Any order issued under this subsection may include a suspension or revocation of authorization to operate under section 6925(e) of this title, shall state with reasonable specificity the nature of the required corrective action or other response measure, and shall specify a time for compliance. If any person named in an order fails to comply with the order, the Administrator may assess, and such person shall be liable to the United States for, a civil penalty in an amount not to exceed $25,000 for each day of noncompliance with the order.


EDITORIAL NOTES

REFERENCES IN TEXT


AMENDMENTS
1986—Subsec. (d)(4). Pub. L. 99–499, §205(i)(1), inserted "or any used oil not identified or listed as a hazardous waste under this subchapter".

Subsec. (d)(5). Pub. L. 99–499, §205(i)(1), (2), inserted "or any used oil not identified or listed as a hazardous waste under this subchapter" and struck out "; or" after "accompanied by a manifest".

Subsec. (d)(6). Pub. L. 99–499, §205(i)(3), inserted at end "; or".


Subsec. (e). Pub. L. 99–499, §205(i)(5), inserted "or used oil not identified or listed as a hazardous waste under this subchapter" and substituted "(5), (6), or (7)" for "(5), or (6)".

1984—Subsec. (a)(1). Pub. L. 98–616, §403(d)(1), in amending par. (1) generally, expanded authority of Administrator by empowering him to determine that a person "has violated" a requirement of this subchapter, and to assess a civil penalty for a past or current violation.

Subsec. (a)(3). Pub. L. 98–616, §403(d)(2), in amending par. (3) generally, substituted provision that any order issued pursuant to this subsection may include a suspension or revocation of any permit issued by the Administrator or a State under this subchapter and shall state with reasonable specificity the nature of the violation, and provision that any penalty assessed in the order shall not exceed $25,000 per day of noncompliance for each violation of a requirement of this subchapter, and that in assessing such a penalty, the Administrator take into account the seriousness of the violation and any good faith efforts to comply with applicable requirements, for provision that if such violator fails to take corrective action within the time specified in the order, he shall be liable for a civil penalty of not more than $25,000 for each day of continued noncompliance and the Administrator may suspend or revoke any permit issued to the violator, whether issued by the Administrator or the State.

Subsec. (b). Pub. L. 98–616, §233(b), inserted "issued under this section".

Subsec. (c). Pub. L. 98–616, §403(d)(3), substituted provisions relating to penalties for violation of compliance orders for former provisions which set forth requirements for compliance orders.

Subsec. (d). Pub. L. 98–616, §232(a)(3), amended closing provisions generally. Prior to amendment, closing provisions read as follows: "shall, upon conviction, be subject to a fine of not more than $25,000 ($50,000 in the case of a violation of paragraph (1) or (2)) for each day of violation, or to imprisonment not to exceed one year (two years in the case of a violation of paragraph (1) or (2)), or both. If the conviction is for a violation committed after a first conviction of such person under this paragraph, punishment shall be by a fine of not more than $50,000 per day of violation, or by imprisonment for not more than two years, or by both."

Subsec. (d)(1). Pub. L. 98–616, §232(a)(1), inserted "or causes to be transported" and substituted "this subchapter" for "section 6925 of this title (or section 6926 of this title in case of a State program)"


Subsec. (d)(2)(A). Pub. L. 98–616, §232(a)(2)(B), (c), substituted "this subchapter" for "section 6925 of this title (or section 6926 of this title in case of a State program)" and struck out "having obtained" before "a permit under".


Subsec. (d)(3) to (5). Pub. L. 98–616, §232(a)(3), in amending pars. (3) and (4) generally, expanded par. (3) by providing criminal penalties for one who knowingly omits material information from documents required to be filed, maintained or used under this subchapter, expanded par. (4) by providing criminal penalties for one who knowingly fails to file required material under this subchapter, and added par. (5).


Subsec. (e). Pub. L. 98–616, §232(b), in amending subsec. (e) generally, struck out provisions referring to violations of interim status standards and omission of material information from permit applications, struck out provision requiring proof of "unjustifiable and inexcusable disregard for human life" or "extreme indifference to human life" for conviction under this subsection, and inserted provision increasing maximum prison sentence to fifteen years for violation of subsec. (d)(1) through (6) of this section by one who knowingly places another person in imminent danger of death or serious bodily injury, replacing former provision calling for maximum imprisonment of two years, or five years in cases evidencing extreme indifference to human life.


1980—Subsec. (a)(1). Pub. L. 96–482, §13(1), (2), struck out "the Administrator shall give notice to the violator of his failure to comply with such requirement. If such violation extends beyond the thirtieth day after the Administrator's notification" before "the Administrator may issue" and substituted "compliance immediately or within a specified time period" for "compliance within a specified time period".

Subsec. (a)(2). Pub. L. 96–482, §13(2), struck out "thirty days" after "violation has occurred".

Subsec. (b). Pub. L. 96–482, §13(3), substituted "order shall become final unless, no later than thirty days after the order is served" for "order or any suspension or revocation of a permit shall become final unless, no later than thirty days after the order or notice of the suspension or revocation is served".


Subsec. (d). Pub. L. 96–482, §13(5), in par. (2), designated existing provisions as subpar. (A) and added subpar. (B), in par. (3), inserted provision requiring the statement or representation to be material, added par.
(4), and in provisions following par. (4), inserted provision authorizing a fine of $50,000 and a two year
imprisonment for violation of par. (1) or (2).
Subsecs. (e) to (g). Pub. L. 96–482, §13(5), added subsecs. (e) to (g).
Research, and Sanctuaries Act.
Subsec. (d)(2). Pub. L. 95–609, §7(k)(2), inserted provisions relating to treatment or storage of hazardous

Executive Documents

Transfer of Functions

For transfer of certain enforcement functions of Administrator or other official of Environmental Protection
Agency under this chapter to Federal Inspector, Office of Federal Inspector for the Alaska Natural Gas
Transportation System, and subsequent transfer to Secretary of Energy, then to Federal Coordinator for
Alaska Natural Gas Transportation Projects, see note set out under section 6903 of this title.

§6929. Retention of State authority

Upon the effective date of regulations under this subchapter no State or political subdivision may impose any
requirements less stringent than those authorized under this subchapter respecting the same matter as governed by such
regulations, except that if application of a regulation with respect to any matter under this subchapter is postponed or
enjoined by the action of any court, no State or political subdivision shall be prohibited from acting with respect to the same
aspect of such matter until such time as such regulation takes effect. Nothing in this chapter shall be construed to prohibit
any State or political subdivision thereof from imposing any requirements, including those for site selection, which are more
stringent than those imposed by such regulations. Nothing in this chapter (or in any regulation adopted under this chapter)
shall be construed to prohibit any State from requiring that the State be provided with a copy of each manifest used in
connection with hazardous waste which is generated within that State or transported to a treatment, storage, or disposal
facility within that State.


Editorial Notes

Amendments

1984—Pub. L. 98–616 inserted "Nothing in this chapter (or in any regulation adopted under this chapter) shall
be construed to prohibit any State from requiring that the State be provided with a copy of each manifest used in
connection with hazardous waste which is generated within that State or transported to a treatment, storage, or disposal
facility within that State."

1980—Pub. L. 96–482 prohibited construction of this chapter as barring a State from imposing more stringent
requirements than provided in Federal regulations.

§6930. Effective date

(a) Preliminary notification

Not later than ninety days after promulgation of regulations under section 6921 of this title identifying by its characteristics
or listing any substance as hazardous waste subject to this subchapter, any person generating or transporting such
substance or owning or operating a facility for treatment, storage, or disposal of such substance shall file with the
Administrator (or with States having authorized hazardous waste permit programs under section 6926 of this title) a
notification stating the location and general description of such activity and the identified or listed hazardous wastes handled by such person. Not later than fifteen months after November 8, 1984—

(1) the owner or operator of any facility which produces a fuel (A) from any hazardous waste identified or listed under
section 6921 of this title, (B) from such hazardous waste identified or listed under section 6921 of this title and any other
material, (C) from used oil, or (D) from used oil and any other material;

(2) the owner or operator of any facility (other than a single- or two-family residence) which burns for purposes of
energy recovery any fuel produced as provided in paragraph (1) or any fuel which otherwise contains used oil or any
hazardous waste identified or listed under section 6921 of this title; and

(3) any person who distributes or markets any fuel which is produced as provided in paragraph (1) or any fuel which
otherwise contains used oil or any hazardous waste identified or listed under section 6921 of this title 1

shall file with the Administrator (and with the State in the case of a State with an authorized hazardous waste program) a
notification stating the location and general description of the facility, together with a description of the identified or listed

1

hazardous waste involved and, in the case of a facility referred to in paragraph (1) or (2), a description of the production or
energy recovery activity carried out at the facility and such other information as the Administrator deems necessary. For
purposes of the preceding provisions, the term "hazardous waste listed under section 6921 of this title" also includes any
commercial chemical product which is listed under section 6921 of this title and which, in lieu of its original intended use, is
(i) produced for use as (or as a component of) a fuel, (ii) distributed for use as a fuel, or (iii) burned as a fuel. Notification
shall not be required under the second sentence of this subsection in the case of facilities (such as residential boilers) where
the Administrator determines that such notification is not necessary in order for the Administrator to obtain sufficient
information respecting current practices of facilities using hazardous waste for energy recovery. Nothing in this subsection
shall be construed to affect or impair the provisions of section 6921(b)(3) of this title. Nothing in this subsection shall affect
regulatory determinations under section 6935 of this title. In revising any regulation under section 6921 of this title identifying
additional characteristics of hazardous waste or listing any additional substance as hazardous waste subject to this
subchapter, the Administrator may require any person referred to in the preceding provisions to file with the Administrator (or
with States having authorized hazardous waste permit programs under section 6926 of this title) the notification described in
the preceding provisions. Nothing more than one such notification shall be required to be filed with respect to the same
substance. No identified or listed hazardous waste subject to this subchapter may be transported, treated, stored, or
disposed of unless notification has been given as required under this subsection.

(b) Effective date of regulation

The regulations under this subchapter respecting requirements applicable to the generation, transportation, treatment,
storage, or disposal of hazardous waste (including requirements respecting permits for such treatment, storage, or disposal)
shall take effect on the date six months after the date of promulgation thereof (or six months after the date of revision in the
case of any regulation which is revised after the date required for promulgation thereof). At the time a regulation is
promulgated, the Administrator may provide for a shorter period prior to the effective date, or an immediate effective date for:

1. a regulation with which the Administrator finds the regulated community does not need six months to come into
compliance;
2. a regulation which responds to an emergency situation; or
3. other good cause found and published with the regulation.


EDITORIAL NOTES

AMENDMENTS

1984—Subsec. (a). Pub. L. 98–616, §204(a), inserted provisions after first sentence relating to burning and
blending of hazardous wastes and substituted "the preceding provisions" for "the preceding sentence" in three
places.

Subsec. (b). Pub. L. 98–616, §234, inserted provision that at the time a regulation is promulgated, the
Administrator may provide for a shorter period prior to the effective date, or an immediate effective date for a
regulation with which the Administrator finds the regulated community does not need six months to come into
compliance, a regulation which responds to an emergency situation, or other good cause found and published with
the regulation.

1980—Subsec. (a). Pub. L. 96–482 struck out "or revision" after "after promulgation or revision of regulations"
and inserted provision for filing of notification when revising any regulation identifying additional characteristics
of hazardous waste or listing any additional substance as hazardous waste subject to this subchapter.

EXECUTIVE DOCUMENTS

TRANSFER OF FUNCTIONS

For transfer of certain enforcement functions of Administrator or other official of Environmental Protection
Agency under this chapter to Federal Inspector, Office of Federal Inspector for the Alaska Natural Gas
Transportation System, and subsequent transfer to Secretary of Energy, then to Federal Coordinator for
Alaska Natural Gas Transportation Projects, see note set out under section 6903 of this title.

§6931. Authorization of assistance to States

(a) Authorization of appropriations

There is authorized to be appropriated $25,000,000 for each of the fiscal years 1978 and 1979 1 $20,000,000 for fiscal
year 1980, $35,000,000 for fiscal year 1981, $40,000,000 for the fiscal year 1982, $55,000,000 for the fiscal year 1985,
$60,000,000 for the fiscal year 1986, $60,000,000 for the fiscal year 1987, and $60,000,000 for the fiscal year 1988 to be

1 So in original. Probably should be followed by a semicolon.
used to make grants to the States for purposes of assisting the States in the development and implementation of authorized State hazardous waste programs.

(b) Allocation

Amounts authorized to be appropriated under subsection (a) shall be allocated among the States on the basis of regulations promulgated by the Administrator, after consultation with the States, which take into account, the extent to which hazardous waste is generated, transported, treated, stored, and disposed of within such State, the extent of exposure of human beings and the environment within such State to such waste, and such other factors as the Administrator deems appropriate.

(c) Activities included

State hazardous waste programs for which grants may be made under subsection (a) may include (but shall not be limited to) planning for hazardous waste treatment, storage and disposal facilities, and the development and execution of programs to protect health and the environment from inactive facilities which may contain hazardous waste.


EDITORIAL NOTES

AMENDMENTS

1984—Subsec. (a). Pub. L. 96–616 substituted "$40,000,000 for fiscal year 1982, $55,000,000 for fiscal year 1985, $60,000,000 for fiscal year 1986, $60,000,000 for fiscal year 1987, and $60,000,000 for fiscal year 1988" for "and $40,000,000 for fiscal year 1982".

1980—Subsec. (a). Pub. L. 96–482, §31(b), authorized appropriation of $20,000,000, $35,000,000, and $40,000,000 for fiscal years 1980, 1981, and 1982, respectively.


EXECUTIVE DOCUMENTS

TRANSFER OF FUNCTIONS

For transfer of certain enforcement functions of Administrator or other official of Environmental Protection Agency under this chapter to Federal Inspector, Office of Federal Inspector for the Alaska Natural Gas Transportation System, and subsequent transfer to Secretary of Energy, then to Federal Coordinator for Alaska Natural Gas Transportation Projects, see note set out under section 6903 of this title.

1 So in original. Probably should be followed by a comma.

§6932. Transferred

EDITORIAL NOTES

CODIFICATION


§6933. Hazardous waste site inventory

(a) State inventory programs

Each State shall, as expeditiously as practicable, undertake a continuing program to compile, publish, and submit to the Administrator an inventory describing the location of each site within such State at which hazardous waste has at any time been stored or disposed of. Such inventory shall contain—

1. a description of the location of the sites at which any such storage or disposal has taken place before the date on which permits are required under section 6925 of this title for such storage or disposal;

2. such information relating to the amount, nature, and toxicity of the hazardous waste at each such site as may be practicable to obtain and as may be necessary to determine the extent of any health hazard which may be associated with such site;

3. the name and address, or corporate headquarters of, the owner of each such site, determined as of the date of preparation of the inventory;
(4) an identification of the types or techniques of waste treatment or disposal which have been used at each such site; and
(5) information concerning the current status of the site, including information respecting whether or not hazardous waste is currently being treated or disposed of at such site (and if not, the date on which such activity ceased) and information respecting the nature of any other activity currently carried out at such site.

For purposes of assisting the States in compiling information under this section, the Administrator shall make available to each State undertaking a program under this section such information as is available to him concerning the items specified in paragraphs (1) through (5) with respect to the sites within such State, including such information as the Administrator is able to obtain from other agencies or departments of the United States and from surveys and studies carried out by any committee or subcommittee of the Congress. Any State may exercise the authority of section 6927 of this title for purposes of this section in the same manner and to the same extent as provided in such section in the case of States having an authorized hazardous waste program, and any State may by order require any person to submit such information as may be necessary to compile the data referred to in paragraphs (1) through (5).

(b) Environmental Protection Agency program

If the Administrator determines that any State program under subsection (a) is not adequately providing information respecting the sites in such State referred to in subsection (a), the Administrator shall notify the State. If within ninety days following such notification, the State program has not been revised or amended in such manner as will adequately provide such information, the Administrator shall carry out the inventory program in such State. In any such case—
(1) the Administrator shall have the authorities provided with respect to State programs under subsection (a);
(2) the funds allocated under subsection (c) for grants to States under this section may be used by the Administrator for carrying out such program in such State; and
(3) no further expenditure may be made for grants to such State under this section until such time as the Administrator determines that such State is carrying out, or will carry out, an inventory program which meets the requirements of this section.

(c) Grants

(1) Upon receipt of an application submitted by any State to carry out a program under this section, the Administrator may make grants to the States for purposes of carrying out such a program. Grants under this section shall be allocated among the several States by the Administrator based upon such regulations as he prescribes to carry out the purposes of this section. The Administrator may make grants to any State which has conducted an inventory program which effectively carried out the purposes of this section before October 21, 1980, to reimburse such State for all, or any portion of, the costs incurred by such State in conducting such program.

(2) There are authorized to be appropriated to carry out this section $25,000,000 for each of the fiscal years 1985 through 1988.

(d) No impediment to immediate remedial action

Nothing in this section shall be construed to provide that the Administrator or any State should, pending completion of the inventory required under this section, postpone undertaking any enforcement or remedial action with respect to any site at which hazardous waste has been treated, stored, or disposed of.


EDITORIAL NOTES

CODIFICATION


AMENDMENTS

1984—Subsec. (c)(2). Pub. L. 98–616 substituted "$25,000,000 for each of the fiscal years 1985 through 1988" for "$20,000,000".

EXECUTIVE DOCUMENTS

TRANSFER OF FUNCTIONS

For transfer of certain enforcement functions of Administrator or other official of Environmental Protection Agency under this chapter to Federal Inspector, Office of Federal Inspector for the Alaska Natural Gas Transportation System, and subsequent transfer to Secretary of Energy, then to Federal Coordinator for Alaska Natural Gas Transportation Projects, see note set out under section 6903 of this title.

§6934. Monitoring, analysis, and testing
(a) Authority of Administrator

If the Administrator determines, upon receipt of any information, that—

(1) the presence of any hazardous waste at a facility or site at which hazardous waste is, or has been, stored, treated, or disposed of, or

(2) the release of any such waste from such facility or site

may present a substantial hazard to human health or the environment, he may issue an order requiring the owner or operator of such facility or site to conduct such monitoring, testing, analysis, and reporting with respect to such facility or site as the Administrator deems reasonable to ascertain the nature and extent of such hazard.

(b) Previous owners and operators

In the case of any facility or site not in operation at the time a determination is made under subsection (a) with respect to the facility or site, if the Administrator finds that the owner of such facility or site could not reasonably be expected to have actual knowledge of the presence of hazardous waste at such facility or site and of its potential for release, he may issue an order requiring the most recent previous owner or operator of such facility or site who could reasonably be expected to have such actual knowledge to carry out the actions referred to in subsection (a).

(c) Proposal

An order under subsection (a) or (b) shall require the person to whom such order is issued to submit to the Administrator within 30 days from the issuance of such order a proposal for carrying out the required monitoring, testing, analysis, and reporting. The Administrator may, after providing such person with an opportunity to confer with the Administrator respecting such proposal, require such person to carry out such monitoring, testing, analysis, and reporting in accordance with such proposal, and such modifications in such proposal as the Administrator deems reasonable to ascertain the nature and extent of the hazard.

(d) Monitoring, etc., carried out by Administrator

(1) If the Administrator determines that no owner or operator referred to in subsection (a) or (b) is able to conduct monitoring, testing, analysis, or reporting satisfactory to the Administrator, if the Administrator deems any such action carried out by an owner or operator to be unsatisfactory, or if the Administrator cannot initially determine that there is an owner or operator referred to in subsection (a) or (b) who is able to conduct such monitoring, testing, analysis, or reporting, he may—

(A) conduct monitoring, testing, or analysis (or any combination thereof) which he deems reasonable to ascertain the nature and extent of the hazard associated with the site concerned, or

(B) authorize a State or local authority or other person to carry out any such action,

and require, by order, the owner or operator referred to in subsection (a) or (b) to reimburse the Administrator or other authority or person for the costs of such activity.

(2) No order may be issued under this subsection requiring reimbursement of the costs of any action carried out by the Administrator which confirms the results of an order issued under subsection (a) or (b).

(3) For purposes of carrying out this subsection, the Administrator or any authority or other person authorized under paragraph (1), may exercise the authorities set forth in section 6927 of this title.

(e) Enforcement

The Administrator may commence a civil action against any person who fails or refuses to comply with any order issued under this section. Such action shall be brought in the United States district court in which the defendant is located, resides, or is doing business. Such court shall have jurisdiction to require compliance with such order and to assess a civil penalty of not to exceed $5,000 for each day during which such failure or refusal occurs.


**EXECUTIVE DOCUMENTS**

**TRANSFER OF FUNCTIONS**

For transfer of certain enforcement functions of Administrator or other official of Environmental Protection Agency under this chapter to Federal Inspector, Office of Federal Inspector for the Alaska Natural Gas Transportation System, and subsequent transfer to Secretary of Energy, then to Federal Coordinator for Alaska Natural Gas Transportation Projects, see note set out under section 6903 of this title.

**§6935. Restrictions on recycled oil**

(a) In general

Not later than one year after October 15, 1980, the Administrator shall promulgate regulations establishing such performance standards and other requirements as may be necessary to protect the public health and the environment from hazards associated with recycled oil. In developing such regulations, the Administrator shall conduct an analysis of the economic impact of the regulations on the oil recycling industry. The Administrator shall ensure that such regulations do not discourage the recovery or recycling of used oil, consistent with the protection of human health and the environment.
(b) Identification or listing of used oil as hazardous waste

Not later than twelve months after November 8, 1984, the Administrator shall propose whether to list or identify used automobile and truck crankcase oil as hazardous waste under section 6921 of this title. Not later than twenty-four months after November 8, 1984, the Administrator shall make a final determination whether to list or identify used automobile and truck crankcase oil and other used oil as hazardous wastes under section 6921 of this title.

(c) Used oil which is recycled

(1) With respect to generators and transporters of used oil identified or listed as a hazardous waste under section 6921 of this title, the standards promulgated under section §6921(d), 6922, and 6923 of this title shall not apply to such used oil if such used oil is recycled.

(2)(A) In the case of used oil which is exempt under paragraph (1), not later than twenty-four months after November 8, 1984, the Administrator shall promulgate such standards under this subsection regarding the generation and transportation of used oil which is recycled as may be necessary to protect human health and the environment. In promulgating such regulations with respect to generators, the Administrator shall take into account the effect of such regulations on environmentally acceptable types of used oil recycling and the effect of such regulations on small quantity generators and generators which are small businesses (as defined by the Administrator).

(B) The regulations promulgated under this subsection shall provide that no generator of used oil which is exempt under paragraph (1) from the standards promulgated under section §6921(d), 6922, and 6923 of this title shall be subject to any manifest requirement or any associated recordkeeping and reporting requirement with respect to such used oil if such generator—

(i) either—

(I) enters into an agreement or other arrangement (including an agreement or arrangement with an independent transporter or with an agent of the recycler) for delivery of such used oil to a recycling facility which has a permit under section 6925(c) of this title (or for which a valid permit is deemed to be in effect under subsection (d)), or

(ii) recycles such used oil at one or more facilities of the generator which has such a permit under section 6925 of this title (or for which a valid permit is deemed to have been issued under subsection (d) of this section);

(ii) such used oil is not mixed by the generator with other types of hazardous wastes; and

(iii) the generator maintains such records relating to such used oil, including records of agreements or other arrangements for delivery of such used oil to any recycling facility referred to in clause (i)(I), as the Administrator deems necessary to protect human health and the environment.

(3) The regulations under this subsection regarding the transportation of used oil which is exempt from the standards promulgated under section §6921(d), 6922, and 6923 of this title under paragraph (1) shall require the transporters of such used oil to deliver such used oil to a facility which has a valid permit under section 6925 of this title which is deemed to have a valid permit under subsection (d) of this section. The Administrator shall also establish other standards for such transporters as may be necessary to protect human health and the environment.

(d) Permits

(1) The owner or operator of a facility which recycles used oil which is exempt under subsection (c)(1), shall be deemed to have a permit under this subsection for all such treatment or recycling (and any associated tank or container storage) if such owner and operator comply with standards promulgated by the Administrator under section 6924 of this title; except that the Administrator may require such owners and operators to obtain an individual permit under section 6925(c) of this title if he determines that an individual permit is necessary to protect human health and the environment.

(2) Notwithstanding any other provision of law, any generator who recycles used oil which is exempt under subsection (c) shall not be required to obtain a permit under section 6925(c) of this title with respect to such used oil until the Administrator has promulgated standards under section 6924 of this title regarding the recycling of such used oil.


EDITORIAL NOTES

Codification

Section was formerly classified to section 6932 of this title.

Amendments

1984—Subsec. (a). Pub. L. 98–616, §§241(a), 242, designated existing provisions as subsec. (a) and inserted "consistent with the protection of human health and the environment" at end.

Subsecs. (b) to (d). Pub. L. 98–616, §241(a), added subsecs. (b) to (d).

Executive Documents

Transfer of Functions
For transfer of certain enforcement functions of Administrator or other official of Environmental Protection Agency under this chapter to Federal Inspector, Office of Federal Inspector for the Alaska Natural Gas Transportation System, and subsequent transfer to Secretary of Energy, then to Federal Coordinator for Alaska Natural Gas Transportation Projects, see note set out under section 6903 of this title.

1 So in original. Probably should be "sections".

§6936. Expansion during interim status

(a) Waste piles

The owner or operator of a waste pile qualifying for the authorization to operate under section 6925(e) of this title shall be subject to the same requirements for liners and leachate collection systems or equivalent protection provided in regulations promulgated by the Administrator under section 6924 of this title before October 1, 1982, or revised under section 6924(o) of this title (relating to minimum technological requirements), for new facilities receiving individual permits under subsection (c) of section 6925 of this title, with respect to each new unit, replacement of an existing unit, or lateral expansion of an existing unit that is within the waste management area identified in the permit application submitted under section 6925 of this title, and with respect to waste received beginning six months after November 8, 1984.

(b) Landfills and surface impoundments

(1) The owner or operator of a landfill or surface impoundment qualifying for the authorization to operate under section 6925(e) of this title shall be subject to the requirements of section 6924(o) of this title (relating to minimum technological requirements), with respect to each new unit, replacement of an existing unit, or lateral expansion of an existing unit that is within the waste management area identified in the permit application submitted under this section, and with respect to waste received beginning 6 months after November 8, 1984.

(2) The owner or operator of each unit referred to in paragraph (1) shall notify the Administrator (or the State, if appropriate) at least sixty days prior to receiving waste. The Administrator (or the State) shall require the filing, within six months of receipt of such notice, of an application for a final determination regarding the issuance of a permit for each facility submitting such notice.

(3) In the case of any unit in which the liner and leachate collection system has been installed pursuant to the requirements of this section and in good faith compliance with the Administrator's regulations and guidance documents governing liners and leachate collection systems, no liner or leachate collection system which is different from that which was so installed pursuant to this section shall be required for such unit by the Administrator when issuing the first permit under section 6925 of this title to such facility, except that the Administrator shall not be precluded from requiring installation of a new liner when the Administrator has reason to believe that any liner installed pursuant to the requirements of this section is leaking. The Administrator may, under section 6924 of this title, amend the requirements for liners and leachate collection systems required under this section as may be necessary to provide additional protection for human health and the environment.


§6937. Inventory of Federal agency hazardous waste facilities

(a) Program requirement; submission; availability; contents

Each Federal agency shall undertake a continuing program to compile, publish, and submit to the Administrator (and to the State in the case of sites in States having an authorized hazardous waste program) an inventory of each site which the Federal agency owns or operates or has owned or operated at which hazardous waste is stored, treated, or disposed of or has been disposed of at any time. The inventory shall be submitted every two years beginning January 31, 1986. Such inventory shall be available to the public as provided in section 6927(b) of this title. Information previously submitted by a Federal agency under section 9603 of this title, or under section 6925 or 6930 of this title, or under this section need not be resubmitted except that the agency shall update any previous submission to reflect the latest available data and information. The inventory shall include each of the following:

(1) A description of the location of each site at which any such treatment, storage, or disposal has taken place before the date on which permits are required under section 6925 of this title for such storage, treatment, or disposal, and where hazardous waste has been disposed, a description of hydrogeology of the site and the location of withdrawal wells and surface water within one mile of the site.

(2) Such information relating to the amount, nature, and toxicity of the hazardous waste in each site as may be necessary to determine the extent of any health hazard which may be associated with any site.

(3) Information on the known nature and extent of environmental contamination at each site, including a description of the monitoring data obtained.

(4) Information concerning the current status of the site, including information respecting whether or not hazardous waste is currently being treated, stored, or disposed of at such site (and if not, the date on which such activity ceased) and information respecting the nature of any other activity currently carried out at such site.

(5) A list of sites at which hazardous waste has been disposed and environmental monitoring data has not been obtained, and the reasons for the lack of monitoring data at each site.

(6) A description of response actions undertaken or contemplated at contaminated sites.
(7) An identification of the types of techniques of waste treatment, storage, or disposal which have been used at each site.

(8) The name and address and responsible Federal agency for each site, determined as of the date of preparation of the inventory.

(b) Environmental Protection Agency program

If the Administrator determines that any Federal agency under subsection (a) is not adequately providing information respecting the sites referred to in subsection (a), the Administrator shall notify the chief official of such agency. If within ninety days following such notification, the Federal agency has not undertaken a program to adequately provide such information, the Administrator shall carry out the inventory program for such agency.


§6938. Export of hazardous wastes

(a) In general

Beginning twenty-four months after November 8, 1984, no person shall export any hazardous waste identified or listed under this subchapter unless 1

1(A) such person has provided the notification required in subsection (c) of this section,
(B) the government of the receiving country has consented to accept such hazardous waste,
(C) a copy of the receiving country’s written consent is attached to the manifest accompanying each waste shipment, and
(D) the shipment conforms with the terms of the consent of the government of the receiving country required pursuant to subsection (e), or
(2) the United States and the government of the receiving country have entered into an agreement as provided for in subsection (f) and the shipment conforms with the terms of such agreement.

(b) Regulations

Not later than twelve months after November 8, 1984, the Administrator shall promulgate the regulations necessary to implement this section. Such regulations shall become effective one hundred and eighty days after promulgation.

(c) Notification

Any person who intends to export a hazardous waste identified or listed under this subchapter beginning twelve months after November 8, 1984, shall, before such hazardous waste is scheduled to leave the United States, provide notification to the Administrator. Such notification shall contain the following information:

(1) the name and address of the exporter;
(2) the types and estimated quantities of hazardous waste to be exported;
(3) the estimated frequency or rate at which such waste is to be exported; and the period of time over which such waste is to be exported;
(4) the ports of entry;
(5) a description of the manner in which such hazardous waste will be transported to and treated, stored, or disposed in the receiving country; and
(6) the name and address of the ultimate treatment, storage or disposal facility.

(d) Procedures for requesting consent of receiving country

Within thirty days of the Administrator's receipt of a complete notification under this section, the Secretary of State, acting on behalf of the Administrator, shall—

(1) forward a copy of the notification to the government of the receiving country;
(2) advise the government that United States law prohibits the export of hazardous waste unless the receiving country consents to accept the hazardous waste;
(3) request the government to provide the Secretary with a written consent or objection to the terms of the notification; and
(4) forward to the government of the receiving country a description of the Federal regulations which would apply to the treatment, storage, and disposal of the hazardous waste in the United States.

(e) Conveyance of written consent to exporter

Within thirty days of receipt by the Secretary of State of the receiving country’s written consent or objection (or any subsequent communication withdrawing a prior consent or objection), the Administrator shall forward such a consent, objection, or other communication to the exporter.

(f) International agreements

Where there exists an international agreement between the United States and the government of the receiving country establishing notice, export, and enforcement procedures for the transportation, treatment, storage, and disposal of hazardous wastes, only the requirements of subsections (a)(2) and (g) shall apply.

(g) Reports

After November 8, 1984, any person who exports any hazardous waste identified or listed under section 6921 of this title shall file with the Administrator no later than March 1 of each year, a report summarizing the types, quantities, frequency, and ultimate destination of all such hazardous waste exported during the previous calendar year.
(h) Other standards

Nothing in this section shall preclude the Administrator from establishing other standards for the export of hazardous wastes under section 6922 of this title or section 6923 of this title.


1 So in original. Probably should be followed by a dash.

§6939. Domestic sewage

(a) Report

The Administrator shall, not later than 15 months after November 8, 1984, submit a report to the Congress concerning those substances identified or listed under section 6921 of this title which are not regulated under this subchapter by reason of the exclusion for mixtures of domestic sewage and other wastes that pass through a sewer system to a publicly owned treatment works. Such report shall include the types, size and number of generators which dispose of such substances in this manner, the types and quantities disposed of in this manner, and the identification of significant generators, wastes, and waste constituents not regulated under existing Federal law or regulated in a manner sufficient to protect human health and the environment.

(b) Revisions of regulations

Within eighteen months after submitting the report specified in subsection (a), the Administrator shall revise existing regulations and promulgate such additional regulations pursuant to this subchapter (or any other authority of the Administrator, including section 1317 of title 33) as are necessary to assure that substances identified or listed under section 6921 of this title which pass through a sewer system to a publicly owned treatment works are adequately controlled to protect human health and the environment.

(c) Report on wastewater lagoons

The Administrator shall, within thirty-six months after November 8, 1984, submit a report to Congress concerning wastewater lagoons at publicly owned treatment works and their effect on groundwater quality. Such report shall include—

1 the number and size of such lagoons;
2 the types and quantities of waste contained in such lagoons;
3 the extent to which such waste has been or may be released from such lagoons and contaminate ground water; and
4 available alternatives for preventing or controlling such releases.

The Administrator may utilize the authority of sections 6927 and 6934 of this title for the purpose of completing such report.

(d) Application of sections 6927 and 6930

The provisions of sections 6927 and 6930 of this title shall apply to solid or dissolved materials in domestic sewage to the same extent and in the same manner as such provisions apply to hazardous waste.


§6939a. Exposure information and health assessments

(a) Exposure information

Beginning on the date nine months after November 8, 1984, each application for a final determination regarding a permit under section 6925(c) of this title for a landfill or surface impoundment shall be accompanied by information reasonably ascertainable by the owner or operator on the potential for the public to be exposed to hazardous wastes or hazardous constituents through releases related to the unit. At a minimum, such information must address:

1 reasonably foreseeable potential releases from both normal operations and accidents at the unit, including releases associated with transportation to or from the unit;
2 the potential pathways of human exposure to hazardous wastes or constituents resulting from the releases described under paragraph (1); and
3 the potential magnitude and nature of the human exposure resulting from such releases.

The owner or operator of a landfill or surface impoundment for which an application for such a final determination under section 6925(c) of this title has been submitted prior to November 8, 1984, shall submit the information required by this subsection to the Administrator (or the State, in the case of a State with an authorized program) no later than the date nine months after November 8, 1984.

(b) Health assessments

1 The Administrator (or the State, in the case of a State with an authorized program) shall make the information required by subsection (a), together with other relevant information, available to the Agency for Toxic Substances and Disease Registry established by section 9604(i) of this title.
(2) Whenever in the judgment of the Administrator, or the State (in the case of a State with an authorized program), a landfill or a surface impoundment poses a substantial potential risk to human health, due to the existence of releases of hazardous constituents, the magnitude of contamination with hazardous constituents which may be the result of a release, or the magnitude of the population exposed to such release or contamination, the Administrator or the State (with the concurrence of the Administrator) may request the Administrator of the Agency for Toxic Substances and Disease Registry to conduct a health assessment in connection with such facility and take other appropriate action with respect to such risks as authorized by section 9604(b) and (i) of this title. If funds are provided in connection with such request the Administrator of such Agency shall conduct such health assessment.

(c) Members of the public

Any member of the public may submit evidence of releases of or exposure to hazardous constituents from such a facility, or as to the risks or health effects associated with such releases or exposure, to the Administrator of the Agency for Toxic Substances and Disease Registry, the Administrator, or the State (in the case of a State with an authorized program).

(d) Priority

In determining the order in which to conduct health assessments under this subsection, the Administrator of the Agency for Toxic Substances and Disease Registry shall give priority to those facilities or sites at which there is documented evidence of release of hazardous constituents, at which the potential risk to human health appears highest, and for which in the judgment of the Administrator of such Agency existing health assessment data is inadequate to assess the potential risk to human health as provided in subsection (f).

(e) Periodic reports

The Administrator of such Agency shall issue periodic reports which include the results of all the assessments carried out under this section. Such assessments or other activities shall be reported after appropriate peer review.

(f) "Health assessments" defined

For the purposes of this section, the term "health assessments" shall include preliminary assessments of the potential risk to human health posed by individual sites and facilities subject to this section, based on such factors as the nature and extent of contamination, the existence of potential for pathways of human exposure (including ground or surface water contamination, air emissions, and food chain contamination), the size and potential susceptibility of the community within the likely pathways of exposure, the comparison of expected human exposure levels to the short-term and long-term health effects associated with identified contaminants and any available recommended exposure or tolerance limits for such contaminants, and the comparison of existing morbidity and mortality data on diseases that may be associated with the observed levels of exposure. The assessment shall include an evaluation of the risks to the potentially affected population from all sources of such contaminants, including known point or nonpoint sources other than the site or facility in question. A purpose of such preliminary assessments shall be to help determine whether full-scale health or epidemiological studies and medical evaluations of exposed populations shall be undertaken.

(g) Cost recovery

In any case in which a health assessment performed under this section discloses the exposure of a population to the release of a hazardous substance, the costs of such health assessment may be recovered as a cost of response under section 9607 of this title from persons causing or contributing to such release of such hazardous substance or, in the case of multiple releases contributing to such exposure, to all such release.


§6939b. Interim control of hazardous waste injection

(a) Underground source of drinking water

No hazardous waste may be disposed of by underground injection—

(1) into a formation which contains (within one-quarter mile of the well used for such underground injection) an underground source of drinking water; or

(2) above such a formation.

The prohibitions established under this section shall take effect 6 months after November 8, 1984, except in the case of any State in which identical or more stringent prohibitions are in effect before such date under the Safe Drinking Water Act [42 U.S.C. 300f et seq.].

(b) Actions under Comprehensive Environmental Response, Compensation, and Liability Act

Subsection (a) shall not apply to the injection of contaminated ground water into the aquifer from which it was withdrawn, if—

(1) such injection is—

(A) a response action taken under section 9604 or 9606 of this title, or

(B) part of corrective action required under this chapter 1

intended to clean up such contamination;

(2) such contaminated ground water is treated to substantially reduce hazardous constituents prior to such injection; and
(3) such response action or corrective action will, upon completion, be sufficient to protect human health and the environment.

(c) Enforcement

In addition to enforcement under the provisions of this chapter, the prohibitions established under paragraphs (1) and (2) of subsection (a) shall be enforceable under the Safe Drinking Water Act [42 U.S.C. 300f et seq.] in any State—

(1) which has adopted identical or more stringent prohibitions under part C of the Safe Drinking Water Act [42 U.S.C. 300h et seq.] and which has assumed primary enforcement responsibility under that Act for enforcement of such prohibitions; or

(2) in which the Administrator has adopted identical or more stringent prohibitions under the Safe Drinking Water Act [42 U.S.C. 300f et seq.] and is exercising primary enforcement responsibility under that Act for enforcement of such prohibitions.

(d) Definitions

The terms "primary enforcement responsibility", "underground source of drinking water", "formation" and "well" have the same meanings as provided in regulations of the Administrator under the Safe Drinking Water Act [42 U.S.C. 300f et seq.]. The term "Safe Drinking Water Act" means title XIV of the Public Health Service Act.


EDITORIAL NOTES

REFERENCES IN TEXT

Title XIV of the Public Health Service Act, referred to in subsec. (d), is title XIV of act July 1, 1944, as added Dec. 16, 1974, Pub. L. 93–523, §2(a), 88 Stat. 1660, as amended, known as the Safe Drinking Water Act, which is classified generally to subchapter XII (§300f et seq.) of chapter 6A of this title. Part C of the Act is classified generally to part C (§300h et seq.) of subchapter XII of chapter 6A of this title. For complete classification of this Act to the Code, see Short Title note set out under section 201 of this title and Tables.

CODIFICATION

Section was formerly classified to section 6979a of this title, prior to renumbering by Pub. L. 99–339.

AMENDMENTS

1986—Subsec. (c). Pub. L. 99–339, §201(c)(1), substituted "enforcement under the provisions of this chapter" for "enforcement under sections 6972 and 6973 of this title".

1 So in original. Probably should be followed by a comma.

§6939c. Mixed waste inventory reports and plan

(a) Mixed waste inventory reports

(1) Requirement

Not later than 180 days after October 6, 1992, the Secretary of Energy shall submit to the Administrator and to the Governor of each State in which the Department of Energy stores or generates mixed wastes the following reports:

(A) A report containing a national inventory of all such mixed wastes, regardless of the time they were generated, on a State-by-State basis.

(B) A report containing a national inventory of mixed waste treatment capacities and technologies.

(2) Inventory of wastes

The report required by paragraph (1)(A) shall include the following:

(A) A description of each type of mixed waste at each Department of Energy facility in each State, including, at a minimum, the name of the waste stream.

(B) The amount of each type of mixed waste currently stored at each Department of Energy facility in each State, set forth separately by mixed waste that is subject to the land disposal prohibition requirements of section 6924 of this title and mixed waste that is not subject to such prohibition requirements.

(C) An estimate of the amount of each type of mixed waste the Department expects to generate in the next 5 years at each Department of Energy facility in each State.

(D) A description of any waste minimization actions the Department has implemented at each Department of Energy facility in each State for each mixed waste stream.

(E) The EPA hazardous waste code for each type of mixed waste containing waste that has been characterized at each Department of Energy facility in each State.

(F) An inventory of each type of waste that has not been characterized by sampling and analysis at each Department of Energy facility in each State.
(G) The basis for the Department’s determination of the applicable hazardous waste code for each type of mixed waste at each Department of Energy facility and a description of whether the determination is based on sampling and analysis conducted on the waste or on the basis of process knowledge.

(H) A description of the source of each type of mixed waste at each Department of Energy facility in each State.

(I) The land disposal prohibition treatment technology or technologies specified for the hazardous waste component of each type of mixed waste at each Department of Energy facility in each State.

(J) A statement of whether and how the radionuclide content of the waste alters or affects use of the technologies described in subparagraph (I).

(3) Inventory of treatment capacities and technologies

The report required by paragraph (1)(B) shall include the following:

(A) An estimate of the available treatment capacity for each waste described in the report required by paragraph (1) for which treatment technologies exist.

(B) A description, including the capacity, number and location, of each treatment unit considered in calculating the estimate under subparagraph (A).

(C) A description, including the capacity, number and location, of any existing treatment unit that was not considered in calculating the estimate under subparagraph (A) but that could, alone or in conjunction with other treatment units, be used to treat any of the wastes described in the report required by paragraph (1)(A) to meet the requirements of regulations promulgated pursuant to section 6924(m) of this title.

(D) For each unit listed in subparagraph (C), a statement of the reasons why the unit was not included in calculating the estimate under subparagraph (A).

(E) A description, including the capacity, number, location, and estimated date of availability, of each treatment unit currently proposed to increase the treatment capacities estimated under subparagraph (A).

(F) For each waste described in the report required by paragraph (1)(A) for which the Department has determined no treatment technology exists, information sufficient to support such determination and a description of the technological approaches the Department anticipates will need to be developed to treat the waste.

(4) Comments and revisions

Not later than 90 days after the date of the submission of the reports by the Secretary of Energy under paragraph (1), the Administrator and each State which received the reports shall submit any comments they may have concerning the reports to the Department of Energy. The Secretary of Energy shall consider and publish the comments prior to publication of the final report.

(5) Requests for additional information

Nothing in this subsection limits or restricts the authority of States or the Administrator to request additional information from the Secretary of Energy.

(b) Plan for development of treatment capacities and technologies

(1) Plan requirement

(A)(i) For each facility at which the Department of Energy generates or stores mixed wastes, except any facility subject to a permit, agreement, or order described in clause (ii), the Secretary of Energy shall develop and submit, as provided in paragraph (2), a plan for developing treatment capacities and technologies to treat all of the facility’s mixed wastes, regardless of the time they were generated, to the standards promulgated pursuant to section 6924(m) of this title.

(ii) Clause (i) shall not apply with respect to any facility subject to any permit establishing a schedule for treatment of such wastes, or any existing agreement or administrative or judicial order governing the treatment of such wastes, to which the State is a party.

(B) Each plan shall contain the following:

(i) For mixed wastes for which treatment technologies exist, a schedule for submitting all applicable permit applications, entering into contracts, initiating construction, conducting systems testing, commencing operations, and processing backlogged and currently generated mixed wastes.

(ii) For mixed wastes for which no treatment technologies exist, a schedule for identifying and developing such technologies, identifying the funding requirements for the identification and development of such technologies, submitting treatability study exemptions, and submitting research and development permit applications.

(iii) For all cases where the Department proposes radionuclide separation of mixed wastes, or materials derived from mixed wastes, it shall provide an estimate of the volume of waste generated by each case of radionuclide separation, the volume of waste that would exist or be generated without radionuclide separation, the estimated costs of waste treatment and disposal if radionuclide separation is used compared to the estimated costs if it is not used, and the assumptions underlying such waste volume and cost estimates.

(C) A plan required under this subsection may provide for centralized, regional, or on-site treatment of mixed wastes, or any combination thereof.

(2) Review and approval of plan

(A) For each facility that is located in a State (i) with authority under State law to prohibit land disposal of mixed waste until the waste has been treated and (ii) with both authority under State law to regulate the hazardous components of mixed waste and authorization from the Environmental Protection Agency under section 6926 of this title to regulate the hazardous components of mixed waste, the Secretary of Energy shall submit the plan required under paragraph (1) to the appropriate State regulatory officials for their review and approval, modification, or disapproval. In reviewing the plan, the State shall consider the need for regional treatment facilities. The State shall consult with the Administrator and any other
State in which a facility affected by the plan is located and consider public comments in making its determination on the plan. The State shall approve, approve with modifications, or disapprove the plan within 6 months after receipt of the plan.

(B) For each facility located in a State that does not have the authority described in subparagraph (A), the Secretary shall submit the plan required under paragraph (1) to the Administrator of the Environmental Protection Agency for review and approval, modification, or disapproval. A copy of the plan also shall be provided by the Secretary to the State in which such facility is located. In reviewing the plan, the Administrator shall consider the need for regional treatment facilities. The Administrator shall consult with the State or States in which any facility affected by the plan is located and consider public comments in making a determination on the plan. The Administrator shall approve, approve with modifications, or disapprove the plan within 6 months after receipt of the plan.

(C) Upon the approval of a plan under this paragraph by the Administrator or a State, the Administrator shall issue an order under section 6928(a) of this title, or the State shall issue an order under appropriate State authority, requiring compliance with the approved plan.

(3) Public participation

Upon submission of a plan by the Secretary of Energy to the Administrator or a State, and before approval of the plan by the Administrator or a State, the Administrator or State shall publish a notice of the availability of the submitted plan and make such submitted plan available to the public on request.

(4) Revisions of plan

If any revisions of an approved plan are proposed by the Secretary of Energy or required by the Administrator or a State, the provisions of paragraphs (2) and (3) shall apply to the revisions in the same manner as they apply to the original plan.

(5) Waiver of plan requirement

(A) A State may waive the requirement for the Secretary of Energy to develop and submit a plan under this subsection for a facility located in the State if the State (i) enters into an agreement with the Secretary of Energy that addresses compliance at that facility with section 6924(j) of this title with respect to mixed waste, and (ii) issues an order requiring compliance with such agreement and which is in effect.

(B) Any violation of an agreement or order referred to in subparagraph (A) is subject to the waiver of sovereign immunity contained in section 6961(a) of this title.

(c) Schedule and progress reports

(1) Schedule

Not later than 6 months after October 6, 1992, the Secretary of Energy shall publish in the Federal Register a schedule for submitting the plans required under subsection (b).

(2) Progress reports

(A) Not later than the deadlines specified in subparagraph (B), the Secretary of Energy shall submit to the Committee on Environment and Public Works of the Senate and the Committee on Energy and Commerce of the House of Representatives a progress report containing the following:

(i) An identification, by facility, of the plans that have been submitted to States or the Administrator of the Environmental Protection Agency pursuant to subsection (b).

(ii) The status of State and Environmental Protection Agency review and approval of each such plan.

(iii) The number of orders requiring compliance with such plans that are in effect.

(iv) For the first 2 reports required under this paragraph, an identification of the plans required under such subsection (b) that the Secretary expects to submit in the 12-month period following submission of the report.

(B) The Secretary of Energy shall submit a report under subparagraph (A) not later than 12 months after October 6, 1992, 24 months after October 6, 1992, and 36 months after October 6, 1992.


STATUTORY NOTES AND RELATED SUBSIDIARIES

CHANGE OF NAME


GAO REPORT

Pub. L. 102–386, title I, §105(c), Oct. 6, 1992, 106 Stat. 1512, provided that not later than 18 months after Oct. 6, 1992, the Comptroller General would submit to Congress a report, containing certain specified data, on the Department of Energy's progress in complying with subsec. (b) of this section.
§6939d. Public vessels

(a) Waste generated on public vessels
Any hazardous waste generated on a public vessel shall not be subject to the storage, manifest, inspection, or recordkeeping requirements of this chapter until such waste is transferred to a shore facility, unless—
(1) the waste is stored on the public vessel for more than 90 days after the public vessel is placed in reserve or is otherwise no longer in service; or
(2) the waste is transferred to another public vessel within the territorial waters of the United States and is stored on such vessel or another public vessel for more than 90 days after the date of transfer.

(b) Computation of storage period
For purposes of subsection (a), the 90-day period begins on the earlier of—
(1) the date on which the public vessel on which the waste was generated is placed in reserve or is otherwise no longer in service; or
(2) the date on which the waste is transferred from the public vessel on which the waste was generated to another public vessel within the territorial waters of the United States;

and continues, without interruption, as long as the waste is stored on the original public vessel (if in reserve or not in service) or another public vessel.

(c) Definitions
For purposes of this section:
(1) The term "public vessel" means a vessel owned or bareboat chartered and operated by the United States, or by a foreign nation, except when the vessel is engaged in commerce.
(2) The terms "in reserve" and "in service" have the meanings applicable to those terms under section 8663 and sections 8674 through 8678 of title 10 and regulations prescribed under those sections.

(d) Relationship to other law
Nothing in this section shall be construed as altering or otherwise affecting the provisions of section 8681 of title 10.

EDITORIAL NOTES

AMENDMENTS
2018—Subsec. (c)(2). Pub. L. 115–232, §809(n)(2)(A), substituted "section 8663 and sections 8674 through 8678 of title 10" for "section 7293 and sections 7304 through 7308 of title 10".
Subsec. (d). Pub. L. 115–232, §809(n)(2)(B), substituted "section 8681 of title 10" for "section 7311 of title 10".

STATUTORY NOTES AND RELATED SUBSIDIARIES

EFFECTIVE DATE OF 2018 AMENDMENT
Amendment by Pub. L. 115–232 effective Feb. 1, 2019, with provision for the coordination of amendments and special rule for certain redesignations, see section 800 of Pub. L. 115–232, set out as a note preceding section 3001 of Title 10, Armed Forces.

§6939e. Federally owned treatment works

(a) In general
For purposes of section 6903(27) of this title, the phrase "but does not include solid or dissolved material in domestic sewage" shall apply to any solid or dissolved material introduced by a source into a federally owned treatment works if—
(1) such solid or dissolved material is subject to a pretreatment standard under section 1317 of title 33, and the source is in compliance with such standard;
(2) for a solid or dissolved material for which a pretreatment standard has not been promulgated pursuant to section 1317 of title 33, the Administrator has promulgated a schedule for establishing such a pretreatment standard which would be applicable to such solid or dissolved material not later than 7 years after October 6, 1992, such standard is promulgated on or before the date established in the schedule, and after the effective date of such standard the source is in compliance with such standard;
(3) such solid or dissolved material is not covered by paragraph (1) or (2) and is not prohibited from land disposal under subsections 1 (d), (e), (f), or (g) of section 6924 of this title because such material has been treated in accordance with section 6924(m) of this title; or
(4) notwithstanding paragraphs 1 (1), (2), or (3), such solid or dissolved material is generated by a household or person which generates less than 100 kilograms of hazardous waste per month unless such solid or dissolved material would otherwise be an acutely hazardous waste and subject to standards, regulations, or other requirements under this chapter notwithstanding the quantity generated.

(b) Prohibition
It is unlawful to introduce into a federally owned treatment works any pollutant that is a hazardous waste.

(c) Enforcement
(1) Actions taken to enforce this section shall not require closure of a treatment works if the hazardous waste is removed or decontaminated and such removal or decontamination is adequate, in the discretion of the Administrator or, in the case of an authorized State, of the State, to protect human health and the environment.

(2) Nothing in this subsection shall be construed to prevent the Administrator or an authorized State from ordering the closure of a treatment works if the Administrator or State determines such closure is necessary for protection of human health and the environment.

(3) Nothing in this subsection shall be construed to affect any other enforcement authorities available to the Administrator or a State under this subchapter.

d) "Federally owned treatment works" defined
For purposes of this section, the term "federally owned treatment works" means a facility that is owned and operated by a department, agency, or instrumentality of the Federal Government treating wastewater, a majority of which is domestic sewage, prior to discharge in accordance with a permit issued under section 1342 of title 33.

(e) Savings clause
Nothing in this section shall be construed as affecting any agreement, permit, or administrative or judicial order, or any condition or requirement contained in such an agreement, permit, or order, that is in existence on October 6, 1992, and that requires corrective action or closure at a federally owned treatment works or solid waste management unit or facility related to such a treatment works.


§6939f. Long-term storage

(a) Designation of facility
(1) In general
Not later than January 1, 2010, the Secretary of Energy (referred to in this section as the "Secretary") shall designate a facility or facilities of the Department of Energy, which shall not include the Y–12 National Security Complex or any other portion or facility of the Oak Ridge Reservation of the Department of Energy, for the purpose of long-term management and storage of elemental mercury generated within the United States.

(2) Operation of facility
Not later than January 1, 2019, the facility designated in paragraph (1) shall be operational and shall accept custody, for the purpose of long-term management and storage, of elemental mercury generated within the United States and delivered to such facility.

(b) Fees
(1) In general

(A) Assessment and collection
After consultation with persons who are likely to deliver elemental mercury to a designated facility for long-term management and storage under the program prescribed in subsection (a), and with other interested persons, the Secretary shall assess and collect a fee at the time of delivery for providing such management and storage, based on the pro rata cost of long-term management and storage of elemental mercury delivered to the facility.

(B) Amount
The amount of the fees described in subparagraph (A)—
(i) shall be made publicly available not later than October 1, 2018;
(ii) may be adjusted annually;
(iii) shall be set in an amount sufficient to cover the costs described in paragraph (2), subject to clause (iv); and
(iv) for generators temporarily accumulating elemental mercury in a facility subject to subparagraphs (B) and (D)(iv) of subsection (g)(2) if the facility designated in subsection (a) is not operational by January 1, 2019, shall be adjusted to subtract the cost of the temporary accumulation during the period in which the facility designated under subsection (a) is not operational.

(C) Conveyance of title and permitting
If the facility designated in subsection (a) is not operational by January 1, 2020, the Secretary—
(i) shall immediately accept the conveyance of title to all elemental mercury that has accumulated in facilities in accordance with subsection (g)(2)(D), before January 1, 2020, and deliver the accumulated mercury to the facility designated under subsection (a) on the date on which the facility becomes operational;
(ii) shall pay any applicable Federal permitting costs, including the costs for permits issued under section 3005(c) of the Solid Waste Disposal Act (42 U.S.C. 6925(c)); and
(iii) shall store, or pay the cost of storage of, until the time at which a facility designated in subsection (a) is operational, accumulated mercury to which the Secretary has title under this subparagraph in a facility that has been issued a permit under section 3005(c) of the Solid Waste Disposal Act (42 U.S.C. 6925(c)).

(2) Costs
The costs referred to in paragraph (1)(B)(iii) are the costs to the Department of Energy of providing such management and storage, including facility operation and maintenance, security, monitoring, reporting, personnel, administration, inspections, training, fire suppression, closure, and other costs required for compliance with applicable law. Such costs shall not include costs associated with land acquisition or permitting of a designated facility under the Solid Waste Disposal Act [42 U.S.C. 6901 et seq.] or other applicable law. Building design and building construction costs shall only be included to the extent that the Secretary finds that the management and storage of elemental mercury accepted under the program under this section cannot be accomplished without construction of a new building or buildings.

(c) Report
Not later than 60 days after the end of each Federal fiscal year, the Secretary shall transmit to the Committee on Energy and Commerce of the House of Representatives and the Committee on Environment and Public Works of the Senate a report on all of the costs incurred in the previous fiscal year associated with the long-term management and storage of elemental mercury. Such report shall set forth separately the costs associated with activities taken under this section.

(d) Management standards for a facility

(1) Guidance
Not later than October 1, 2009, the Secretary, after consultation with the Administrator of the Environmental Protection Agency and all appropriate State agencies in affected States, shall make available, including to potential users of the long-term management and storage program established under subsection (a), guidance that establishes procedures and standards for the receipt, management, and long-term storage of elemental mercury at a designated facility or facilities, including requirements to ensure appropriate use of flasks or other suitable shipping containers. Such procedures and standards shall be protective of human health and the environment and shall ensure that the elemental mercury is stored in a safe, secure, and effective manner. In addition to such procedures and standards, elemental mercury managed and stored under this section at a designated facility shall be subject to the requirements of the Solid Waste Disposal Act [42 U.S.C. 6901 et seq.], including the requirements of subtitle C of that Act [42 U.S.C. 6921 et seq.], except as provided in subsection (g)(2) of this section. A designated facility is authorized to operate under interim status pursuant to section 3005(e) of the Solid Waste Disposal Act [42 U.S.C. 6921 et seq.] until a final decision on a permit application is made pursuant to section 3005(c) of the Solid Waste Disposal Act [42 U.S.C. 6925(c)]. Not later than January 1, 2020, the Administrator of the Environmental Protection Agency (or an authorized State) shall issue a final decision on the permit application.

(2) Training
The Secretary shall conduct operational training and emergency training for all staff that have responsibilities related to elemental mercury management, transfer, storage, monitoring, or response.

(3) Equipment
The Secretary shall ensure that each designated facility has all equipment necessary for routine operations, emergencies, monitoring, checking inventory, loading, and storing elemental mercury at the facility.

(4) Fire detection and suppression systems
The Secretary shall—
(A) ensure the installation of fire detection systems at each designated facility, including smoke detectors and heat detectors; and
(B) ensure the installation of a permanent fire suppression system, unless the Secretary determines that a permanent fire suppression system is not necessary to protect human health and the environment.

(e) Indemnification of persons delivering elemental mercury

(1) In general
(A) Except as provided in subparagraph (B) and subject to paragraph (2), the Secretary shall hold harmless, defend, and indemnify in full any person who delivers elemental mercury to a designated facility under the program established under subsection (a) from and against any suit, claim, demand or action, liability, judgment, cost, or other fee arising out of any claim for personal injury or property damage (including death, illness, or loss of or damage to property or economic loss) that results from, or is in any manner predicated upon, the release or threatened release of elemental mercury as a result of acts or omissions occurring after such mercury is delivered to a designated facility described in subsection (a).
(B) To the extent that a person described in subparagraph (A) contributed to any such release or threatened release, subparagraph (A) shall not apply.

(2) Conditions
No indemnification may be afforded under this subsection unless the person seeking indemnification—
(A) notifies the Secretary in writing within 30 days after receiving written notice of the claim for which indemnification is sought;
(B) furnishes to the Secretary copies of pertinent papers the person receives;
(C) furnishes evidence or proof of any claim, loss, or damage covered by this subsection; and
(D) provides, upon request by the Secretary, access to the records and personnel of the person for purposes of defending or settling the claim or action.

(3) Authority of Secretary

(A) In any case in which the Secretary determines that the Department of Energy may be required to make indemnification payments to a person under this subsection for any suit, claim, demand or action, liability, judgment, cost, or other fee arising out of any claim for personal injury or property damage referred to in paragraph (1)(A), the Secretary may settle or defend, on behalf of that person, the claim for personal injury or property damage.

(B) In any case described in subparagraph (A), if the person to whom the Department of Energy may be required to make indemnification payments does not allow the Secretary to settle or defend the claim, the person may not be afforded indemnification with respect to that claim under this subsection.

(f) Terms, conditions, and procedures

The Secretary is authorized to establish such terms, conditions, and procedures as are necessary to carry out this section.

(g) Effect on other law

(1) In general

Except as provided in paragraph (2), nothing in this section changes or affects any Federal, State, or local law or the obligation of any person to comply with such law.

(2) Exception

(A) Elemental mercury that the Secretary is storing on a long-term basis shall not be subject to the storage prohibition of section 3004(j) of the Solid Waste Disposal Act (42 U.S.C. 6924(j)). For the purposes of section 3004(j) of the Solid Waste Disposal Act, a generator accumulating elemental mercury destined for a facility designated by the Secretary under subsection (a) for 90 days or less shall be deemed to be accumulating the mercury to facilitate proper treatment, recovery, or disposal.

(B) Elemental mercury may be stored at a facility with respect to which any permit has been issued under section 3005(c) of the Solid Waste Disposal Act (42 U.S.C. 6925(c)), and shall not be subject to the storage prohibition of section 3004(j) of the Solid Waste Disposal Act (42 U.S.C. 6924(j)) if—

(i) the Secretary is unable to accept the mercury at a facility designated by the Secretary under subsection (a) for reasons beyond the control of the owner or operator of the permitted facility;

(ii) the owner or operator of the permitted facility certifies in writing to the Secretary that it will ship the mercury to the designated facility when the Secretary is able to accept the mercury; and

(iii) the owner or operator of the permitted facility certifies in writing to the Secretary that it will not sell, or otherwise place into commerce, the mercury.

(C) Subparagraph (B) shall not apply to mercury with respect to which the owner or operator of the permitted facility fails to comply with a certification provided under clause (ii) or (iii) of that subparagraph.

(D) A generator producing elemental mercury incidentally from the beneficiation or processing of ore or related pollution control activities may accumulate the mercury produced onsite that is destined for a facility designated by the Secretary under subsection (a) for more than 90 days without a permit issued under section 3005(c) of the Solid Waste Disposal Act (42 U.S.C. 6925(c)), and shall not be subject to the storage prohibition of section 3004(j) of that Act (42 U.S.C. 6924(j)), if—

(i) the Secretary is unable to accept the mercury at a facility designated by the Secretary under subsection (a) for reasons beyond the control of the generator;

(ii) the generator certifies in writing to the Secretary that the generator will ship the mercury to a designated facility when the Secretary is able to accept the mercury;

(iii) the generator certifies in writing to the Secretary that the generator is storing only mercury the generator has produced or recovered onsite and will not sell, or otherwise place into commerce, the mercury; and

(iv) the generator has obtained an identification number under section 262.12 of title 40, Code of Federal Regulations, and complies with the requirements described in paragraphs (1) through (4) of section 262.34(a) of title 40, Code of Federal Regulations (as in effect on the date of enactment of this subparagraph).

(E) Management standards for temporary storage.—Not later than January 1, 2017, the Secretary, after consultation with the Administrator of the Environmental Protection Agency and State agencies in affected States, shall develop and make available guidance that establishes procedures and standards for the management and short-term storage of elemental mercury at a generator covered under subparagraph (D), including requirements to ensure appropriate use of flasks or other suitable containers. Such procedures and standards shall be protective of health and the environment and shall ensure that the elemental mercury is stored in a safe, secure, and effective manner. A generator may accumulate mercury in accordance with subparagraph (D) immediately upon enactment of this subparagraph, and notwithstanding that guidance called for by this paragraph has not been developed or made available.

(h) Study
Not later than July 1, 2014, the Secretary shall transmit to the Congress the results of a study, conducted in consultation with the Administrator of the Environmental Protection Agency, that—
(1) determines the impact of the long-term storage program under this section on mercury recycling; and
(2) includes proposals, if necessary, to mitigate any negative impact identified under paragraph (1).


EDITORIAL NOTES

REFERENCES IN TEXT

AMENDMENTS
Subsec. (b)(1)(A). Pub. L. 114–182, §10(c)(2)(A)(ii), designated first sentence of par. (1) as subpar. (A) and inserted heading. Former subpar. (A) redesignated cl. (i) of subpar. (B).
Subsec. (b)(1)(B). Pub. L. 114–182, §10(c)(2)(A)(i), (iii), (iv), designated second sentence of par. (1) as subpar. (B), inserted heading, substituted "The amount of the fees described in subparagraph (A)" for "The amount of such fees" in introductory provisions, redesignated former subpars. (A) to (C) of par. (1) as cls. (i) to (iii), respectively, of subpar. (B) and realigned margins, substituted "publicly available not later than October 1, 2018" for "publicly available not later than October 1, 2012" in cl. (i) and ", subject to clause (iv); and" for period at end of cl. (iii), and added cl. (iv).
Subsec. (g)(2)(C). Pub. L. 114–182, §10(c)(3)(A), (B), redesignated concluding provisions of subpar. (B) as (C), substituted "Subparagraph (B)" for "This subparagraph", and inserted "of that subparagraph before period at end.
Subsec. (g)(2)(D), (E). Pub. L. 114–182, §10(c)(3)(C), added subpars. (D) and (E).

CODIFICATION

Section was enacted as part of the Mercury Export Ban Act of 2008, and not as part of the Solid Waste Disposal Act which comprises this chapter.

STATUTORY NOTES AND RELATED SUBSIDIARIES

DEPOSIT OF FEES

§6939g. Hazardous waste electronic manifest system

(a) Definitions
In this section:
(1) Board
The term "Board" means the Hazardous Waste Electronic Manifest System Advisory Board established under subsection (f).
(2) Fund
The term "Fund" means the Hazardous Waste Electronic Manifest System Fund established by subsection (d).
(3) Person
The term "person" includes an individual, corporation (including a Government corporation), company, association, firm, partnership, society, joint stock company, trust, municipality, commission, Federal agency, State, political subdivision of a
State, or interstate body.

(4) System
The term "system" means the hazardous waste electronic manifest system established under subsection (b).

(5) User
The term "user" means a hazardous waste generator, a hazardous waste transporter, an owner or operator of a hazardous waste treatment, storage, recycling, or disposal facility, or any other person that—
(A) is required to use a manifest to comply with any Federal or State requirement to track the shipment, transportation, and receipt of hazardous waste or other material that is shipped from the site of generation to an off-site facility for treatment, storage, disposal, or recycling; and
(B)(i) elects to use the system to complete and transmit an electronic manifest format; or
(ii) submits to the system for data processing purposes a paper copy of the manifest (or data from such a paper copy), in accordance with such regulations as the Administrator may promulgate to require such a submission.

(b) Establishment
Not later than 3 years after October 5, 2012, the Administrator shall establish a hazardous waste electronic manifest system that may be used by any user.

(c) User fees
(1) In general
In accordance with paragraph (4), the Administrator may impose on users such reasonable service fees as the Administrator determines to be necessary to pay costs incurred in developing, operating, maintaining, and upgrading the system, including any costs incurred in collecting and processing data from any paper manifest submitted to the system after the date on which the system enters operation.

(2) Collection of fees
The Administrator shall—
(A) collect the fees described in paragraph (1) from the users in advance of, or as reimbursement for, the provision by the Administrator of system-related services; and
(B) deposit the fees in the Fund.

(3) Fee structure
(A) In general
The Administrator, in consultation with information technology vendors, shall determine through the contract award process described in subsection (e) the fee structure that is necessary to recover the full cost to the Administrator of providing system-related services, including—
(i) contractor costs relating to—
(I) materials and supplies;
(II) contracting and consulting;
(III) overhead;
(IV) information technology (including costs of hardware, software, and related services);
(V) information management;
(VI) collection of service fees;
(VII) reporting and accounting; and
(VIII) project management; and

(ii) costs of employment of direct and indirect Government personnel dedicated to establishing, managing, and maintaining the system.

(B) Adjustments in fee amount
(i) In general
The Administrator, in consultation with the Board, shall increase or decrease the amount of a service fee determined under the fee structure described in subparagraph (A) to a level that will—
(I) result in the collection of an aggregate amount for deposit in the Fund that is sufficient and not more than reasonably necessary to cover current and projected system-related costs (including any necessary system upgrades); and
(II) minimize, to the maximum extent practicable, the accumulation of unused amounts in the Fund.

(ii) Exception for initial period of operation
The requirement described in clause (i)(II) shall not apply to any additional fees that accumulate in the Fund, in an amount that does not exceed $2,000,000, during the 3-year period beginning on the date on which the system enters operation.

(iii) Timing of adjustments
Adjustments to service fees described in clause (i) shall be made—
(I) initially, at the time at which initial development costs of the system have been recovered by the Administrator such that the service fee may be reduced to reflect the elimination of the system development component of the fee; and
(II) periodically thereafter, upon receipt and acceptance of the findings of any annual accounting or auditing report under subsection (d)(3), if the report discloses a significant disparity for a fiscal year between the funds collected from service fees under this subsection for the fiscal year and expenditures made for the fiscal year to provide system-related services.

(4) **Crediting and availability of fees**

Fees authorized under this section shall be collected and available for obligation only to the extent and in the amount provided in advance in appropriations Acts.

(d) **Hazardous Waste Electronic Manifest System Fund**

(1) **Establishment**

There is established in the Treasury of the United States a revolving fund, to be known as the "Hazardous Waste Electronic Manifest System Fund", consisting of such amounts as are deposited in the Fund under subsection (c)(2)(B).

(2) **Expenditures from Fund**

(A) **In general**

Only to the extent provided in advance in appropriations Acts, on request by the Administrator, the Secretary of the Treasury shall transfer from the Fund to the Administrator amounts appropriated to pay costs incurred in developing, operating, maintaining, and upgrading the system under subsection (c).

(B) **Use of funds by Administrator**

Fees collected by the Administrator and deposited in the Fund under this section shall be available to the Administrator subject to appropriations Acts for use in accordance with this section without fiscal year limitation.

(C) **Oversight of funds**

The Administrator shall carry out all necessary measures to ensure that amounts in the Fund are used only to carry out the goals of establishing, operating, maintaining, upgrading, managing, supporting, and overseeing the system.

(3) **Accounting and auditing**

(A) **Accounting**

For each 2-fiscal-year period, the Administrator shall prepare and submit to the Committee on Environment and Public Works and the Committee on Appropriations of the Senate and the Committee on Energy and Commerce and the Committee on Appropriations of the House of Representatives a report that includes—

(i) an accounting of the fees paid to the Administrator under subsection (c) and disbursed from the Fund for the period covered by the report, as reflected by financial statements provided in accordance with—

(I) the Chief Financial Officers Act of 1990 (Public Law 101–576; 104 Stat. 2838) and amendments made by that Act; and

(II) the Government Management Reform Act of 1994 (Public Law 103–356; 108 Stat. 3410) and amendments made by that Act;

(ii) an accounting describing actual expenditures from the Fund for the period covered by the report for costs described in subsection (c)(1).

(B) **Auditing**

(i) **In general**

For the purpose of section 3515(c) of title 31, the Fund shall be considered a component of an Executive agency.

(ii) **Components of audit**

The annual audit required in accordance with sections 3515(b) and 3521 of title 31 of the financial statements of activities carried out using amounts from the Fund shall include an analysis of—

(I) the fees collected and disbursed under this section;

(II) the reasonableness of the fee structure in place as of the date of the audit to meet current and projected costs of the system;

(III) the level of use of the system by users; and

(IV) the success to date of the system in operating on a self-sustaining basis and improving the efficiency of tracking waste shipments and transmitting waste shipment data.

(iii) **Federal responsibility**

The Inspector General of the Environmental Protection Agency shall—

(I) conduct the annual audit described in clause (ii); and

(II) submit to the Administrator a report that describes the findings and recommendations of the Inspector General resulting from the audit.

(e) **Contracts**

(1) **Authority to enter into contracts funded by service fees**

After consultation with the Secretary of Transportation, the Administrator may enter into 1 or more information technology contracts with entities determined to be appropriate by the Administrator (referred to in this subsection as "contractors") for the provision of system-related services.
(2) Term of contract
A contract awarded under this subsection shall have a term of not more than 10 years.

(3) Achievement of goals
The Administrator shall ensure, to the maximum extent practicable, that a contract awarded under this subsection—
(A) is performance-based;
(B) identifies objective outcomes; and
(C) contains performance standards that may be used to measure achievement and goals to evaluate the success of a contractor in performing under the contract and the right of the contractor to payment for services under the contract, taking into consideration that a primary measure of successful performance shall be the development of a hazardous waste electronic manifest system that—
   (i) meets the needs of the user community (including States that rely on data contained in manifests);
   (ii) attracts sufficient user participation and service fee revenues to ensure the viability of the system;
   (iii) decreases the administrative burden on the user community; and
   (iv) provides the waste receipt data applicable to the biennial reports required by section 6922(a)(6) of this title.

(4) Payment structure
Each contract awarded under this subsection shall include a provision that specifies—
(A) the service fee structure of the contractor that will form the basis for payments to the contractor; and
(B) the fixed-share ratio of monthly service fee revenues from which the Administrator shall reimburse the contractor for system-related development, operation, and maintenance costs.

(5) Cancellation and termination
   (A) In general
      If the Administrator determines that sufficient funds are not made available for the continuation in a subsequent fiscal year of a contract entered into under this subsection, the Administrator may cancel or terminate the contract.
   (B) Negotiation of amounts
      The amount payable in the event of cancellation or termination of a contract entered into under this subsection shall be negotiated with the contractor at the time at which the contract is awarded.

(6) No effect on ownership
Regardless of whether the Administrator enters into a contract under this subsection, the system shall be owned by the Federal Government.

(f) Hazardous Waste Electronic Manifest System Advisory Board
(1) Establishment
   Not later than 3 years after October 5, 2012, the Administrator shall establish a board to be known as the "Hazardous Waste Electronic Manifest System Advisory Board".

(2) Composition
   The Board shall be composed of 9 members, of which—
   (A) 1 member shall be the Administrator (or a designee), who shall serve as Chairperson of the Board; and
   (B) 8 members shall be individuals appointed by the Administrator—
      (i) at least 2 of whom shall have expertise in information technology;
      (ii) at least 3 of whom shall have experience in using or represent users of the manifest system to track the transportation of hazardous waste under this subchapter (or an equivalent State program); and
      (iii) at least 3 of whom shall be a State representative responsible for processing those manifests.

(3) Duties
   The Board shall meet annually to discuss, evaluate the effectiveness of, and provide recommendations to the Administrator relating to, the system.

(g) Regulations
(1) Promulgation
   (A) In general
      Not later than 1 year after October 5, 2012, after consultation with the Secretary of Transportation, the Administrator shall promulgate regulations to carry out this section.
   (B) Inclusions
      The regulations promulgated pursuant to subparagraph (A) may include such requirements as the Administrator determines to be necessary to facilitate the transition from the use of paper manifests to the use of electronic manifests, or to accommodate the processing of data from paper manifests in the electronic manifest system, including a requirement that users of paper manifests submit to the system copies of the paper manifests for data processing purposes.
   (C) Requirements
      The regulations promulgated pursuant to subparagraph (A) shall ensure that each electronic manifest provides, to the same extent as paper manifests under applicable Federal and State law, for—
(i) the ability to track and maintain legal accountability of—
   (I) the person that certifies that the information provided in the manifest is accurately described; and
   (II) the person that acknowledges receipt of the manifest;

(ii) if the manifest is electronically submitted, State authority to access paper printout copies of the manifest from
   the system; and
   (iii) access to all publicly available information contained in the manifest.

(2) Effective date of regulations
   Any regulation promulgated by the Administrator under paragraph (1) and in accordance with section 6923 of this title
   relating to electronic manifesting of hazardous waste shall take effect in each State as of the effective date specified in the
   regulation.

(3) Administration
   The Administrator shall carry out regulations promulgated under this subsection in each State unless the State program
   is fully authorized to carry out such regulations in lieu of the Administrator.

(h) Requirement of compliance with respect to certain States
   In any case in which the State in which waste is generated, or the State in which waste will be transported to a designated
   facility, requires that the waste be tracked through a hazardous waste manifest, the designated facility that receives the
   waste shall, regardless of the State in which the facility is located—
   (1) complete the facility portion of the applicable manifest;
   (2) sign and date the facility certification; and
   (3) submit to the system a final copy of the manifest for data processing purposes.

(i) Authorization for start-up activities
   There are authorized to be appropriated $2,000,000 for each of fiscal years 2013 through 2015 for start-up activities to
   carry out this section, to be offset by collection of user fees under subsection (c) such that all such appropriated funds are
   offset by fees as provided in subsection (c).


EDITORIAL NOTES

REFERENCES IN TEXT


SUBCHAPTER IV—STATE OR REGIONAL SOLID WASTE PLANS

§6941. Objectives of subchapter
   The objectives of this subchapter are to assist in developing and encouraging methods for the disposal of solid waste
   which are environmentally sound and which maximize the utilization of valuable resources including energy and materials
   which are recoverable from solid waste and to encourage resource conservation. Such objectives are to be accomplished
   through Federal technical and financial assistance to States or regional authorities for comprehensive planning pursuant to
   Federal guidelines designed to foster cooperation among Federal, State, and local governments and private industry. In
   developing such comprehensive plans, it is the intention of this chapter that in determining the size of the waste-to-energy
   facility, adequate provision shall be given to the present and reasonably anticipated future needs, including those needs
   created by thorough implementation of section 6962(h) of this title, of the recycling and resource recovery interest within the
   area encompassed by the planning process.


EDITORIAL NOTES

PRIOR PROVISIONS

Provisions similar to those in this section were contained in section 3254 of this title, prior to the general
AMENDMENTS

1984—Pub. L. 98–616, §501(f)(1), inserted ", including those needs created by thorough implementation of section 6962(h) of this title,"

Pub. L. 98–616, §301(a), inserted at end "In developing such comprehensive plans, it is the intention of this chapter that in determining the size of the waste-to-energy facility, adequate provision shall be given to the present and reasonably anticipated future needs of the recycling and resource recovery interest within the area encompassed by the planning process."

1980—Pub. L. 96–482 included as an objective in the disposal of solid waste the utilization of energy and materials recoverable from solid waste.

§6941a. Energy and materials conservation and recovery; Congressional findings

The Congress finds that—

1. significant savings could be realized by conserving materials in order to reduce the volume or quantity of material which ultimately becomes waste;

2. solid waste contains valuable energy and material resources which can be recovered and used thereby conserving increasingly scarce and expensive fossil fuels and virgin materials;

3. the recovery of energy and materials from municipal waste, and the conservation of energy and materials contributing to such waste streams, can have the effect of reducing the volume of the municipal waste stream and the burden of disposing of increasing volumes of solid waste;

4. the technology to conserve resources exists and is commercially feasible to apply;

5. the technology to recover energy and materials from solid waste is of demonstrated commercial feasibility; and

6. various communities throughout the nation have different needs and different potentials for conserving resources and for utilizing techniques for the recovery of energy and materials from waste, and Federal assistance in planning and implementing such energy and materials conservation and recovery programs should be available to all such communities on an equitable basis in relation to their needs and potential.


EDITORIAL NOTES

CODIFICATION

Section was enacted as part of the Solid Waste Disposal Act Amendments of 1980, and not as part of the Solid Waste Disposal Act which comprises this chapter.

§6942. Federal guidelines for plans

(a) Guidelines for identification of regions

For purposes of encouraging and facilitating the development of regional planning for solid waste management, the Administrator, within one hundred and eighty days after October 21, 1976, and after consultation with appropriate Federal, State, and local authorities, shall by regulation publish guidelines for the identification of those areas which have common solid waste management problems and are appropriate units for planning regional solid waste management services. Such guidelines shall consider—

1. the size and location of areas which should be included,

2. the volume of solid waste which should be included, and

3. the available means of coordinating regional planning with other related regional planning and for coordination of such regional planning into the State plan.

(b) Guidelines for State plans

Not later than eighteen months after October 21, 1976, and after notice and hearing, the Administrator shall, after consultation with appropriate Federal, State, and local authorities, promulgate regulations containing guidelines to assist in the development and implementation of State solid waste management plans (hereinafter in this chapter referred to as "State plans"). The guidelines shall contain methods for achieving the objectives specified in section 6941 of this title. Such guidelines shall be reviewed from time to time, but not less frequently than every three years, and revised as may be appropriate.

(c) Considerations for State plan guidelines

The guidelines promulgated under subsection (b) shall consider—

1. the varying regional, geologic, hydrologic, climatic, and other circumstances under which different solid waste practices are required in order to insur the reasonable protection of the quality of the ground and surface waters from leachate contamination, the reasonable protection of the quality of the surface waters from surface runoff contamination, and the reasonable protection of ambient air quality;

2. characteristics and conditions of collection, storage, processing, and disposal operating methods, techniques and practices, and location of facilities where such operating methods, techniques, and practices are conducted, taking into
account the nature of the material to be disposed;
(3) methods for closing or upgrading open dumps for purposes of eliminating potential health hazards;
(4) population density, distribution, and projected growth;
(5) geographic, geologic, climatic, and hydrologic characteristics;
(6) the type and location of transportation;
(7) the profile of industries;
(8) the constituents and generation rates of waste;
(9) the political, economic, organizational, financial, and management problems affecting comprehensive solid waste management;
(10) types of resource recovery facilities and resource conservation systems which are appropriate; and
(11) available new and additional markets for recovered material and energy and energy resources recovered from solid waste as well as methods for conserving such materials and energy.


EDITORIAL NOTES

AMENDMENTS

1980—Subsec. (c)(11). Pub. L. 96–482 required State plan guidelines to consider energy and energy resources recovered from solid waste as well as methods for conserving such materials and energy.

EXECUTIVE DOCUMENTS

TRANSFER OF FUNCTIONS

For transfer of certain enforcement functions of Administrator or other official of Environmental Protection Agency under this chapter to Federal Inspector, Office of Federal Inspector for the Alaska Natural Gas Transportation System, and subsequent transfer to Secretary of Energy, then to Federal Coordinator for Alaska Natural Gas Transportation Projects, see note set out under section 6903 of this title.

§6943. Requirements for approval of plans

(a) Minimum requirements

In order to be approved under section 6947 of this title, each State plan must comply with the following minimum requirements—

(1) The plan shall identify (in accordance with section 6946(b) of this title) (A) the responsibilities of State, local, and regional authorities in the implementation of the State plan, (B) the distribution of Federal funds to the authorities responsible for development and implementation of the State plan, and (C) the means for coordinating regional planning and implementation under the State plan.

(2) The plan shall, in accordance with sections 6944(b) and 6945(a) of this title, prohibit the establishment of new open dumps within the State, and contain requirements that all solid waste (including solid waste originating in other States, but not including hazardous waste) shall be (A) utilized for resource recovery or (B) disposed of in sanitary landfills (within the meaning of section 6944(a) of this title) or otherwise disposed of in an environmentally sound manner.

(3) The plan shall provide for the closing or upgrading of all existing open dumps within the State pursuant to the requirements of section 6945 of this title.

(4) The plan shall provide for the establishment of such State regulatory powers as may be necessary to implement the plan.

(5) The plan shall provide that no State or local government within the State shall be prohibited under State or local law from negotiating and entering into long-term contracts for the supply of solid waste to resource recovery facilities, from entering into long-term contracts for the operation of such facilities, or from securing long-term markets for material and energy recovered from such facilities or for conserving materials or energy by reducing the volume of waste.

(6) The plan shall provide for such resource conservation or recovery and for the disposal of solid waste in sanitary landfills or any combination of practices so as may be necessary to use or dispose of such waste in a manner that is environmentally sound.

(b) Discretionary plan provisions relating to recycled oil

Any State plan submitted under this subchapter may include, at the option of the State, provisions to carry out each of the following:

(1) Encouragement, to the maximum extent feasible and consistent with the protection of the public health and the environment, of the use of recycled oil in all appropriate areas of State and local government.

(2) Encouragement of persons contracting with the State to use recycled oil to the maximum extent feasible, consistent with protection of the public health and the environment.

(3) Informing the public of the uses of recycled oil.
(4) Establishment and implementation of a program (including any necessary licensing of persons and including the use, where appropriate, of manifests) to assure that used oil is collected, transported, treated, stored, reused, and disposed of, in a manner which does not present a hazard to the public health or the environment.

Any plan submitted under this chapter before October 15, 1980, may be amended, at the option of the State, at any time after such date to include any provision referred to in this subsection.

(c) Energy and materials conservation and recovery feasibility planning and assistance

(1) A State which has a plan approved under this subchapter or which has submitted a plan for such approval shall be eligible for assistance under section 6948(a)(3) of this title if the Administrator determines that under such plan the State will

(A) analyze and determine the economic and technical feasibility of facilities and programs to conserve resources which contribute to the waste stream or to recover energy and materials from municipal waste;

(B) analyze the legal, institutional, and economic impediments to the development of systems and facilities for conservation of energy or materials which contribute to the waste stream or for the recovery of energy and materials from municipal waste and make recommendations to appropriate governmental authorities for overcoming such impediments;

(C) assist municipalities within the State in developing plans, programs, and projects to conserve resources or recover energy and materials from municipal waste; and

(D) coordinate the resource conservation and recovery planning under subparagraph (C).

(2) The analysis referred to in paragraph (1)(A) shall include—

(A) the evaluation of, and establishment of priorities among, market opportunities for industrial and commercial users of all types (including public utilities and industrial parks) to utilize energy and materials recovered from municipal waste;

(B) comparisons of the relative costs of energy recovered from municipal waste in relation to the costs of energy derived from fossil fuels and other sources;

(C) studies of the transportation and storage problems and other problems associated with the development of energy and materials recovery technology, including curbside source separation;

(D) the evaluation and establishment of priorities among ways of conserving energy or materials which contribute to the waste stream;

(E) comparison of the relative total costs between conserving resources and disposing of or recovering such waste; and

(F) studies of impediments to resource conservation or recovery, including business practices, transportation requirements, or storage difficulties.

Such studies and analyses shall also include studies of other sources of solid waste from which energy and materials may be recovered or minimized.

(d) Size of waste-to-energy facilities

Notwithstanding any of the above requirements, it is the intention of this chapter and the planning process developed pursuant to this chapter that in determining the size of the waste-to-energy facility, adequate provision shall be given to the present and reasonably anticipated future needs of the recycling and resource recovery interest within the area encompassed by the planning process.


EDITORIAL NOTES

CODIFICATION

Another section 5(b) of Pub. L. 96–463 amended section 6948 of this title.

AMENDMENTS

1984—Subsecs. (b), (c). Pub. L. 98–616, §502(h), redesignated the subsec. (b) entitled energy and materials conservation and recovery feasibility planning and assistance, as subsec. (c).


Subsec. (a)(2). Pub. L. 96–482, §18(a), substituted reference to sections 6944(b) and 6945(a) of this title for reference to section 6945(c) of this title.

Subsec. (a)(5). Pub. L. 96–482, §§18(b), 32(d)(1), substituted "State or local government" for "local government" and required State plan recognition of right to enter into long-term contracts for operation of resource recovery facilities and to secure long-term markets for material and energy recovered from such facilities, and required State plan recognition of right to negotiate long-term contracts and to negotiate and enter into such contracts for conserving materials or energy by reducing the volume of waste.

Subsec. (b). Pub. L. 96–463, §5(b), added subsec. (b) relating to discretionary plan provisions for recycled oil.
Pub. L. 96–482, §32(d)(2), added subsec. (b) relating to energy and materials conservation and recovery feasibility planning and assistance.

§6944. Criteria for sanitary landfills; sanitary landfills required for all disposal

(a) Criteria for sanitary landfills

Not later than one year after October 21, 1976, after consultation with the States, and after notice and public hearings, the Administrator shall promulgate regulations containing criteria for determining which facilities shall be classified as sanitary landfills and which shall be classified as open dumps within the meaning of this chapter. At a minimum, such criteria shall provide that a facility may be classified as a sanitary landfill and not an open dump only if there is no reasonable probability of adverse effects on health or the environment from disposal of solid waste at such facility. Such regulations may provide for the classification of the types of sanitary landfills.

(b) Disposal required to be in sanitary landfills, etc.

For purposes of complying with section 6943(2) of this title each State plan shall prohibit the establishment of open dumps and contain a requirement that disposal of all solid waste within the State shall be in compliance with such section 6943(2) of this title.

(c) Effective date

The prohibition contained in subsection (b) shall take effect on the date six months after the date of promulgation of regulations under subsection (a).


EDITORIAL NOTES

REFERENCES IN TEXT


AMENDMENTS

1984—Subsec. (c). Pub. L. 98–616 struck out "or on the date of approval of the State plan, whichever is later" at end.

EXECUTIVE DOCUMENTS

TRANSFER OF FUNCTIONS

For transfer of certain enforcement functions of Administrator or other official of Environmental Protection Agency under this chapter to Federal Inspector, Office of Federal Inspector for the Alaska Natural Gas Transportation System, and subsequent transfer to Secretary of Energy, then to Federal Coordinator for Alaska Natural Gas Transportation Projects, see note set out under section 6903 of this title.

1 See References in Text note below.

§6945. Upgrading of open dumps

(a) Closing or upgrading of existing open dumps

Upon promulgation of criteria under section 6907(a)(3) of this title, any solid waste management practice or disposal of solid waste or hazardous waste which constitutes the open dumping of solid waste or hazardous waste is prohibited, except in the case of any practice or disposal of solid waste under a timetable or schedule for compliance established under this section. The prohibition contained in the preceding sentence shall be enforceable under section 6972 of this title against persons engaged in the act of open dumping. For purposes of complying with section 6943(a)(2) and 6943(a)(3) of this title, each State plan shall contain a requirement that all existing disposal facilities or sites for solid waste in such State which are open dumps listed in the inventory under subsection (b) shall comply with such measures as may be promulgated by the Administrator to eliminate health hazards and minimize potential health hazards. Each such plan shall establish, for any entity which demonstrates that it has considered other public or private alternatives for solid waste management to comply with the prohibition on open dumping and is unable to utilize such alternatives to comply, a timetable or schedule for compliance for such practice or disposal of solid waste which specifies a schedule of remedial measures, including an enforceable sequence of actions or operations, leading to compliance with the prohibition on open dumping of solid waste within a reasonable time (not to exceed 5 years from the date of publication of criteria under section 6907(a)(3) of this title).
(b) Inventory

To assist the States in complying with section 6943(a)(3) of this title, not later than one year after promulgation of regulations under section 6944 of this title, the Administrator, with the cooperation of the Bureau of the Census shall publish an inventory of all disposal facilities or sites in the United States which are open dumps within the meaning of this chapter.

(c) Control of hazardous disposal

(1)(A) Not later than 36 months after November 8, 1984, each State shall adopt and implement a permit program or other system of prior approval and conditions to assure that each solid waste management facility within such State which may receive hazardous household waste or hazardous waste due to the provision of section 6921(d) of this title for small quantity generators (otherwise not subject to the requirement for a permit under section 6925 of this title) will comply with the applicable criteria promulgated under section 6944(a) and 6907(a)(3) of this title.

(B) Not later than eighteen months after the promulgation of revised criteria under subsection 1-6944(a) of this title (as required by section 6949a(c) of this title), each State shall adopt and implement a permit program or other system or prior approval and conditions, to assure that each solid waste management facility within such State which may receive hazardous household waste or hazardous waste due to the provision of section 6921(d) of this title for small quantity generators (otherwise not subject to the requirement for a permit under section 6925 of this title) will comply with the criteria revised under section 6944(a) of this title.

(C) The Administrator shall determine whether each State has developed an adequate program under this paragraph. The Administrator may make such a determination in conjunction with approval, disapproval or partial approval of a State plan under section 6947 of this title.

(2)(A) In any State that the Administrator determines has not adopted an adequate program for such facilities under paragraph (1)(B) by the date provided in such paragraph, the Administrator may use the authorities available under sections 6927 and 6928 of this title to enforce the prohibition contained in subsection (a) of this section with respect to such facilities.

(B) For purposes of this paragraph, the term "requirement of this subchapter" in section 6928 of this title shall be deemed to include criteria promulgated by the Administrator under sections 6907(a)(3) and 6944(a) of this title, and the term "hazardous wastes" in section 6927 of this title shall be deemed to include solid waste at facilities that may handle hazardous household wastes or hazardous wastes from small quantity generators.

(d) State programs for control of coal combustion residuals

(1) Approval by Administrator

(A) In general

Each State may submit to the Administrator, in such form as the Administrator may establish, evidence of a permit program or other system of prior approval and conditions under State law for regulation by the State of coal combustion residuals units that are located in the State that, after approval by the Administrator, will operate in lieu of regulation of coal combustion residuals units in the State by—

(i) application of part 257 of title 40, Code of Federal Regulations (or successor regulations promulgated pursuant to sections 6907(a)(3) and 6944(a) of this title); or

(ii) implementation by the Administrator of a permit program under paragraph (2)(B).

(B) Requirement

Not later than 180 days after the date on which a State submits the evidence described in subparagraph (A), the Administrator, after public notice and an opportunity for public comment, shall approve, in whole or in part, a permit program or other system of prior approval and conditions submitted under subparagraph (A) if the Administrator determines that the program or other system requires each coal combustion residuals unit located in the State to achieve compliance with—

(i) the applicable criteria for coal combustion residuals units under part 257 of title 40, Code of Federal Regulations (or successor regulations promulgated pursuant to sections 6907(a)(3) and 6944(a) of this title); or

(ii) such other State criteria that the Administrator, after consultation with the State, determines to be at least as protective as the criteria described in clause (i).

(C) Permit requirements

The Administrator shall approve under subparagraph (B)(ii) a State permit program or other system of prior approval and conditions that allows a State to include technical standards for individual permits or conditions of approval that differ from the criteria under part 257 of title 40, Code of Federal Regulations (or successor regulations promulgated pursuant to sections 6907(a)(3) and 6944(a) of this title) if, based on site-specific conditions, the Administrator determines that the technical standards established pursuant to a State permit program or other system are at least as protective as the criteria under that part.

(D) Program review and notification

(i) Program review

The Administrator shall review a State permit program or other system of prior approval and conditions that is approved under subparagraph (B)—

(I) from time to time, as the Administrator determines necessary, but not less frequently than once every 12 years;

(II) not later than 3 years after the date on which the Administrator revises the applicable criteria for coal combustion residuals units under part 257 of title 40, Code of Federal Regulations (or successor regulations promulgated pursuant to sections 6907(a)(3) and 6944(a) of this title);
(III) not later than 1 year after the date of a significant release (as defined by the Administrator), that was not authorized at the time the release occurred, from a coal combustion residuals unit located in the State; and

(IV) on request of any other State that asserts that the soil, groundwater, or surface water of the State is or is likely to be adversely affected by a release or potential release from a coal combustion residuals unit located in the State for which the program or other system was approved.

(ii) Notification and opportunity for a public hearing

The Administrator shall provide to a State notice of deficiencies with respect to the permit program or other system of prior approval and conditions of the State that is approved under subparagraph (B), and an opportunity for a public hearing, if the Administrator determines that—

(I) a revision or correction to the permit program or other system of prior approval and conditions of the State is necessary to ensure that the permit program or other system of prior approval and conditions continues to ensure that each coal combustion residuals unit located in the State achieves compliance with the criteria described in clauses (i) and (ii) of subparagraph (B);

(II) the State has not implemented an adequate permit program or other system of prior approval and conditions that requires each coal combustion residuals unit located in the State to achieve compliance with the criteria described in subparagraph (B); or

(III) the State has, at any time, approved or failed to revoke a permit for a coal combustion residuals unit, a release from which adversely affects or is likely to adversely affect the soil, groundwater, or surface water of another State.

(E) Withdrawal

(i) In general

The Administrator shall withdraw approval of a State permit program or other system of prior approval and conditions if, after the Administrator provides notice and an opportunity for a public hearing to the relevant State under subparagraph (D)(ii), the Administrator determines that the State has not corrected the deficiencies identified by the Administrator under subparagraph (D)(ii).

(ii) Reinstatement of State approval

Any withdrawal of approval under clause (i) shall cease to be effective on the date on which the Administrator makes a determination that the State has corrected the deficiencies identified by the Administrator under subparagraph (D)(ii).

(2) Nonparticipating states

(A) Definition of nonparticipating State

In this paragraph, the term "nonparticipating State" means a State—

(i) for which the Administrator has not approved a State permit program or other system of prior approval and conditions under paragraph (1)(B);

(ii) the Governor of which has not submitted to the Administrator for approval evidence to operate a State permit program or other system of prior approval and conditions under paragraph (1)(A);

(iii) the Governor of which provides notice to the Administrator that, not fewer than 90 days after the date on which the Governor provides the notice to the Administrator, the State will relinquish an approval under paragraph (1)(B) to operate a permit program or other system of prior approval and conditions; or

(iv) for which the Administrator has withdrawn approval for a permit program or other system of prior approval and conditions under paragraph (1)(E).

(B) Implementation of permit program

In the case of a nonparticipating State and subject to the availability of appropriations specifically provided in an appropriations Act to carry out a program in a nonparticipating State, the Administrator shall implement a permit program to require each coal combustion residuals unit located in the nonparticipating State to achieve compliance with applicable criteria established by the Administrator under part 257 of title 40, Code of Federal Regulations (or successor regulations promulgated pursuant to sections 6907(a)(3) and 6944(a) of this title).

(3) Applicability of criteria

The applicable criteria for coal combustion residuals units under part 257 of title 40, Code of Federal Regulations (or successor regulations promulgated pursuant to sections 6907(a)(3) and 6944(a) of this title), shall apply to each coal combustion residuals unit in a State unless—

(A) a permit under a State permit program or other system of prior approval and conditions approved by the Administrator under paragraph (1)(B) is in effect for the coal combustion residuals unit; or

(B) a permit issued by the Administrator in a State in which the Administrator is implementing a permit program under paragraph (2)(B) is in effect for the coal combustion residuals unit.

(4) Prohibition on open dumping

(A) In general

The Administrator may use the authority provided by sections 6927 and 6928 of this title to enforce the prohibition on open dumping under subsection (a) with respect to a coal combustion residuals unit—

(i) in a nonparticipating State (as defined in paragraph (2)); and
(ii) located in a State that is approved to operate a permit program or other system of prior approval and conditions under paragraph (1)(B), in accordance with subparagraph (B) of this paragraph.

(B) Federal enforcement in an approved State

(i) In general

In the case of a coal combustion residuals unit located in a State that is approved to operate a permit program or other system of prior approval and conditions under paragraph (1)(B), the Administrator may commence an administrative or judicial enforcement action under section 6928 of this title if—

(I) the State requests that the Administrator provide assistance in the performance of an enforcement action; or

(II) after consideration of any other administrative or judicial enforcement action involving the coal combustion residuals unit, the Administrator determines that an enforcement action is likely to be necessary to ensure that the coal combustion residuals unit is operating in accordance with the criteria established under the permit program or other system of prior approval and conditions.

(ii) Notification

In the case of an enforcement action by the Administrator under clause (i)(II), before issuing an order or commencing a civil action, the Administrator shall notify the State in which the coal combustion residuals unit is located.

(iii) Annual report to Congress

(I) In general

Subject to subclause (II), not later than December 31, 2017, and December 31 of each year thereafter, the Administrator shall submit to the Committee on Environment and Public Works of the Senate and the Committee on Energy and Commerce of the House of Representatives a report that describes any enforcement action commenced under clause (i), including a description of the basis for the enforcement action.

(II) Applicability

Subclause (I) shall not apply for any calendar year during which the Administrator does not commence an enforcement action under clause (I).

(5) Indian country

The Administrator shall establish and carry out a permit program, in accordance with this subsection, for coal combustion residuals units in Indian country (as defined in section 1151 of title 18) to require each coal combustion residuals unit located in Indian country to achieve compliance with the applicable criteria established by the Administrator under part 257 of title 40, Code of Federal Regulations (or successor regulations promulgated pursuant to sections 6907(a)(3) and 6944(a) of this title).

(6) Treatment of coal combustion residuals units

A coal combustion residuals unit shall be considered to be a sanitary landfill for purposes of this chapter, including subsection (a), only if the coal combustion residuals unit is operating in accordance with—

(A) the requirements of a permit issued by—

(i) the State in accordance with a program or system approved under paragraph (1)(B); or

(ii) the Administrator pursuant to paragraph (2)(B) or paragraph (5); or

(B) the applicable criteria for coal combustion residuals units under part 257 of title 40, Code of Federal Regulations (or successor regulations promulgated pursuant to sections 6907(a)(3) and 6944(a) of this title).

(7) Effect of subsection

Nothing in this subsection affects any authority, regulatory determination, other law, or legal obligation in effect on the day before December 16, 2016.


EDITORIAL NOTES

CODIFICATION

Another section 19(b) of Pub. L. 96–482 amended section 6946 of this title.

AMENDMENTS


1984—Subsec. (a). Pub. L. 98–616, §403(c), inserted after first sentence "The prohibition contained in the preceding sentence shall be enforceable under section 6972 of this title against persons engaged in the act of open dumping."

Pub. L. 98–616, §502(c), inserted a closing parenthesis before the period at end.

Subsec. (c). Pub. L. 98–616, §302(c), added subsec. (c).
1980—Subsec. (a). Pub. L. 96–482, §19(a), (b)(1), struck out subsec. (a) which defined "open dump", which is covered in section 6903(14) of this title, redesignated subsec. (c) as (a) and substituted "Upon promulgation of criteria under section 6907(a)(3) of this title, any" for "Any", "section 6943(a)(2) and 6943(a)(3) of this title" for "section 6943(2) of this title", and "criteria under section 6907(a)(3) of this title" for "the inventory under subsection (b)".

Amendment by section 19(b)(1) of Pub. L. 96–482, directing that following reference to "4003(2)", which had been editorially translated as section 6943(2) of this title, the phrase "and 4003(3)" be inserted, was executed by translating "4003(2) and 4003(3)" as section 6943(a)(2) and 6943(a)(3) of this title, in view of the designation of the existing provisions of section 6943 of this title as subsec. (a) of section 6943 of this title by section 5(b) of Pub. L. 96–463 and also by section 32(d)(2) of Pub. L. 96–482.

Subsec. (b). Pub. L. 96–482, §19(b)(2), inserted introductory phrase "To assist the States in complying with section 6943(a)(3) of this title". Amendment referring to section "4003(3)" was executed by translating "4003(3)" as section 6943(a)(3) of this title, in view of the designation of the existing provisions of section 6943 of this title as subsec. (a) of section 6943 of this title by section 5(b) of Pub. L. 96–463 and also by section 32(d)(2) of Pub. L. 96–482.

Subsec. (c). Pub. L. 96–482, §19(a), redesignated subsec. (c) as (a).

EXECUTIVE DOCUMENTS

TRANSFER OF FUNCTIONS

For transfer of certain enforcement functions of Administrator or other official of Environmental Protection Agency under this chapter to Federal Inspector, Office of Federal Inspector for the Alaska Natural Gas Transportation System, and subsequent transfer to Secretary of Energy, then to Federal Coordinator for Alaska Natural Gas Transportation Projects, see note set out under section 6903 of this title.

1 So in original. Probably should be "section".

2 So in original. Probably should be "of".

§6946. Procedure for development and implementation of State plan

(a) Identification of regions

Within one hundred and eighty days after publication of guidelines under section 6942(a) of this title (relating to identification of regions), the Governor of each State, after consultation with local elected officials, shall promulgate regulations based on such guidelines identifying the boundaries of each area within the State which, as a result of urban concentrations, geographic conditions, markets, and other factors, is appropriate for carrying out regional solid waste management. Such regulations may be modified from time to time (identifying additional or different regions) pursuant to such guidelines.

(b) Identification of State and local agencies and responsibilities

(1) Within one hundred and eighty days after the Governor promulgates regulations under subsection (a), for purposes of facilitating the development and implementation of a State plan which will meet the minimum requirements of section 6943 of this title, the State, together with appropriate elected officials of general purpose units of local government, shall jointly (A) identify an agency to develop the State plan and identify one or more agencies to implement such plan, and (B) identify which solid waste management activities will, under such State plan, be planned for and carried out by the State and which such management activities will, under such State plan, be planned for and carried out by a regional or local authority or a combination of regional or local and State authorities. If a multi-functional regional agency authorized by State law to conduct solid waste planning and management (the members of which are appointed by the Governor) is in existence on October 21, 1976, the Governor shall identify such authority for purposes of carrying out within such region clause (A) of this paragraph. Where feasible, designation of the agency for the affected area designated under section 1288 of title 33 shall be considered. A State agency identified under this paragraph shall be established or designated by the Governor of such State. Local or regional agencies identified under this paragraph shall be composed of individuals at least a majority of whom are elected local officials.

(2) If planning and implementation agencies are not identified and designated or established as required under paragraph (1) for any affected area, the governor shall, before the date two hundred and seventy days after promulgation of regulations under subsection (a), establish or designate a State agency to develop and implement the State plan for such area.

(c) Interstate regions

(1) In the case of any region which, pursuant to the guidelines published by the Administrator under section 6942(a) of this title (relating to identification of regions), would be located in two or more States, the Governors of the respective States, after consultation with local elected officials, shall consult, cooperate, and enter into agreements identifying the boundaries of such region pursuant to subsection (a).

(2) Within one hundred and eighty days after an interstate region is identified by agreement under paragraph (1), appropriate elected officials of general purpose units of local government within such region shall jointly establish or designate an agency to develop a plan for such region. If no such agency is established or designated within such period by
such officials, the Governors of the respective States may, by agreement, establish or designate for such purpose a single representative organization including elected officials of general purpose units of local government within such region.

(3) Implementation of interstate regional solid waste management plans shall be conducted by units of local government for any portion of a region within their jurisdiction, or by multijurisdictional agencies or authorities designated in accordance with State law, including those designated by agreement by such units of local government for such purpose. If no such unit, agency, or authority is so designated, the respective Governors shall designate or establish a single interstate agency to implement such plan.

(4) For purposes of this subchapter, so much of an interstate regional plan as is carried out within a particular State shall be deemed part of the State plan for such State.


EDITORIAL NOTES

CODIFICATION

Another section 19(b) of Pub. L. 96–482 amended section 6945 of this title.

AMENDMENTS


EXECUTIVE DOCUMENTS

TRANSFER OF FUNCTIONS

For transfer of certain enforcement functions of Administrator or other official of Environmental Protection Agency under this chapter to Federal Inspector, Office of Federal Inspector for the Alaska Natural Gas Transportation System, and subsequent transfer to Secretary of Energy, then to Federal Coordinator for Alaska Natural Gas Transportation Projects, see note set out under section 6903 of this title.

§6947. Approval of State plan; Federal assistance

(a) Plan approval

The Administrator shall, within six months after a State plan has been submitted for approval, approve or disapprove the plan. The Administrator shall approve a plan if he determines that—

1. it meets the requirements of paragraphs (1), (2), (3), and (5) of section 6943(a) of this title; and

2. it contains provision for revision of such plan, after notice and public hearing, whenever the Administrator, by regulation, determines—

A. that revised regulations respecting minimum requirements have been promulgated under paragraphs (1), (2), (3), and (5) of section 6943(a) of this title with which the State plan is not in compliance;

B. that information has become available which demonstrates the inadequacy of the plan to effectuate the purposes of this subchapter; or

C. that such revision is otherwise necessary.

The Administrator shall review approved plans from time to time and if he determines that revision or corrections are necessary to bring such plan into compliance with the minimum requirements promulgated under section 6943 of this title (including new or revised requirements), he shall, after notice and opportunity for public hearing, withdraw his approval of such plan. Such withdrawal of approval shall cease to be effective upon the Administrator’s determination that such complies with such minimum requirements.

(b) Eligibility of States for Federal financial assistance

1. The Administrator shall approve a State application for financial assistance under this subchapter, and make grants to such State, if such State and local and regional authorities within such State have complied with the requirements of section 6946 of this title within the period required under such section and if such State has a State plan which has been approved by the Administrator under this subchapter.

2. The Administrator shall approve a State application for financial assistance under this subchapter, and make grants to such State, for fiscal years 1978 and 1979 if the Administrator determines that the State plan continues to be eligible for approval under subsection (a) and is being implemented by the State.

3. Upon withdrawal of approval of a State plan under subsection (a), the Administrator shall withhold Federal financial and technical assistance under this subchapter (other than such technical assistance as may be necessary to assist in obtaining the reinstatement of approval) until such time as such approval is reinstated.

(c) Existing activities

Nothing in this subchapter shall be construed to prevent or affect any activities respecting solid waste planning or management which are carried out by State, regional, or local authorities unless such activities are inconsistent with a State
plan approved by the Administrator under this subchapter.


EDITORIAL NOTES

AMENDMENTS

1996—Subsec. (a)(1), (2)(A). Pub. L. 104–119 substituted "section 6943(a) of this title" for "section 6943 of this title".


EXECUTIVE DOCUMENTS

TRANSFER OF FUNCTIONS

For transfer of certain enforcement functions of Administrator or other official of Environmental Protection Agency under this chapter to Federal Inspector, Office of Federal Inspector for the Alaska Natural Gas Transportation System, and subsequent transfer to Secretary of Energy, then to Federal Coordinator for Alaska Natural Gas Transportation Projects, see note set out under section 6903 of this title.

§6948. Federal assistance

(a) Authorization of Federal financial assistance

(1) There are authorized to be appropriated $30,000,000 for fiscal year 1978, $40,000,000 for fiscal year 1979, $20,000,000 for fiscal year 1980, $15,000,000 for fiscal year 1981, $20,000,000 for the fiscal year 1982, and $10,000,000 for each of the fiscal years 1985 through 1988 for purposes of financial assistance to States and local, regional, and interstate authorities for the development and implementation of plans approved by the Administrator under this subchapter (other than the provisions of such plans referred to in section 6943(b) 1 of this title, relating to feasibility planning for municipal waste energy and materials conservation and recovery).

(2)(A) The Administrator is authorized to provide financial assistance to States, counties, municipalities, and intermunicipal agencies and State and local public solid waste management authorities for implementation of programs to provide solid waste management, resource recovery, and resource conservation services and hazardous waste management. Such assistance shall include assistance for facility planning and feasibility studies; expert consultation; surveys and analyses of market needs; marketing of recovered resources; technology assessments; legal expenses; construction feasibility studies; source separation projects; and fiscal or economic investigations or studies; but such assistance shall not include any other element of construction, or any acquisition of land or interest in land, or any subsidy for the price of recovered resources. Agencies assisted under this subsection shall consider existing solid waste management and hazardous waste management services and facilities as well as facilities proposed for construction.

(B) An applicant for financial assistance under this paragraph must agree to comply with respect to the project or program assisted with the applicable requirements of section 6945 of this title and subchapter III of this chapter and apply applicable solid waste management practices, methods, and levels of control consistent with any guidelines published pursuant to section 6907 of this title. Assistance under this paragraph shall be available only for programs certified by the State to be consistent with any applicable State or areawide solid waste management plan or program. Applicants for technical and financial assistance under this section shall not preclude or foreclose consideration of programs for the recovery of recyclable materials through source separation or other resource recovery techniques.

(C) There are authorized to be appropriated $15,000,000 for each of the fiscal years 1978 and 1979 for purposes of this section. There are authorized to be appropriated $10,000,000 for fiscal year 1980, $10,000,000 for fiscal year 1981, $10,000,000 for fiscal year 1982, and $10,000,000 for each of the fiscal years 1985 through 1988 for purposes of this paragraph.

(D) There are authorized—

(i) to be made available $15,000,000 out of funds appropriated for fiscal year 1985, and

(ii) to be appropriated for each of the fiscal years 1986 through 2 1988, $20,000,000 3

for grants to States (and where appropriate to regional, local, and interstate agencies) to implement programs requiring compliance by solid waste management facilities with the criteria promulgated under section 6944(a) of this title and section 6907(a)(3) of this title and with the provisions of section 6945 of this title. To the extent practicable, such programs shall require such compliance not later than thirty-six months after November 8, 1984.

(3)(A) There is authorized to be appropriated for the fiscal year beginning October 1, 1981, and for each fiscal year thereafter before October 1, 1986, $4,000,000 for purposes of making grants to States to carry out section 6943(b) 1 of this title. No amount may be appropriated for such purposes for the fiscal year beginning on October 1, 1986, or for any fiscal year thereafter.
(B) Assistance provided by the Administrator under this paragraph shall be used only for the purposes specified in section 6943(b) of this title. Such assistance may not be used for purposes of land acquisition, final facility design, equipment purchase, construction, startup or operation activities.

(C) Where appropriate, any State receiving assistance under this paragraph may make all or any part of such assistance available to municipalities within the State to carry out the activities specified in section 6943(1)(A) and (B) of this title.

(b) State allotment

The sums appropriated in any fiscal year under subsection (a) shall be allotted by the Administrator among all States, in the ratio that the population in each State bears to the population in all of the States, except that no State shall receive less than one-half of 1 per centum of the sums so allotted in any fiscal year. No State shall receive any grant under this section during any fiscal year when its expenditures of non-Federal funds for other than non-recurring expenditures for solid waste management control programs will be less than its expenditures were for such programs during fiscal year 1975, except that such funds may be reduced by an amount equal to their proportionate share of any general reduction of State spending ordered by the Governor or legislature of such State. No State shall receive any grant for solid waste management programs unless the Administrator is satisfied that such grant will be so used as to supplement and, to the extent practicable, increase the level of State, local, regional, or other non-Federal funds that would in the absence of such grant be made available for the maintenance of such programs.

(c) Distribution of Federal financial assistance within the State

The Federal assistance allotted to the States under subsection (b) shall be allocated by the State receiving such funds to State, local, regional, and interstate authorities carrying out planning and implementation of the State plan. Such allocation shall be based upon the responsibilities of the respective parties as determined pursuant to section 6946(b) of this title.

(d) Technical assistance

(1) The Administrator may provide technical assistance to State and local governments for purposes of developing and implementing State plans. Technical assistance respecting resource recovery and conservation may be provided through resource recovery and conservation panels, established in the Environmental Protection Agency under subchapter II, to assist the State and local governments with respect to particular resource recovery and conservation projects under consideration and to evaluate their effect on the State plan.

(2) In carrying out this subsection, the Administrator may, upon request, provide technical assistance to States to assist in the removal or modification of legal, institutional, economic, and other impediments to the recycling of used oil. Such impediments may include laws, regulations, and policies, including State procurement policies, which are not favorable to the recycling of used oil.

(3) In carrying out this subsection, the Administrator is authorized to provide technical assistance to States, municipalities, regional authorities, and intermunicipal agencies upon request, to assist in the removal or modification of legal, institutional, and economic impediments which have the effect of impeding the development of systems and facilities to recovery energy and materials from municipal waste or to conserve energy or materials which contribute to the waste stream. Such impediments may include—

(A) laws, regulations, and policies, including State and local procurement policies, which are not favorable to resource conservation and recovery programs, systems, and facilities;

(B) impediments to the financing of facilities to conserve or recover energy and materials from municipal waste through the exercise of State and local authority to issue revenue bonds and the use of State and local credit assistance; and

(C) impediments to institutional arrangements necessary to undertake projects for the conservation or recovery of energy and materials from municipal waste, including the creation of special districts, authorities, or corporations where necessary having the power to secure the supply of waste of a project, to conserve resources, to implement the project, and to undertake related activities.

(e) Special communities

(1) The Administrator, in cooperation with State and local officials, shall identify local governments within the United States (A) having a solid waste disposal facility (i) which is owned by the unit of local government, (ii) for which an order has been issued by the State to cease receiving solid waste for treatment, storage, or disposal, and (iii) which is subject to a State-approved end-use recreation plan, and (B) which are located over an aquifer which is the source of drinking water for any person or public water system and which has serious environmental problems resulting from the disposal of such solid waste, including possible methane migration.

(2) There is authorized to be appropriated to the Administrator $2,500,000 for the fiscal year 1980 and $1,500,000 for each of the fiscal years 1981 and 1982 to make grants to be used for containment and stabilization of solid waste located at the disposal sites referred to in paragraph (1). Not more than one community in any State shall be eligible for grants under this paragraph and not more than one project in any State shall be eligible for such grants. No unit of local government shall be eligible for grants under this paragraph with respect to any site which exceeds 65 acres in size.

(f) Assistance to States for discretionary program for recycled oil

(1) The Administrator may make grants to States, which have a State plan approved under section 6947 of this title, or which have submitted a State plan for approval under such section, if such plan includes the discretionary provisions described in section 6943(b) of this title. Grants under this subsection shall be for purposes of assisting the State in carrying out such discretionary provisions. No grant under this subsection may be used for construction or for the acquisition of land or equipment.

(2) Grants under this subsection shall be allotted among the States in the same manner as provided in the first sentence of subsection (b).
(3) No grant may be made under this subsection unless an application therefor is submitted to, and approved by, the Administrator. The application shall be in such form, be submitted in such manner, and contain such information as the Administrator may require.

(4) For purposes of making grants under this subsection, there are authorized to be appropriated $5,000,000 for fiscal year 1982, $5,000,000 for fiscal year 1983, and $5,000,000 for each of the fiscal years 1985 through 1988.

(g) Assistance to municipalities for energy and materials conservation and recovery planning activities

(1) The Administrator is authorized to make grants to municipalities, regional authorities, and intermunicipal agencies to carry out activities described in subparagraphs (A) and (B) of section 6943(b)(1) of this title. Such grants may be made only pursuant to an application submitted to the Administrator by the municipality which application has been approved by the State and determined by the State to be consistent with any State plan approved or submitted under this subchapter or any other appropriate planning carried out by the State.

(2) There is authorized to be appropriated for the fiscal year beginning October 1, 1981, and for each fiscal year thereafter before October 1, 1986, $8,000,000 for purposes of making grants to municipalities under this subsection. No amount may be appropriated for such purposes for the fiscal year beginning on October 1, 1986, or for any fiscal year thereafter.

(3) Assistance provided by the Administrator under this subsection shall be used only for the purposes specified in paragraph (1). Such assistance may not be used for purposes of land acquisition, final facility design, equipment purchase, construction, startup or operation activities.


EDITORIAL NOTES

REFERENCES IN TEXT

Section 6943(b) of this title, referred to in subssecs. (a)(1), (3) and (g)(1), was redesignated section 6943(c) of this title by Pub. L. 98–616, title V, §502(h), Nov. 8, 1984, 98 Stat. 3277.

CODIFICATION

Section 2(d)–(g) of Pub. L. 98–616, cited as a credit to this section, appears to contain typographical error in that the text of subsec. (f)(1) of section 2007 of the Solid Waste Disposal Act (as added by section 2(i) of Pub. L. 98–616) is also shown as the text of subsec. "(f)(1)" of such section 2. Subsec. (f) of section 2, as set out in the Conference Report (H. Rept. 98–1133) to accompany H.R. 2867 (which became Pub. L. 98–616) read: "(f) Section 4008(e)(2) of the Solid Waste Disposal Act (relating to special communities) is amended by striking out 'and $1,500,000 for each of the fiscal years 1981 and 1982' and substituting ', $1,500,000 for each of the fiscal years 1981 and 1982, and $500,000 for each of the fiscal years 1985 through 1988'."

Another section 5(b) of Pub. L. 96–463 amended section 6943 of this title.

AMENDMENTS


Subsec. (d)(2). Pub. L. 98–616, §502(d), redesignated second par. (2), relating to recovery of energy and materials from municipal waste, as par. (3).

Subsec. (f). Pub. L. 98–616, §502(e), redesignated second subsec. (f), relating to assistance to municipalities for energy and materials conservation and recovery planning activities, as subsec. (g).


Subsec. (g). Pub. L. 98–616, §502(e), redesignated second subsec. (f), relating to assistance to municipalities for energy and materials conservation and recovery planning activities, as subsec. (g).

1980—Subsec. (a)(1). Pub. L. 96–482, §31(c), authorized appropriations of $20,000,000, $15,000,000, and $20,000,000 for fiscal years, 1980, 1981, and 1982, respectively, and substituted provision making appropriation available for financial assistance to States, and local, regional, and interstate authorities for development and implementation of plans approved by the Administrator, except plans referred to in section 6943(b) of this title, relating to feasibility planning for municipal waste energy and materials conservation and recovery for provision making appropriations available to State for development and implementation of State plans.

Subsec. (a)(2)(B). Pub. L. 96–482, §32(e)(1), provided that applicants for technical and financial assistance shall not preclude or foreclose consideration of programs for recovery of recyclable materials through source separation or other resource recovery techniques.
Subsec. (d)(2). Pub. L. 96–463, §6, added par. (2) authorizing the Administrator to provide technical assistance to States to assist in the removal or modification of legal, institutional, economic, and other impediments to the recycling of used oil.
Pub. L. 96–482, §32(f), added par. (2) authorizing the Administrator to provide technical assistance to States, municipalities, regional authorities, and intermunicipal agencies to assist in the removal or modification of legal, institutional, and economic impediments which have the effect of impeding the development of systems and facilities to recover energy and materials from municipal waste.
Subsec. (e)(1). Pub. L. 96–482, §20(1)–(5), substituted in provision preceding cl. (A) "identify local governments" for "identify communities", struck out cl. (A), which required the Administrator to identify populations of less than twenty-five thousand persons, redesignated cls. (B) and (C) as (A) and (B), respectively, in cl. (A) as so redesignated, substituted "a solid waste disposal facility (i) which is owned by the unit of local government, (ii) for which an order has been issued by the State to cease receiving solid waste for treatment, storage, or disposal, and (iii) which is subject to a State-approved end-use recreation plan" for "solid waste disposal facilities in which more than 75 per centum of the solid waste of is from areas outside the jurisdiction of the communities" in cl. (B) as so redesignated, substituted "which are located over an aquifer which is the source of drinking water for any person or public water system and which has" for "which have" and inserted ", including possible methane migration" after "such solid waste".
Subsec. (e)(2). Pub. L. 96–482, §20(6)–(8), substituted appropriations authorization of $2,500,000; $1,500,000; and $1,500,000 for fiscal years 1980, 1981, and 1982, for prior authorization of $2,500,000 for fiscal years 1978 and 1979, substituted provision for grants for "containment and stabilization of solid waste located at the disposal sites referred to in paragraph (1)" for such grants for "the conversion, improvement, or consolidation of existing solid waste disposal facilities, or for the construction of new solid waste disposal facilities, or for both, within communities identified under paragraph (1)", and prohibited grants to units of local government when site exceeds 65 acres in size.
Subsec. (e)(3). Pub. L. 96–482, §20(9), struck out par. (3) which required that grants to States be made only when the projects are consistent with applicable and approved State plan and will assist in carrying out such plan.
Subsec. (f). Pub. L. 96–463, §5(b), added subsec. (f) relating to assistance to States for discretionary program for recycled oil.
Pub. L. 96–482, §32(e)(3), added subsec. (f) relating to assistance to municipalities for energy and materials conservation and recovery planning activities.

**Executive Documents**

**TRANSFER OF FUNCTIONS**

For transfer of certain enforcement functions of Administrator or other official of Environmental Protection Agency under this chapter to Federal Inspector, Office of Federal Inspector for the Alaska Natural Gas Transportation System, and subsequent transfer to Secretary of Energy, then to Federal Coordinator for Alaska Natural Gas Transportation Projects, see note set out under section 6903 of this title.

1 See References in Text note below.
2 So in original. Probably should be "through".
3 So in original. Probably should be followed by a comma.

§6949. Rural communities assistance

(a) In general

The Administrator shall make grants to States to provide assistance to municipalities with a population of five thousand or less, or counties with a population of ten thousand or less or less than twenty persons per square mile and not within a metropolitan area, for solid waste management facilities (including equipment) necessary to meet the requirements of section 6945 of this title or restrictions on open burning or other requirements arising under the Clean Air Act [42 U.S.C. 7401 et seq.] or the Federal Water Pollution Control Act [33 U.S.C. 1251 et seq.]. Such assistance shall only be available—

1 to any municipality or county which could not feasibly be included in a solid waste management system or facility serving an urbanized, multijurisdictional area because of its distance from such systems;
2 where existing or planned solid waste management services or facilities are unavailable or insufficient to comply with the requirements of section 6945 of this title; and
(3) for systems which are certified by the State to be consistent with any plans or programs established under any State or areawide planning process.

(b) Allotment

The Administrator shall allot the sums appropriated to carry out this section in any fiscal year among the States in accordance with regulations promulgated by him on the basis of the average of the ratio which the population of rural areas of each State bears to the total population of rural areas of all the States, the ratio which the population of counties in each State having less than twenty persons per square mile bears to the total population of such counties in all the States, and the ratio which the population of such low-density counties in each State having 33 per centum or more of all families with incomes not in excess of 125 per centum of the poverty level bears to the total population of such counties in all the States.

(c) Limit

The amount of any grant under this section shall not exceed 75 per centum of the costs of the project. No assistance under this section shall be available for the acquisition of land or interests in land.

(d) Authorization of appropriations

There are authorized to be appropriated $25,000,000 for each of the fiscal years 1978 and 1979 to carry out this section. There are authorized to be appropriated $10,000,000 for the fiscal year 1980 and $15,000,000 for each of the fiscal years 1981 and 1982 to carry out this section.

(e) Additional appropriations

1. In general

There are authorized to be appropriated to carry out this section for the Denali Commission to provide assistance to municipalities in the State of Alaska $1,500,000 for each of fiscal years 2008 through 2012.

2. Administration

For the purpose of carrying out this subsection, the Denali Commission shall—

(A) be considered a State; and

(B) comply with all other requirements and limitations of this section.


EDITORIAL NOTES

REFERENCES IN TEXT

The Clean Air Act, referred to in subsec. (a), is act July 14, 1955, ch. 360, 69 Stat. 322, as amended, which is classified generally to chapter 85 (§7401 et seq.) of this title. For complete classification of this Act to the Code, see Short Title note set out under section 7401 of this title and Tables.

The Federal Water Pollution Control Act, referred to in subsec. (a), is act June 30, 1948, ch. 758, as amended generally by Pub. L. 92–500, §2, Oct. 18, 1972, 86 Stat. 816, which is classified generally to chapter 26 (§1251 et seq.) of title 33, Navigation and Navigable Waters. For complete classification of this Act to the Code, see Short title note set out under section 1251 of title 33 and Tables.

CODIFICATION


AMENDMENTS


1980—Subsec. (d). Pub. L. 96–482 authorized appropriation of $10,000,000, $15,000,000, and $15,000,000 for fiscal years 1980, 1981, 1982, respectively.

STATUTORY NOTES AND RELATED SUBSIDIARIES

EFFECTIVE DATE OF 2008 AMENDMENT


EXECUTIVE DOCUMENTS

TRANSFER OF FUNCTIONS
For transfer of certain enforcement functions of Administrator or other official of Environmental Protection Agency under this chapter to Federal Inspector, Office of Federal Inspector for the Alaska Natural Gas Transportation System, and subsequent transfer to Secretary of Energy, then to Federal Coordinator for Alaska Natural Gas Transportation Projects, see note set out under section 6903 of this title.

§6949a. Adequacy of certain guidelines and criteria

(a) Study
The Administrator shall conduct a study of the extent to which the guidelines and criteria under this chapter (other than guidelines and criteria for facilities to which subchapter III applies) which are applicable to solid waste management and disposal facilities, including, but not limited to landfills and surface impoundments, are adequate to protect human health and the environment from ground water contamination. Such study shall include a detailed assessment of the degree to which the criteria under section 6907(a) of this title and the criteria under section 6944 of this title regarding monitoring, prevention of contamination, and remedial action are adequate to protect ground water and shall also include recommendation with respect to any additional enforcement authorities which the Administrator, in consultation with the Attorney General, deems necessary for such purposes.

(b) Report
Not later than thirty-six months after November 8, 1984, the Administrator shall submit a report to the Congress setting forth the results of the study required under this section, together with any recommendations made by the Administrator on the basis of such study.

(c) Revisions of guidelines and criteria

(1) In general
Not later than March 31, 1988, the Administrator shall promulgate revisions of the criteria promulgated under paragraph (1) of section 6944(a) of this title and under section 6907(a)(3) of this title for facilities that may receive hazardous household wastes or hazardous wastes from small quantity generators under section 6921(d) of this title. The criteria shall be those necessary to protect human health and the environment and may take into account the practicable capability of such facilities. At a minimum such revisions for facilities potentially receiving such wastes should require ground water monitoring as necessary to detect contamination, establish criteria for the acceptable location of new or existing facilities, and provide for corrective action as appropriate.

(2) Additional revisions
Subject to paragraph (3), the requirements of the criteria described in paragraph (1) relating to ground water monitoring shall not apply to an owner or operator of a new municipal solid waste landfill unit, an existing municipal solid waste landfill unit, or a lateral expansion of a municipal solid waste landfill unit, that disposes of less than 20 tons of municipal solid waste daily, based on an annual average, if—

(A) there is no evidence of ground water contamination from the municipal solid waste landfill unit or expansion; and
(B) the municipal solid waste landfill unit or expansion serves—

(i) a community that experiences an annual interruption of at least 3 consecutive months of surface transportation that prevents access to a regional waste management facility; or
(ii) a community that has no practicable waste management alternative and the landfill unit is located in an area that annually receives less than or equal to 25 inches of precipitation.

(3) Protection of ground water resources

(A) Monitoring requirement
A State may require ground water monitoring of a solid waste landfill unit that would otherwise be exempt under paragraph (2) if necessary to protect ground water resources and ensure compliance with a State ground water protection plan, where applicable.

(B) Methods
If a State requires ground water monitoring of a solid waste landfill unit under subparagraph (A), the State may allow the use of a method other than the use of ground water monitoring wells to detect a release of contamination from the unit.

(C) Corrective action
If a State finds a release from a solid waste landfill unit, the State shall require corrective action as appropriate.

(4) No-migration exemption

(A) In general
Ground water monitoring requirements may be suspended by the Director of an approved State for a landfill operator if the operator demonstrates that there is no potential for migration of hazardous constituents from the unit to the uppermost aquifer during the active life of the unit and the post-closure care period.

(B) Certification
A demonstration under subparagraph (A) shall be certified by a qualified ground-water scientist and approved by the Director of an approved State.
(C) Guidance

Not later than 6 months after March 26, 1996, the Administrator shall issue a guidance document to facilitate small community use of the no migration exemption under this paragraph.

(5) Alaska Native villages

Upon certification by the Governor of the State of Alaska that application of the requirements described in paragraph (1) to a solid waste landfill unit of a Native village (as defined in section 1602 of title 43) or unit that is located in or near a small, remote Alaska village would be infeasible, or would not be cost-effective, or is otherwise inappropriate because of the remote location of the unit, the State may exempt the unit from some or all of those requirements. This paragraph shall apply only to solid waste landfill units that dispose of less than 20 tons of municipal solid waste daily, based on an annual average.

(6) Further revisions of guidelines and criteria

Recognizing the unique circumstances of small communities, the Administrator shall, not later than two years after March 26, 1996, promulgate revisions to the guidelines and criteria promulgated under this subchapter to provide additional flexibility to approved States to allow landfills that receive 20 tons or less of municipal solid waste per day, based on an annual average, to use alternative frequencies of daily cover application, frequencies of methane gas monitoring, infiltration layers for final cover, and means for demonstrating financial assurance: Provided, That such alternative requirements take into account climatic and hydrogeologic conditions and are protective of human health and environment.


EDITORIAL NOTES

AMENDMENTS

1996—Subsec. (c). Pub. L. 104–119 designated existing provisions as par. (1), inserted heading, and added pars. (2) to (6).

STATUTORY NOTES AND RELATED SUBSIDIARIES

REINSTATEMENT OF REGULATORY EXEMPTION

Pub. L. 104–119, §3(b), Mar. 26, 1996, 110 Stat. 833, provided that: "It is the intent of section 4010(c)(2) of the Solid Waste Disposal Act [42 U.S.C. 6949a(c)(2)], as added by subsection (a), to immediately reinstate subpart E of part 258 of title 40, Code of Federal Regulations, as added by the final rule published at 56 Federal Register 50798 on October 9, 1991."

1 So in original. Probably should be "no-migration".

SUBCHAPTER V—DUTIES OF SECRETARY OF COMMERCE IN RESOURCE AND RECOVERY

§6951. Functions

The Secretary of Commerce shall encourage greater commercialization of proven resource recovery technology by providing—
(1) accurate specifications for recovered materials;
(2) stimulation of development of markets for recovered materials;
(3) promotion of proven technology; and
(4) a forum for the exchange of technical and economic data relating to resource recovery facilities.


§6952. Development of specifications for secondary materials

The Secretary of Commerce, acting through the National Institute of Standards and Technology, and in conjunction with national standards-setting organizations in resource recovery, shall, after public hearings, and not later than two years after September 1, 1979, publish guidelines for the development of specifications for the classification of materials recovered from waste which were destined for disposal. The specifications shall pertain to the physical and chemical properties and characteristics of such materials with regard to their use in replacing virgin materials in various industrial, commercial, and governmental uses. In establishing such guidelines the Secretary shall also, to the extent feasible, provide such information as may be necessary to assist Federal agencies with procurement of items containing recovered materials. The Secretary
shall continue to cooperate with national standards-setting organizations, as may be necessary, to encourage the publication, promulgation and updating of standards for recovered materials and for the use of recovered materials in various industrial, commercial, and governmental uses.


EDITORIAL NOTES

AMENDMENTS


§6953. Development of markets for recovered materials

The Secretary of Commerce shall within two years after September 1, 1979, take such actions as may be necessary to—

1. identify the geographical location of existing or potential markets for recovered materials;

2. identify the economic and technical barriers to the use of recovered materials; and

3. encourage the development of new uses for recovered materials.


EDITORIAL NOTES

AMENDMENTS


§6954. Technology promotion

The Secretary of Commerce is authorized to evaluate the commercial feasibility of resource recovery facilities and to publish the results of such evaluation, and to develop a data base for purposes of assisting persons in choosing such a system.


§6955. Marketing policies, establishment; nondiscrimination requirement

In establishing any policies which may affect the development of new markets for recovered materials and in making any determination concerning whether or not to impose monitoring or other controls on any marketing or transfer of recovered materials, the Secretary of Commerce may consider whether to establish the same or similar policies or impose the same or similar monitoring or other controls on virgin materials.


§6956. Authorization of appropriations

There are authorized to be appropriated to the Secretary of Commerce $5,000,000 for each of fiscal years 1980, 1981, and 1982 and $1,500,000 for each of the fiscal years 1985 through 1988 to carry out the purposes of this subchapter.


EDITORIAL NOTES

AMENDMENTS


SUBCHAPTER VI—FEDERAL RESPONSIBILITIES
§6961. Application of Federal, State, and local law to Federal facilities

(a) In general

Each department, agency, and instrumentality of the executive, legislative, and judicial branches of the Federal Government (1) having jurisdiction over any solid waste management facility or disposal site, or (2) engaged in any activity resulting, or which may result, in the disposal or management of solid waste or hazardous waste shall be subject to, and comply with, all Federal, State, interstate, and local requirements, both substantive and procedural (including any requirement for permits or reporting or any provisions for injunctive relief and such sanctions as may be imposed by a court to enforce such relief), respecting control and abatement of solid waste or hazardous waste disposal and management in the same manner, and to the same extent, as any person is subject to such requirements, including the payment of reasonable service charges. The Federal, State, interstate, and local substantive and procedural requirements referred to in this subsection include, but are not limited to, all administrative orders and all civil and administrative penalties and fines, regardless of whether such penalties or fines are punitive or coercive in nature or are imposed for isolated, intermittent, or continuing violations. The United States hereby expressly waives any immunity otherwise applicable to the United States with respect to any such substantive or procedural requirement (including, but not limited to, any injunctive relief, administrative order or civil or administrative penalty or fine referred to in the preceding sentence, or reasonable service charge). The reasonable service charges referred to in this subsection include, but are not limited to, fees or charges assessed in connection with the processing and issuance of permits, renewal of permits, amendments to permits, review of plans, studies, and other documents, and inspection and monitoring of facilities, as well as any other nondiscriminatory charges that are assessed in connection with a Federal, State, interstate, or local solid waste or hazardous waste regulatory program. Neither the United States, nor any agent, employee, or officer thereof, shall be immune or exempt from any process or sanction of any State or Federal Court with respect to the enforcement of any such injunctive relief. No agent, employee, or officer of the United States shall be personally liable for any civil penalty under any Federal, State, interstate, or local solid or hazardous waste law with respect to any act or omission within the scope of the official duties of the agent, employee, or officer. An agent, employee, or officer of the United States shall be subject to any criminal sanction (including, but not limited to, any fine or imprisonment) under any Federal or State solid or hazardous waste law, but no department, agency, or instrumentality of the executive, legislative, or judicial branch of the Federal Government shall be subject to any such sanction. The President may exempt any solid waste management facility of any department, agency, or instrumentality in the executive branch from compliance with such a requirement if he determines it to be in the paramount interest of the United States to do so. No such exemption shall be granted due to lack of appropriation unless the President shall have specifically requested such appropriation as a part of the budgetary process and the Congress shall have failed to make available such requested appropriation. Any exemption shall be for a period not in excess of one year, but additional exemptions may be granted for periods not to exceed one year upon the President's making a new determination. The President shall report each January to the Congress all exemptions from the requirements of this section granted during the preceding calendar year, together with his reason for granting each such exemption.

(b) Administrative enforcement actions

(1) The Administrator may commence an administrative enforcement action against any department, agency, or instrumentality of the executive, legislative, or judicial branch of the Federal Government pursuant to the enforcement authorities contained in this chapter. The Administrator shall initiate an administrative enforcement action against such a department, agency, or instrumentality in the same manner and under the same circumstances as an action would be initiated against another person. Any voluntary resolution or settlement of such an action shall be set forth in a consent order.

(2) No administrative order issued to such a department, agency, or instrumentality shall become final until such department, agency, or instrumentality has had the opportunity to confer with the Administrator.

(c) Limitation on State use of funds collected from Federal Government

Unless a State law in effect on October 6, 1992, or a State constitution requires the funds to be used in a different manner, all funds collected by a State from the Federal Government from penalties and fines imposed for violation of any substantive or procedural requirement referred to in subsection (a) shall be used by the State only for projects designed to improve or protect the environment or to defray the costs of environmental protection or enforcement.


EDITORIAL NOTES

AMENDMENTS

1992—Pub. L. 102–386 designated existing provisions as subsec. (a), inserted heading, inserted in first sentence "and management" before "in the same manner", inserted second to fourth, sixth, and seventh sentences specifying Federal, State, interstate, and local substantive and procedural requirements, waiving sovereign immunity, determining reasonable service charges, and providing no agent, employee, or officer of the United States be personally liable for a civil penalty for an act or omission within the scope of official duties but be subject to criminal sanction, with no department, agency, or instrumentality of the executive, legislative, or judicial branch subject to such sanction, and added subsecs. (b) and (c).
1978—Pub. L. 95–609 inserted "or management" after "disposal" in cl. (2).

STATUTORY NOTES AND RELATED SUBSIDIARIES

EFFECTIVE DATE OF 1992 AMENDMENT

Pub. L. 102–386, title I, §102(c), Oct. 6, 1992, 106 Stat. 1506, provided that:

"(1) IN GENERAL.—Except as otherwise provided in paragraphs (2) and (3), the amendments made by subsection (a) [amending this section] shall take effect upon the date of the enactment of this Act [Oct. 6, 1992].

"(2) DELAYED EFFECTIVE DATE FOR CERTAIN MIXED WASTE.—Until the date that is 3 years after the date of the enactment of this Act, the waiver of sovereign immunity contained in section 6001(a) of the Solid Waste Disposal Act [subsection (a) of this section] with respect to civil, criminal, and administrative penalties and fines (as added by the amendments made by subsection (a)) shall not apply to departments, agencies, and instrumentalities of the executive branch of the Federal Government for violations of section 3004(j) of the Solid Waste Disposal Act [42 U.S.C. 6924(j)] involving storage of mixed waste that is not subject to an existing agreement, permit, or administrative or judicial order, so long as such waste is managed in compliance with all other applicable requirements.

"(3) EFFECTIVE DATE FOR CERTAIN MIXED WASTE.—(A) Except as provided in subparagraph (B), after the date that is 3 years after the date of the enactment of this Act, the waiver of sovereign immunity contained in section 6001(a) of the Solid Waste Disposal Act with respect to civil, criminal, and administrative penalties and fines (as added by the amendments made by subsection (a)) shall apply to departments, agencies, and instrumentalities of the executive branch of the Federal Government for violations of section 3004(j) of the Solid Waste Disposal Act involving storage of mixed waste.

"(B) With respect to the Department of Energy, the waiver of sovereign immunity referred to in subparagraph (A) shall not apply after the date that is 3 years after the date of the enactment of this Act for violations of section 3004(j) of such Act involving storage of mixed waste, so long as the Department of Energy is in compliance with both—

"(i) a plan that has been submitted and approved pursuant to section 3021(b) of the Solid Waste Disposal Act [42 U.S.C. 6939c(b)] and which is in effect; and

"(ii) an order requiring compliance with such plan which has been issued pursuant to such section 3021(b) and which is in effect.

"(4) APPLICATION OF WAIVER TO AGREEMENTS AND ORDERS.—The waiver of sovereign immunity contained in section 6001(a) of the Solid Waste Disposal Act (as added by the amendments made by subsection (a)) shall take effect on the date of the enactment of this Act with respect to any agreement, permit, or administrative or judicial order existing on such date of enactment (and any subsequent modifications to such an agreement, permit, or order), including, without limitation, any provision of an agreement, permit, or order that addresses compliance with section 3004(j) of such Act with respect to mixed waste.

"(5) AGREEMENT OR ORDER.—Except as provided in paragraph (4), nothing in this Act [see Short Title of 1992 Amendment note set out under section 6901 of this title] shall be construed to alter, modify, or change in any manner any agreement, permit, or administrative or judicial order, including, without limitation, any provision of an agreement, permit, or order—

"(i) that addresses compliance with section 3004(j) of the Solid Waste Disposal Act with respect to mixed waste;

"(ii) that is in effect on the date of enactment of this Act; and

"(iii) to which a department, agency, or instrumentality of the executive branch of the Federal Government is a party.

TERMINATION OF REPORTING REQUIREMENTS

For termination, effective May 15, 2000, of provisions in subsec. (a) of this section requiring the President to report annually to Congress, see section 3003 of Pub. L. 104–66, as amended, set out as a note under section 1113 of Title 31, Money and Finance, and the 8th item on page 20 of House Document No. 103–7.

EXECUTIVE DOCUMENTS

EXECUTIVE ORDER NO. 12780


EXECUTIVE ORDER NO. 12873

EXECUTIVE ORDER NO. 13101

Ex. Ord. No. 13101, Sept. 14, 1998, 63 F.R. 49643, which directed executive agencies to incorporate waste prevention and recycling policies in their daily operations and created a Steering Committee, a Federal Environmental Executive, a Task Force, and Agency Environmental Executive positions responsible for ensuring the implementation of this order, was revoked by Ex. Ord. No. 13423, §11(a)(i), Jan. 24, 2007, 72 F.R. 3923, formerly set out in a note under section 4321 of this title.

§6962. Federal procurement

(a) Application of section

Except as provided in subsection (b), a procuring agency shall comply with the requirements set forth in this section and any regulations issued under this section, with respect to any purchase or acquisition of a procurement item where the purchase price of the item exceeds $10,000 or where the quantity of such items or of functionally equivalent items purchased or acquired in the course of the preceding fiscal year was $10,000 or more.

(b) Procurement subject to other law

Any procurement, by any procuring agency, which is subject to regulations of the Administrator under section 6964 of this title (as promulgated before October 21, 1976, under comparable provisions of prior law) shall not be subject to the requirements of this section to the extent that such requirements are inconsistent with such regulations.

(c) Requirements

(1) After the date specified in applicable guidelines prepared pursuant to subsection (e) of this section, each procuring agency which procures any items designated in such guidelines shall procure such items composed of the highest percentage of recovered materials practicable (and in the case of paper, the highest percentage of the postconsumer recovered materials referred to in subsection (h)(1) practicable), consistent with maintaining a satisfactory level of competition, considering such guidelines. The decision not to procure such items shall be based on a determination that such procurement items—

(A) are not reasonably available within a reasonable period of time;

(B) fail to meet the performance standards set forth in the applicable specifications or fail to meet the reasonable performance standards of the procuring agencies; or

(C) are only available at an unreasonable price. Any determination under subparagraph (B) shall be made on the basis of the guidelines of the National Institute of Standards and Technology in any case in which such material is covered by such guidelines.

(2) Agencies that generate heat, mechanical, or electrical energy from fossil fuel in systems that have the technical capability of using energy or fuels derived from solid waste as a primary or supplementary fuel shall use such capability to the maximum extent practicable.

(3)(A) After the date specified in any applicable guidelines prepared pursuant to subsection (e) of this section, contracting officers shall require that vendors:

(i) certify that the percentage of recovered materials to be used in the performance of the contract will be at least the amount required by applicable specifications or other contractual requirements and

(ii) estimate the percentage of the total material utilized for the performance of the contract which is recovered materials.

(B) Clause (ii) of subparagraph (A) applies only to a contract in an amount greater than $100,000.

(d) Specifications

All Federal agencies that have the responsibility for drafting or reviewing specifications for procurement items procured by Federal agencies shall—

(1) as expeditiously as possible but in any event no later than eighteen months after November 8, 1984, eliminate from such specifications—

(A) any exclusion of recovered materials and

(B) any requirement that items be manufactured from virgin materials; and

(2) within one year after the date of publication of applicable guidelines under subsection (e), or as otherwise specified in such guidelines, assure that such specifications require the use of recovered materials to the maximum extent possible without jeopardizing the intended end use of the item.

(e) Guidelines
The Administrator, after consultation with the Administrator of General Services, the Secretary of Commerce (acting through the National Institute of Standards and Technology), and the Director of the Government Publishing Office, shall prepare, review not less frequently than once every 5 years, and, if appropriate, revise, in consultation with recyclers and manufacturers of products containing recycled content, not later than 2 years after the completion of the initial review after November 15, 2021, and thereafter, as appropriate, guidelines for the use of procuring agencies in complying with the requirements of this section. Such guidelines shall—

(1) designate those items which are or can be produced with recovered materials and whose procurement by procuring agencies will carry out the objectives of this section, and in the case of paper, provide for maximizing the use of post consumer recovered materials referred to in subsection (h)(1); and

(2) set forth recommended practices with respect to the procurement of recovered materials and items containing such materials and with respect to certification by vendors of the percentage of recovered materials used,

and shall provide information as to the availability, relative price, and performance of such materials and items and where appropriate shall recommend the level of recovered material to be contained in the procured product. The Administrator shall prepare final guidelines for paper within one hundred and eighty days after November 8, 1984, and for three additional product categories (including tires) by October 1, 1985. In making the designation under paragraph (1), the Administrator shall consider, but is not limited in his considerations, to—

(A) the availability of such items;
(B) the impact of the procurement of such items by procuring agencies on the volume of solid waste which must be treated, stored or disposed of;
(C) the economic and technological feasibility of producing and using such items; and
(D) other uses for such recovered materials.

(f) Procurement of services

A procuring agency shall, to the maximum extent practicable, manage or arrange for the procurement of solid waste management services in a manner which maximizes energy and resource recovery.

(g) Executive Office

The Office of Procurement Policy in the Executive Office of the President, in cooperation with the Administrator, shall implement the requirements of this section. It shall be the responsibility of the Office of Procurement Policy to coordinate this policy with other policies for Federal procurement, in such a way as to maximize the use of recovered resources, and to, every two years beginning in 1984, report to the Congress on actions taken by Federal agencies and the progress made in the implementation of this section, including agency compliance with subsection (d).

(h) "Recovered materials" defined

As used in this section, in the case of paper products, the term "recovered materials" includes—

(1) postconsumer materials such as—
(A) paper, paperboard, and fibrous wastes from retail stores, office buildings, homes, and so forth, after they have passed through their end-usage as a consumer item, including: used corrugated boxes; old newspapers; old magazines; mixed waste paper; tabulating cards; and used cordage; and
(B) all paper, paperboard, and fibrous wastes that enter and are collected from municipal solid waste, and

(2) manufacturing, forest residues, and other wastes such as—
(A) dry paper and paperboard waste generated after completion of the papermaking process (that is, those manufacturing operations up to and including the cutting and trimming of the paper machine reel into smaller rolls or rough sheets) including: envelope cuttings, bindery trimmings, and other paper and paperboard waste, resulting from printing, cutting, forming, and other converting operations; bag, box, and carton manufacturing wastes; and butt rolls, mill wrappers, and rejected unused stock; and
(B) finished paper and paperboard from obsolete inventories of paper and paperboard manufacturers, merchants, wholesalers, dealers, printers, converters, or others;
(C) fibrous byproducts of harvesting, manufacturing, extractive, or wood-cutting processes, flax, straw, linters, bagasse, slash, and other forest residues;
(D) wastes generated by the conversion of goods made from fibrous material (that is, waste rope from cordage manufacture, textile mill waste, and cuttings); and
(E) fibers recovered from waste water which otherwise would enter the waste stream.

(i) Procurement program

(1) Within one year after the date of publication of applicable guidelines under subsection (e), each procuring agency shall develop an affirmative procurement program which will assure that items composed of recovered materials will be purchased to the maximum extent practicable and which is consistent with applicable provisions of Federal procurement law.

(2) Each affirmative procurement program required under this subsection shall, at a minimum, contain—
(A) a recovered materials preference program;
(B) an agency promotion program to promote the preference program adopted under subparagraph (A);
(C) a program for requiring estimates of the total percentage of recovered material utilized in the performance of a contract; certification of minimum recovered material content actually utilized, where appropriate; and reasonable verification procedures for estimates and certifications; and
(D) annual review and monitoring of the effectiveness of an agency's affirmative procurement program.
In the case of paper, the recovered materials preference program required under subparagraph (A) shall provide for the maximum use of the post consumer recovered materials referred to in subsection (h)(1).

(3) In developing the preference program, the following options shall be considered for adoption:

(A) Case-by-Case Policy Development: Subject to the limitations of subsection (c)(1)(A) through (C), a policy of awarding contracts to the vendor offering an item composed of the highest percentage of recovered materials practicable (and in the case of paper, the highest percentage of the post consumer recovered materials referred to in subsection (h)(1)). Subject to such limitations, agencies may make an award to a vendor offering items with less than the maximum recovered materials content.

(B) Minimum Content Standards: Minimum recovered materials content specifications which are set in such a way as to ensure that the recovered materials content (and in the case of paper, the content of post consumer materials referred to in subsection (h)(1)) required is the maximum available without jeopardizing the intended end use of the item, or violating the limitations of subsection (c)(1)(A) through (C).

Procuring agencies shall adopt one of the options set forth in subparagraphs (A) and (B) or a substantially equivalent alternative, for inclusion in the affirmative procurement program.

(j) Consultation and provision of information by Administrator

The Administrator shall—

(1) consult with each procuring agency, including contractors of the procuring agency, to clarify the responsibilities of the procuring agency under this section; and

(2) provide to each procuring agency information on the requirements under this section and the responsibilities of the procuring agency under this section.

(k) Reports

The Administrator, in consultation with the Administrator of General Services, shall submit to Congress an annual report describing—

(1) the quantity of federally procured recycled products listed in the guidelines under subsection (e); and

(2) with respect to the products described in paragraph (1), the percentage of recycled material in each product.


EDITORIAL NOTES

CODIFICATION


AMENDMENTS

2021—Subsec. (e). Pub. L. 117–58, §70402(c)(1), which directed substitution of "review not less frequently than once every 5 years, and, if appropriate, revise, in consultation with recyclers and manufacturers of products containing recycled content, not later than 2 years after the completion of the initial review after November 15, 2021, and thereafter, as appropriate" for "and from time to time, revise" in introductory provisions, was executed by making the substitution for "and from time to time revise" to reflect the probable intent of Congress.

Subsecs. (j), (k). Pub. L. 117–58, §70402(c)(2), added subsecs. (j) and (k).

1994—Subsec. (c)(3). Pub. L. 103–355, §4104(e), designated existing provisions as subpar. (A), redesignated subpars. (A) and (B) as cls. (i) and (ii), respectively, and added subpar. (B).


1984—Subsec. (c)(1). Pub. L. 98–616, §501(c), inserted "(and in the case of paper, the highest percentage of the postconsumer recovered materials referred to in subsection (h)(1) practicable)".

Subsec. (d)(1). Pub. L. 98–616, §501(e), substituted "eighteen months after November 8, 1984" for "five years after October 21, 1976".
Subsec. (e). Pub. L. 98–616, §501(b)(2), substituted "for paper within one hundred and eighty days after November 8, 1984, and for three additional product categories (including tires) by October 1, 1985" for "for at least three product categories, including paper, by May 1, 1981, and for two additional product categories, including construction materials, by September 30, 1982." in provisions following par. (2).

Subsec. (e)(1). Pub. L. 98–616, §501(b)(1), inserted ", and in the case of paper, for providing for the use of post consumer recovered materials referred to in subsection (h)(1)."

Subsec. (g). Pub. L. 98–616, §501(d), substituted "the requirements of " for "the policy expressed in" and inserted ", and to, every two years beginning in 1984, report to the Congress on actions taken by Federal agencies and the progress made in the implementation of this section, including agency compliance with subsection (d)".

Subsecs. (h), (i). Pub. L. 98–616, §501(a), added subsecs. (h) and (i).

1982—Subsec. (g). Pub. L. 97–375 struck out provision requiring the Office of Procurement Policy to report annually to Congress on actions taken by Federal agencies and the progress made in the implementation of the policy expressed in this section.

1980—Subsec. (c)(1). Pub. L. 96–482, §22(1), (2), in provision preceding subpar. (A), substituted "After the date specified in applicable guidelines prepared pursuant to subsection (e) of this section, each procuring agency which procures any item designated in such guidelines shall procure such" for "After two years after October 21, 1976, each procuring agency shall procure", and in subpar. (C), "subparagraph (B)" for "clause (B)".

Subsec. (c)(2). Pub. L. 96–482, §22(3), substituted "energy or fuels derived from solid waste" for "recovered material and recovered-material-derived fuel".

Subsec. (c)(3). Pub. L. 96–482, §22(4), substituted subpars. (A) and (B) for provision requiring certification of the percentage of the total material utilized for the performance of the contract which is recovered materials.

Subsec. (d). Pub. L. 96–482, §22(5), in par. (1), substituted provision requiring Federal agencies to eliminate from specifications as expeditiously as possible, but in no event later than 5 years after Oct. 21, 1976, any exclusion of recovered materials and any requirement that items be manufactured from virgin materials for provision that Federal agencies in reviewing specifications, ascertain whether those specifications violate prohibitions in par. (2)(A) to (C), with such review undertaken not later than 18 months after Oct. 21, 1976, and in par. (2), substituted provision that Federal agencies act within 1 year from publication of applicable guidelines under subsec. (e) of this section for provision that in drafting or revising specifications after Oct. 21, 1976, any exclusion of recovered materials be eliminated and specifications not require the item to be manufactured from virgin materials.

Subsec. (e). Pub. L. 96–482, §22(6), designated provision relating to requirements of guidelines as cl. (2) and subpars. (A) and (C), added cl. (1), subpars. (B) and (C), and provision preceding subpar. (A), and struck out provision requiring information on source of supply.

1978—Subsec. (c). Pub. L. 95–609, §7(n)(1), (2), redesignated subpar. (1)(A) as par. (1), subpars. (1)(B) and (C) as pars. (2) and (3), respectively, and cls. (i) to (iii) of former subpar. (1)(A) as subpars. (A) to (C), respectively, of par. (1), and in par. (3), as so redesignated, inserted "After the date specified in any applicable guidelines prepared pursuant to subsection (e) of this section," before "contracting".

Subsec. (e). Pub. L. 95–609, §7(n)(3), inserted provision dealing with certification by vendors of the materials used.

STATUTORY NOTES AND RELATED SUBSIDIARIES

CHANGE OF NAME

"Director of the Government Publishing Office" substituted for "Public Printer" in subsec. (e) on authority of section 1301(d) of Pub. L. 113–235, set out as a note under section 301 of Title 44, Public Printing and Documents.

EFFECTIVE DATE OF 1994 AMENDMENT

For effective date and applicability of amendment by Pub. L. 103–355, see section 10001 of Pub. L. 103–355, set out as a note under section 8752 of Title 10, Armed Forces.

EXECUTIVE DOCUMENTS

TRANSFER OF FUNCTIONS

For transfer of certain enforcement functions of Administrator or other official of Environmental Protection Agency under this chapter to Federal Inspector, Office of Federal Inspector for the Alaska Natural Gas Transportation System, and subsequent transfer to Secretary of Energy, then to Federal Coordinator for Alaska Natural Gas Transportation Projects, see note set out under section 6903 of this title.
§6963. Cooperation with Environmental Protection Agency

(a) General rule
All Federal agencies shall assist the Administrator in carrying out his functions under this chapter and shall promptly make available all requested information concerning past or present Agency waste management practices and past or present Agency owned, leased, or operated solid or hazardous waste facilities. This information shall be provided in such format as may be determined by the Administrator.

(b) Information relating to energy and materials conservation and recovery
The Administrator shall collect, maintain, and disseminate information concerning the market potential of energy and materials recovered from solid waste, including materials obtained through source separation, and information concerning the savings potential of conserving resources contributing to the waste stream. The Administrator shall identify the regions in which the increased substitution of such energy for energy derived from fossil fuels and other sources is most likely to be feasible, and provide information on the technical and economic aspects of developing integrated resource conservation or recovery systems which provide for the recovery of source-separated materials to be recycled or the conservation of resources. The Administrator shall utilize the authorities of subsection (a) in carrying out this subsection.


EDITORIAL NOTES

AMENDMENTS

1980—Pub. L. 96–482 designated existing provision as subsec. (a), substituted provision that information be provided in a format determined by the Administrator for provision that information be furnished on a reimbursable basis, and added subsec. (b).

EXECUTIVE DOCUMENTS

TRANSFER OF FUNCTIONS

For transfer of certain enforcement functions of Administrator or other official of Environmental Protection Agency under this chapter to Federal Inspector, Office of Federal Inspector for the Alaska Natural Gas Transportation System, and subsequent transfer to Secretary of Energy, then to Federal Coordinator for Alaska Natural Gas Transportation Projects, see note set out under section 6903 of this title.

§6964. Applicability of solid waste disposal guidelines to Executive agencies

(a) Compliance

(1) If—
(A) an Executive agency (as defined in section 105 of title 5) or any unit of the legislative branch of the Federal Government has jurisdiction over any real property or facility the operation or administration of which involves such agency in solid waste management activities, or
(B) such an agency enters into a contract with any person for the operation by such person of any Federal property or facility, and the performance of such contract involves such person in solid waste management activities,

then such agency shall insure compliance with the guidelines recommended under section 6907 of this title and the purposes of this chapter in the operation or administration of such property or facility, or the performance of such contract, as the case may be.

(2) Each Executive agency or any unit of the legislative branch of the Federal Government which conducts any activity—
(A) which generates solid waste, and
(B) which, if conducted by a person other than such agency, would require a permit or license from such agency in order to dispose of such solid waste,

shall insure compliance with such guidelines and the purposes of this chapter in conducting such activity.

(3) Each Executive agency which permits the use of Federal property for purposes of disposal of solid waste shall insure compliance with such guidelines and the purposes of this chapter in the disposal of such waste.

(4) The President or the Committee on House Oversight of the House of Representatives and the Committee on Rules and Administration of the Senate with regard to any unit of the legislative branch of the Federal Government shall prescribe regulations to carry out this subsection.

(b) Licenses and permits
Each Executive agency which issues any license or permit for disposal of solid waste shall, prior to the issuance of such license or permit, consult with the Administrator to insure compliance with guidelines recommended under section 6907 of this title and the purposes of this chapter.


EDITORIAL NOTES

PRIOR PROVISIONS

Provisions similar to those in this section were contained in section 3254e of this title, prior to the general amendment of the Solid Waste Disposal Act by Pub. L. 94–580.

AMENDMENTS


Subsec. (a)(4). Pub. L. 96–482, §23(3), required House Committee on House Administration and Senate Committee on Rules and Administration with regard to any unit of the legislative branch of the Federal Government to prescribe implementing regulations.


Subsec. (b). Pub. L. 95–609, §7(o)(3), substituted "Administrator" for "Secretary".

STATUTORY NOTES AND RELATED SUBSIDIARIES

CHANGE OF NAME

Committee on House Oversight of House of Representatives changed to Committee on House Administration of House of Representatives by House Resolution No. 5, One Hundred Sixth Congress, Jan. 6, 1999.

EXECUTIVE DOCUMENTS

TRANSFER OF FUNCTIONS

For transfer of certain enforcement functions of Administrator or other official of Environmental Protection Agency under this chapter to Federal Inspector, Office of Federal Inspector for the Alaska Natural Gas Transportation System, and subsequent transfer to Secretary of Energy, then to Federal Coordinator for Alaska Natural Gas Transportation Projects, see note set out under section 6903 of this title.

§6965. Chief Financial Officer report

The Chief Financial Officer of each affected agency shall submit to Congress an annual report containing, to the extent practicable, a detailed description of the compliance activities undertaken by the agency for mixed waste streams, and an accounting of the fines and penalties imposed on the agency for violations involving mixed waste.


EDITORIAL NOTES

CODIFICATION

Section was enacted as part of the Federal Facility Compliance Act of 1992, and not as part of the Solid Waste Disposal Act which comprises this chapter.

§6966. Increased use of recovered mineral component in federally funded projects involving procurement of cement or concrete

(a) Definitions

In this section:
(1) Agency head
The term "agency head" means—
(A) the Secretary of Transportation; and
(B) the head of any other Federal agency that, on a regular basis, procures, or provides Federal funds to pay or assist in paying the cost of procuring, material for cement or concrete projects.

(2) Cement or concrete project
The term "cement or concrete project" means a project for the construction or maintenance of a highway or other transportation facility or a Federal, State, or local government building or other public facility that—
(A) involves the procurement of cement or concrete; and
(B) is carried out, in whole or in part, using Federal funds.

(3) Recovered mineral component
The term "recovered mineral component" means—
(A) ground granulated blast furnace slag, excluding lead slag;
(B) coal combustion fly ash; and
(C) any other waste material or byproduct recovered or diverted from solid waste that the Administrator, in consultation with an agency head, determines should be treated as recovered mineral component under this section for use in cement or concrete projects paid for, in whole or in part, by the agency head.

(b) Implementation of requirements

(1) In general
Not later than 1 year after August 8, 2005, the Administrator and each agency head shall take such actions as are necessary to implement fully all procurement requirements and incentives in effect as of August 8, 2005 (including guidelines under section 6962 of this title) that provide for the use of cement and concrete incorporating recovered mineral component in cement or concrete projects.

(2) Priority
In carrying out paragraph (1), an agency head shall give priority to achieving greater use of recovered mineral component in cement or concrete projects for which recovered mineral components historically have not been used or have been used only minimally.

(3) Federal procurement requirements
The Administrator and each agency head shall carry out this subsection in accordance with section 6962 of this title.

(c) Full implementation study

(1) In general
The Administrator, in cooperation with the Secretary of Transportation and the Secretary of Energy, shall conduct a study to determine the extent to which procurement requirements, when fully implemented in accordance with subsection (b), may realize energy savings and environmental benefits attainable with substitution of recovered mineral component in cement used in cement or concrete projects.

(2) Matters to be addressed
The study shall—
(A) quantify—
(i) the extent to which recovered mineral components are being substituted for Portland cement, particularly as a result of procurement requirements; and
(ii) the energy savings and environmental benefits associated with the substitution;

(B) identify all barriers in procurement requirements to greater realization of energy savings and environmental benefits, including barriers resulting from exceptions from the law; and
(C)(i) identify potential mechanisms to achieve greater substitution of recovered mineral component in types of cement or concrete projects for which recovered mineral components historically have not been used or have been used only minimally;
(ii) evaluate the feasibility of establishing guidelines or standards for optimized substitution rates of recovered mineral component in those cement or concrete projects; and
(iii) identify any potential environmental or economic effects that may result from greater substitution of recovered mineral component in those cement or concrete projects.

(3) Report
Not later than 30 months after August 8, 2005, the Administrator shall submit to Congress a report on the study.

(d) Additional procurement requirements
Unless the study conducted under subsection (c) identifies any effects or other problems described in subsection (c)(2)(C)(i) that warrant further review or delay, the Administrator and each agency head shall, not later than 1 year after the date on which the report under subsection (c)(3) is submitted, take additional actions under this chapter to establish procurement requirements and incentives that provide for the use of cement and concrete with increased substitution of recovered mineral component in the construction and maintenance of cement or concrete projects—
(1) to realize more fully the energy savings and environmental benefits associated with increased substitution; and
(2) to eliminate barriers identified under subsection (c)(2)(B).

(e) Effect of section

Nothing in this section affects the requirements of section 6962 of this title (including the guidelines and specifications for implementing those requirements).


EDITORIAL NOTES

CODIFICATION

Another section 6005 of Pub. L. 89–272 is classified to section 6966a of this title.

§6966a. Increased use of recovered mineral component in federally funded projects involving procurement of cement or concrete

(a) Definitions

In this section:

(1) Agency head

The term "agency head" means—
(A) the Secretary of Transportation; and
(B) the head of each other Federal agency that on a regular basis procures, or provides Federal funds to pay or assist in paying the cost of procuring, material for cement or concrete projects.

(2) Cement or concrete project

The term "cement or concrete project" means a project for the construction or maintenance of a highway or other transportation facility or a Federal, State, or local government building or other public facility that—
(A) involves the procurement of cement or concrete; and
(B) is carried out in whole or in part using Federal funds.

(3) Recovered mineral component

The term "recovered mineral component" means—
(A) ground granulated blast furnace slag other than lead slag;
(B) coal combustion fly ash;
(C) blast furnace slag aggregate other than lead slag aggregate;
(D) silica fume; and
(E) any other waste material or byproduct recovered or diverted from solid waste that the Administrator, in consultation with an agency head, determines should be treated as recovered mineral component under this section for use in cement or concrete projects paid for, in whole or in part, by the agency head.

(b) Implementation of requirements

(1) In general

Not later than 1 year after August 10, 2005, the Administrator and each agency head shall take such actions as are necessary to implement fully all procurement requirements and incentives in effect as of August 10, 2005 (including guidelines under section 6962 of this title) that provide for the use of cement and concrete incorporating recovered mineral component in cement or concrete projects.

(2) Priority

In carrying out paragraph (1) an agency head shall give priority to achieving greater use of recovered mineral component in cement or concrete projects for which recovered mineral components historically have not been used or have been used only minimally.

(3) Conformance

The Administrator and each agency head shall carry out this subsection in accordance with section 6962 of this title.

(c) Full implementation study

(1) In general

The Administrator, in cooperation with the Secretary of Transportation and the Secretary of Energy, shall conduct a study to determine the extent to which current procurement requirements, when fully implemented in accordance with subsection (b), may realize energy savings and environmental benefits attainable with substitution of recovered mineral component in cement used in cement or concrete projects.

(2) Matters to be addressed

The study shall—
(A) quantify the extent to which recovered mineral components are being substituted for Portland cement, particularly as a result of current procurement requirements, and the energy savings and environmental benefits associated with
that substitution;
(B) identify all barriers in procurement requirements to greater realization of energy savings and environmental
benefits, including barriers resulting from exceptions from current law; and
(C)(i) identify potential mechanisms to achieve greater substitution of recovered mineral component in types of
cement or concrete projects for which recovered mineral components historically have not been used or have been
used only minimally;
(ii) evaluate the feasibility of establishing guidelines or standards for optimized substitution rates of recovered mineral
component in those cement or concrete projects; and
(iii) identify any potential environmental or economic effects that may result from greater substitution of recovered
mineral component in those cement or concrete projects.

(3) Report
Not later than 30 months after August 10, 2005, the Administrator shall submit to Congress a report on the study.

(d) Additional procurement requirements
Unless the study conducted under subsection (c) identifies any effects or other problems described in subsection (c)(2)(C)
(iii) that warrant further review or delay, the Administrator and each agency head shall, not later than 1 year after the release
of the report in accordance with subsection (c)(3), take additional actions authorized under this chapter to establish
procurement requirements and incentives that provide for the use of cement and concrete with increased substitution of
recovered mineral component in the construction and maintenance of cement or concrete projects, so as to—
(1) realize more fully the energy savings and environmental benefits associated with increased substitution; and
(2) eliminate barriers identified under subsection (c).

(e) Effect of section
Nothing in this section affects the requirements of section 6962 of this title (including the guidelines and specifications for
implementing those requirements).


EDITORIAL NOTES

CODIFICATION

Another section 6005 of Pub. L. 89–272 is classified to section 6966 of this title.

§6966b. Use of granular mine tailings

(a) Mine tailings

(1) In general
Not later than 180 days after August 10, 2005, the Administrator, in consultation with the Secretary of Transportation
and heads of other Federal agencies, shall establish criteria (including an evaluation of whether to establish a numerical
standard for concentration of lead and other hazardous substances) for the safe and environmentally protective use of
granular mine tailings from the Tar Creek, Oklahoma Mining District, known as "chat", for—
(A) cement or concrete projects; and
(B) transportation construction projects (including transportation construction projects involving the use of asphalt)
that are carried out, in whole or in part, using Federal funds.

(2) Requirements
In establishing criteria under paragraph (1), the Administrator shall consider—
(A) the current and previous uses of granular mine tailings as an aggregate for asphalt; and
(B) any environmental and public health risks and benefits derived from the removal, transportation, and use in
transportation projects of granular mine tailings.

(3) Public participation
In establishing the criteria under paragraph (1), the Administrator shall solicit and consider comments from the public.

(4) Applicability of criteria
On the establishment of the criteria under paragraph (1), any use of the granular mine tailings described in paragraph
(1) in a transportation project that is carried out, in whole or in part, using Federal funds, shall meet the criteria established
under paragraph (1).

(b) Effect of sections
Nothing in this section or section 6966a of this title affects any requirement of any law (including a regulation) in effect on
August 10, 2005.


EDITORIAL NOTES
REFERENCES IN TEXT
Section 6966a of this title, referred to in subsec. (b), was in the original "section 6005" meaning section 6005 of Pub. L. 89–272, which was translated as meaning the section 6005 of Pub. L. 89–272 as added by section 6017(a) of Pub. L. 109–58, to reflect the probable intent of Congress.

§6966c. Best practices for battery recycling and labeling guidelines

(a) Definitions
In this section:

(1) Administrator
The term "Administrator" means the Administrator of the Environmental Protection Agency.

(2) Battery
The term "battery" means a device that—
(A) consists of 1 or more electrochemical cells that are electrically connected; and
(B) is designed to store and deliver electric energy.

(3) Recycling
The term "recycling" means the series of activities—
(A) during which recyclable materials are processed into specification-grade commodities, and consumed as raw-material feedstock, in lieu of virgin materials, in the manufacturing of new products;
(B) that may include collection, processing, and brokering; and
(C) that result in subsequent consumption by a materials manufacturer, including for the manufacturing of new products.

(b) Best practices for collection of batteries to be recycled

(1) In general
The Administrator shall develop best practices that may be implemented by State, Tribal, and local governments with respect to the collection of batteries to be recycled in a manner that—
(A) to the maximum extent practicable, is technically and economically feasible for State, Tribal, and local governments;
(B) is environmentally sound and safe for waste management workers; and
(C) optimizes the value and use of material derived from recycling of batteries.

(2) Consultation
The Administrator shall develop the best practices described in paragraph (1) in coordination with State, Tribal, and local governments and relevant nongovernmental and private sector entities.

(3) Report
Not later than 2 years after November 15, 2021, the Administrator shall submit to Congress a report describing the best practices developed under paragraph (1).

(4) Authorization of appropriations
There is authorized to be appropriated to the Administrator to carry out this subsection $10,000,000 for fiscal year 2022, to remain available until September 30, 2026.

(c) Voluntary labeling guidelines

(1) In general
There is established within the Environmental Protection Agency a program (referred to in this subsection as the "program") to promote battery recycling through the development of—
(A) voluntary labeling guidelines for batteries; and
(B) other forms of communication materials for battery producers and consumers about the reuse and recycling of critical materials from batteries.

(2) Purposes
The purposes of the program are to improve battery collection and reduce battery waste, including by—
(A) identifying battery collection locations and increasing accessibility to those locations;
(B) promoting consumer education about battery collection and recycling; and
(C) reducing safety concerns relating to the improper disposal of batteries.

(3) Other standards and law
The Administrator shall make every reasonable effort to ensure that voluntary labeling guidelines and other forms of communication materials developed under the program are consistent with—
(A) international battery labeling standards; and
(B) the Mercury-Containing and Rechargeable Battery Management Act (42 U.S.C. 14301 et seq.).

(4) Authorization of appropriations
There is authorized to be appropriated to the Administrator to carry out this subsection $15,000,000 for fiscal year 2022, to remain available until September 30, 2026.


EDITORIAL NOTES

REFERENCES IN TEXT


CODIFICATION

Section was enacted as part of the Infrastructure Investment and Jobs Act, and not as part of the Solid Waste Disposal Act which comprises this chapter.

§6966d. Consumer recycling education and outreach grant program; Federal procurement

(a) Definition of Administrator

In this section, the term "Administrator" means the Administrator of the Environmental Protection Agency.

(b) Consumer recycling education and outreach grant program

(1) In general

The Administrator shall establish a program (referred to in this subsection as the "grant program") to award competitive grants to eligible entities to improve the effectiveness of residential and community recycling programs through public education and outreach.

(2) Criteria

The Administrator shall award grants under the grant program for projects that, by using one or more eligible activities described in paragraph (5)—

(A) inform the public about residential or community recycling programs;

(B) provide information about the recycled materials that are accepted as part of a residential or community recycling program that provides for the separate collection of residential solid waste from recycled material; and

(C) increase collection rates and decrease contamination in residential and community recycling programs.

(3) Eligible entities

(A) In general

An entity that is eligible to receive a grant under the grant program is—

(i) a State;

(ii) a unit of local government;

(iii) an Indian Tribe (as defined in section 5304 of title 25);

(iv) a Native Hawaiian organization (as defined in section 7517 of title 20);

(v) the Department of Hawaiian Home Lands;

(vi) the Office of Hawaiian Affairs;

(vii) a nonprofit organization; or

(viii) a public-private partnership.

(B) Coordination of activities

2 or more entities described in subparagraph (A) may receive a grant under the grant program to coordinate the provision of information to residents that may access 2 or more residential recycling programs, including programs that accept different recycled materials, to provide to the residents information regarding differences among those residential recycling programs.

(4) Requirement

(A) In general

To receive a grant under the grant program, an eligible entity shall demonstrate to the Administrator that the grant funds will be used to encourage the collection of recycled materials that are sold to an existing or developing market.

(B) Business plans and financial data

(I) In general

An eligible entity may make a demonstration under subparagraph (A) through the submission to the Administrator of appropriate business plans and financial data.
(ii) Confidentiality

The Administrator shall treat any business plans or financial data received under clause (i) as confidential information.

(5) Eligible activities

An eligible entity that receives a grant under the grant program may use the grant funds for activities including—
(A) public service announcements;
(B) a door-to-door education and outreach campaign;
(C) social media and digital outreach;
(D) an advertising campaign on recycling awareness;
(E) the development and dissemination of—
   (i) a toolkit for a municipal and commercial recycling program;
   (ii) information on the importance of quality in the recycling stream;
   (iii) information on the economic and environmental benefits of recycling; and
   (iv) information on what happens to materials after the materials are placed into a residential or community recycling program;

(F) businesses recycling outreach;
(G) bin, cart, and other receptacle labeling and signs; and
(H) such other activities that the Administrator determines are appropriate to carry out the purposes of this subsection.

(6) Prohibition on use of funds

No funds may be awarded under the grant program for a residential recycling program that—
(A) does not provide for the separate collection of residential solid waste (as defined in section 246.101 of title 40, Code of Federal Regulations (as in effect on November 15, 2021)) from recycled material (as defined in that section), unless the funds are used to promote a transition to a system that separately collects recycled materials; or
(B) promotes the establishment of, or conversion to, a residential collection system that does not provide for the separate collection of residential solid waste from recycled material (as those terms are defined under subparagraph (A)).

(7) Model recycling program toolkit

(A) In general

In carrying out the grant program, the Administrator, in consultation with other relevant Federal agencies, States, Indian Tribes, units of local government, nonprofit organizations, and the private sector, shall develop a model recycling program toolkit for States, Indian Tribes, and units of local government that includes, at a minimum—
(i) a standardized set of terms and examples that may be used to describe materials that are accepted by a residential recycling program;
(ii) information that the Administrator determines can be widely applied across residential recycling programs, taking into consideration the differences in recycled materials accepted by residential recycling programs;
(iii) educational principles on best practices for the collection and processing of recycled materials;
(iv) a community self-assessment guide to identify gaps in existing recycling programs;
(v) training modules that enable States and nonprofit organizations to provide technical assistance to units of local government;
(vi) access to consumer educational materials that States, Indian Tribes, and units of local government can adapt and use in recycling programs; and
(vii) a guide to measure the effectiveness of a grant received under the grant program, including standardized measurements for recycling rates and decreases in contamination.

(B) Requirement

In developing the standardized set of terms and examples under subparagraph (A)(i), the Administrator may not establish any requirements for—
(i) what materials shall be accepted by a residential recycling program; or
(ii) the labeling of products.

(8) School curriculum

The Administrator shall provide assistance to the educational community, including nonprofit organizations, such as an organization the science, technology, engineering, and mathematics program of which incorporates recycling, to promote the introduction of recycling principles and best practices into public school curricula.

(9) Reports

(A) To the Administrator

Not earlier than 180 days, and not later than 2 years, after the date on which a grant under the grant program is awarded to an eligible entity, the eligible entity shall submit to the Administrator a report describing, by using the guide developed under paragraph (7)(A)(vii)—
(i) the change in volume of recycled material collected through the activities funded with the grant;
(ii) the change in participation rate of the recycling program funded with the grant;
(iii) the reduction of contamination in the recycling stream as a result of the activities funded with the grant; and
(iv) such other information as the Administrator determines to be appropriate.

(B) To Congress
The Administrator shall submit to Congress an annual report describing—
(i) the effectiveness of residential recycling programs awarded funds under the grant program, including statistics comparing the quantity and quality of recycled materials collected by those programs, as described in the reports submitted to the Administrator under subparagraph (A); and
(ii) recommendations on additional actions to improve residential recycling.

(c) Omitted
(d) Authorization of appropriations

(1) In general
There is authorized to be appropriated to the Administrator to carry out this section and the amendments made by this section $15,000,000 for each of fiscal years 2022 through 2026.

(2) Requirement
Of the amount made available under paragraph (1) for a fiscal year, not less than 20 percent shall be allocated to—
(A) low-income communities;
(B) rural communities; and
(C) communities identified as Native American pursuant to section 3001(9) of title 25.


EDITORIAL NOTES

REFERENCES IN TEXT
The amendments made by this section, referred to in subsec. (d)(1), means the amendments made by section 70402(c) of Pub. L. 117–58, which amended section 6962 of this title. See Codification note below.

CODIFICATION
Section is comprised of section 70402 of Pub. L. 117–58. Subsec. (c) of section 70402 of Pub. L. 117–58 amended section 6962 of this title.
Section was enacted as part of the Infrastructure Investment and Jobs Act, and not as part of the Solid Waste Disposal Act which comprises this chapter.

SUBCHAPTER VII—MISCELLANEOUS PROVISIONS

§6971. Employee protection

(a) General
No person shall fire, or in any other way discriminate against, or cause to be fired or discriminated against, any employee or any authorized representative of employees by reason of the fact that such employee or representative has filed, instituted, or caused to be filed or instituted any proceeding under this chapter or under any applicable implementation plan, or has testified or is about to testify in any proceeding resulting from the administration or enforcement of the provisions of this chapter or of any applicable implementation plan.

(b) Remedy
Any employee or a representative of employees who believes that he has been fired or otherwise discriminated against by any person in violation of subsection (a) of this section may, within thirty days after such alleged violation occurs, apply to the Secretary of Labor for a review of such firing or alleged discrimination. A copy of the application shall be sent to such person who shall be the respondent. Upon receipt of such application, the Secretary of Labor shall cause such investigation to be made as he deems appropriate. Such investigation shall provide an opportunity for a public hearing at the request of any party to such review to enable the parties to present information relating to such alleged violation. The parties shall be given written notice of the time and place of the hearing at least five days prior to the hearing. Any such hearing shall be of record and shall be subject to section 554 of title 5. Upon receiving the report of such investigation, the Secretary of Labor shall make findings of fact. If he finds that such violation did occur, he shall issue a decision, incorporating an order therein and his findings, requiring the party committing such violation to take such affirmative action to abate the violation as the Secretary of Labor deems appropriate, including, but not limited to, the rehiring or reinstatement of the employee or representative of employees to his former position with compensation. If he finds that there was no such violation, he shall issue an order denying the application. Such order issued by the Secretary of Labor under this subparagraph shall be subject to judicial review in the same manner as orders and decisions of the Administrator or subject to judicial review under this chapter.

(c) Costs
Whenever an order is issued under this section to abate such violation, at the request of the applicant, a sum equal to the aggregate amount of all costs and expenses (including the attorney's fees) as determined by the Secretary of Labor, to have been reasonably incurred by the applicant for, or in connection with, the institution and prosecution of such proceedings, shall be assessed against the person committing such violation.

(d) Exception

This section shall have no application to any employee who, acting without direction from his employer (or his agent) deliberately violates any requirement of this chapter.

(e) Employment shifts and loss

The Administrator shall conduct continuing evaluations of potential loss or shifts of employment which may result from the administration or enforcement of the provisions of this chapter and applicable implementation plans, including, where appropriate, investigating threatened plant closures or reductions in employment allegedly resulting from such administration or enforcement. Any employee who is discharged, or laid off, threatened with discharge or layoff, or otherwise discriminated against by any person because of the alleged results of such administration or enforcement, or any representative of such employee, may request the Administrator to conduct a full investigation of the matter. The Administrator shall thereupon investigate the matter and, at the request of any party, shall hold public hearings on not less than five days' notice, and shall at such hearings require the parties, including the employer involved, to present information relating to the actual or potential effect of such administration or enforcement on employment and on any alleged discharge, layoff, or other discrimination and the detailed reasons or justification therefor. Any such hearing shall be of record and shall be subject to section 554 of title 5. Upon receiving the report of such investigation, the Administrator shall make findings of fact as to the effect of such administration or enforcement on employment and on the alleged discharge, layoff, or discrimination and shall make such recommendations as he deems appropriate. Such report, findings, and recommendations shall be available to the public. Nothing in this subsection shall be construed to require or authorize the Administrator or any State to modify or withdraw any standard, limitation, or any other requirement of this chapter or any applicable implementation plan.

(f) Occupational safety and health

In order to assist the Secretary of Labor and the Director of the National Institute for Occupational Safety and Health in carrying out their duties under the Occupational Safety and Health Act of 1970 [29 U.S.C. 651 et seq.], the Administrator shall—

1. provide the following information, as such information becomes available, to the Secretary and the Director:
   a. the identity of any hazardous waste generation, treatment, storage, disposal facility or site where cleanup is planned or underway;
   b. information identifying the hazards to which persons working at a hazardous waste generation, treatment, storage, disposal facility or site or otherwise handling hazardous waste may be exposed, the nature and extent of the exposure, and methods to protect workers from such hazards; and
   c. incidents of worker injury or harm at a hazardous waste generation, treatment, storage or disposal facility or site;

2. notify the Secretary and the Director of the Administrator's receipt of notifications under section 6930 or reports under sections 6922, 6923, and 6924 of this title and make such notifications and reports available to the Secretary and the Director.


EDITORIAL NOTES

REFERENCES IN TEXT


AMENDMENTS


EXECUTIVE DOCUMENTS

TRANSFER OF FUNCTIONS

For transfer of certain enforcement functions of Administrator or other official of Environmental Protection Agency under this chapter to Federal Inspector, Office of Federal Inspector for the Alaska Natural Gas Transportation System, and subsequent transfer to Secretary of Energy, then to Federal Coordinator for Alaska Natural Gas Transportation Projects, see note set out under section 6903 of this title.
§6972. Citizen suits

(a) In general

Except as provided in subsection (b) or (c) of this section, any person may commence a civil action on his own behalf—

(1)(A) against any person (including (a) the United States, and (b) any other governmental instrumentality or agency, to the extent permitted by the eleventh amendment to the Constitution) who is alleged to be in violation of any permit, standard, regulation, condition, requirement, prohibition, or order which has become effective pursuant to this chapter; or

(B) against any person, including the United States and any other governmental instrumentality or agency, to the extent permitted by the eleventh amendment to the Constitution, and including any past or present generator, past or present transporter, or past or present owner or operator of a treatment, storage, or disposal facility, who has contributed or who is contributing to the past or present handling, storage, treatment, transportation, or disposal of any solid or hazardous waste which may present an imminent and substantial endangerment to health or the environment; or

(2) against the Administrator where there is alleged a failure of the Administrator to perform any act or duty under this chapter which is not discretionary with the Administrator.

Any action under paragraph (a)(1) of this subsection shall be brought in the district court for the district in which the alleged violation occurred or the alleged endangerment may occur. Any action brought under paragraph (a)(2) of this subsection may be brought in the district court for the district in which the alleged violation occurred or in the District Court of the District of Columbia. The district court shall have jurisdiction, without regard to the amount in controversy or the citizenship of the parties, to enforce the permit, standard, regulation, condition, requirement, prohibition, or order, referred to in paragraph (1)(A), to restrain any person who has contributed or who is contributing to the past or present handling, storage, treatment, transportation, or disposal of any solid or hazardous waste referred to in paragraph (1)(B), to order such person to take such other action as may be necessary, or both, or to order the Administrator to perform the act or duty referred to in paragraph (2), as the case may be, and to apply any appropriate civil penalties under section 6928(a) and (g) of this title.

(b) Actions prohibited

(1) No action may be commenced under subsection (a)(1)(A) of this section—

(A) prior to 60 days after the plaintiff has given notice of the violation to—

(i) the Administrator;

(ii) the State in which the alleged violation occurs; and

(iii) to any alleged violator of such permit, standard, regulation, condition, requirement, prohibition, or order,

except that such action may be brought immediately after such notification in the case of an action under this section respecting a violation of subchapter III of this chapter; or

(B) if the Administrator or State has commenced and is diligently prosecuting a civil or criminal action in a court of the United States or a State to require compliance with such permit, standard, regulation, condition, requirement, prohibition, or order.

In any action under subsection (a)(1)(A) in a court of the United States, any person may intervene as a matter of right.

(2)(A) No action may be commenced under subsection (a)(1)(B) of this section prior to ninety days after the plaintiff has given notice of the endangerment to—

(i) the Administrator;

(ii) the State in which the alleged endangerment may occur;

(iii) any person alleged to have contributed or to be contributing to the past or present handling, storage, treatment, transportation, or disposal of any solid or hazardous waste referred to in subsection (a)(1)(B),

except that such action may be brought immediately after such notification in the case of an action under this section respecting a violation of subchapter III of this chapter.

(B) No action may be commenced under subsection (a)(1)(B) of this section if the Administrator, in order to restrain or abate acts or conditions which may have contributed or are contributing to the activities which may present the alleged endangerment—

(i) has commenced and is diligently prosecuting an action under section 6973 of this title or under section 106 of the Comprehensive Environmental Response, Compensation and Liability Act of 1980 [42 U.S.C. 9606] ;

(ii) is actually engaging in a removal action under section 104 of the Comprehensive Environmental Response, Compensation and Liability Act of 1980 [42 U.S.C. 9604];

(iii) has incurred costs to initiate a Remedial Investigation and Feasibility Study under section 104 of the Comprehensive Environmental Response, Compensation and Liability Act of 1980 [42 U.S.C. 9604] and is diligently proceeding with a remedial action under that Act [42 U.S.C. 9601 et seq.]; or

(iv) has obtained a court order (including a consent decree) or issued an administrative order under section 106 of the Comprehensive Environmental Response, Compensation and Liability Act of 980 [42 U.S.C. 9606] or section 6973 of this title pursuant to which a responsible party is diligently conducting a removal action, Remedial Investigation and Feasibility Study (RIFS), or proceeding with a remedial action.
In the case of an administrative order referred to in clause (iv), actions under subsection (a)(1)(B) are prohibited only as to the scope and duration of the administrative order referred to in clause (iv).

(C) No action may be commenced under subsection (a)(1)(B) of this section if the State, in order to restrain or abate acts or conditions which may have contributed or are contributing to the activities which may present the alleged endangerment —

(i) has commenced and is diligently prosecuting an action under subsection (a)(1)(B);

(ii) is actually engaging in a removal action under section 104 of the Comprehensive Environmental Response, Compensation and Liability Act of 1980 [42 U.S.C. 9604]; or

(iii) has incurred costs to initiate a Remedial Investigation and Feasibility Study under section 104 of the Comprehensive Environmental Response, Compensation and Liability Act of 1980 [42 U.S.C. 9604] and is diligently proceeding with a remedial action under that Act [42 U.S.C. 9601 et seq.].

(D) No action may be commenced under subsection (a)(1)(B) by any person (other than a State or local government) with respect to the siting of a hazardous waste treatment, storage, or a disposal facility, nor to restrain or enjoin the issuance of a permit for such facility.

(E) In any action under subsection (a)(1)(B) in a court of the United States, any person may intervene as a matter of right when the applicant claims an interest relating to the subject of the action and he is so situated that the disposition of the action may, as a practical matter, impair or impede his ability to protect that interest, unless the Administrator or the State shows that the applicant's interest is adequately represented by existing parties.

(F) Whenever any action is brought under subsection (a)(1)(B) in a court of the United States, the plaintiff shall serve a copy of the complaint on the Attorney General of the United States and with the Administrator.

(c) Notice

No action may be commenced under paragraph (a)(2) of this section prior to sixty days after the plaintiff has given notice to the Administrator that he will commence such action, except that such action may be brought immediately after such notification in the case of an action under this section respecting a violation of subchapter III. Notice under this subsection shall be given in such manner as the Administrator shall prescribe by regulation. Any action respecting a violation under this chapter may be brought under this section only in the judicial district in which such alleged violation occurs.

(d) Intervention

In any action under this section the Administrator, if not a party, may intervene as a matter of right.

(e) Costs

The court, in issuing any final order in any action brought pursuant to this section or section 6976 of this title, may award costs of litigation (including reasonable attorney and expert witness fees) to the prevailing or substantially prevailing party, whenever the court determines such an award is appropriate. The court may, if a temporary restraining order or preliminary injunction is sought, require the filing of a bond or equivalent security in accordance with the Federal Rules of Civil Procedure.

(f) Other rights preserved

Nothing in this section shall restrict any right which any person (or class of persons) may have under any statute or common law to seek enforcement of any standard or requirement relating to the management of solid waste or hazardous waste, or to seek any other relief (including relief against the Administrator or a State agency).

(g) Transporters

A transporter shall not be deemed to have contributed or to be contributing to the handling, storage, treatment, or disposal, referred to in subsection (a)(1)(B) taking place after such solid waste or hazardous waste has left the possession or control of such transporter, if the transportation of such waste was under a sole contractual arrangement arising from a published tariff and acceptance for carriage by common carrier by rail and such transporter has exercised due care in the past or present handling, storage, treatment, transportation and disposal of such waste.


EDITORIAL NOTES

REFERENCES IN TEXT


The Federal Rules of Civil Procedure, referred to in subsec. (e), are set out in the Appendix to Title 28, Judiciary and Judicial Procedure.

AMENDMENTS

1984—Subsec. (a). Pub. L. 98–616, §401(a), (b), designated existing provisions of subsec. (a)(1) as subpar. (A) thereof, inserted "prohibition," after "requirement," added subpar. (B), and in provisions following par. (2) inserted "or the alleged endangerment may occur" in first sentence and substituted "to enforce the permit,
standard, regulation, condition, requirement, prohibition, or order, referred to in paragraph (1)(A), to restrain any person who has contributed or who is contributing to the past or present handling, storage, treatment, transportation, or disposal of any solid or hazardous waste referred to in paragraph (1)(B), to order such person to take such other action as may be necessary, or both, or to order the Administrator to perform the act or duty referred to in paragraph (2), as the case may be, and to apply any appropriate civil penalties under section 6928(a) and (g) of this title" for "to enforce such regulation or order, or to order the Administrator to perform such act or duty as the case may be".

Subsec. (b). Pub. L. 98–616, §401(d), amended subsec. (b) generally. Prior to amendment, subsec. (b) read as follows: "No action may be commenced under paragraph (a)(1) of this section—

"(1) prior to sixty days after the plaintiff has given notice of the violation (A) to the Administrator; (B) to the State in which the alleged violation occurs; and (C) to any alleged violator of such permit, standard, regulation, condition, requirement, or order; or

"(2) if the Administrator or State has commenced and is diligently prosecuting a civil or criminal action in a court of the United States or a State to require compliance with such permit, standard, regulation, condition, requirement, or order: Provided, however, That in any such action in a court of the United States, any person may intervene as a matter of right."

Subsec. (e). Pub. L. 98–616, §401(e), substituted "to the prevailing or substantially prevailing party" for "to any party" and inserted "or section 6976 of this title".

Subsec. (g). Pub. L. 98–616, §401(c), added subsec. (g).

1978—Subsec. (c). Pub. L. 95–609, §7(p)(1), substituted "subchapter III" for "section 212 of this Act."

Subsec. (e). Pub. L. 95–609, §7(p)(2), substituted "require" for "requiring".

**Executive Documents**

**Transfer of Functions**

For transfer of certain enforcement functions of Administrator or other official of Environmental Protection Agency under this chapter to Federal Inspector, Office of Federal Inspector for the Alaska Natural Gas Transportation System, and subsequent transfer to Secretary of Energy, then to Federal Coordinator for Alaska Natural Gas Transportation Projects, see note set out under section 6903 of this title.

1. *So in original. The comma probably should be a semicolon.*

2. *So in original. Probably should be "1980."

**§6973. Imminent hazard**

(a) Authority of Administrator

Notwithstanding any other provision of this chapter, upon receipt of evidence that the past or present handling, storage, treatment, transportation or disposal of any solid waste or hazardous waste may present an imminent and substantial endangerment to health or the environment, the Administrator may bring suit on behalf of the United States in the appropriate district court against any person (including any past or present generator, past or present transporter, or past or present owner or operator of a treatment, storage, or disposal facility) who has contributed or who is contributing to such handling, storage, treatment, transportation or disposal to restrain such person from such handling, storage, treatment, transportation, or disposal, to order such person to take such other action as may be necessary, or both. A transporter shall not be deemed to have contributed or to be contributing to such handling, storage, treatment, or disposal taking place after such solid waste or hazardous waste has left the possession or control of such transporter if the transportation of such waste was under a sole contractual arrangement arising from a published tariff and acceptance for carriage by common carrier by rail and such transporter has exercised due care in the past or present handling, storage, treatment, transportation, and disposal of such waste. The Administrator shall provide notice to the affected State of any such suit. The Administrator may also, after notice to the affected State, take other action under this section including, but not limited to, issuing such orders as may be necessary to protect public health and the environment.

(b) Violations

Any person who willfully violates, or fails or refuses to comply with, any order of the Administrator under subsection (a) may, in an action brought in the appropriate United States district court to enforce such order, be fined not more than $5,000 for each day in which such violation occurs or such failure to comply continues.

(c) Immediate notice

Upon receipt of information that there is hazardous waste at any site which has presented an imminent and substantial endangerment to human health or the environment, the Administrator shall provide immediate notice to the appropriate local government agencies. In addition, the Administrator shall require notice of such endangerment to be promptly posted at the site where the waste is located.

(d) Public participation in settlements
Whenever the United States or the Administrator proposes to covenant not to sue or to forbear from suit or to settle any claim arising under this section, notice, and opportunity for a public meeting in the affected area, and a reasonable opportunity to comment on the proposed settlement prior to its final entry shall be afforded to the public. The decision of the United States or the Administrator to enter into or not to enter into such Consent Decree, covenant or agreement shall not constitute a final agency action subject to judicial review under this chapter or chapter 7 of title 5.


EDITORIAL NOTES

CODIFICATION

In subsec. (d), "chapter 7 of title 5" substituted for "the Administrative Procedure Act" on authority of Pub. L. 89–554, §7(b), Sept. 6, 1966, 80 Stat. 631, the first section of which enacted Title 5, Government Organization and Employees.

AMENDMENTS

1984—Subsec. (a). Pub. L. 98–616, §402, inserted "past or present" after "evidence that the", substituted "against any person (including any past or present generator, past or present transporter, or past or present owner or operator of a treatment, storage, or disposal facility who has contributed or, who is "for "to immediately restrain any person", substituted "to restrain such person from" for "to stop", substituted ", to order such person to take such other action as may be necessary, or both" for "or to take such other action as may be necessary", and inserted "A transporter shall not be deemed to have contributed or to be contributing to such handling, storage, treatment, or disposal, taking place after such solid waste or hazardous waste has left the possession or control of such transporter, if the transportation of such waste was under a sole contractual [sic] arrangement arising from a published tariff and acceptance for carriage by common carrier by rail and such transporter has exercised due care in the past or present handling, storage, treatment, transportation and disposal of such waste."
   Subsec. (c). Pub. L. 98–616, §403(a), added subsec. (c).

1980—Pub. L. 96–482, §25, designated existing provisions as subsec. (a), substituted "may present" for "is presenting" and "such handling, storage, treatment, transportation or disposal" for "the alleged disposal" and authorized other action to be taken by the Administrator after notice including issuance of protective orders relating to public health and the environment, and added subsec. (b).

1978—Pub. L. 95–609 struck out "for" after "restrain any person".

EXECUTIVE DOCUMENTS

TRANSFER OF FUNCTIONS

For transfer of certain enforcement functions of Administrator or other official of Environmental Protection Agency under this chapter to Federal Inspector, Office of Federal Inspector for the Alaska Natural Gas Transportation System, and subsequent transfer to Secretary of Energy, then to Federal Coordinator for Alaska Natural Gas Transportation Projects, see note set out under section 6903 of this title.

1 So in original. Probably should be "contractual".

§6974. Petition for regulations; public participation

(a) Petition

Any person may petition the Administrator for the promulgation, amendment, or repeal of any regulation under this chapter. Within a reasonable time following receipt of such petition, the Administrator shall take action with respect to such petition and shall publish notice of such action in the Federal Register, together with the reasons therefor.

(b) Public participation

(1) Public participation in the development, revision, implementation, and enforcement of any regulation, guideline, information, or program under this chapter shall be provided for, encouraged, and assisted by the Administrator and the States. The Administrator, in cooperation with the States, shall develop and publish minimum guidelines for public participation in such processes.

(2) Before the issuing of a permit to any person with any respect to any facility for the treatment, storage, or disposal of hazardous wastes under section 6925 of this title, the Administrator shall—
(A) cause to be published in major local newspapers of general circulation and broadcast over local radio stations notice of the agency's intention to issue such permit, and

(B) transmit in writing notice of the agency's intention to issue such permit to each unit of local government having jurisdiction over the area in which such facility is proposed to be located and to each State agency having any authority under State law with respect to the construction or operation of such facility.

If within 45 days the Administrator receives written notice of opposition to the agency's intention to issue such permit and a request for a hearing, or if the Administrator determines on his own initiative, he shall hold an informal public hearing (including an opportunity for presentation of written and oral views) on whether he should issue a permit for the proposed facility. Whenever possible the Administrator shall schedule such hearing at a location convenient to the nearest population center to such proposed facility and give notice in the aforementioned manner of the date, time, and subject matter of such hearing. No State program which provides for the issuance of permits referred to in this paragraph may be authorized by the Administrator under section 6926 of this title unless such program provides for the notice and hearing required by the paragraph.


EDITORIAL NOTES

AMENDMENTS

1980—Subsec. (b). Pub. L. 96–482 designated existing provisions as par. (1) and added par. (2).

EXECUTIVE DOCUMENTS

TRANSFER OF FUNCTIONS

For transfer of certain enforcement functions of Administrator or other official of Environmental Protection Agency under this chapter to Federal Inspector, Office of Federal Inspector for the Alaska Natural Gas Transportation System, and subsequent transfer to Secretary of Energy, then to Federal Coordinator for Alaska Natural Gas Transportation Projects, see note set out under section 6903 of this title.

§6975. Separability

If any provision of this chapter, or the application of any provision of this chapter to any person or circumstance, is held invalid, the application of such provision to other persons or circumstances, and the remainder of this chapter, shall not be affected thereby.


§6976. Judicial review

(a) Review of final regulations and certain petitions

Any judicial review of final regulations promulgated pursuant to this chapter and the Administrator's denial of any petition for the promulgation, amendment, or repeal of any regulation under this chapter shall be in accordance with sections 701 through 706 of title 5, except that—

(1) a petition for review of action of the Administrator in promulgating any regulation, or requirement under this chapter or denying any petition for the promulgation, amendment or repeal of any regulation under this chapter may be filed only in the United States Court of Appeals for the District of Columbia, and such petition shall be filed within ninety days from the date of such promulgation or denial, or after such date if such petition for review is based solely on grounds arising after such ninetieth day; action of the Administrator with respect to which review could have been obtained under this subsection shall not be subject to judicial review in civil or criminal proceedings for enforcement; and

(2) in any judicial proceeding brought under this section in which review is sought of a determination under this chapter required to be made on the record after notice and opportunity for hearing, if a party seeking review under this chapter applies to the court for leave to adduce additional evidence, and shows to the satisfaction of the court that the information is material and that there were reasonable grounds for the failure to adduce such evidence in the proceeding before the Administrator, the court may order such additional evidence (and evidence in rebuttal thereof) to be taken before the Administrator, and to be adduced upon the hearing in such manner and upon such terms and conditions as the court may deem proper; the Administrator may modify his findings as to the facts, or make new findings, by reason of the additional evidence so taken, and he shall file with the court such modified or new findings and his recommendation, if any, for the modification or setting aside of his original order, with the return of such additional evidence.

(b) Review of certain actions under sections 6925 and 6926 of this title

Review of the Administrator's action (1) in issuing, denying, modifying, or revoking any permit under section 6925 of this title (or in modifying or revoking any permit which is deemed to have been issued under section 6935(d)(1) of this title), or
(2) in granting, denying, or withdrawing authorization or interim authorization under section 6926 of this title, may be had by any interested person in the Circuit Court of Appeals of the United States for the Federal judicial district in which such person resides or transacts such business upon application by such person. Any such application shall be made within ninety days from the date of such issuance, denial, modification, revocation, grant, or withdrawal, or after such date only if such application is based solely on grounds which arose after such ninetieth day. Action of the Administrator with respect to which review could have been obtained under this subsection shall not be subject to judicial review in civil or criminal proceedings for enforcement. Such review shall be in accordance with sections 701 through 706 of title 5.


EDITORIAL NOTES

REFERENCES IN TEXT

Section 6935(d)(1) of this title, referred to in subsec. (b), was in the original a reference to section 3012(d)(1) of Pub. L. 89–272, which was renumbered section 3014(d)(1) of Pub. L. 89–272 by Pub. L. 98–616 and is classified to section 6935(d)(1) of this title.

AMENDMENTS

1984—Pub. L. 98–616 inserted "(or in modifying or revoking any permit which is deemed to have been issued under section 6935(d)(1) of this title)" and inserted "Action of the Administrator with respect to which review could have been obtained under this subsection shall not be subject to judicial review in civil or criminal proceedings for enforcement."

1980—Pub. L. 96–482, §27(a), designated existing provisions as subsec. (a), in provision preceding par. (1), included judicial review of Administrator's denial of any petition for promulgation, amendment, or repeal of any regulation in par. (1), included review of Administrator's denial of any petition for promulgation, amendment, or repeal of any regulation, and substituted "District of Columbia, and" for "District of Columbia. Any", "date of such promulgation or denial" for "date of such promulgation", "petition for review is based" for "petition is based", and ";" for "." Action", and in par. (2), substituted "proper; the" for "proper. The", and added subsec. (b).

EXECUTIVE DOCUMENTS

TRANSFER OF FUNCTIONS

For transfer of certain enforcement functions of Administrator or other official of Environmental Protection Agency under this chapter to Federal Inspector, Office of Federal Inspector for the Alaska Natural Gas Transportation System, and subsequent transfer to Secretary of Energy, then to Federal Coordinator for Alaska Natural Gas Transportation Projects, see note set out under section 6903 of this title.

1 See References in Text note below.

§6977. Grants or contracts for training projects

(a) General authority

The Administrator is authorized to make grants to, and contracts with any eligible organization. For purposes of this section the term "eligible organization" means a State or interstate agency, a municipality, educational institution, and any other organization which is capable of effectively carrying out a project which may be funded by grant under subsection (b) of this section.

(b) Purposes

(1) Subject to the provisions of paragraph (2), grants or contracts may be made to pay all or a part of the costs, as may be determined by the Administrator, of any project operated or to be operated by an eligible organization, which is designed—

(A) to develop, expand, or carry out a program (which may combine training, education, and employment) for training persons for occupations involving the management, supervision, design, operation, or maintenance of solid waste management and resource recovery equipment and facilities; or

(B) to train instructors and supervisory personnel to train or supervise persons in occupations involving the design, operation, and maintenance of solid waste management and resource recovery equipment and facilities.

(2) A grant or contract authorized by paragraph (1) of this subsection may be made only upon application to the Administrator at such time or times and containing such information as he may prescribe, except that no such application shall be approved unless it provides for the same procedures and reports (and access to such reports and to other records)
as required by section 3254a(b)(4) and (5) \(^1\) of this title (as in effect before October 21, 1976) with respect to applications
made under such section (as in effect before October 21, 1976).


**EDITORIAL NOTES**

**REFERENCES IN TEXT**

Section 3254a(b)(4) and (5) of this title, referred to in subsec. (b)(2), was in the original "section 207(b)(4)
and (5)" meaning section 207(b)(4) and (5) of the Solid Waste Disposal Act, which was omitted in the general

**PRIOR PROVISIONS**

Provisions similar to those in this section were contained in section 3254d of this title, prior to the general

**AMENDMENTS**

1998—Subsec. (c). Pub. L. 105–362 struck out heading and text of subsec. (c) which related to
Administrator's study and report on State and local training needs and obstacles to employment and
occupational advancement in solid waste management and resource recovery field.

1978—Subsec. (b)(1). Pub. L. 95–609, §7(r)(1), (2), substituted "management" for "disposal" in two places,
and "resource" for "resources".

Subsec. (c)(3). Pub. L. 95–609, §7(r)(3), substituted "management" for "disposal".

**EXECUTIVE DOCUMENTS**

**TRANSFER OF FUNCTIONS**

For transfer of certain enforcement functions of Administrator or other official of Environmental Protection
Agency under this chapter to Federal Inspector, Office of Federal Inspector for the Alaska Natural Gas
Transportation System, and subsequent transfer to Secretary of Energy, then to Federal Coordinator for
Alaska Natural Gas Transportation Projects, see note set out under section 6903 of this title.

\(^1\) See References in Text note below.

§6978. Payments

(a) General rule

Payments of grants under this chapter may be made (after necessary adjustment on account of previously made
underpayments or overpayments) in advance or by way of reimbursement, and in such installments and on such conditions
as the Administrator may determine.

(b) Prohibition

No grant may be made under this chapter to any private profitmaking organization.


**EDITORIAL NOTES**

**PRIOR PROVISIONS**

Provisions similar to those in this section were contained in section 3258 of this title, prior to the general

**EXECUTIVE DOCUMENTS**

**TRANSFER OF FUNCTIONS**

For transfer of certain enforcement functions of Administrator or other official of Environmental Protection
Agency under this chapter to Federal Inspector, Office of Federal Inspector for the Alaska Natural Gas
Transportation System, and subsequent transfer to Secretary of Energy, then to Federal Coordinator for
Alaska Natural Gas Transportation Projects, see note set out under section 6903 of this title.
§6979. Labor standards

No grant for a project of construction under this chapter shall be made unless the Administrator finds that the application contains or is supported by reasonable assurance that all laborers and mechanics employed by contractors or subcontractors on projects of the type covered by sections 3141–3144, 3146, and 3147 of title 40, will be paid wages at rates not less than those prevailing on similar work in the locality as determined by the Secretary of Labor in accordance with those sections; and the Secretary of Labor shall have with respect to the labor standards specified in this section the authority and functions set forth in Reorganization Plan Numbered 14 of 1950 (15 F.R. 3176) and section 3145 of title 40.

EDITORIAL NOTES

REFERENCES IN TEXT

Reorganization Plan Numbered 14 of 1950, referred to in text, is set out in the Appendix to Title 5, Government Organization and Employees.

CODIFICATION


PRIOR PROVISIONS

Provisions similar to those in this section were contained in section 3256 of this title, prior to the general amendment of the Solid Waste Disposal Act by Pub. L. 94–580.

AMENDMENTS

1980—Pub. L. 96–482 substituted "Administrator" for "Secretary".

§6979a. Transferred

EDITORIAL NOTES

CODIFICATION


§6979b. Law enforcement authority

The Attorney General of the United States shall, at the request of the Administrator and on the basis of a showing of need, deputize qualified employees of the Environmental Protection Agency to serve as special deputy United States marshals in criminal investigations with respect to violations of the criminal provisions of this chapter.

EDITORIAL NOTES

PRIOR PROVISIONS

A prior section 7010 of Pub. L. 89–272, which was classified to section 6979a of this title, was renumbered section 3020 and transferred to section 6939b of this title.

SUBCHAPTER VIII—RESEARCH, DEVELOPMENT, DEMONSTRATION, AND INFORMATION

112/151
§6981. Research, demonstration, training, and other activities

(a) General authority

The Administrator, alone or after consultation with the Secretary of Energy, shall conduct, and encourage, cooperate with, and render financial and other assistance to appropriate public (whether Federal, State, interstate, or local) authorities, agencies, and institutions, private agencies and institutions, and individuals in the conduct of, and promote the coordination of, research, investigations, experiments, training, demonstrations, surveys, public education programs, and studies relating to—

(1) any adverse health and welfare effects of the release into the environment of material present in solid waste, and methods to eliminate such effects;
(2) the operation and financing of solid waste management programs;
(3) the planning, implementation, and operation of resource recovery and resource conservation systems and hazardous waste management systems, including the marketing of recovered resources;
(4) the production of usable forms of recovered resources, including fuel, from solid waste;
(5) the reduction of the amount of such waste and unsalvageable waste materials;
(6) the development and application of new and improved methods of collecting and disposing of solid waste and processing and recovering materials and energy from solid wastes;
(7) the identification of solid waste components and potential materials and energy recoverable from such waste components;
(8) small scale and low technology solid waste management systems, including but not limited to, resource recovery source separation systems;
(9) methods to improve the performance characteristics of resources recovered from solid waste and the relationship of such performance characteristics to available and potentially available markets for such resources;
(10) improvements in land disposal practices for solid waste (including sludge) which may reduce the adverse environmental effects of such disposal and other aspects of solid waste disposal on land, including means for reducing the harmful environmental effects of earlier and existing landfills, means for restoring areas damaged by such earlier or existing landfills, means for rendering landfills safe for purposes of construction and other uses, and techniques of recovering materials and energy from landfills;
(11) methods for the sound disposal of, or recovery of resources, including energy, from, sludge (including sludge from pollution control and treatment facilities, coal slurry pipelines, and other sources);
(12) methods of hazardous waste management, including methods of rendering such waste environmentally safe; and
(13) any adverse effects on air quality (particularly with regard to the emission of heavy metals) which result from solid waste which is burned (either alone or in conjunction with other substances) for purposes of treatment, disposal or energy recovery.

(b) Management program

(1)(A) In carrying out his functions pursuant to this chapter, and any other Federal legislation respecting solid waste or discarded material research, development, and demonstrations, the Administrator shall establish a management program or system to insure the coordination of all such activities and to facilitate and accelerate the process of development of sound new technology (or other discoveries) from the research phase, through development, and into the demonstration phase.

(B) The Administrator shall (i) assist, on the basis of any research projects which are developed with assistance under this chapter or without Federal assistance, the construction of pilot plant facilities for the purpose of investigating or testing the technological feasibility of any promising new fuel, energy, or resource recovery or resource conservation method or technology; and (ii) demonstrate each such method and technology that appears justified by an evaluation at such pilot plant stage or at a pilot plant stage developed without Federal assistance. Each such demonstration shall incorporate new or innovative technical advances or shall apply such advances to different circumstances and conditions, for the purpose of evaluating design concepts or to test the performance, efficiency, and economic feasibility of a particular method or technology under actual operating conditions. Each such demonstration shall be so planned and designed that, if successful, it can be expanded or utilized directly as a full-scale operational fuel, energy, or resource recovery or resource conservation facility.

(2) Any energy-related research, development, or demonstration project for the conversion including bioconversion, of solid waste carried out by the Environmental Protection Agency or by the Secretary of Energy pursuant to this chapter or any other Act shall be administered in accordance with the May 7, 1976, Interagency Agreement between the Environmental Protection Agency and the Energy Research and Development Administration on the Development of Energy from Solid Wastes and specifically, that in accordance with this agreement, (A) for those energy-related projects of mutual interest, planning will be conducted jointly by the Environmental Protection Agency and the Secretary of Energy, following which project responsibility will be assigned to one agency; (B) energy-related portions of projects for recovery of synthetic fuels or other forms of energy from solid waste shall be the responsibility of the Secretary of Energy; (C) the Environmental Protection Agency shall retain responsibility for the environmental, economic, and institutional aspects of solid waste projects and for assurance that such projects are consistent with any applicable suggested guidelines published pursuant to section 6907 of this title, and any applicable State or regional solid waste management plan; and (D) any activities undertaken under provisions of sections 6982 and 6983 of this title as related to energy; as related to energy or synthetic fuels recovery from waste; or as related to energy conservation shall be accomplished through coordination and consultation with the Secretary of Energy.

(c) Authorities
(1) In carrying out subsection (a) of this section respecting solid waste research, studies, development, and demonstration, except as otherwise specifically provided in section 6984(d) of this title, the Administrator may make grants to or enter into contracts (including contracts for construction) with, public agencies and authorities or private persons.

(2) Contracts for research, development, or demonstrations or for both (including contracts for construction) shall be made in accordance with and subject to the limitations provided with respect to research contracts of the military departments in section 2353 of title 10, except that the determination, approval, and certification required thereby shall be made by the Administrator.

(3) Any invention made or conceived in the course of, or under, any contract under this chapter shall be subject to section 9 of the Federal Nonnuclear Energy Research and Development Act of 1974 [42 U.S.C. 5908] to the same extent and in the same manner as inventions made or conceived in the course of contracts under such Act [42 U.S.C. 5901 et seq.], except that in applying such section, the Environmental Protection Agency shall be substituted for the Secretary of Energy and the words "solid waste" shall be substituted for the word "energy" where appropriate.

(4) For carrying out the purpose of this chapter the Administrator may detail personnel of the Environmental Protection Agency to agencies eligible for assistance under this section.


EDITORIAL NOTES

REFERENCES IN TEXT


PRIOR PROVISIONS

Provisions similar to those in this section were contained in section 3253 of this title, prior to the general amendment of the Solid Waste Disposal Act by Pub. L. 94–580.

AMENDMENTS

1978—Subsec. (a)(2). Pub. L. 95–609, §7(s)(1), substituted "management" for "disposal".

Subsec. (a)(13). Pub. L. 95–609, §7(s)(2), inserted "treatment," after "for purpose of".

STATUTORY NOTES AND RELATED SUBSIDIARIES

TRANSFER OF FUNCTIONS

"Secretary of Energy" was substituted for "Administrator of the Federal Energy Administration, the Administrator of the Energy Research and Development Administration, or the Chairman of the Federal Power Commission" in subsec. (a), and for "Energy Research and Development Administration" in subsecs. (b)(2) and (c)(3), in view of the termination of the Federal Energy Administration, the Energy Research and Development Administration, and the Federal Power Commission and the transfer of their functions and the functions of the Administrators and Chairman thereof (with certain exceptions) to the Secretary of Energy pursuant to sections 301, 703, and 707 of Pub. L. 95–91, which are classified to sections 7151, 7293, and 7297 of this title.

EPA STUDY OF METHODS TO REDUCE PLASTIC POLLUTION

Pub. L. 100–220, title II, §2202, Dec. 29, 1987, 101 Stat. 1465, directed Administrator of Environmental Protection Agency, in consultation with Secretary of Commerce, to conduct a study of the adverse effects of improper disposal of plastic articles on environment and on waste disposal, and various methods to reduce or eliminate such adverse effects, and directed Administrator, within 18 months after Dec. 29, 1987, to report results of this study to Congress.

NATIONAL ADVISORY COMMISSION ON RESOURCE CONSERVATION AND RECOVERY

Pub. L. 96–482, §33, Oct. 21, 1980, 94 Stat. 2356, as amended by Pub. L. 105–362, title V, §501(g), Nov. 10, 1998, 112 Stat. 3284, provided for establishment, membership, functions, etc., of a National Advisory Commission on Resource Conservation and Recovery, directed Commission, upon expiration of the two-year period beginning on the date when all initial members of the Commission have been appointed or the date initial funds become available, whichever is later, to transmit a final report to President and Congress containing a detailed statement of the findings and conclusions of the Commission, and terminated the Commission 30 days after submission of its final report.
SOLID WASTE CLEANUP ON FEDERAL LANDS IN ALASKA; STUDY AND REPORT TO CONGRESSIONAL COMMITTEES


LEACHATE CONTROL RESEARCH PROGRAM IN DELAWARE

Pub. L. 94–580, §4, Oct. 21, 1976, 90 Stat. 2840, directed Administrator of Environmental Protection Agency, in order to demonstrate effective means of dealing with contamination of public water supplies by leachate from abandoned or other landfills, to provide technical and financial assistance for a research program, designed by New Castle County area wide waste treatment management program, to control leachate from Llangollen Landfill in New Castle County, Delaware, and provided up to $250,000 in each of the fiscal years 1978 and 1979 for the operating costs of a counter-pumping program to contain the leachate from the Llangollen Landfill during the period of this study.

EXECUTIVE DOCUMENTS

TRANSFER OF FUNCTIONS

For transfer of certain enforcement functions of Administrator or other official of Environmental Protection Agency under this chapter to Federal Inspector, Office of Federal Inspector for the Alaska Natural Gas Transportation System, and subsequent transfer to Secretary of Energy, then to Federal Coordinator for Alaska Natural Gas Transportation Projects, see note set out under section 6903 of this title.

§6982. Special studies; plans for research, development, and demonstrations

(a) Glass and plastic

The Administrator shall undertake a study and publish a report on resource recovery from glass and plastic waste, including a scientific, technological, and economic investigation of potential solutions to implement such recovery.

(b) Composition of waste stream

The Administrator shall undertake a systematic study of the composition of the solid waste stream and of anticipated future changes in the composition of such stream and shall publish a report containing the results of such study and quantitatively evaluating the potential utility of such components.

(c) Priorities study

For purposes of determining priorities for research on recovery of materials and energy from solid waste and developing materials and energy recovery research, development, and demonstration strategies, the Administrator shall review, and make a study of, the various existing and promising techniques of energy recovery from solid waste (including, but not limited to, waterwall furnace incinerators, dry shredded fuel systems, pyrolysis, densified refuse-derived fuel systems, anaerobic digestion, and fuel and feedstock preparation systems). In carrying out such study the Administrator shall investigate with respect to each such technique—

1 the degree of public need for the potential results of such research, development, or demonstration,

2 the potential for research, development, and demonstration without Federal action, including the degree of restraint on such potential posed by the risks involved, and

3 the magnitude of effort and period of time necessary to develop the technology to the point where Federal assistance can be ended.

(d) Small-scale and low technology study

The Administrator shall undertake a comprehensive study and analysis of, and publish a report on, systems of small-scale and low technology solid waste management, including household resource recovery and resource recovery systems which have special application to multiple dwelling units and high density housing and office complexes. Such study and analysis shall include an investigation of the degree to which such systems could contribute to energy conservation.

(e) Front-end source separation

The Administrator shall undertake research and studies concerning the compatibility of front-end source separation systems with high technology resource recovery systems and shall publish a report containing the results of such research and studies.

(f) Mining waste

The Administrator, in consultation with the Secretary of the Interior, shall conduct a detailed and comprehensive study on the adverse effects of solid wastes from active and abandoned surface and underground mines on the environment, including, but not limited to, the effects of such wastes on humans, water, air, health, welfare, and natural resources, and on
the adequacy of means and measures currently employed by the mining industry, Government agencies, and others to dispose of and utilize such solid wastes and to prevent or substantially mitigate such adverse effects. Such study shall include an analysis of—

(1) the sources and volume of discarded material generated per year from mining;
(2) present disposal practices;
(3) potential dangers to human health and the environment from surface runoff of leachate and air pollution by dust;
(4) alternatives to current disposal methods;
(5) the cost of those alternatives in terms of the impact on mine product costs; and
(6) potential for use of discarded material as a secondary source of the mine product.

In furtherance of this study, the Administrator shall, as he deems appropriate, review studies and other actions of other Federal agencies concerning such wastes with a view toward avoiding duplication of effort and the need to expedite such study. Not later than thirty-six months after October 21, 1980, the Administrator shall publish a report of such study and shall include appropriate findings and recommendations for Federal and non-Federal actions concerning such effects. Such report shall be submitted to the Committee on Environment and Public Works of the United States Senate and the Committee on Energy and Commerce of the United States House of Representatives.

(g) Sludge
The Administrator shall undertake a comprehensive study and publish a report on sludge. Such study shall include an analysis of—

(1) what types of solid waste (including but not limited to sewage and pollution treatment residues and other residues from industrial operations such as extraction of oil from shale, liquefaction and gasification of coal and coal slurry pipeline operations) shall be classified as sludge;
(2) the effects of air and water pollution legislation on the creation of large volumes of sludge;
(3) the amounts of sludge originating in each State and in each industry producing sludge;
(4) methods of disposal of such sludge, including the cost, efficiency, and effectiveness of such methods;
(5) alternative methods for the use of sludge, including agricultural applications of sludge and energy recovery from sludge; and
(6) methods to reclaim areas which have been used for the disposal of sludge or which have been damaged by sludge.

(h) Tires
The Administrator shall undertake a study and publish a report respecting discarded motor vehicle tires which shall include an analysis of the problems involved in the collection, recovery of resources including energy, and use of such tires.

(i) Resource recovery facilities
The Administrator shall conduct research and report on the economics of, and impediments, to the effective functioning of resource recovery facilities.

(j) Resource Conservation Committee
(1) The Administrator shall serve as Chairman of a Committee composed of himself, the Secretary of Commerce, the Secretary of Labor, the Chairman of the Council on Environmental Quality, the Secretary of Treasury, the Secretary of the Interior, the Secretary of Energy, the Chairman of the Council of Economic Advisors, and a representative of the Office of Management and Budget, which shall conduct a full and complete investigation and study of all aspects of the economic, social, and environmental consequences of resource conservation with respect to—

(A) the appropriateness of recommended incentives and disincentives to foster resource conservation;
(B) the effect of existing public policies (including subsidies and economic incentives and disincentives, percentage depletion allowances, capital gains treatment and other tax incentives and disincentives) upon resource conservation, and the likely effect of the modification or elimination of such incentives and disincentives upon resource conservation;
(C) the appropriateness and feasibility of restricting the manufacture or use of categories of consumer products as a resource conservation strategy;
(D) the appropriateness and feasibility of employing as a resource conservation strategy the imposition of solid waste management charges on consumer products, which charges would reflect the costs of solid waste management services, litter pickup, the value of recoverable components of such product, final disposal, and any social value associated with the nonrecycling or uncontrolled disposal of such product; and
(E) the need for further research, development, and demonstration in the area of resource conservation.

(2) The study required in paragraph (1)(D) may include pilot scale projects, and shall consider and evaluate alternative strategies with respect to—

(A) the product categories on which such charges would be imposed;
(B) the appropriate state in the production of such consumer product at which to levy such charge;
(C) appropriate criteria for establishing such charges for each consumer product category;
(D) methods for the adjustment of such charges to reflect actions such as recycling which would reduce the overall quantities of solid waste requiring disposal; and
(E) procedures for amending, modifying, or revising such charges to reflect changing conditions.

(3) The design for the study required in paragraph (1) of this subsection shall include timetables for the completion of the study. A preliminary report putting forth the study design shall be sent to the President and the Congress within six months
following October 21, 1976, and followup reports shall be sent six months thereafter. Each recommendation resulting from
the study shall include at least two alternatives to the proposed recommendation.

(4) The results of such investigation and study, including recommendations, shall be reported to the President and the
Congress not later than two years after October 21, 1976.

(5) There are authorized to be appropriated not to exceed $2,000,000 to carry out this subsection.

(k) Airport landfills
The Administrator shall undertake a comprehensive study and analysis of and publish a report on systems to alleviate the
hazards to aviation from birds congregating and feeding on landfills in the vicinity of airports.

(l) Completion of research and studies
The Administrator shall complete the research and studies, and submit the reports, required under subsections (b), (c),
(d), (e), (f), (g), and (k) not later than October 1, 1978. The Administrator shall complete the research and studies, and
submit the reports, required under subsections (a), (h), and (i) not later than October 1, 1979. Upon completion, each study
specified in subsections (a) through (k) of this section, the Administrator shall prepare a plan for research, development, and
demonstration respecting the findings of the study and shall submit any legislative recommendations resulting from such
study to appropriate committees of Congress.

(m) Drilling fluids, produced waters, and other wastes associated with the exploration, development, or production
of crude oil or natural gas or geothermal energy

1 The Administrator shall conduct a detailed and comprehensive study and submit a report on the adverse effects, if
any, of drilling fluids, produced waters, and other wastes associated with the exploration, development, or production
of crude oil or natural gas or geothermal energy on human health and the environment, including, but not limited to, the effects
of such wastes on humans, water, air, health, welfare, and natural resources and on the adequacy of means and measures
currently employed by the oil and gas and geothermal drilling and production industry, Government agencies, and others to
dispose of and utilize such wastes and to prevent or substantially mitigate such adverse effects. Such study shall include an
analysis of—
(A) the sources and volume of discarded material generated per year from such wastes;
(B) present disposal practices;
(C) potential danger to human health and the environment from the surface runoff or leachate;
(D) documented cases which prove or have caused danger to human health and the environment from surface runoff or
leachate;
(E) alternatives to current disposal methods;
(F) the cost of such alternatives; and
(G) the impact of those alternatives on the exploration for, and development and production of, crude oil and natural gas
or geothermal energy.

In furtherance of this study, the Administrator shall, as he deems appropriate, review studies and other actions of other
Federal agencies concerning such wastes with a view toward avoiding duplication of effort and the need to expeditethe such
study. The Administrator shall publish a report of such study and shall include appropriate findings and recommendations for
Federal and non-Federal actions concerning such effects.

2 The Administrator shall complete the research and study and submit the report required under paragraph (1) not later
than twenty-four months from October 21, 1980. Upon completion of the study, the Administrator shall prepare a summary
of the findings of the study, a plan for research, development, and demonstration respecting the findings of the study, and
shall submit the findings and the study, along with any recommendations resulting from such study, to the Committee on
Environment and Public Works of the United States Senate and the Committee on Energy and Commerce of the United
States House of Representatives.

(3) There are authorized to be appropriated not to exceed $1,000,000 to carry out the provisions of this subsection.

(n) Materials generated from the combustion of coal and other fossil fuels
The Administrator shall conduct a detailed and comprehensive study and submit a report on the adverse effects on
human health and the environment, if any, of the disposal and utilization of fly ash waste, bottom ash waste, slag waste, flue
gas emission control waste, and other byproduct materials generated primarily from the combustion of coal or other fossil
fuels. Such study shall include an analysis of—
(1) the source and volumes of such material generated per year;
(2) present disposal and utilization practices;
(3) potential danger, if any, to human health and the environment from the disposal and reuse of such materials;
(4) documented cases in which danger to human health or the environment from surface runoff or leachate has been
proved;
(5) alternatives to current disposal methods;
(6) the costs of such alternatives;
(7) the impact of those alternatives on the use of coal and other natural resources; and
(8) the current and potential utilization of such materials.

In furtherance of this study, the Administrator shall, as he deems appropriate, review studies and other actions of other
Federal and State agencies concerning such material and invite participation by other concerned parties, including industry
and other Federal and State agencies, with a view toward avoiding duplication of effort. The Administrator shall publish a
report on such study, which shall include appropriate findings, not later than twenty-four months after October 21, 1980.
Such study and findings shall be submitted to the Committee on Environment and Public Works of the United States Senate and the Committee on Energy and Commerce of the United States House of Representatives.

(o) Cement kiln dust waste
The Administrator shall conduct a detailed and comprehensive study of the adverse effects on human health and the environment, if any, of the disposal of cement kiln dust waste. Such study shall include an analysis of—

1. the source and volumes of such materials generated per year;
2. present disposal practices;
3. potential danger, if any, to human health and the environment from the disposal of such materials;
4. documented cases in which danger to human health or the environment has been proved;
5. alternatives to current disposal methods;
6. the costs of such alternatives;
7. the impact of those alternatives on the use of natural resources; and
8. the current and potential utilization of such materials.

In furtherance of this study, the Administrator shall, as he deems appropriate, review studies and other actions of other Federal and State agencies concerning such waste or materials and invite participation by other concerned parties, including industry and other Federal and State agencies, with a view toward avoiding duplication of effort. The Administrator shall publish a report of such study, which shall include appropriate findings, not later than thirty-six months after October 21, 1980. Such report shall be submitted to the Committee on Environment and Public Works of the United States Senate and the Committee on Energy and Commerce of the United States House of Representatives.

(p) Materials generated from extraction, beneficiation, and processing of ores and minerals, including phosphate rock and overburden from uranium mining
The Administrator shall conduct a detailed and comprehensive study of the adverse effects on human health and the environment, if any, of the disposal and utilization of solid waste from the extraction, beneficiation, and processing of ores and minerals, including phosphate rock and overburden from uranium mining. Such study shall be conducted in conjunction with the study of mining wastes required by subsection (f) of this section and shall include an analysis of—

1. the source and volumes of such materials generated per year;
2. present disposal and utilization practices;
3. potential danger, if any, to human health and the environment from the disposal and reuse of such materials;
4. documented cases in which danger to human health or the environment has been proved;
5. alternatives to current disposal methods;
6. the costs of such alternatives;
7. the impact of those alternatives on the use of phosphate rock and uranium ore, and other natural resources; and
8. the current and potential utilization of such materials.

In furtherance of this study, the Administrator shall, as he deems appropriate, review studies and other actions of other Federal and State agencies concerning such waste or materials and invite participation by other concerned parties, including industry and other Federal and State agencies, with a view toward avoiding duplication of effort. The Administrator shall publish a report of such study, which shall include appropriate findings, in conjunction with the publication of the report of the study of mining wastes required to be conducted under subsection (f) of this section. Such report and findings shall be submitted to the Committee on Environment and Public Works of the United States Senate and the Committee on Energy and Commerce of the United States House of Representatives.

(q) Authorization of appropriations
There are authorized to be appropriated not to exceed $8,000,000 for the fiscal years 1978 and 1979 to carry out this section other than subsection (j).

(r) Minimization of hazardous waste
The Administrator shall compile, and not later than October 1, 1986, submit to the Congress, a report on the feasibility and desirability of establishing standards of performance or of taking other additional actions under this chapter to require the generators of hazardous waste to reduce the volume or quantity and toxicity of the hazardous waste they generate, and of establishing with respect to hazardous wastes required management practices or other requirements to assure such wastes are managed in ways that minimize present and future risks to human health and the environment. Such report shall include any recommendations for legislative changes which the Administrator determines are feasible and desirable to implement the national policy established by section 6902 of this title.

(s) Extending landfill life and reusing landfilled areas
The Administrator shall conduct detailed, comprehensive studies of methods to extend the useful life of sanitary landfills and to better use sites in which filled or closed landfills are located. Such studies shall address—

1. methods to reduce the volume of materials before placement in landfills;
2. more efficient systems for depositing waste in landfills;
3. methods to enhance the rate of decomposition of solid waste in landfills, in a safe and environmentally acceptable manner;
4. methane production from closed landfill units;
5. innovative uses of closed landfill sites, including use for energy production such as solar or wind energy and use for metals recovery;
6. potential for use of sewage treatment sludge in reclaiming landfilled areas; and
(7) methods to coordinate use of a landfill owned by one municipality by nearby municipalities, and to establish equitable rates for such use, taking into account the need to provide future landfill capacity to replace that so used.

The Administrator is authorized to conduct demonstrations in the areas of study provided in this subsection. The Administrator shall periodically report on the results of such studies, with the first such report not later than October 1, 1986. In carrying out this subsection, the Administrator need not duplicate other studies which have been completed and may rely upon information which has previously been compiled.


EDITORIAL NOTES

AMENDMENTS


Subsecs. (m) to (q). Pub. L. 96–482, §29(2), added subsecs. (m) to (p) and redesignated former subsec. (m) as (q).

1978—Subsec. (g)(1). Pub. L. 95–609, §7(t)(1), substituted "shale, liquefaction" for "shale liquefaction".
Subsec. (j)(1). Pub. L. 95–609, §7(t)(2), enacted a provision adding the Secretary of Energy and the Chairman of the Council of Economic Advisors to the Committee.
Subsec. (j)(2). Pub. L. 95–609, §7(t)(3), substituted "paragraph (1)(D)" for "paragraph (2)(D)".
Subsec. (j)(3). Pub. L. 95–609, §7(t)(4), substituted "paragraph (1)" for "paragraph (2)(D)".
Subsec. (l). Pub. L. 95–609, §7(t)(5), struck out requirement of submission of reports under subsec. (j) of this section.

STATUTORY NOTES AND RELATED SUBSIDIARIES

CHANGE OF NAME


EXECUTIVE DOCUMENTS

TRANSFER OF FUNCTIONS

For transfer of certain enforcement functions of Administrator or other official of Environmental Protection Agency under this chapter to Federal Inspector, Office of Federal Inspector for the Alaska Natural Gas Transportation System, and subsequent transfer to Secretary of Energy, then to Federal Coordinator for Alaska Natural Gas Transportation Projects, see note set out under section 6903 of this title.

§6983. Coordination, collection, and dissemination of information

(a) Information

The Administrator shall develop, collect, evaluate, and coordinate information on—

   (1) methods and costs of the collection of solid waste;
   (2) solid waste management practices, including data on the different management methods and the cost, operation, and maintenance of such methods;
   (3) the amounts and percentages of resources (including energy) that can be recovered from solid waste by use of various solid waste management practices and various technologies;
   (4) methods available to reduce the amount of solid waste that is generated;
(5) existing and developing technologies for the recovery of energy or materials from solid waste and the costs, reliability, and risks associated with such technologies;

(6) hazardous solid waste, including incidents of damage resulting from the disposal of hazardous solid wastes; inherently and potentially hazardous solid wastes; methods of neutralizing or properly disposing of hazardous solid wastes; facilities that properly dispose of hazardous wastes;

(7) methods of financing resource recovery facilities or, sanitary landfills, or hazardous solid waste treatment facilities, whichever is appropriate for the entity developing such facility or landfill (taking into account the amount of solid waste reasonably expected to be available to such entity);

(8) the availability of markets for the purchase of resources, either materials or energy, recovered from solid waste; and

(9) research and development projects respecting solid waste management.

(b) Library

(1) The Administrator shall establish and maintain a central reference library for (A) the materials collected pursuant to subsection (a) of this section and (B) the actual performance and cost effectiveness records and other data and information with respect to—

(i) the various methods of energy and resource recovery from solid waste,

(ii) the various systems and means of resource conservation,

(iii) the various systems and technologies for collection, transport, storage, treatment, and final disposition of solid waste, and

(iv) other aspects of solid waste and hazardous solid waste management.

Such central reference library shall also contain, but not be limited to, the model codes and model accounting systems developed under this section, the information collected under subsection (d), and, subject to any applicable requirements of confidentiality, information respecting any aspect of solid waste provided by officers and employees of the Environmental Protection Agency which has been acquired by them in the conduct of their functions under this chapter and which may be of value to Federal, State, and local authorities and other persons.

(2) Information in the central reference library shall, to the extent practicable, be collated, analyzed, verified, and published and shall be made available to State and local governments and other persons at reasonable times and subject to such reasonable charges as may be necessary to defray expenses of making such information available.

(c) Model accounting system

In order to assist State and local governments in determining the cost and revenues associated with the collection and disposal of solid waste and with resource recovery operations, the Administrator shall develop and publish a recommended model cost and revenue accounting system applicable to the solid waste management functions of State and local governments. Such system shall be in accordance with generally accepted accounting principles. The Administrator shall periodically, but not less frequently than once every five years, review such accounting system and revise it as necessary.

(d) Model codes

The Administrator is authorized, in cooperation with appropriate State and local agencies, to recommend model codes, ordinances, and statutes, providing for sound solid waste management.

(e) Information programs

(1) The Administrator shall implement a program for the rapid dissemination of information on solid waste management, hazardous waste management, resource conservation, and methods of resource recovery from solid waste, including the results of any relevant research, investigations, experiments, surveys, studies, or other information which may be useful in the implementation of new or improved solid waste management practices and methods and information on any other technical, managerial, financial, or market aspect of resource conservation and recovery facilities.

(2) The Administrator shall develop and implement educational programs to promote citizen understanding of the need for environmentally sound solid waste management practices.

(f) Coordination

In collecting and disseminating information under this section, the Administrator shall coordinate his actions and cooperate to the maximum extent possible with State and local authorities.

(g) Special restriction

Upon request, the full range of alternative technologies, programs or processes deemed feasible to meet the resource recovery or resource conservation needs of a jurisdiction shall be described in such a manner as to provide a sufficient evaluative basis from which the jurisdiction can make its decisions, but no officer or employee of the Environmental Protection Agency shall, in an official capacity, lobby for or otherwise represent an agency position in favor of resource recovery or resource conservation, as a policy alternative for adoption into ordinances, codes, regulations, or law by any State or political subdivision thereof.


EDITORIAL NOTES

AMENDMENTS

EXECUTIVE DOCUMENTS

TRANSFER OF FUNCTIONS

For transfer of certain enforcement functions of Administrator or other official of Environmental Protection Agency under this chapter to Federal Inspector, Office of Federal Inspector for the Alaska Natural Gas Transportation System, and subsequent transfer to Secretary of Energy, then to Federal Coordinator for Alaska Natural Gas Transportation Projects, see note set out under section 6903 of this title.

§6984. Full-scale demonstration facilities

(a) Authority

The Administrator may enter into contracts with public agencies or authorities or private persons for the construction and operation of a full-scale demonstration facility under this chapter, or provide financial assistance in the form of grants to a full-scale demonstration facility under this chapter only if the Administrator finds that—

(1) such facility or proposed facility will demonstrate at full scale a new or significantly improved technology or process, a practical and significant improvement in solid waste management practice, or the technological feasibility and cost effectiveness of an existing, but unproven technology, process, or practice, and will not duplicate any other Federal, State, local, or commercial facility which has been constructed or with respect to which construction has begun (determined as of the date action is taken by the Administrator under this chapter),

(2) such contract or assistance meets the requirements of section 6981 of this title and meets other applicable requirements of this chapter,

(3) such facility will be able to comply with the guidelines published under section 6907 of this title and with other laws and regulations for the protection of health and the environment,

(4) in the case of a contract for construction or operation, such facility is not likely to be constructed or operated by State, local, or private persons or in the case of an application for financial assistance, such facility is not likely to receive adequate financial assistance from other sources, and

(5) any Federal interest in, or assistance to, such facility will be disposed of or terminated, with appropriate compensation, within such period of time as may be necessary to carry out the basic objectives of this chapter.

(b) Time limitation

No obligation may be made by the Administrator for financial assistance under this subchapter for any full-scale demonstration facility after the date ten years after October 21, 1976. No expenditure of funds for any such full-scale demonstration facility under this subchapter may be made by the Administrator after the date fourteen years after October 21, 1976.

(c) Cost sharing

(1) Wherever practicable, in constructing, operating, or providing financial assistance under this subchapter to a full-scale demonstration facility, the Administrator shall endeavor to enter into agreements and make other arrangements for maximum practicable cost sharing with other Federal, State, and local agencies, private persons, or any combination thereof.

(2) The Administrator shall enter into arrangements, wherever practicable and desirable, to provide monitoring of full-scale solid waste facilities (whether or not constructed or operated under this chapter) for purposes of obtaining information concerning the other aspects, of such facilities. Where the Administrator provides only monitoring and evaluation instruments or personnel (or both) or funds for such instruments or personnel and provides no other financial assistance to a facility, notwithstanding section 6981(c)(3) of this title, title to any invention made or conceived of in the course of developing, constructing, or operating such facility shall not be required to vest in the United States and patents respecting such invention shall not be required to be issued to the United States.

(d) Prohibition

After October 21, 1976, the Administrator shall not construct or operate any full-scale facility (except by contract with public agencies or authorities or private persons).


EDITORIAL NOTES

AMENDMENTS

1984—Subsec. (c)(1). Pub. L. 98–616 inserted "(1)" before "Wherever".

1978—Subsec. (a)(1). Pub. L. 95–609 substituted "solid waste" for "discarded material".

EXECUTIVE DOCUMENTS
TRANSFER OF FUNCTIONS

For transfer of certain enforcement functions of Administrator or other official of Environmental Protection Agency under this chapter to Federal Inspector, Office of Federal Inspector for the Alaska Natural Gas Transportation System, and subsequent transfer to Secretary of Energy, then to Federal Coordinator for Alaska Natural Gas Transportation Projects, see note set out under section 6903 of this title.

§6985. Special study and demonstration projects on recovery of useful energy and materials

(a) Studies

The Administrator shall conduct studies and develop recommendations for administrative or legislative action on—

1. means of recovering materials and energy from solid waste, recommended uses of such materials and energy for national or international welfare, including identification of potential markets for such recovered resources, the impact of distribution of such resources on existing markets, and potentials for energy conservation through resource conservation and resource recovery;
2. actions to reduce waste generation which have been taken voluntarily or in response to governmental action, and those which practically could be taken in the future, and the economic, social, and environmental consequences of such actions;
3. methods of collection, separation, and containerization which will encourage efficient utilization of facilities and contribute to more effective programs of reduction, reuse, or disposal of wastes;
4. the use of Federal procurement to develop market demand for recovered resources;
5. recommended incentives (including Federal grants, loans, and other assistance) and disincentives to accelerate the reclamation or recycling of materials from solid wastes, with special emphasis on motor vehicle hulks;
6. the effect of existing public policies, including subsidies and economic incentives and disincentives, percentage depletion allowances, capital gains treatment and other tax incentives and disincentives, upon the recycling and reuse of materials, and the likely effect of the modification or elimination of such incentives and disincentives upon the reuse, recycling and conservation of such materials;
7. the necessity and method of imposing disposal or other charges on packaging, containers, vehicles, and other manufactured goods, which charges would reflect the cost of final disposal, the value of recoverable components of the item, and any social costs associated with nonrecycling or uncontrolled disposal of such items; and
8. the legal constraints and institutional barriers to the acquisition of land needed for solid waste management, including land for facilities and disposal sites;
9. in consultation with the Secretary of Agriculture, agricultural waste management problems and practices, the extent of reuse and recovery of resources in such wastes, the prospects for improvement, Federal, State, and local regulations governing such practices, and the economic, social, and environmental consequences of such practices; and
10. in consultation with the Secretary of the Interior, mining waste management problems, and practices, including an assessment of existing authorities, technologies, and economics, and the environmental and public health consequences of such practices.

(b) Demonstration

The Administrator is also authorized to carry out demonstration projects to test and demonstrate methods and techniques developed pursuant to subsection (a).

(c) Application of other sections

Section 6981(b) and (c) of this title shall be applicable to investigations, studies, and projects carried out under this section.


EDITORIAL NOTES

PRIOR PROVISIONS

Provisions similar to those in this section were contained in section 3253a of this title, prior to the general amendment of the Solid Waste Disposal Act by Pub. L. 94–580.

EXECUTIVE DOCUMENTS

TRANSFER OF FUNCTIONS

For transfer of certain enforcement functions of Administrator or other official of Environmental Protection Agency under this chapter to Federal Inspector, Office of Federal Inspector for the Alaska Natural Gas Transportation System, and subsequent transfer to Secretary of Energy, then to Federal Coordinator for Alaska Natural Gas Transportation Projects, see note set out under section 6903 of this title.
§6986. Grants for resource recovery systems and improved solid waste disposal facilities

(a) Authority
The Administrator is authorized to make grants pursuant to this section to any State, municipal, or interstate or intermunicipal agency for the demonstration of resource recovery systems or for the construction of new or improved solid waste disposal facilities.

(b) Conditions
(1) Any grant under this section for the demonstration of a resource recovery system may be made only if it (A) is consistent with any plans which meet the requirements of subchapter IV of this chapter; (B) is consistent with the guidelines recommended pursuant to section 6907 of this title; (C) is designed to provide area-wide resource recovery systems consistent with the purposes of this chapter, as determined by the Administrator, pursuant to regulations promulgated under subsection (d) of this section; and (D) provides an equitable system for distributing the costs associated with construction, operation, and maintenance of any resource recovery system among the users of such system.

(2) The Federal share for any project to which paragraph (1) applies shall not be more than 75 percent.

(c) Limitations
(1) A grant under this section for the construction of a new or improved solid waste disposal facility may be made only if—

(A) a State or interstate plan for solid waste disposal has been adopted which applies to the area involved, and the facility to be constructed (i) is consistent with such plan, (ii) is included in a comprehensive plan for the area involved which is satisfactory to the Administrator for the purposes of this chapter, and (iii) is consistent with the guidelines recommended under section 6907 of this title, and

(B) the project advances the state of the art by applying new and improved techniques in reducing the environmental impact of solid waste disposal, in achieving recovery of energy or resources, or in recycling useful materials.

(2) The Federal share for any project to which paragraph (1) applies shall be not more than 50 percent in the case of a project serving an area which includes only one municipality, and not more than 75 percent in any other case.

(d) Regulations
(1) The Administrator shall promulgate regulations establishing a procedure for awarding grants under this section which—

(A) provides that projects will be carried out in communities of varying sizes, under such conditions as will assist in solving the community waste problems of urban-industrial centers, metropolitan regions, and rural areas, under representative geographic and environmental conditions; and

(B) provides deadlines for submission of, and action on, grant requests.

(2) In taking action on applications for grants under this section, consideration shall be given by the Administrator (A) to the public benefits to be derived by the construction and the propriety of Federal aid in making such grant; (B) to the extent applicable, to the economic and commercial viability of the project (including contractual arrangements with the private sector to market any resources recovered); (C) to the potential of such project for general application to community solid waste disposal problems; and (D) to the use by the applicant of comprehensive regional or metropolitan area planning.

(e) Additional limitations
A grant under this section—

(1) may be made only in the amount of the Federal share of (A) the estimated total design and construction costs, plus

(B) in the case of a grant to which subsection (b)(1) applies, the first-year operation and maintenance costs;

(2) may not be provided for land acquisition or (except as otherwise provided in paragraph (1)(B)) for operating or maintenance costs;

(3) may not be made until the applicant has made provision satisfactory to the Administrator for proper and efficient operation and maintenance of the project (subject to paragraph (1)(B)); and

(4) may be made subject to such conditions and requirements, in addition to those provided in this section, as the Administrator may require to properly carry out his functions pursuant to this chapter.

For purposes of paragraph (1), the non-Federal share may be in any form, including, but not limited to, lands or interests therein needed for the project or personal property or services, the value of which shall be determined by the Administrator.

(f) Single State
(1) Not more than 15 percent of the total of funds authorized to be appropriated for any fiscal year to carry out this section shall be granted under this section for projects in any one State.

(2) The Administrator shall prescribe by regulation the manner in which this subsection shall apply to a grant under this section for a project in an area which includes all or part of more than one State.


EDITORIAL NOTES
PRIOR PROVISIONS
Provisions similar to those in this section were contained in section 3254b of this title, prior to the general amendment of the Solid Waste Disposal Act by Pub. L. 94–580.

EXECUTIVE DOCUMENTS
TRANSFER OF FUNCTIONS
For transfer of certain enforcement functions of Administrator or other official of Environmental Protection Agency under this chapter to Federal Inspector, Office of Federal Inspector for the Alaska Natural Gas Transportation System, and subsequent transfer to Secretary of Energy, then to Federal Coordinator for Alaska Natural Gas Transportation Projects, see note set out under section 6903 of this title.

§6987. Authorization of appropriations
There are authorized to be appropriated not to exceed $35,000,000 for the fiscal year 1978 to carry out the purposes of this subchapter (except for section 6982 of this title).


EDITORIAL NOTES
PRIOR PROVISIONS
Provisions similar to those in this section were contained in section 3259 of this title, prior to the general amendment of the Solid Waste Disposal Act by Pub. L. 94–580.

SUBCHAPTER IX—REGULATION OF UNDERGROUND STORAGE TANKS

§6991. Definitions and exemptions
In this subchapter:
(1) INDIAN TRIBE.—
   (A) IN GENERAL.—The term "Indian tribe" means any Indian tribe, band, nation, or other organized group or community that is recognized as being eligible for special programs and services provided by the United States to Indians because of their status as Indians.
   (B) INCLUSIONS.—The term "Indian tribe" includes any Alaska Native village, as defined in or established under the Alaska Native Claims Settlement Act (43 U.S.C. 1601 et seq.); and

(2) The term "nonoperational storage tank" means any underground storage tank in which regulated substances will not be deposited or from which regulated substances will not be dispensed after November 8, 1984.
(3) The term "operator" means any person in control of, or having responsibility for, the daily operation of the underground storage tank.
(4) The term "owner" means—
   (A) in the case of an underground storage tank in use on November 8, 1984, or brought into use after that date, any person who owns an underground storage tank used for the storage, use, or dispensing of regulated substances and
   (B) in the case of any underground storage tank in use before November 8, 1984, but no longer in use on November 8, 1984, any person who owned such tank immediately before the discontinuation of its use.
(5) The term "person" has the same meaning as provided in section 6903(15) of this title, except that such term includes a consortium, a joint venture, and a commercial entity, and the United States Government.
(6) The term "petroleum" means petroleum, including crude oil or any fraction thereof which is liquid at standard conditions of temperature and pressure (60 degrees Fahrenheit and 14.7 pounds per square inch absolute).
(7) The term "regulated substance" means—
   (A) any substance defined in section 9601(14) of this title (but not including any substance regulated as a hazardous waste under subchapter III), and
   (B) petroleum.
(8) The term "release" means any spilling, leaking, emitting, discharging, escaping, leaching, or disposing from an underground storage tank into ground water, surface water or subsurface soils.
(9) TRUST FUND.—The term "Trust Fund" means the Leaking Underground Storage Tank Trust Fund established by section 9508 of title 26.

124/151
(10) The term "underground storage tank" means any one or combination of tanks (including underground pipes connected thereto) which is used to contain an accumulation of regulated substances, and the volume of which (including the volume of the underground pipes connected thereto) is 10 per centum or more beneath the surface of the ground. Such term does not include any—
(A) farm or residential tank of 1,100 gallons or less capacity used for storing motor fuel for noncommercial purposes,
(B) tank used for storing heating oil for consumptive use on the premises where stored,
(C) septic tank,
(D) pipeline facility (including gathering lines)—
   (i) which is regulated under chapter 601 of title 49, or
   (ii) which is an intrastate pipeline facility regulated under State laws as provided in chapter 601 of title 49,

and which is determined by the Secretary to be connected to a pipeline or to be operated or intended to be capable of operating at pipeline pressure or as an integral part of a pipeline,
(E) surface impoundment, pit, pond, or lagoon,
(F) storm water or waste water collection system,
(G) flow-through process tank,
(H) liquid trap or associated gathering lines directly related to oil or gas production and gathering operations, or
(I) storage tank situated in an underground area (such as a basement, cellar, mineworking, drift, shaft, or tunnel) if the storage tank is situated upon or above the surface of the floor.

The term "underground storage tank" shall not include any pipes connected to any tank which is described in subparagraphs (A) through (I).


EDITORIAL NOTES

REFERENCES IN TEXT

The Alaska Native Claims Settlement Act, referred to in par. (1)(B), is Pub. L. 92–203, Dec. 18, 1971, 85 Stat. 688, as amended, which is classified generally to chapter 33 (§1601 et seq.) of Title 43, Public Lands. For complete classification of this Act to the Code, see Short Title note set out under section 1601 of Title 43 and Tables.

AMENDMENTS

2005—Pub. L. 109–58 substituted "In this subchapter:" for "For the purposes of this subchapter—" in introductory provisions, added pars. (1) and (9), redesignated former pars. (1) to (8) as pars. (10), (7), (4), (3), (8), (5), (2), and (6), respectively, and, in par. (4)(A), substituted "substances" for "stances".

1994—Par. (1)(D). Pub. L. 103–429 amended subpar. (D) generally. Prior to amendment, subpar. (D) read as follows: "pipeline facility (including gathering lines)—
   (i) which is regulated under the Natural Gas Pipeline Safety Act of 1968 (49 U.S.C. App. 1671 et seq.),
   (ii) which is regulated under the Hazardous Liquid Pipeline Safety Act of 1979 (49 U.S.C. App. 2001 et seq.), or
   (iii) which is an intrastate pipeline facility regulated under State laws as provided in the provisions of law referred to in clause (i) or (ii) of this subparagraph,
and which is determined by the Secretary to be connected to a pipeline or to be operated or intended to be capable of operating at pipeline pressure or as an integral part of a pipeline,"

1992—Par. (1)(D). Pub. L. 102–508 amended subpar. (D) generally. Prior to amendment, subpar. (D) read as follows: "pipeline facility (including gathering lines) regulated under—
   (i) the Natural Gas Pipeline Safety Act of 1968,
   (ii) the Hazardous Liquid Pipeline Safety Act of 1979, or
   (iii) which is an intrastate pipeline facility regulated under State laws comparable to the provisions of law referred to in clause (i) or (ii) of this subparagraph,"

1986—Par. (2)(B). Pub. L. 99–499 struck out ", including crude oil or any fraction thereof which is liquid at standard conditions of temperature and pressure (60 degrees Fahrenheit and 14.7 pounds per square inch absolute)", See par. (8).

STATUTORY NOTES AND RELATED SUBSIDIARIES

ABOVEGROUND STORAGE TANK GRANT PROGRAM
Pub. L. 106–554, §1(a)(4) [div. B, title XII, §1201], Dec. 21, 2000, 114 Stat. 2763, 2763A-313, provided that:

"(a) DEFINITIONS.—In this provision:

"(1) ABOVEGROUND STORAGE TANK.—The term 'aboveground storage tank' means any tank or combination of tanks (including any connected pipe)—

"(A) that is used to contain an accumulation of regulated substances; and

"(B) the volume of which (including the volume of any connected pipe) is located wholly above the surface of the ground.

"(2) ADMINISTRATOR.—The term 'Administrator' means the Administrator of the Environmental Protection Agency.


"(4) FEDERAL ENVIRONMENTAL LAW.—The term 'Federal environmental law' means—

"(A) the Oil Pollution Control Act of 1990 (33 U.S.C. 2701 et seq.);

"(B) the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (42 U.S.C. 9601 et seq.);

"(C) the Solid Waste Disposal Act (42 U.S.C. 6901 et seq.);

"(D) the Federal Water Pollution Control Act (33 U.S.C. 1251 et seq.); or

"(E) any other Federal law that is applicable to the release into the environment of a regulated substance, as determined by the Administrator.

"(5) NATIVE VILLAGE.—The term 'Native village' has the meaning given the term in section 11(b) in Public Law 92–203 (85 Stat. 688) [43 U.S.C. 1610(b)].

"(6) PROGRAM.—The term 'program' means the Aboveground Storage Tank Grant Program established by subsection (b)(1).

"(7) REGULATED SUBSTANCE.—The term 'regulated substance' has the meaning given the term in section 9001 of the Solid Waste Disposal Act (42 U.S.C. 6991).

"(8) STATE.—The term 'State' means the State of Alaska.

"(b) ESTABLISHMENT.—

"(1) IN GENERAL.—There is established a grant program to be known as the 'Aboveground Storage Tank Grant Program'

"(2) GRANTS.—Under the program, the Administrator shall award a grant to—

"(A) the State, on behalf of a Native village; or

"(B) the Denali Commission.

"(c) USE OF GRANTS.—The State or the Denali Commission shall use the funds of a grant under subsection (b) to repair, upgrade, or replace one or more aboveground storage tanks that—

"(1) leaks or poses an imminent threat of leaking, as certified by the Administrator, the Commandant of the Coast Guard, or any other appropriate Federal or State agency (as determined by the Administrator); and

"(2) is located in a Native village—

"(A) the median household income of which is less than 80 percent of the median household income in the State;

"(B) that is located—

"(i) within the boundaries of—

"(I) a unit of the National Park System;

"(II) a unit of the National Wildlife Refuge System; or

"(III) a National Forest; or

"(ii) on public land under the administrative jurisdiction of the Bureau of Land Management; or

"(C) that receives payments from the Federal Government under chapter 69 of title 31, United States Code (commonly known as 'payments in lieu of taxes').

"(d) REPORTS.—Not later than 1 year after the date on which the State or the Denali Commission receives a grant under subsection (c), and annually thereafter, the State or the Denali Commission, as the case may be, shall submit a report describing each project completed with grant funds and any projects planned for the following year, to—

"(1) the Administrator;

"(2) the Committee on Resources [now Committee on Natural Resources] of the House of Representatives;

"(3) the Committee on Environment and Public Works of the Senate;

"(4) the Committee on Appropriations of the House of Representatives; and

"(5) the Committee on Appropriations of the Senate.

"(e) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated to carry out this Act [probably means this section], to remain available until expended—

"(1) $20,000,000 for fiscal year 2001; and

"(2) such sums as are necessary for each fiscal year thereafter."
§6991a. Notification

(a) Underground storage tanks

(1) Within 18 months after November 8, 1984, each owner of an underground storage tank shall notify the State or local agency or department designated pursuant to subsection (b)(1) of the existence of such tank, specifying the age, size, type, location, and uses of such tank.

(2)(A) For each underground storage tank taken out of operation after January 1, 1974, the owner of such tank shall, within eighteen months after November 8, 1984, notify the State or local agency, or department designated pursuant to subsection (b)(1) of the existence of such tanks (unless the owner knows the tank subsequently was removed from the ground). The owner of a tank taken out of operation on or before January 1, 1974, shall not be required to notify the State or local agency under this subsection.

(B) Notice under subparagraph (A) shall specify, to the extent known to the owner—

(i) the date the tank was taken out of operation,
(ii) the age of the tank on the date taken out of operation,
(iii) the size, type and location of the tank, and
(iv) the type and quantity of substances left stored in such tank on the date taken out of operation.

(3) Any owner which brings into use an underground storage tank after the initial notification period specified under paragraph (1), shall notify the designated State or local agency or department within thirty days of the existence of such tank, specifying the age, size, type, location and uses of such tank.

(4) Paragraphs (1) through (3) of this subsection shall not apply to tanks for which notice was given pursuant to section 9603(c) of this title.

(5) Beginning thirty days after the Administrator prescribes the form of notice pursuant to subsection (b)(2) and for eighteen months thereafter, any person who deposits regulated substances in an underground storage tank shall reasonably notify the owner or operator of such tank of the owner’s notification requirements pursuant to this subsection.

(6) Beginning thirty days after the Administrator issues new tank performance standards pursuant to section 6991b(c) of this title, any person who sells a tank intended to be used as an underground storage tank shall notify the purchaser of such tank of the owner’s notification requirements pursuant to this subsection.

(b) Agency designation

(1) Within one hundred and eighty days after November 8, 1984, the Governors of each State shall designate the appropriate State agency or department or local agencies or departments to receive the notifications under subsection (a) (1), (2), or (3).

(2) Within twelve months after November 8, 1984, the Administrator, in consultation with State and local officials designated pursuant to subsection (b)(1), and after notice and opportunity for public comment, shall prescribe the form of the notice and the information to be included in the notifications under subsection (a)(1), (2), or (3). In prescribing the form of such notice, the Administrator shall take into account the effect on small businesses and other owners and operators.

(c) State inventories

Each State shall make 2 separate inventories of all underground storage tanks in such State containing regulated substances. One inventory shall be made with respect to petroleum and one with respect to other regulated substances. In making such inventories, the State shall utilize and aggregate the data in the notification forms submitted pursuant to subsections (a) and (b) of this section. Each State shall submit such aggregated data to the Administrator not later than 270 days after October 17, 1986.

(d) Public record

(1) In general

The Administrator shall require each State that receives Federal funds to carry out this subchapter to maintain, update at least annually, and make available to the public, in such manner and form as the Administrator shall prescribe (after consultation with States), a record of underground storage tanks regulated under this subchapter.

(2) Considerations

To the maximum extent practicable, the public record of a State, respectively, shall include, for each year—

(A) the number, sources, and causes of underground storage tank releases in the State;
(B) the record of compliance by underground storage tanks in the State with—
   (i) this subchapter; or
   (ii) an applicable State program approved under section 6991c of this title; and

[For transfer of authorities, functions, personnel, and assets of the Coast Guard, including the authorities and functions of the Secretary of Transportation relating thereto, to the Department of Homeland Security, and for treatment of related references, see sections 468(b), 551(d), 552(d), and 557 of Title 6, Domestic Security, and the Department of Homeland Security Reorganization Plan of November 25, 2002, as modified, set out as a note under section 542 of Title 6.]

1 So in original. The semicolon probably should be a period and the word "and" probably should not appear.
(C) data on the number of underground storage tank equipment failures in the State.


EDITORIAL NOTES

AMENDMENTS


§6991b. Release detection, prevention, and correction regulations

(a) Regulations

The Administrator, after notice and opportunity for public comment, and at least three months before the effective dates specified in subsection (f), shall promulgate release detection, prevention, and correction regulations applicable to all owners and operators of underground storage tanks, as may be necessary to protect human health and the environment.

(b) Distinctions in regulations

In promulgating regulations under this section, the Administrator may distinguish between types, classes, and ages of underground storage tanks. In making such distinctions, the Administrator may take into consideration factors, including, but not limited to: location of the tanks, soil and climate conditions, uses of the tanks, history of maintenance, age of the tanks, current industry recommended practices, national consensus codes, hydrogeology, water table, size of the tanks, quantity of regulated substances periodically deposited in or dispensed from the tank, the technical capability of the owners and operators, and the compatibility of the regulated substance and the materials of which the tank is fabricated.

(c) Requirements

The regulations promulgated pursuant to this section shall include, but need not be limited to, the following requirements respecting all underground storage tanks—

1. requirements for maintaining a leak detection system, an inventory control system together with tank testing, or a comparable system or method designed to identify releases in a manner consistent with the protection of human health and the environment;
2. requirements for maintaining records of any monitoring or leak detection system or inventory control system or tank testing or comparable system;
3. requirements for reporting of releases and corrective action taken in response to a release from an underground storage tank;
4. requirements for taking corrective action in response to a release from an underground storage tank;
5. requirements for the closure of tanks to prevent future releases of regulated substances into the environment; and
6. requirements for maintaining evidence of financial responsibility for taking corrective action and compensating third parties for bodily injury and property damage caused by sudden and nonsudden accidental releases arising from operating an underground storage tank.

(d) Financial responsibility

1. Financial responsibility required by this subsection may be established in accordance with regulations promulgated by the Administrator by any one, or any combination, of the following: insurance, guarantee, surety bond, letter of credit, qualification as a self-insurer or any other method satisfactory to the Administrator. In promulgating requirements under this subsection, the Administrator is authorized to specify policy or other contractual terms, conditions, or defenses which are necessary or are unacceptable in establishing such evidence of financial responsibility in order to effectuate the purposes of this subchapter.

2. In any case where the owner or operator is in bankruptcy, reorganization, or arrangement pursuant to the Federal Bankruptcy Code or where with reasonable diligence jurisdiction in any State court of the Federal courts cannot be obtained over an owner or operator likely to be solvent at the time of judgment, any claim arising from conduct for which evidence of financial responsibility must be provided under this subsection may be asserted directly against the guarantor providing such evidence of financial responsibility. In the case of any action pursuant to this paragraph such guarantor shall be entitled to invoke all rights and defenses which would have been available to the owner or operator if any action had been brought against the owner or operator by the claimant and which would have been available to the guarantor if an action had been brought against the guarantor by the owner or operator.

3. The total liability of any guarantor shall be limited to the aggregate amount which the guarantor has provided as evidence of financial responsibility to the owner or operator under this section. Nothing in this subsection shall be construed to limit any other State or Federal statutory, contractual or common law liability of a guarantor to its owner or operator including, but not limited to, the liability of such guarantor for bad faith either in negotiating or in failing to negotiate the settlement of any claim. Nothing in this subsection shall be construed to diminish the liability of any person under section 9607 or 9611 of this title or other applicable law.

4. For the purpose of this subsection, the term “guarantor” means any person, other than the owner or operator, who provides evidence of financial responsibility for an owner or operator under this subsection.
(5)(A) The Administrator, in promulgating financial responsibility regulations under this section, may establish an amount of coverage for particular classes or categories of underground storage tanks containing petroleum which shall satisfy such regulations and which shall not be less than $1,000,000 for each occurrence with an appropriate aggregate requirement.

(B) The Administrator may set amounts lower than the amounts required by subparagraph (A) of this paragraph for underground storage tanks containing petroleum which are at facilities not engaged in petroleum production, refining, or marketing and which are not used to handle substantial quantities of petroleum.

(C) In establishing classes and categories for purposes of this paragraph, the Administrator may consider the following factors:

(i) The size, type, location, storage, and handling capacity of underground storage tanks in the class or category and the volume of petroleum handled by such tanks.

(ii) The likelihood of release and the potential extent of damage from any release from underground storage tanks in the class or category.

(iii) The economic impact of the limits on the owners and operators of each such class or category, particularly relating to the small business segment of the petroleum marketing industry.

(iv) The availability of methods of financial responsibility in amounts greater than the amount established by this paragraph.

(v) Such other factors as the Administrator deems pertinent.

(D) The Administrator may suspend enforcement of the financial responsibility requirements for a particular class or category of underground storage tanks in a particular State, if the Administrator makes a determination that methods of financial responsibility satisfying the requirements of this subsection are not generally available for underground storage tanks in that class or category, and—

(i) steps are being taken to form a risk retention group for such class of tanks; or

(ii) such State is taking steps to establish a fund pursuant to section 6991(c)(1) of this title to be submitted as evidence of financial responsibility.

A suspension by the Administrator pursuant to this paragraph shall extend for a period not to exceed 180 days. A determination to suspend may be made with respect to the same class or category or for the same State at the end of such period, but only if substantial progress has been made in establishing a risk retention group, or the owners or operators in the class or category demonstrate, and the Administrator finds, that the formation of such a group is not possible and that the State is unable or unwilling to establish such a fund pursuant to clause (ii).

(e) New tank performance standards

The Administrator shall, not later than three months prior to the effective date specified in subsection (f), issue performance standards for underground storage tanks brought into use on or after the effective date of such standards. The performance standards for new underground storage tanks shall include, but need not be limited to, design, construction, installation, release detection, and compatibility standards.

(f) Effective dates

(1) Regulations issued pursuant to subsections (c) and (d), and standards issued pursuant to subsection (e) of this section, for underground storage tanks containing regulated substances defined in section 6991(7)(B) of this title (petroleum, including crude oil or any fraction thereof which is liquid at standard conditions of temperature and pressure) shall be effective not later than thirty months after November 8, 1984.

(2) Standards issued pursuant to subsection (e) of this section (entitled "New Tank Performance Standards") for underground storage tanks containing regulated substances defined in section 6991(7)(A) of this title shall be effective not later than thirty-six months after November 8, 1984.

(3) Regulations issued pursuant to subsection (c) of this section (entitled "Requirements") and standards issued pursuant to subsection (d) of this section (entitled "Financial Responsibility") for underground storage tanks containing regulated substances defined in section 6991(7)(A) of this title shall be effective not later than forty-eight months after November 8, 1984.

(g) Interim prohibition

(1) Until the effective date of the standards promulgated by the Administrator under subsection (e) and after one hundred and eighty days after November 8, 1984, no person may install an underground storage tank for the purpose of storing regulated substances unless such tank (whether of single or double wall construction)—

(A) will prevent releases due to corrosion or structural failure for the operational life of the tank;

(B) is cathodically protected against corrosion, constructed of noncorrosive material, steel clad with a noncorrosive material, or designed in a manner to prevent the release or threatened release of any stored substance; and

(C) the material used in the construction or lining of the tank is compatible with the substance to be stored.

(2) Notwithstanding paragraph (1), if soil tests conducted in accordance with ASTM Standard G57–78, or another standard approved by the Administrator, show that soil resistivity in an installation location is 12,000 ohm/cm or more (unless a more stringent standard is prescribed by the Administrator by rule), a storage tank without corrosion protection may be installed in that location during the period referred to in paragraph (1).

(h) EPA response program for petroleum

(1) Before regulations
Before the effective date of regulations under subsection (c), the Administrator (or a State pursuant to paragraph (7)) is authorized to—

(A) require the owner or operator of an underground storage tank to undertake corrective action with respect to any release of petroleum when the Administrator (or the State) determines that such corrective action will be done properly and promptly by the owner or operator of the underground storage tank from which the release occurs; or

(B) undertake corrective action with respect to any release of petroleum into the environment from an underground storage tank if such action is necessary, in the judgment of the Administrator (or the State), to protect human health and the environment.

The corrective action undertaken or required under this paragraph shall be such as may be necessary to protect human health and the environment. The Administrator shall use funds in the Trust Fund for payment of costs incurred for corrective action under subparagraph (B), enforcement action under subparagraph (A), and cost recovery under paragraph (6) of this subsection. Subject to the priority requirements of paragraph (3), the Administrator (or the State) shall give priority in undertaking such actions under subparagraph (B) to cases where the Administrator (or the State) cannot identify a solvent owner or operator of the tank who will undertake action properly.

(2) After regulations

Following the effective date of regulations under subsection (c), all actions or orders of the Administrator (or a State pursuant to paragraph (7)) described in paragraph (1) of this subsection shall be in conformity with such regulations. Following such effective date, the Administrator (or the State) may undertake corrective action with respect to any release of petroleum into the environment from an underground storage tank only if such action is necessary, in the judgment of the Administrator (or the State), to protect human health and the environment and one or more of the following situations exists:

(A) No person can be found, within 90 days or such shorter period as may be necessary to protect human health and the environment, who is—

(i) an owner or operator of the tank concerned;

(ii) subject to such corrective action regulations, and

(iii) capable of carrying out such corrective action properly.

(B) A situation exists which requires prompt action by the Administrator (or the State) under this paragraph to protect human health and the environment.

(C) Corrective action costs at a facility exceed the amount of coverage required by the Administrator pursuant to the provisions of subsections (c) and (d)(5) of this section and, considering the class or category of underground storage tank from which the release occurred, expenditures from the Trust Fund are necessary to assure an effective corrective action.

(D) The owner or operator of the tank has failed or refused to comply with an order of the Administrator under this subsection or section 6991e of this title or with the order of a State under this subsection to comply with the corrective action regulations.

(3) Priority of corrective actions

The Administrator (or a State pursuant to paragraph (7)) shall give priority in undertaking corrective actions under this subsection, and in issuing orders requiring owners or operators to undertake such actions, to releases of petroleum from underground storage tanks which pose the greatest threat to human health and the environment.

(4) Corrective action orders

The Administrator is authorized to issue orders to the owner or operator of an underground storage tank to carry out subparagraph (A) of paragraph (1) or to carry out regulations issued under subsection (c)(4). A State acting pursuant to paragraph (7) of this subsection is authorized to carry out subparagraph (A) of paragraph (1) only until the State’s program is approved by the Administrator under section 6991c of this title. Such orders shall be issued and enforced in the same manner and subject to the same requirements as orders under section 6991e of this title.

(5) Allowable corrective actions

The corrective actions undertaken by the Administrator (or a State pursuant to paragraph (7)) under paragraph (1) or (2) may include temporary or permanent relocation of residents and alternative household water supplies. In connection with the performance of any corrective action under paragraph (1) or (2), the Administrator may undertake an exposure assessment as defined in paragraph (10) of this subsection or provide for such an assessment in a cooperative agreement with a State pursuant to paragraph (7) of this subsection. The costs of any such assessment may be treated as corrective action for purposes of paragraph (6), relating to cost recovery.

(6) Recovery of costs

(A) In general

Whenever costs have been incurred by the Administrator, or by a State pursuant to paragraph (7), for undertaking corrective action or enforcement action with respect to the release of petroleum from an underground storage tank, the owner or operator of such tank shall be liable to the Administrator or the State for such costs. The liability under this paragraph shall be construed to be the standard of liability which obtains under section 1321 of title 33.

(B) Recovery

In determining the equities for seeking the recovery of costs under subparagraph (A), the Administrator (or a State pursuant to paragraph (7) of this subsection) may consider the amount of financial responsibility required to be
maintained under subsections (c) and (d)(5) of this section and the factors considered in establishing such amount under subsection (d)(5).

(C) Effect on liability

(i) No transfers of liability

No indemnification, hold harmless, or similar agreement or conveyance shall be effective to transfer from the owner or operator of any underground storage tank or from any person who may be liable for a release or threat of release under this subsection, to any other person the liability imposed under this subsection. Nothing in this subsection shall bar any agreement to insure, hold harmless, or indemnify a party to such agreement for any liability under this section.

(ii) No bar to cause of action

Nothing in this subsection, including the provisions of clause (i) of this subparagraph, shall bar a cause of action that an owner or operator or any other person subject to liability under this section, or a guarantor, has or would have, by reason of subrogation or otherwise against any person.

(D) Facility

For purposes of this paragraph, the term “facility” means, with respect to any owner or operator, all underground storage tanks used for the storage of petroleum which are owned or operated by such owner or operator and located on a single parcel of property (or on any contiguous or adjacent property).

(E) Inability or limited ability to pay

(i) In general

In determining the level of recovery effort, or amount that should be recovered, the Administrator (or the State pursuant to paragraph (7)) shall consider the owner or operator's ability to pay. An inability or limited ability to pay corrective action costs must be demonstrated to the Administrator (or the State pursuant to paragraph (7)) by the owner or operator.

(ii) Considerations

In determining whether or not a demonstration is made under clause (i), the Administrator (or the State pursuant to paragraph (7)) shall take into consideration the ability of the owner or operator to pay corrective action costs and still maintain its basic business operations, including consideration of the overall financial condition of the owner or operator and demonstrable constraints on the ability of the owner or operator to raise revenues.

(iii) Information

An owner or operator requesting consideration under this subparagraph shall promptly provide the Administrator (or the State pursuant to paragraph (7)) with all relevant information needed to determine the ability of the owner or operator to pay corrective action costs.

(iv) Alternative payment methods

The Administrator (or the State pursuant to paragraph (7)) shall consider alternative payment methods as may be necessary or appropriate if the Administrator (or the State pursuant to paragraph (7)) determines that an owner or operator cannot pay all or a portion of the costs in a lump sum payment.

(v) Misrepresentation

If an owner or operator provides false information or otherwise misrepresents their financial situation under clause (ii), the Administrator (or the State pursuant to paragraph (7)) shall seek full recovery of the costs of all such actions pursuant to the provisions of subparagraph (A) without consideration of the factors in subparagraph (B).

(7) State authorities

(A) General

A State may exercise the authorities in paragraphs (1), (2), and (12), subject to the terms and conditions of paragraphs (3), (5), (9), (10), and (11), and the authority under sections 699fj and 6991k of this title and paragraphs (4), (6), and (8), if—

(i) the Administrator determines that the State has the capabilities to carry out effective corrective actions and enforcement activities; and

(ii) the Administrator enters into a cooperative agreement with the State setting out the actions to be undertaken by the State.

The Administrator may provide funds from the Trust Fund for the reasonable costs of the State's actions under the cooperative agreement.

(B) Cost share

Following the effective date of the regulations under subsection (c) of this section, the State shall pay 10 per centum of the cost of corrective actions undertaken either by the Administrator or by the State under a cooperative agreement, except that the Administrator may take corrective action at a facility where immediate action is necessary to respond to an imminent and substantial endangerment to human health or the environment if the State fails to pay the cost share.

(8) Emergency procurement powers
Notwithstanding any other provision of law, the Administrator may authorize the use of such emergency procurement powers as he deems necessary.

(9) Definition of owner or operator

(A) In general

As used in this subchapter, the terms "owner" and "operator" do not include a person that, without participating in the management of an underground storage tank and otherwise not engaged in petroleum production, refining, or marketing, holds indicia of ownership primarily to protect the person's security interest.

(B) Security interest holders

The provisions regarding holders of security interests in subparagraphs (E) through (G) of section 9601(20) of this title and the provisions regarding fiduciaries at section 9607(n) of this title shall apply in determining a person's liability as an owner or operator of an underground storage tank for the purposes of this subchapter.

(C) Effect on rule

Nothing in subparagraph (B) shall be construed as modifying or affecting the final rule issued by the Administrator on September 7, 1995 (60 Fed. Reg. 46,692), or as limiting the authority of the Administrator to amend the final rule, in accordance with applicable law. The final rule in effect on September 30, 1996, shall prevail over any inconsistent provision regarding holders of security interests in subparagraphs (E) through (G) of section 9601(20) of this title or any inconsistent provision regarding fiduciaries in section 9607(n) of this title. Any amendment to the final rule shall be consistent with the provisions regarding holders of security interests in subparagraphs (E) through (G) of section 9601(20) of this title and the provisions regarding fiduciaries in section 9607(n) of this title. This subparagraph does not preclude judicial review of any amendment of the final rule made after September 30, 1996.

(10) Definition of exposure assessment

As used in this subsection, the term "exposure assessment" means an assessment to determine the extent of exposure of, or potential for exposure of, individuals to petroleum from a release from an underground storage tank based on such factors as the nature and extent of contamination and the existence of or potential for pathways of human exposure (including ground or surface water contamination, air emissions, and food chain contamination), the size of the community within the likely pathways of exposure, and the comparison of expected human exposure levels to the short-term and long-term health effects associated with identified contaminants and any available recommended exposure or tolerance limits for such contaminants. Such assessment shall not delay corrective action to abate immediate hazards or reduce exposure.

(11) Facilities without financial responsibility

At any facility where the owner or operator has failed to maintain evidence of financial responsibility in amounts at least equal to the amounts established by subsection (d)(5)(A) of this section or a lesser amount if such amount is applicable to such facility as a result of subsection (d)(5)(B) of this section for whatever reason the Administrator shall expend no monies from the Trust Fund to clean up releases at such facility pursuant to the provisions of paragraph (1) or (2) of this subsection. At such facilities the Administrator shall use the authorities provided in subparagraph (A) of paragraph (1) and paragraph (4) of this subsection and section 6991e of this title to order corrective action to clean up such releases. States acting pursuant to paragraph (7) of this subsection shall use the authorities provided in subparagraph (A) of paragraph (1) and paragraph (4) of this subsection to order corrective action to clean up such releases. Notwithstanding the provisions of this paragraph, the Administrator may use monies from the fund to take the corrective actions authorized by paragraph (5) of this subsection to protect human health at such facilities and shall seek full recovery of the costs of all such actions pursuant to the provisions of paragraph (6)(A) of this subsection and without consideration of the factors in paragraph (6)(B) of this subsection. Nothing in this paragraph shall prevent the Administrator (or a State pursuant to paragraph (7) of this subsection) from taking corrective action at a facility where there is no solvent owner or operator or where immediate action is necessary to respond to an imminent and substantial endangerment of human health or the environment.

(12) Remediation of oxygenated fuel contamination

(A) In general

The Administrator and the States may use funds made available under section 6991m(2)(B) of this title to carry out corrective actions with respect to a release of a fuel containing an oxygenated fuel additive that presents a threat to human health or welfare or the environment.

(B) Applicable authority

The Administrator or a State shall carry out subparagraph (A) in accordance with paragraph (2), and in the case of a State, in accordance with a cooperative agreement entered into by the Administrator and the State under paragraph (7).

(i) Additional measures to protect groundwater from contamination

The Administrator shall require each State that receives funding under this subchapter to require one of the following:

(1) Tank and piping secondary containment

(A) Each new underground storage tank, or piping connected to any such new tank, installed after the effective date of this subsection, or any existing underground storage tank, or existing piping connected to such existing tank, that is replaced after the effective date of this subsection, shall be secondarily contained and monitored for leaks if the new or replaced underground storage tank or piping is within 1,000 feet of any existing community water system or any existing potable drinking water well.
(B) In the case of a new underground storage tank system consisting of one or more underground storage tanks and connected by piping, subparagraph (A) shall apply to all underground storage tanks and connected pipes comprising such system.

(C) In the case of a replacement of an existing underground storage tank or existing piping connected to the underground storage tank, subparagraph (A) shall apply only to the specific underground storage tank or piping being replaced, not to other underground storage tanks and connected pipes comprising such system.

(D) Each installation of a new motor fuel dispenser system, after the effective date of this subsection, shall include under-dispenser spill containment if the new dispenser is within 1,000 feet of any existing community water system or any existing potable drinking water well.

(E) This paragraph shall not apply to repairs to an underground storage tank, piping, or dispenser that are meant to restore a tank, pipe, or dispenser to operating condition.

(F) As used in this subsection:
   (i) The term "secondarily contained" means a release detection and prevention system that meets the requirements of 40 CFR 280.43(g), but shall not include under-dispenser spill containment or control systems.
   (ii) The term "underground storage tank" has the meaning given to it in section 6991 of this title, except that such term does not include tank combinations or more than a single underground pipe connected to a tank.
   (iii) The term "installation of a new motor fuel dispenser system" means the installation of a new motor fuel dispenser and the equipment necessary to connect the dispenser to the underground storage tank system, but does not mean the installation of a motor fuel dispenser installed separately from the equipment needed to connect the dispenser to the underground storage tank system.

(2) Evidence of financial responsibility and certification

(A) Manufacturer and installer financial responsibility

A person that manufactures an underground storage tank or piping for an underground storage tank system or that installs an underground storage tank system is required to maintain evidence of financial responsibility under subsection (d) in order to provide for the costs of corrective actions directly related to releases caused by improper manufacture or installation unless the person can demonstrate themselves to be already covered as an owner or operator of an underground storage tank under this section.

(B) Installer certification

The Administrator and each State that receives funding under this subchapter, as appropriate, shall require that a person that installs an underground storage tank system is—
   (i) certified or licensed by the tank and piping manufacturer;
   (ii) certified or licensed by the Administrator or a State, as appropriate;
   (iii) has their underground storage tank system installation certified by a registered professional engineer with education and experience in underground storage tank system installation;
   (iv) has had their installation of the underground storage tank inspected and approved by the Administrator or the State, as appropriate;
   (v) compliant with a code of practice developed by a nationally recognized association or independent testing laboratory and in accordance with the manufacturer's instructions; or
   (vi) compliant with another method that is determined by the Administrator or a State, as appropriate, to be no less protective of human health and the environment.

(C) Savings clause

Nothing in subparagraph (A) alters or affects the liability of any owner or operator of an underground storage tank.

(j) Government-owned tanks

(1) State compliance report

(A) Not later than 2 years after August 8, 2005, each State that receives funding under this subchapter shall submit to the Administrator a State compliance report that—
   (i) lists the location and owner of each underground storage tank described in subparagraph (B) in the State that, as of the date of submission of the report, is not in compliance with this section; and
   (ii) specifies the date of the last inspection and describes the actions that have been and will be taken to ensure compliance of the underground storage tank listed under clause (i) with this subchapter.

(B) An underground storage tank described in this subparagraph is an underground storage tank that is—
   (i) regulated under this subchapter; and
   (ii) owned or operated by the Federal, State, or local government.

(C) The Administrator shall make each report, received under subparagraph (A), available to the public through an appropriate media.

(2) Financial incentive

The Administrator may award to a State that develops a report described in paragraph (1), in addition to any other funds that the State is entitled to receive under this subchapter, not more than $50,000, to be used to carry out the report.

(3) Not a safe harbor
This subsection does not relieve any person from any obligation or requirement under this subchapter.


EDITORIAL NOTES

REFERENCES IN TEXT

The Federal Bankruptcy Code, referred to in subsec. (d)(2), probably means a reference to Title 11, Bankruptcy.

The effective date of this subsection, referred to in subsec. (i)(1)(A), (D), is 18 months after Aug. 8, 2005. See Effective Date of 2005 Amendment note set out below.

AMENDMENTS

2006—Subsecs. (i), (j). Pub. L. 109–168 redesignated subsec. (i), relating to government-owned tanks, as (j). Subsec. (j) was editorially transferred to the end of the section to reflect the probable intent of Congress.

2005—Subsec. (f)(1). Pub. L. 109–58, §1533(2), substituted "subsections (c) and (d)" for "subsection (c) and (d) of this section".

Pub. L. 109–58, §1532(b)(1)(A), substituted "6991(7)(B)" for "6991(2)(B)".


Pub. L. 109–58, §1525(1), in introductory provisions, substituted "paragraphs (1), (2), and (12)" for "paragraphs (1) and (2) of this subsection" and "and the authority under sections 6991 and 6991k of this title and paragraphs (4), (6), and (8)," for "and including the authorities of paragraphs (4), (6), and (8) of this subsection".


Subsec. (i). Pub. L. 109–58, §1530(a), added subsec. (i) relating to additional measures to protect groundwater from contamination.

Pub. L. 109–58, §1526(b), added subsec. (i) relating to government-owned tanks.

1996—Subsec. (h)(9). Pub. L. 104–208 added par. (9) and struck out heading and text of former par. (9). Text read as follows: "As used in this subsection, the term 'owner' does not include any person who, without participating in the management of an underground storage tank and otherwise not engaged in petroleum production, refining, and marketing, holds indicia of ownership primarily to protect the owner's security interest in the tank."


Subsec. (d)(1). Pub. L. 99–499, §205(c)(3), which directed that par. (1) be amended by "striking out 'or after credit,' and by striking out the period at the end thereof and inserting in lieu thereof the following: 'or any other method satisfactory to the Administrator.'", was executed by striking the period and making insertion at end of first sentence, rather than at end of par. (1), as the probable intent of Congress, because an earlier version of the amending legislation had provided that such amendment be made to first sentence.

Pub. L. 99–499, §205(c)(2), redesignated par. (2) as (1) and struck out former par. (1) which read as follows: "As he deems necessary or desirable, the Administrator shall promulgate regulations containing requirements for maintaining evidence of financial responsibility as he deems necessary and desirable for taking corrective action and compensating third parties for bodily injury and property damage caused by sudden and nonsudden accidental releases arising from operating an underground storage tank."

Subsec. (d)(2) to (5). Pub. L. 99–499, §205(c)(2), (4), added par. (5) and redesignated pars. (3) to (5) as (2) to (4), respectively. Former par. (2) redesignated (1).


STATUTORY NOTES AND RELATED SUBSIDIARIES

EFFECTIVE DATE OF 2005 AMENDMENT

Pub. L. 109–58, title XV, §1530(b), Aug. 8, 2005, 119 Stat. 1104, provided that: "This subsection [probably means this section, which amended this section and section 6991e of this title and enacted provisions set out as
notes under this section] shall take effect 18 months after the date of enactment of this subsection [Aug. 8, 2005]."

**Effective Date of 1996 Amendment**


**Regulations**

Pub. L. 109–58, title XV, §1530(c), Aug. 8, 2005, 119 Stat. 1104, provided that: "The Administrator shall issue regulations or guidelines implementing the requirements of this subsection [probably means this section, which amended this section and section 6991e of this title and enacted provisions set out as notes under this section], including guidance to differentiate between the terms 'repair' and 'replace' for the purposes of section 9003(i)(1) of the Solid Waste Disposal Act [42 U.S.C. 6991b(i)(1)]."

**Assistance Agreements With Indian Tribes**

Pub. L. 105–276, title III, Oct. 21, 1998, 112 Stat. 2497, provided in part: "That hereafter, the Administrator is authorized to enter into assistance agreements with Federally recognized Indian tribes on such terms and conditions as the Administrator deems appropriate for the same purposes as are set forth in section 9003(h) (7) of the Resource Conservation and Recovery Act [probably means section 9003(h)(7) of Pub. L. 89–272, 42 U.S.C. 6991b(h)(7)]."

**Pollution Liability Insurance**


"(1) STUDY.—The Comptroller General shall conduct a study of the availability of pollution liability insurance, leak insurance, and contamination insurance for owners and operators of petroleum storage and distribution facilities. The study shall assess the current and projected extent to which private insurance can contribute to the financial responsibility of owners and operators of underground storage tanks and the ability of owners and operators of underground storage tanks to maintain financial responsibility through other methods. The study shall consider the experience of owners and operators of marine vessels in getting insurance for their liabilities under the Federal Water Pollution Control Act [33 U.S.C. 1251 et seq.] and the operation of the Water Quality Insurance Syndicate.

"(2) REPORT.—The Comptroller General shall report the findings under this subsection to the Congress within 15 months after the enactment of this subsection [Oct. 17, 1986]. Such report shall include recommendations for legislative or administrative changes that will enable owners and operators of underground storage tanks to maintain financial responsibility sufficient to provide all clean-up costs and damages that may result from reasonably foreseeable releases and events."

\[1 \text{ So in original.} \]

\[2 \text{ So in original. Probably should be "medium."} \]

§6991c. Approval of State programs

(a) Elements of State program

Beginning 30 months after November 8, 1984, any State may,\[1\] submit an underground storage tank release detection, prevention, and correction program for review and approval by the Administrator. The program may cover tanks used to store regulated substances referred to in subparagraph (A) or (B) of section 6991(7) of this title. A State program may be approved by the Administrator under this section only if the State demonstrates that the State program includes the following requirements and standards and provides for adequate enforcement of compliance with such requirements and standards—

(1) requirements for maintaining a leak detection system, an inventory control system together with tank testing, or a comparable system or method designed to identify releases in a manner consistent with the protection of human health and the environment;

(2) requirements for maintaining records of any monitoring or leak detection system or inventory control system or tank testing system;

(3) requirements for reporting of any releases and corrective action taken in response to a release from an underground storage tank;

(4) requirements for taking corrective action in response to a release from an underground storage tank;

(5) requirements for the closure of tanks to prevent future releases of regulated substances into the environment;
(6) requirements for maintaining evidence of financial responsibility for taking corrective action and compensating third parties for bodily injury and property damage caused by sudden and nonsudden accidental releases arising from operating an underground storage tank;

(7) standards of performance for new underground storage tanks;

(8) requirements—
(A) for notifying the appropriate State agency or department (or local agency or department) designated according to section 6991a(b)(1) of this title of the existence of any operational or non-operational underground storage tank; and
(B) for providing the information required on the form issued pursuant to section 6991a(b)(2) of this title; and

(9) State-specific training requirements as required by section 6991i of this title.

(b) Federal standards

(1) A State program submitted under this section may be approved only if the requirements under paragraphs (1) through (7) of subsection (a) are less stringent than the corresponding requirements standards promulgated by the Administrator pursuant to section 6991b(a) of this title.

(2)(A) A State program may be approved without regard to whether or not the requirements referred to in paragraphs (1), (2), (3), and (5) of subsection (a) are less stringent than the corresponding standards under section 6991b(a) of this title during the one-year period commencing on the date of promulgation of regulations under section 6991b(a) of this title if State regulatory action but no State legislative action is required in order to adopt a State program.

(B) If such State legislative action is required, the State program may be approved without regard to whether or not the requirements referred to in paragraphs (1), (2), (3), and (5) of subsection (a) are less stringent than the corresponding standards under section 6991b(a) of this title during the two-year period commencing on the date of promulgation of regulations under section 6991b(a) of this title (and during an additional one-year period after such legislative action if regulations are required to be promulgated by the State pursuant to such legislative action).

(c) Financial responsibility

(1) Corrective action and compensation programs administered by State or local agencies or departments may be submitted for approval under subsection (a)(6) as evidence of financial responsibility.

(2) Financial responsibility required by this subsection may be established in accordance with regulations promulgated by the Administrator by any one, or any combination, of the following: insurance, guarantee, surety bond, letter of credit, qualification as a self-insurer or any other method satisfactory to the Administrator. In promulgating requirements under this subsection, the Administrator is authorized to specify policy or other contractual terms including the amount of coverage required for various classes and categories of underground storage tanks pursuant to section 6991b(d)(5) of this title, conditions, or defenses which are necessary or are unacceptable in establishing such evidence of financial responsibility in order to effectuate the purposes of this subchapter.

(3) In any case where the owner or operator is in bankruptcy, reorganization, or arrangement pursuant to the Federal Bankruptcy Code or where with reasonable diligence jurisdiction in any State court of the Federal courts cannot be obtained over an owner or operator likely to be solvent at the time of judgment, any claim arising from conduct for which evidence of financial responsibility must be provided under this subsection may be asserted directly against the guarantor providing such evidence of financial responsibility. In the case of any action pursuant to this paragraph such guarantor shall be entitled to invoke all rights and defenses which would have been available to the owner or operator if any action had been brought against the owner or operator by the claimant and which would have been available to the guarantor if an action had been brought against the guarantor by the owner or operator.

(4) The total liability of any guarantor shall be limited to the aggregate amount which the guarantor has provided as evidence of financial responsibility to the owner or operator under this section. Nothing in this subsection shall be construed to limit any other State or Federal statutory, contractual or common law liability of a guarantor to its owner or operator including, but not limited to, the liability of such guarantor for bad faith either in negotiating or in failing to negotiate the settlement of any claim. Nothing in this subsection shall be construed to diminish the liability of any person under section 9607 or 9611 of this title or other applicable law.

(5) For the purpose of this subsection, the term "guarantor" means any person, other than the owner or operator, who provides evidence of financial responsibility for an owner or operator under this subsection.

(6) Withdrawal of approval.—After an opportunity for good faith, collaborative efforts to correct financial deficiencies with a State fund, the Administrator may withdraw approval of any State fund or State assurance program to be used as a financial responsibility mechanism without withdrawing approval of a State underground storage tank program under subsection (a).

(d) EPA determination

(1) Within one hundred and eighty days of the date of receipt of a proposed State program, the Administrator shall, after notice and opportunity for public comment, make a determination whether the State's program complies with the provisions of this section and provides for adequate enforcement of compliance with the requirements and standards adopted pursuant to this section.

(2) If the Administrator determines that a State program complies with the provisions of this section and provides for adequate enforcement of compliance with the requirements and standards adopted pursuant to this section, he shall approve the State program in lieu of the Federal program and the State shall have primary enforcement responsibility with respect to requirements of its program.

(e) Withdrawal of authorization

Whenever the Administrator determines after public hearing that a State is not administering and enforcing a program authorized under this subchapter in accordance with the provisions of this section, he shall so notify the State. If appropriate
action is not taken within a reasonable time, not to exceed one hundred and twenty days after such notification, the Administrator shall withdraw approval of such program and reestablish the Federal program pursuant to this subchapter.

(f) Trust Fund distribution

(1) In general

(A) Amount and permitted uses of distribution
The Administrator shall distribute to States not less than 80 percent of the funds from the Trust Fund that are made available to the Administrator under section 6991m(2)(A) of this title for each fiscal year for use in paying the reasonable costs, incurred under a cooperative agreement with any State for—
(i) corrective actions taken by the State under section 6991b(h)(7)(A) of this title;
(ii) necessary administrative expenses, as determined by the Administrator, that are directly related to State fund or State assurance programs under subsection (c)(1); or
(iii) enforcement, by a State or a local government, of State or local regulations pertaining to underground storage tanks regulated under this subchapter.

(B) Use of funds for enforcement
In addition to the uses of funds authorized under subparagraph (A), the Administrator may use funds from the Trust Fund that are not distributed to States under subparagraph (A) for enforcement of any regulation promulgated by the Administrator under this subchapter.

(C) Prohibited uses
Funds provided to a State by the Administrator under subparagraph (A) shall not be used by the State to provide financial assistance to an owner or operator to meet any requirement relating to underground storage tanks under subparts B, C, D, H, and G of part 280 of title 40, Code of Federal Regulations (as in effect on August 8, 2005).

(2) Allocation

(A) Process
Subject to subparagraphs (B) and (C), in the case of a State with which the Administrator has entered into a cooperative agreement under section 6991b(h)(7)(A) of this title, the Administrator shall distribute funds from the Trust Fund to the State using an allocation process developed by the Administrator.

(B) Diversion of State funds
The Administrator shall not distribute funds under subparagraph (A)(iii) of subsection (f)(1) to any State that has diverted funds from a State fund or State assurance program for purposes other than those related to the regulation of underground storage tanks covered by this subchapter, with the exception of those transfers that had been completed earlier than August 8, 2005.

(C) Revisions to process
The Administrator may revise the allocation process referred to in subparagraph (A) after—
(i) consulting with State agencies responsible for overseeing corrective action for releases from underground storage tanks; and
(ii) taking into consideration, at a minimum, each of the following:
(I) The number of confirmed releases from federally regulated leaking underground storage tanks in the States.
(II) The number of federally regulated underground storage tanks in the States.
(III) The performance of the States in implementing and enforcing the program.
(IV) The financial needs of the States.
(V) The ability of the States to use the funds referred to in subparagraph (A) in any year.

(3) Distributions to State agencies
Distributions from the Trust Fund under this subsection shall be made directly to a State agency that—
(A) enters into a cooperative agreement referred to in paragraph (2)(A); or
(B) is enforcing a State program approved under this section.


EDITORIAL NOTES

REFERENCES IN TEXT
The Federal Bankruptcy Code, referred to in subsec. (c)(3), probably means a reference to Title 11, Bankruptcy.

AMENDMENTS
2005—Subsec. (a). Pub. L. 109–58, §1533(3), substituted "in subparagraph (A) or (B) of section 6991(7)" for "in 6991(2)(A) or (B) or both".
§6991d. Inspections, monitoring, testing, and corrective action

(a) Furnishing information

For the purposes of developing or assisting in the development of any regulation, conducting any study, taking any corrective action, or enforcing the provisions of this subchapter, any owner or operator of an underground storage tank (or any tank subject to study under section 6991h of this title that is used for storing regulated substances) shall, upon request of any officer, employee or representative of the Environmental Protection Agency, duly designated by the Administrator, or upon request of any duly designated officer, employee, or representative of a State acting pursuant to subsection (h)(7) of section 6991b of this title or with an approved program, furnish information relating to such tanks, their associated equipment, their contents, conduct monitoring or testing, permit such officer at all reasonable times to have access to, and to copy all records relating to such tanks and permit such officer to have access for corrective action. For the purposes of developing or assisting in the development of any regulation, conducting any study, taking corrective action, or enforcing the provisions of this subchapter, such officers, employees, or representatives are authorized—

1. to enter at reasonable times any establishment or other place where an underground storage tank is located;
2. to inspect and obtain samples from any person of any regulated substances contained in such tank;
3. to conduct monitoring or testing of the tanks, associated equipment, contents, or surrounding soils, air, surface water or ground water; and
4. to take corrective action.

Each such inspection shall be commenced and completed with reasonable promptness.

(b) Confidentiality

1. Any records, reports, or information obtained from any persons under this section shall be available to the public, except that upon a showing satisfactory to the Administrator (or the State, as the case may be) by any person that records, reports, or information, or a particular part thereof, to which the Administrator or the State, as the case may be, or any officer, employee, or representative thereof has access under this section if made public, would divulge information entitled to protection under section 1905 of title 18, such information or particular portion thereof shall be considered confidential in accordance with the purposes of that section, except that such record, report, document, or information may be disclosed to other officers, employees, or authorized representatives of the United States concerned with carrying out this chapter, or when relevant in any proceeding under this chapter.

2. Any person not subject to the provisions of section 1905 of title 18 who knowingly and willfully divulges or discloses any information entitled to protection under this subsection shall, upon conviction, be subject to a fine of not more than $5,000 or to imprisonment not to exceed one year, or both.

3. In submitting data under this subchapter, a person required to provide such data may—
A. designate the data which such person believes is entitled to protection under this subsection, and
B. submit such designated data separately from other data submitted under this subchapter.

A designation under this paragraph shall be made in writing and in such manner as the Administrator may prescribe.

4. Notwithstanding any limitation contained in this section or any other provision of law, all information reported to, or otherwise obtained, by the Administrator (or any representative of the Administrator) under this chapter shall be made available, upon written request of any duly authorized committee of the Congress, to such committee (including records, reports, or information obtained by representatives of the Environmental Protection Agency).

(c) Inspection requirements

1. Uninspected tanks

In the case of underground storage tanks regulated under this subchapter that have not undergone an inspection since December 22, 1998, not later than 2 years after August 8, 2005, the Administrator or a State that receives funding under this subchapter, as appropriate, shall conduct on-site inspections of all such tanks to determine compliance with this subchapter and the regulations under this subchapter (40 CFR 280) or a requirement or standard of a State program developed under section 6991c of this title.

2. Periodic inspections

After completion of all inspections required under paragraph (1), the Administrator or a State that receives funding under this subchapter, as appropriate, shall conduct on-site inspections of each underground storage tank regulated under this subchapter at least once every 3 years to determine compliance with this subchapter and the regulations under
this subchapter (40 CFR 280) or a requirement or standard of a State program developed under section 6991c of this title. The Administrator may extend for up to one additional year the first 3-year inspection interval under this paragraph if the State demonstrates that it has insufficient resources to complete all such inspections within the first 3-year period.

(3) Inspection authority

Nothing in this section shall be construed to diminish the Administrator’s or a State’s authorities under subsection (a).


EDITORIAL NOTES

AMENDMENTS


Subsec. (c). Pub. L. 109–58, §1523(a), added subsec. (c).


Subsec. (a). Pub. L. 99–499, §205(f)(1), in first sentence, inserted "taking any corrective action" after "conducing any study", inserted "acting pursuant to subsection (h)(7) of section 6991b of this title or", struck out "and" before "permit such officer", and inserted "and permit such officer to have access for corrective action", and in second sentence, inserted "taking corrective action," after "study,". The amendment directing insertion of "taking any corrective action" after "study" in first sentence was executed by inserting that language after "conducing any study" rather than after "subject to study", as the probable intent of Congress.


§6991e. Federal enforcement

(a) Compliance orders

(1) Except as provided in paragraph (2), whenever on the basis of any information, the Administrator determines that any person is in violation of any requirement of this subchapter, the Administrator may issue an order requiring compliance within a reasonable specified time period or the Administrator may commence a civil action in the United States district court in which the violation occurred for appropriate relief, including a temporary or permanent injunction.

(2) In the case of a violation of any requirement of this subchapter where such violation occurs in a State with a program approved under section 6991c of this title, the Administrator shall give notice to the State in which such violation has occurred prior to issuing an order or commencing a civil action under this section.

(3) If a violator fails to comply with an order under this subsection within the time specified in the order, he shall be liable for a civil penalty of not more than $25,000 for each day of continued noncompliance.

(b) Procedure

Any order issued under this section shall become final unless, no later than thirty days after the order is served, the person or persons named therein request a public hearing. Upon such request the Administrator shall promptly conduct a public hearing. In connection with any proceeding under this section the Administrator may issue subpoenas for the attendance and testimony of witnesses and the production of relevant papers, books, and documents, and may promulgate rules for discovery procedures.

(c) Contents of order

Any order issued under this section shall state with reasonable specificity the nature of the violation, specify a reasonable time for compliance, and assess a penalty, if any, which the Administrator determines is reasonable taking into account the seriousness of the violation and any good faith efforts to comply with the applicable requirements.

(d) Civil penalties

(1) Any owner who knowingly fails to notify or submits false information pursuant to section 6991a(a) of this title shall be subject to a civil penalty not to exceed $10,000 for each tank for which notification is not given or false information is submitted.

(2) Any owner or operator of an underground storage tank who fails to comply with—

(A) any requirement or standard promulgated by the Administrator under section 6991b of this title;

(B) any requirement or standard of a State program approved pursuant to section 6991c of this title;

(C) the provisions of section 6991b(g) of this title (entitled "Interim Prohibition"); or

(D) the requirements established in section 6991b(i) of this title;

(E) the delivery prohibition requirement established by section 6991k of this title,
shall be subject to a civil penalty not to exceed $10,000 for each tank for each day of violation. Any person making or accepting a delivery or deposit of a regulated substance to an underground storage tank at an ineligible facility in violation of section 6991k of this title shall also be subject to the same civil penalty for each day of such violation.

(e) Incentive for performance

Both of the following may be taken into account in determining the terms of a civil penalty under subsection (d):

1. The compliance history of an owner or operator in accordance with this subchapter or a program approved under section 6991c of this title.

2. Any other factor the Administrator considers appropriate.


EDITORIAL NOTES

AMENDMENTS

2005—Subsec. (d)(2). Pub. L. 109–58, §1527(b)(2), inserted at end "Any person making or accepting a delivery or deposit of a regulated substance to an underground storage tank at an ineligible facility in violation of section 6991k of this title shall also be subject to the same civil penalty for each day of such violation."

Subsec. (d)(2)(B). Pub. L. 109–58, §1530(d)(1), which directed amendment of subpar. (B) by striking out "or" at end, could not be executed because "or" did not appear subsequent to amendment by Pub. L. 109–58, §1524(c)(1). See below.

Pub. L. 109–58, §1524(c)(1), struck out "or" at end.


Subsec. (d)(2)(D). Pub. L. 109–58, §1530(d)(3), added subpar. (D) relating to requirements established in section 6991b(i) of this title.

Pub. L. 109–58, §1524(c)(2), added subpar. (D) relating to training requirements established by States pursuant to section 6991b of this title.


STATUTORY NOTES AND RELATED SUBSIDIARIES

EFFECTIVE DATE OF 2005 AMENDMENT

Amendment by section 1530(d) of Pub. L. 109–58 effective 18 months after Aug. 8, 2005, see section 1530(b) of Pub. L. 109–58, set out as a note under section 6991b of this title.

1. So in original. The word "or" probably should not appear.

2. So in original. Two subpars. (D) have been enacted.

3. So in original. The comma probably should be a semicolon.

§6991f. Federal facilities

(a) In general

Each department, agency, and instrumentality of the executive, legislative, and judicial branches of the Federal Government (1) having jurisdiction over any underground storage tank or underground storage tank system, or (2) engaged in any activity resulting, or which may result, in the installation, operation, management, or closure of any underground storage tank, release response activities related thereto, or in the delivery, acceptance, or deposit of any regulated substance to an underground storage tank or underground storage tank system shall be subject to, and comply with, all Federal, State, interstate, and local requirements, both substantive and procedural (including any requirement for permits or reporting or any provisions for injunctive relief and such sanctions as may be imposed by a court to enforce such relief), respecting underground storage tanks in the same manner, and to the same extent, as any person is subject to such requirements, including the payment of reasonable service charges. The Federal, State, interstate, and local substantive and procedural requirements referred to in this subsection include, but are not limited to, all administrative orders and all civil and administrative penalties and fines, regardless of whether such penalties or fines are punitive or coercive in nature or are imposed for isolated, intermittent, or continuing violations. The United States hereby expressly waives any immunity otherwise applicable to the United States with respect to any such substantive or procedural requirement (including, but not limited to, any injunctive relief, administrative order or civil or administrative penalty or fine referred to in the preceding sentence, or reasonable service charge). The reasonable service charges referred to in this subsection include, but are not limited to, fees or charges assessed in connection with the processing and issuance of permits, renewal of permits,
amendments to permits, review of plans, studies, and other documents, and inspection and monitoring of facilities, as well as any other nondiscriminatory charges that are assessed in connection with a Federal, State, interstate, or local underground storage tank regulatory program. Neither the United States, nor any agent, employee, or officer thereof, shall be immune or exempt from any process or sanction of any State or Federal Court with respect to the enforcement of any such injunctive relief. No agent, employee, or officer of the United States shall be personally liable for any civil penalty under any Federal, State, interstate, or local law concerning underground storage tanks with respect to any act or omission within the scope of the official duties of the agent, employee, or officer. An agent, employee, or officer of the United States shall be subject to any criminal sanction (including, but not limited to, any fine or imprisonment) under any Federal or State law concerning underground storage tanks, but no department, agency, or instrumentality of the executive, legislative, or judicial branch of the Federal Government shall be subject to any such sanction. The President may exempt any underground storage tank of any department, agency, or instrumentality in the executive branch from compliance with such a requirement if he determines it to be in the paramount interest of the United States to do so. No such exemption shall be granted due to lack of appropriation unless the President shall have specifically requested such appropriation as a part of the budgetary process and the Congress shall have failed to make available such requested appropriation. Any exemption shall be for a period not in excess of 1 year, but additional exemptions may be granted for periods not to exceed 1 year upon the President's making a new determination. The President shall report each January to the Congress all exemptions from the requirements of this section granted during the preceding calendar year, together with his reason for granting each such exemption.

(b) Review of and report on Federal underground storage tanks

(1) Review

Not later than 12 months after August 8, 2005, each Federal agency that owns or operates one or more underground storage tanks, or that manages land on which one or more underground storage tanks are located, shall submit to the Administrator, the Committee on Energy and Commerce of the United States House of Representatives, and the Committee on the Environment and Public Works of the Senate a compliance strategy report that—

(A) lists the location and owner of each underground storage tank described in this paragraph;
(B) lists all tanks that are not in compliance with this subchapter that are owned or operated by the Federal agency;
(C) specifies the date of the last inspection by a State or Federal inspector of each underground storage tank owned or operated by the agency;
(D) lists each violation of this subchapter respecting any underground storage tank owned or operated by the agency;
(E) describes the operator training that has been provided to the operator and other persons having primary daily on-site management responsibility for the operation and maintenance of underground storage tanks owned or operated by the agency; and
(F) describes the actions that have been and will be taken to ensure compliance for each underground storage tank identified under subparagraph (B).

(2) Not a safe harbor

This subsection does not relieve any person from any obligation or requirement under this subchapter.


EDITORIAL NOTES

AMENDMENTS

2005—Pub. L. 109–58 amended section generally. Prior to amendment, section required each department, agency, and instrumentality of the executive, legislative, and judicial branches of the Federal Government having jurisdiction over any underground storage tank to comply with all Federal, State, interstate, and local requirements, applicable to such tank, both substantive and procedural, in the same manner, and to the same extent, as any other person is subject to such requirements, including payment of reasonable service charges, provided that neither the United States, nor any agent, employee, or officer thereof, was immune or exempt from any process or sanction of any State or Federal court with respect to the enforcement of any such injunctive relief, and authorized the President to exempt any tank from compliance with such requirements upon certain determinations.

§6991g. State authority

Nothing in this subchapter shall preclude or deny any right of any State or political subdivision thereof to adopt or enforce any regulation, requirement, or standard of performance respecting underground storage tanks that is more stringent than a regulation, requirement, or standard of performance in effect under this subchapter or to impose any additional liability with respect to the release of regulated substances within such State or political subdivision.

EDITORIAL NOTES

AMENDMENTS

1986—Pub. L. 99–499 amended section generally. Prior to amendment, section read as follows: "Nothing in this subchapter shall preclude or deny any right of any State or political subdivision thereof to adopt or enforce any regulation, requirement or standard of performance respecting underground storage tanks that is more stringent than a regulation, requirement, or standard of performance in effect under this subchapter."

§6991h. Study of underground storage tanks

(a) Petroleum tanks

Not later than twelve months after November 8, 1984, the Administrator shall complete a study of underground storage tanks used for the storage of regulated substances defined in section 6991(7)(B) of this title.

(b) Other tanks

Not later than thirty-six months after November 8, 1984, the Administrator shall complete a study of all other underground storage tanks.

(c) Elements of studies

The studies under subsections (a) and (b) shall include an assessment of the ages, types (including methods of manufacture, coatings, protection systems, the compatibility of the construction materials and the installation methods) and locations (including the climate of the locations) of such tanks; soil conditions, water tables, and the hydrogeology of tank locations; the relationship between the foregoing factors and the likelihood of releases from underground storage tanks; the effectiveness and costs of inventory systems, tank testing, and leak detection systems; and such other factors as the Administrator deems appropriate.

(d) Farm and heating oil tanks

Not later than thirty-six months after November 8, 1984, the Administrator shall conduct a study regarding the tanks referred to in subparagraphs (A) and (B) of section 6991(10) of this title. Such study shall include estimates of the number and location of such tanks and an analysis of the extent to which there may be releases or threatened releases from such tanks into the environment.

(e) Reports

Upon completion of the studies authorized by this section, the Administrator shall submit reports to the President and to the Congress containing the results of the studies and recommendations respecting whether or not such tanks should be subject to the preceding provisions of this subchapter.

(f) Reimbursement

(1) If any owner or operator (excepting an agency, department, or instrumentality of the United States Government, a State or a political subdivision thereof) shall incur costs, including the loss of business opportunity, due to the closure or interruption of operation of an underground storage tank solely for the purpose of conducting studies authorized by this section, the Administrator shall provide such person fair and equitable reimbursement for such costs.

(2) All claims for reimbursement shall be filed with the Administrator not later than ninety days after the closure or interruption which gives rise to the claim.

(3) Reimbursements made under this section shall be from funds appropriated by the Congress pursuant to the authorization contained in section 6916(g) 1 of this title.

(4) For purposes of judicial review, a determination by the Administrator under this subsection shall be considered final agency action.


EDITORIAL NOTES

REFERENCES IN TEXT

Section 6916(g) of this title, referred to in subsec. (f)(3), probably means section 6916(f) of this title which authorizes appropriations for this subchapter. There is no subsec. (g) of section 6916.

AMENDMENTS

2005—Subsec. (a). Pub. L. 109–58, §1532(b)(3)(A), substituted "6991(7)(B)" for "6991(2)(B)". Subsec. (d). Pub. 109–58, §1532(b)(3)(B), substituted "subparagraphs (A) and (B) of section 6991(10)" for "section 6991(1)(A) and (B)".

1 See References in Text note below.
§6991i. Operator training

(a) Guidelines

(1) In general
Not later than 2 years after August 8, 2005, in consultation and cooperation with States and after public notice and opportunity for comment, the Administrator shall publish guidelines that specify training requirements for—
(A) persons having primary responsibility for on-site operation and maintenance of underground storage tank systems;
(B) persons having daily on-site responsibility for the operation and maintenance of underground storage tanks systems; and
(C) daily, on-site employees having primary responsibility for addressing emergencies presented by a spill or release from an underground storage tank system.

(2) Considerations
The guidelines described in paragraph (1) shall take into account—
(A) State training programs in existence as of the date of publication of the guidelines;
(B) training programs that are being employed by tank owners and tank operators as of August 8, 2005;
(C) the high turnover rate of tank operators and other personnel;
(D) the frequency of improvement in underground storage tank equipment technology;
(E) the nature of the businesses in which the tank operators are engaged;
(F) the substantial differences in the scope and length of training needed for the different classes of persons described in subparagraphs (A), (B), and (C) of paragraph (1); and
(G) such other factors as the Administrator determines to be necessary to carry out this section.

(b) State programs

(1) In general
Not later than 2 years after the date on which the Administrator publishes the guidelines under subsection (a)(1), each State that receives funding under this subchapter shall develop State-specific training requirements that are consistent with the guidelines developed under subsection (a)(1).

(2) Requirements
State requirements described in paragraph (1) shall—
(A) be consistent with subsection (a);
(B) be developed in cooperation with tank owners and tank operators;
(C) take into consideration training programs implemented by tank owners and tank operators as of August 8, 2005; and
(D) be appropriately communicated to tank owners and operators.

(3) Financial incentive
The Administrator may award to a State that develops and implements requirements described in paragraph (1), in addition to any funds that the State is entitled to receive under this subchapter, not more than $200,000, to be used to carry out the requirements.

(c) Training
All persons that are subject to the operator training requirements of subsection (a) shall—
(1) meet the training requirements developed under subsection (b); and
(2) repeat the applicable requirements developed under subsection (b), if the tank for which they have primary daily on-site management responsibilities is determined to be out of compliance with—
(A) a requirement or standard promulgated by the Administrator under section 6991b of this title; or
(B) a requirement or standard of a State program approved under section 6991c of this title.


EDITORIAL NOTES

REFERENCES IN TEXT
August 8, 2005, referred to in subsec. (b)(2)(C), was in the original "the date of enactment of this section", which was translated as meaning the date of enactment of Pub. L. 109–58, which amended this section generally, to reflect the probable intent of Congress.

AMENDMENTS
2005—Pub. L. 109–58 amended section catchline and text generally. Prior to amendment, text read as follows: "For authorization of appropriations to carry out this subchapter, see section 6916(g) of this title."
§6991j. Use of funds for release prevention and compliance

Funds made available under section 6991m(2)(D) of this title from the Trust Fund may be used to conduct inspections, issue orders, or bring actions under this subchapter—

(1) by a State, in accordance with a grant or cooperative agreement with the Administrator, of State regulations pertaining to underground storage tanks regulated under this subchapter; and

(2) by the Administrator, for tanks regulated under this subchapter (including under a State program approved under section 699 fc of this title).


1 So in original.

§6991k. Delivery prohibition

(a) Requirements

(1) Prohibition of delivery or deposit

Beginning 2 years after August 8, 2005, it shall be unlawful to deliver to, deposit into, or accept a regulated substance into an underground storage tank at a facility which has been identified by the Administrator or a State implementing agency to be ineligible for such delivery, deposit, or acceptance.

(2) Guidance

Within 1 year after August 8, 2005, the Administrator shall, in consultation with the States, underground storage tank owners, and product delivery industries, publish guidelines detailing the specific processes and procedures they will use to implement the provisions of this section. The processes and procedures include, at a minimum—

(A) the criteria for determining which underground storage tank facilities are ineligible for delivery, deposit, or acceptance of a regulated substance;

(B) the mechanisms for identifying which facilities are ineligible for delivery, deposit, or acceptance of a regulated substance to the underground storage tank owning and fuel delivery industries;

(C) the process for reclassifying ineligible facilities as eligible for delivery, deposit, or acceptance of a regulated substance;

(D) one or more processes for providing adequate notice to underground storage tank owners and operators and supplier industries that an underground storage tank has been determined to be ineligible for delivery, deposit, or acceptance of a regulated substance; and

(E) a delineation of, or a process for determining, the specified geographic areas subject to paragraph (4).

(3) Compliance

States that receive funding under this subchapter shall, at a minimum, comply with the processes and procedures published under paragraph (2).

(4) Consideration

(A) Rural and remote areas

Subject to subparagraph (B), the Administrator or a State may consider not treating an underground storage tank as ineligible for delivery, deposit, or acceptance of a regulated substance if such treatment would jeopardize the availability of, or access to, fuel in any rural and remote areas unless an urgent threat to public health, as determined by the Administrator, exists.

(B) Applicability

Subparagraph (A) shall apply only during the 180-day period following the date of a determination by the Administrator or the appropriate State under subparagraph (A).

(b) Effect on State authority

Nothing in this section shall affect or preempt the authority of a State to prohibit the delivery, deposit, or acceptance of a regulated substance to an underground storage tank.

(c) Defense to violation

A person shall not be in violation of subsection (a)(1) if the person has not been provided with notice pursuant to subsection (a)(2)(D) of the ineligibility of a facility for delivery, deposit, or acceptance of a regulated substance as determined by the Administrator or a State, as appropriate, under this section.


EDITORIAL NOTES
AMENDMENTS


§6991j. Tanks on tribal lands

(a) Strategy
The Administrator, in coordination with Indian tribes, shall, not later than 1 year after August 8, 2005, develop and implement a strategy—

(1) giving priority to releases that present the greatest threat to human health or the environment, to take necessary corrective action in response to releases from leaking underground storage tanks located wholly within the boundaries of—

(A) an Indian reservation; or
(B) any other area under the jurisdiction of an Indian tribe; and

(2) to implement and enforce requirements concerning underground storage tanks located wholly within the boundaries of—

(A) an Indian reservation; or
(B) any other area under the jurisdiction of an Indian tribe.

(b) Report
Not later than 2 years after August 8, 2005, the Administrator shall submit to Congress a report that summarizes the status of implementation and enforcement of this subchapter in areas located wholly within—

(1) the boundaries of Indian reservations; and
(2) any other areas under the jurisdiction of an Indian tribe.

The Administrator shall make the report under this subsection available to the public.

(c) Not a safe harbor
This section does not relieve any person from any obligation or requirement under this subchapter.

(d) State authority
Nothing in this section applies to any underground storage tank that is located in an area under the jurisdiction of a State, or that is subject to regulation by a State, as of August 8, 2005.


§6991m. Authorization of appropriations

There are authorized to be appropriated to the Administrator the following amounts:

(1) To carry out this subchapter (except sections 6991b(h), 6991d(c), 6991j, and 6991k of this title) $50,000,000 for each of fiscal years 2006 through 2011.
(2) From the Trust Fund—

(A) to carry out section 6991b(h) of this title (except section 6991b(h)(12) of this title) $200,000,000 for each of fiscal years 2006 through 2011;
(B) to carry out section 6991b(h)(12) of this title, $200,000,000 for each of fiscal years 2006 through 2011;
(C) to carry out sections 6991b(i), 6991c(f), and 6991d(c) of this title $100,000,000 for each of fiscal years 2006 through 2011; and
(D) to carry out sections 6991i, 6991j, 6991k, and 6991l of this title $55,000,000 for each of fiscal years 2006 through 2011.


EDITORIAL NOTES

AMENDMENTS


§6992. Scope of demonstration program for medical waste

(a) Covered States

The States within the demonstration program established under this subchapter for tracking medical wastes shall be New York, New Jersey, Connecticut, the States contiguous to the Great Lakes and any State included in the program through the petition procedure described in subsection (c), except for any of such States in which the Governor notifies the Administrator under subsection (b) that such State shall not be covered by the program.

(b) Opt out

(1) If the Governor of any State covered under subsection (a) which is not contiguous to the Atlantic Ocean notifies the Administrator that such State elects not to participate in the demonstration program, the Administrator shall remove such State from the program.

(2) If the Governor of any other State covered under subsection (a) notifies the Administrator that such State has implemented a medical waste tracking program that is no less stringent than the demonstration program under this subchapter and that such State elects not to participate in the demonstration program, the Administrator shall, if the Administrator determines that such State program is no less stringent than the demonstration program under this subchapter, remove such State from the demonstration program.

(3) Notifications under paragraphs (1) or (2) shall be submitted to the Administrator no later than 30 days after the promulgation of regulations implementing the demonstration program under this subchapter.

(c) Petition in

The Governor of any State may petition the Administrator to be included in the demonstration program and the Administrator may, in his discretion, include any such State. Such petition may not be made later than 30 days after promulgation of regulations establishing the demonstration program under this subchapter, and the Administrator shall determine whether to include the State within 30 days after receipt of the State's petition.

(d) Expiration of demonstration program

The demonstration program shall expire on the date 24 months after the effective date of the regulations under this subchapter.

(Pub. L. 89–272, title II, §11001, as added Pub. L. 100–582, §2(a), Nov. 1, 1988, 102 Stat. 2950.)

§6992a. Listing of medical wastes

(a) List

Not later than 6 months after November 1, 1988, the Administrator shall promulgate regulations listing the types of medical waste to be tracked under the demonstration program. Except as provided in subsection (b), such list shall include, but need not be limited to, each of the following types of solid waste:

(1) Cultures and stocks of infectious agents and associated biologicals, including cultures from medical and pathological laboratories, cultures and stocks of infectious agents from research and industrial laboratories, wastes from the production of biologicals, discarded live and attenuated vaccines, and culture dishes and devices used to transfer, inoculate, and mix cultures.

(2) Pathological wastes, including tissues, organs, and body parts that are removed during surgery or autopsy.

(3) Waste human blood and products of blood, including serum, plasma, and other blood components.

(4) Sharps that have been used in patient care or in medical, research, or industrial laboratories, including hypodermic needles, syringes, pasteur pipettes, broken glass, and scalpel blades.

(5) Contaminated animal carcasses, body parts, and bedding of animals that were exposed to infectious agents during research, production of biologicals, or testing of pharmaceuticals.

(6) Wastes from surgery or autopsy that were in contact with infectious agents, including soiled dressings, sponges, drapes, lavage tubes, drainage sets, underpads, and surgical gloves.

(7) Laboratory wastes from medical, pathological, pharmaceutical, or other research, commercial, or industrial laboratories that were in contact with infectious agents, including slides and cover slips, disposable gloves, laboratory coats, and aprons.

(8) Dialysis wastes that were in contact with the blood of patients undergoing hemodialysis, including contaminated disposable equipment and supplies such as tubing, filters, disposable sheets, towels, gloves, aprons, and laboratory coats.

(9) Discarded medical equipment and parts that were in contact with infectious agents.

(10) Biological waste and discarded materials contaminated with blood, excretion, exudates or secretion from human beings or animals who are isolated to protect others from communicable diseases.

(11) Such other waste material that results from the administration of medical care to a patient by a health care provider and is found by the Administrator to pose a threat to human health or the environment.

(b) Exclusions from list

The Administrator may exclude from the list under this section any categories or items described in paragraphs (6) through (10) of subsection (a) which he determines do not pose a substantial present or potential hazard to human health or the environment when improperly treated, stored, transported, disposed of, or otherwise managed.
§6992b. Tracking of medical waste

(a) Demonstration program
Not later than 6 months after November 1, 1988, the Administrator shall promulgate regulations establishing a program for the tracking of the medical waste listed in section 6992a of this title which is generated in a State subject to the demonstration program. The program shall (1) provide for tracking of the transportation of the waste from the generator to the disposal facility, except that waste that is incinerated need not be tracked after incineration, (2) include a system for providing the generator of the waste with assurance that the waste is received by the disposal facility, (3) use a uniform form for tracking in each of the demonstration States, and (4) include the following requirements:

(A) A requirement for segregation of the waste at the point of generation where practicable.

(B) A requirement for placement of the waste in containers that will protect waste handlers and the public from exposure.

(C) A requirement for appropriate labeling of containers of the waste.

(b) Small quantities
In the program under subsection (a), the Administrator may establish an exemption for generators of small quantities of medical waste listed under section 6992a of this title, except that the Administrator may not exempt from the program any person who, or facility that, generates 50 pounds or more of such waste in any calendar month.

(c) On-site incinicators
Concurrently with the promulgation of regulations under subsection (a), the Administrator shall promulgate a recordkeeping and reporting requirement for any generator in a demonstration State of medical waste listed in section 6992a of this title that (1) incinerates medical waste listed in section 6992a of this title on site and (2) does not track such waste under the regulations promulgated under subsection (a). Such requirement shall require the generator to report to the Administrator on the volume and types of medical waste listed in section 6992a of this title that the generator incinerated on site during the 6 months following the effective date of the requirements of this subsection.

(d) Type of medical waste and types of generators
For each of the requirements of this section, the regulations may vary for different types of medical waste and for different types of medical waste generators.

§6992c. Inspections

(a) Requirements for access
For purposes of developing or assisting in the development of any regulation or report under this subchapter or enforcing any provision of this subchapter, any person who generates, stores, treats, transports, disposes of, or otherwise handles or has handled medical waste shall, upon request of any officer, employee, or representative of the Environmental Protection Agency duly designated by the Administrator, furnish information relating to such waste, including any tracking forms required to be maintained under section 6992b of this title, conduct monitoring or testing, and permit such person at all reasonable times to have access to, and to copy, all records relating to such waste. For such purposes, such officers, employees, or representatives are authorized to—

(1) enter at reasonable times any establishment or other place where medical wastes are or have been generated, stored, treated, disposed of, or transported from;

(2) conduct monitoring or testing; and

(3) inspect and obtain samples from any person of any such wastes and samples of any containers or labeling for such wastes.

(b) Procedures
Each inspection under this section shall be commenced and completed with reasonable promptness. If the officer, employee, or representative obtains any samples, prior to leaving the premises he shall give to the owner, operator, or agent in charge a receipt describing the sample obtained and, if requested, a portion of each such sample equal in volume or weight to the portion retained if giving such an equal portion is feasible. If any analysis is made of such samples, a copy of the results of such analysis shall be furnished promptly to the owner, operator, or agent in charge of the premises concerned.

(c) Availability to public
The provisions of section 6927(b) of this title shall apply to records, reports, and information obtained under this section in the same manner and to the same extent as such provisions apply to records, reports, and information obtained under section 6927 of this title.


1 So in original. Probably should be “exudates.”
§6992d. Enforcement

(a) Compliance orders

(1) Violations

Whenever on the basis of any information the Administrator determines that any person has violated, or is in violation of, any requirement or prohibition in effect under this subchapter (including any requirement or prohibition in effect under regulations under this subchapter) (A) the Administrator may issue an order (i) assessing a civil penalty for any past or current violation, (ii) requiring compliance immediately or within a specified time period, or (iii) both, or (B) the Administrator may commence a civil action in the United States district court in the district in which the violation occurred for appropriate relief, including a temporary or permanent injunction. Any order issued pursuant to this subsection shall state with reasonable specificity the nature of the violation.

(2) Orders assessing penalties

Any penalty assessed in an order under this subsection shall not exceed $25,000 per day of noncompliance for each violation of a requirement or prohibition in effect under this subchapter. In assessing such a penalty, the Administrator shall take into account the seriousness of the violation and any good faith efforts to comply with applicable requirements.

(3) Public hearing

Any order issued under this subsection shall become final unless, not later than 30 days after issuance of the order, the persons named therein request a public hearing. Upon such request, the Administrator shall promptly conduct a public hearing. In connection with any proceeding under this section, the Administrator may issue subpoenas for the production of relevant papers, books, and documents, and may promulgate rules for discovery procedures.

(4) Violation of compliance orders

In the case of an order under this subsection requiring compliance with any requirement of or regulation under this subchapter, if a violator fails to take corrective action within the time specified in an order, the Administrator may assess a civil penalty of not more than $25,000 for each day of continued noncompliance with the order.

(b) Criminal penalties

Any person who—

(1) knowingly violates the requirements of or regulations under this subchapter;

(2) knowingly omits material information or makes any false material statement or representation in any label, record, report, or other document filed, maintained, or used for purposes of compliance with this subchapter or regulations thereunder; or

(3) knowingly generates, stores, treats, transports, disposes of, or otherwise handles any medical waste (whether such activity took place before or takes place after November 1, 1988) and who knowingly destroys, alters, conceals, or fails to file any record, report, or other document required to be maintained or filed for purposes of compliance with this subchapter or regulations thereunder

shall, upon conviction, be subject to a fine of not more than $50,000 for each day of violation, or imprisonment not to exceed 2 years (5 years in the case of a violation of paragraph (1)). If the conviction is for a violation committed after a first conviction of such person under this paragraph, the maximum punishment under the respective paragraph shall be doubled with respect to both fine and imprisonment.

(c) Knowing endangerment

Any person who knowingly violates any provision of subsection (b) who knows at that time that he thereby places another person in imminent danger of death or serious bodily injury, shall upon conviction be subject to a fine of not more than $250,000 or imprisonment for not more than 15 years, or both. A defendant that is an organization shall, upon conviction under this subsection, be subject to a fine of not more than $1,000,000. The terms of this paragraph shall be interpreted in accordance with the rules provided under section 6928(f) of this title.

(d) Civil penalties

Any person who violates any requirement of or regulation under this subchapter shall be liable to the United States for a civil penalty in an amount not to exceed $25,000 for each such violation. Each day of such violation shall, for purposes of this section, constitute a separate violation.

(e) Civil penalty policy

Civil penalties assessed by the United States or by the States under this subchapter shall be assessed in accordance with the Administrator’s "RCRA Civil Penalty Policy", as such policy may be amended from time to time.

(Pub. L. 89–272, title II, §11005, as added Pub. L. 100–582, §2(a), Nov. 1, 1988, 102 Stat. 2953.)

§6992e. Federal facilities

(a) In general

Each department, agency, and instrumentality of the executive, legislative, and judicial branches of the Federal Government in a demonstration State (1) having jurisdiction over any solid waste management facility or disposal site at
which medical waste is disposed of or otherwise handled, or (2) engaged in any activity resulting, or which may result, in the disposal, management, or handling of medical waste shall be subject to, and comply with, all Federal, State, interstate, and local requirements, both substantive and procedural (including any requirement for permits or reporting or any provisions for injunctive relief and such sanctions as may be imposed by a court to enforce such relief), respecting control and abatement of medical waste disposal and management in the same manner, and to the same extent, as any person is subject to such requirements, including the payment of reasonable service charges. The Federal, State, interstate, and local substantive and procedural requirements included in this subsection include, but are not limited to, all administrative orders, civil, criminal, and administrative penalties, and other sanctions, including injunctive relief, fines, and imprisonment. Neither the United States, nor any agent, employee, or officer thereof, shall be immune or exempt from any process or sanction of any State or Federal court with respect to the enforcement of any such order, penalty, or other sanction. For purposes of enforcing any such substantive or procedural requirement (including, but not limited to, any injunctive relief, administrative order, or civil, criminal, administrative penalty, or other sanction) against any such department, agency, or instrumentality, the United States hereby expressly waives any immunity otherwise applicable to the United States. The President may exempt any department, agency, or instrumentality in the executive branch from compliance with such a requirement if he determines it to be in the paramount interest of the United States to do so. No such exemption shall be granted due to lack of appropriation unless the President shall have specifically requested such appropriation as a part of the budgetary process and the Congress shall have failed to make available such requested appropriation. Any exemption shall be for a period not in excess of one year, but additional exemptions may be granted for periods not to exceed one year upon the President's making a new determination. The President shall report each January to the Congress all exemptions from the requirements of this section granted during the preceding calendar year, together with his reason for granting each such exemption.

(b) "Person" defined
For purposes of this chapter, the term "person" shall be treated as including each department, agency, and instrumentality of the United States.


STATUTORY NOTES AND RELATED SUBSIDIARIES

TERMINATION OF REPORTING REQUIREMENTS

For termination, effective May 15, 2000, of provisions in subsec. (a) of this section requiring the President to report annually to Congress, see section 3003 of Pub. L. 104–66, as amended, set out as a note under section 1113 of Title 31, Money and Finance, and the 10th item on page 20 of House Document No. 103–7.

§6992f. Relationship to State law

(a) State inspections and enforcement

A State may conduct inspections under 1 6992c of this title and take enforcement actions under section 6992d of this title against any person, including any person who has imported medical waste into a State in violation of the requirements of, or regulations under, this subchapter, to the same extent as the Administrator. At the time a State initiates an enforcement action under section 6992d of this title against any person, the State shall notify the Administrator in writing.

(b) Retention of State authority

Nothing in this subchapter shall—

1. preempt any State or local law; or
2. except as provided in subsection (c), otherwise affect any State or local law or the authority of any State or local government to adopt or enforce any State or local law.

(c) State forms

Any State or local law which requires submission of a tracking form from any person subject to this subchapter shall require that the form be identical in content and format to the form required under section 6992b of this title, except that a State may require the submission of other tracking information which is supplemental to the information required on the form required under section 6992b of this title through additional sheets or such other means as the State deems appropriate.

(Pub. L. 89–272, title II, §11007, as added Pub. L. 100–582, §2(a), Nov. 1, 1988, 102 Stat. 2955.)

1 So in original. Probably should be "under section".


§6992h. Health impacts report

Within 24 months after November 1, 1988, the Administrator of the Agency for Toxic Substances and Disease Registry shall prepare for Congress a report on the health effects of medical waste, including each of the following—

1. A description of the potential for infection or injury from the segregation, handling, storage, treatment, or disposal of medical wastes.

2. An estimate of the number of people injured or infected annually by sharps, and the nature and seriousness of those injuries or infections.

3. An estimate of the number of people infected annually by other means related to waste segregation, handling, storage, treatment, or disposal, and the nature and seriousness of those infections.

4. For diseases possibly spread by medical waste, including Acquired Immune Deficiency Syndrome and hepatitis B, an estimate of what percentage of the total number of cases nationally may be traceable to medical wastes.


EDITORIAL NOTES

PRIOR PROVISIONS


§6992i. General provisions

(a) Consultation

1. In promulgating regulations under this subchapter, the Administrator shall consult with the affected States and may consult with other interested parties.

2. The Administrator shall also consult with the International Joint Commission to determine how to monitor the disposal of medical waste emanating from Canada.

(b) Public comment

In the case of the regulations required by this subchapter to be promulgated within 9 months after November 1, 1988, the Administrator may promulgate such regulations in interim final form without prior opportunity for public comment, but the Administrator shall provide an opportunity for public comment on the interim final rule. The promulgation of such regulations shall not be subject to the Paperwork Reduction Act of 1980.1

(c) Relationship to subchapter III

Nothing in this subchapter shall affect the authority of the Administrator to regulate medical waste, including medical waste listed under section 6992a of this title, under subchapter III of this chapter.


EDITORIAL NOTES

REFERENCES IN TEXT


PRIOR PROVISIONS

A prior section 11009 of Pub. L. 89–272 was renumbered section 11008 and is classified to section 6992h of this title.

1. See References in Text note below.

§6992j. Effective date

The regulations promulgated under this subchapter shall take effect within 90 days after promulgation, except that, at the time of promulgation, the Administrator may provide for a shorter period prior to the effective date if he finds the regulated
community does not need 90 days to come into compliance.

**Editorial Notes**

**Prior Provisions**
A prior section 11010 of Pub. L. 89–272 was renumbered section 11009 and is classified to section 6992l of this title.

§6992k. Authorization of appropriations

There are authorized to be appropriated to the Administrator such sums as may be necessary for each of the fiscal years 1989 through 1991 for purposes of carrying out activities under this subchapter.

**Editorial Notes**

**Prior Provisions**
A prior section 11011 of Pub. L. 89–272 was renumbered section 11010 and is classified to section 6992j of this title.
49-104. Powers and duties of the department and director

A. The department shall:

1. Formulate policies, plans and programs to implement this title to protect the environment.

2. Stimulate and encourage all local, state, regional and federal governmental agencies and all private persons and enterprises that have similar and related objectives and purposes, cooperate with those agencies, persons and enterprises and correlate department plans, programs and operations with those of the agencies, persons and enterprises.

3. Conduct research on its own initiative or at the request of the governor, the legislature or state or local agencies pertaining to any department objectives.

4. Provide information and advice on request of any local, state or federal agencies and private persons and business enterprises on matters within the scope of the department.

5. Consult with and make recommendations to the governor and the legislature on all matters concerning department objectives.

6. Promote and coordinate the management of air resources to ensure their protection, enhancement and balanced utilization consistent with the environmental policy of this state.

7. Promote and coordinate the protection and enhancement of the quality of water resources consistent with the environmental policy of this state.

8. Encourage industrial, commercial, residential and community development that maximizes environmental benefits and minimizes the effects of less desirable environmental conditions.

9. Ensure the preservation and enhancement of natural beauty and man-made scenic qualities.

10. Provide for the prevention and abatement of all water and air pollution including that related to particulates, gases, dust, vapors, noise, radiation, odor, nutrients and heated liquids in accordance with article 3 of this chapter and chapters 2 and 3 of this title.

11. Promote and recommend methods for the recovery, recycling and reuse or, if recycling is not possible, the disposal of solid wastes consistent with sound health, scenic and environmental quality policies. The department shall report annually on its revenues and expenditures relating to the solid and hazardous waste programs overseen or administered by the department.

12. Prevent pollution through the regulation of the storage, handling and transportation of solids, liquids and gases that may cause or contribute to pollution.

13. Promote the restoration and reclamation of degraded or despoiled areas and natural resources.

14. Participate in the state civil defense program and develop the necessary organization and facilities to meet wartime or other disasters.

15. Cooperate with the Arizona-Mexico commission in the governor's office and with researchers at universities in this state to collect data and conduct projects in the United States and Mexico on issues that are within the scope of the department's duties and that relate to quality of life, trade and economic development in this state in a manner that will help the Arizona-Mexico commission to assess and enhance the economic competitiveness of this state and of the Arizona-Mexico region.

16. Unless specifically authorized by the legislature, ensure that state laws, rules, standards, permits, variances and orders are adopted and construed to be consistent with and no more stringent than the corresponding federal law that addresses the same subject matter. This paragraph does not adversely affect standards adopted by an Indian tribe under federal law.
17. Provide administrative and staff support for the oil and gas conservation commission.

B. The department, through the director, shall:

1. Contract for the services of outside advisers, consultants and aides reasonably necessary or desirable to enable the department to adequately perform its duties.

2. Contract and incur obligations reasonably necessary or desirable within the general scope of department activities and operations to enable the department to adequately perform its duties.

3. Utilize any medium of communication, publication and exhibition when disseminating information, advertising and publicity in any field of its purposes, objectives or duties.

4. Adopt procedural rules that are necessary to implement the authority granted under this title, but that are not inconsistent with other provisions of this title.

5. Contract with other agencies, including laboratories, in furthering any department program.

6. Use monies, facilities or services to provide matching contributions under federal or other programs that further the objectives and programs of the department.

7. Accept gifts, grants, matching monies or direct payments from public or private agencies or private persons and enterprises for department services and publications and to conduct programs that are consistent with the general purposes and objectives of this chapter. Monies received pursuant to this paragraph shall be deposited in the department fund corresponding to the service, publication or program provided.

8. Provide for the examination of any premises if the director has reasonable cause to believe that a violation of any environmental law or rule exists or is being committed on the premises. The director shall give the owner or operator the opportunity for its representative to accompany the director on an examination of those premises. Within forty-five days after the date of the examination, the department shall provide to the owner or operator a copy of any report produced as a result of any examination of the premises.

9. Supervise sanitary engineering facilities and projects in this state, authority for which is vested in the department, and own or lease land on which sanitary engineering facilities are located, and operate the facilities, if the director determines that owning, leasing or operating is necessary for the public health, safety or welfare.

10. Adopt and enforce rules relating to approving design documents for constructing, improving and operating sanitary engineering and other facilities for disposing of solid, liquid or gaseous deleterious matter.

11. Define and prescribe reasonably necessary rules regarding the water supply, sewage disposal and garbage collection and disposal for subdivisions. The rules shall:

(a) Provide for minimum sanitary facilities to be installed in the subdivision and may require that water systems plan for future needs and be of adequate size and capacity to deliver specified minimum quantities of drinking water and to treat all sewage.

(b) Provide that the design documents showing or describing the water supply, sewage disposal and garbage collection facilities be submitted with a fee to the department for review and that no lots in any subdivision be offered for sale before compliance with the standards and rules has been demonstrated by approval of the design documents by the department.

12. Prescribe reasonably necessary measures to prevent pollution of water used in public or semipublic swimming pools and bathing places and to prevent deleterious conditions at those places. The rules shall prescribe minimum standards for the design of and for sanitary conditions at any public or semipublic swimming pool or bathing place and provide for abatement as public nuisances of premises and facilities that do not comply with the minimum standards. The rules shall be developed in cooperation with the director of the department of health services and shall be consistent with the rules adopted by the director of the department of health services pursuant to section 36-136, subsection 1, paragraph 10.
13. Prescribe reasonable rules regarding sewage collection, treatment, disposal and reclamation systems to prevent the transmission of sewage borne or insect borne diseases. The rules shall:

(a) Prescribe minimum standards for the design of sewage collection systems and treatment, disposal and reclamation systems and for operating the systems.

(b) Provide for inspecting the premises, systems and installations and for abating as a public nuisance any collection system, process, treatment plant, disposal system or reclamation system that does not comply with the minimum standards.

(c) Require that design documents for all sewage collection systems, sewage collection system extensions, treatment plants, processes, devices, equipment, disposal systems, on-site wastewater treatment facilities and reclamation systems be submitted with a fee for review to the department and may require that the design documents anticipate and provide for future sewage treatment needs.

(d) Require that construction, reconstruction, installation or initiation of any sewage collection system, sewage collection system extension, treatment plant, process, device, equipment, disposal system, on-site wastewater treatment facility or reclamation system conform with applicable requirements.

14. Prescribe reasonably necessary rules regarding excreta storage, handling, treatment, transportation and disposal. The rules may:

(a) Prescribe minimum standards for human excreta storage, handling, treatment, transportation and disposal and shall provide for inspection of premises, processes and vehicles and for abating as public nuisances any premises, processes or vehicles that do not comply with the minimum standards.

(b) Provide that vehicles transporting human excreta from privies, septic tanks, cesspools and other treatment processes shall be licensed by the department subject to compliance with the rules. The department may require payment of a fee as a condition of licensure. The department may establish by rule a fee as a condition of licensure, including a maximum fee. As part of the rulemaking process, there must be public notice and comment and a review of the rule by the joint legislative budget committee. The department shall not increase that fee by rule without specific statutory authority for the increase. The fees shall be deposited, pursuant to sections 35-146 and 35-147, in the solid waste fund established by section 49-881.

15. Perform the responsibilities of implementing and maintaining a data automation management system to support the reporting requirements of title III of the superfund amendments and reauthorization act of 1986 (P.L. 99-499) and article 2 of this chapter.

16. Approve remediation levels pursuant to article 4 of this chapter.

17. Establish or revise fees by rule pursuant to the authority granted under title 44, chapter 9, article 8 and chapters 4 and 5 of this title for the department to adequately perform its duties. All fees shall be fairly assessed and impose the least burden and cost to the parties subject to the fees. In establishing or revising fees, the department shall base the fees on:

(a) The direct and indirect costs of the department's relevant duties, including employee salaries and benefits, professional and outside services, equipment, in-state travel and other necessary operational expenses directly related to issuing licenses as defined in title 41, chapter 6 and enforcing the requirements of the applicable regulatory program.

(b) The availability of other funds for the duties performed.

(c) The impact of the fees on the parties subject to the fees.

(d) The fees charged for similar duties performed by the department, other agencies and the private sector.

18. Appoint a person with a background in oil and gas conservation to act on behalf of the oil and gas conservation commission and administer and enforce the applicable provisions of title 27, chapter 4 relating to the oil and gas
conservation commission.

C. The department may:

1. Charge fees to cover the costs of all permits and inspections it performs to ensure compliance with rules adopted under section 49-203, except that state agencies are exempt from paying those fees that are not associated with the dredge and fill permit program established pursuant to chapter 2, article 3.2 of this title. For services provided under the dredge and fill permit program, a state agency shall pay either:

(a) The fees established by the department under the dredge and fill permit program.

(b) The reasonable cost of services provided by the department pursuant to an interagency service agreement.

2. Monies collected pursuant to this subsection shall be deposited, pursuant to sections 35-146 and 35-147, in the water quality fee fund established by section 49-210.

3. Contract with private consultants for the purposes of assisting the department in reviewing applications for licenses, permits or other authorizations to determine whether an applicant meets the criteria for issuance of the license, permit or other authorization. If the department contracts with a consultant under this paragraph, an applicant may request that the department expedite the application review by requesting that the department use the services of the consultant and by agreeing to pay the department the costs of the consultant's services. Notwithstanding any other law, monies paid by applicants for expedited reviews pursuant to this paragraph are appropriated to the department for use in paying consultants for services.

D. The director may:

1. If the director has reasonable cause to believe that a violation of any environmental law or rule exists or is being committed, inspect any person or property in transit through this state and any vehicle in which the person or property is being transported and detain or disinfect the person, property or vehicle as reasonably necessary to protect the environment if a violation exists.

2. Authorize in writing any qualified officer or employee in the department to perform any act that the director is authorized or required to do by law.
49-203. **Powers and duties of the director and department**

A. The director shall:

1. Adopt, by rule, water quality standards in the form and subject to the considerations prescribed by article 2 of this chapter.

2. Adopt, by rule, a permit program for WOTUS that is consistent with but not more stringent than the requirements of the clean water act for the point source discharge of any pollutant or combination of pollutants into WOTUS. The program and the rules shall be sufficient to enable this state to administer the permit program identified in section 402(b) of the clean water act, including the sewage sludge requirements of section 405 of the clean water act and as prescribed by article 3.1 of this chapter.

3. Apply the program and rules authorized under paragraph 2 of this subsection to point source discharges to non-WOTUS protected surface waters, consistent with section 49-255.04, which establishes the program components and rules that do not apply to non-WOTUS protected surface waters. The following are exempt from the non-WOTUS protected surface waters point source discharge program:

   (a) Discharges to a non-WOTUS protected surface water incidental to a recharge project.

   (b) Established or ongoing farming, ranching and silviculture activities such as plowing, seeding, cultivating, minor drainage or harvesting for the production of food, fiber or forest products or upland soil and water conservation practices.

   (c) Maintenance but not construction of drainage ditches.

   (d) Construction and maintenance of irrigation ditches.

   (e) Maintenance of structures such as dams, dikes and levees.

4. Adopt, by rule, a program to control nonpoint source discharges of any pollutant or combination of pollutants into WOTUS.

5. Adopt, by rule, an aquifer protection permit program to control discharges of any pollutant or combination of pollutants that are reaching or may with a reasonable probability reach an aquifer. The permit program shall be as prescribed by article 3 of this chapter.

6. Adopt, by rule, the permit program for underground injection control described in the safe drinking water act.

7. Adopt, by rule, technical standards for conveyances of reclaimed water and a permit program for the direct reuse of reclaimed water.

8. Adopt, by rule or as permit conditions, discharge limitations, best management practice standards, new source performance standards, toxic and pretreatment standards and other standards and conditions as reasonable and necessary to carry out the permit programs and regulatory duties described in paragraphs 2 through 6 of this subsection.

9. Assess and collect fees to revoke, issue, deny, modify or suspend permits issued pursuant to this chapter and to process permit applications. The director may also assess and collect costs reasonably necessary if the director must conduct sampling or monitoring relating to a facility because the owner or operator of the facility has refused or failed to do so on order by the director. The director shall set fees that are reasonably related to the department's costs of providing the service for which the fee is charged. Monies collected from aquifer protection permit fees and from Arizona pollutant discharge elimination system permit fees shall be deposited, pursuant to sections 35-146 and 35-147, in the water quality fee fund established by section 49-210. Monies from other permit fees shall be deposited, pursuant to sections 35-146 and 35-147, in the water quality fee fund unless otherwise provided by law. Monies paid by an applicant for review by consultants for the department pursuant to section 49-241.02, subsection D shall be deposited, pursuant to sections 35-146 and 35-147, in the water quality fee fund established by section 49-210. State
49-257.01. Underground injection control permit program; permits; prohibitions; rules

A. The department shall establish an underground injection control permit program, including a permitting process.

B. An underground injection is prohibited unless the underground injection is into a well authorized by rule or unless it is authorized by a permit issued pursuant to this article or by a permit issued by the United States environmental protection agency. A person may not construct any well that is required to have a permit until the person is issued the permit or is otherwise authorized under the permit program established pursuant to this article or federal law.

C. Any underground injection activity is prohibited if it is conducted in a manner that allows the movement of fluid containing any contaminant into underground sources of drinking water and if the presence of that contaminant may endanger underground sources of drinking water.

D. The director shall adopt rules for the purposes of establishing and operating the underground injection control permit program pursuant to this article. Rules adopted by the director shall meet the minimum requirements prescribed by 42 United States Code section 300h(b).
date of the installment payment, the Department may suspend
the licensee's authorization to make installment payments and
require the licensee to pay all pending fees.

G. If a licensee fails to submit an installment payment within 30
days after its due date, the Department may initiate action
under A.R.S. § 36-495.09.

Historical Note
Adopted effective August 16, 1985 (Supp. 85-4). Former
Section R9-14-608 repealed, new Section R9-14-608
adopted effective December 20, 1991 (Supp. 91-4). Sec-
tion citation corrected in preceding historical note; Sec-
tion R9-14-608 renumbered to R9-14-609; new Section
R9-14-608 renumbered from R9-14-607 and amended
effective June 20, 1997 (Supp. 97-2). Former Section R9-
14-608 renumbered to R9-14-610; new Section R9-14-
608 adopted by final rulemaking at 7 A.A.R. 184, effec-
tive December 15, 2000 (Supp. 00-4). Amended by final
rulemaking at 12 A.A.R. 4798, effective December 5,
2006 (Supp. 06-4). Amended by final rulemaking at 22
A.A.R. 2683, effective October 1, 2016 (Supp. 16-3).

R9-14-609. Proficiency Testing
A. At least once in each 12-month period, and more often if
requested by the Department, each licensee or applicant shall
have at least one laboratory analyst participate in proficiency
testing provided by the Department, the EPA, or a proficiency
testing service that:
1. Includes at least one proficiency testing sample for each
parameter for which an initial license or renewal license
has been issued or requested and for which proficiency
testing samples are available;
2. Demonstrates the laboratory analyst's proficiency in compliance
testing of:
   a. Applicable drinking water parameters in Table
       6.2.A, if:
      i. The applicant plans to perform compliance test-
         ing of drinking water parameters, or
      ii. The licensee is approved to perform compli-
          iance testing of drinking water parameters; and
   b. Applicable parameters other than drinking water
      parameters, if:
      i. The applicant plans to perform compliance test-
         ing of the parameters, or
      ii. The licensee is approved to perform compli-
          ance testing of the parameters; and
3. If the licensee or applicant has been issued or has
   requested a license that includes approval for testing
   an analyte by different methods, may use the same
   proficiency testing sample for each method.

B. To demonstrate proficiency for a parameter, test results
reported for the parameter shall be within acceptance limits
established for:
1. Drinking water inorganic chemistry parameters by the
   EPA, as provided in 40 CFR 141.23;
2. Drinking water organic chemistry parameters by the EPA,
   as provided in 40 CFR 141.24;
3. Lead or copper in drinking water by the EPA, as provided
   in 40 CFR 141.89;
4. Disinfection byproducts in drinking water by the EPA, as
   provided in 40 CFR 141.131; and
5. Other parameters by the EPA or the proficiency testing
   service.

C. A licensee or applicant shall ensure that:
1. Each proficiency testing sample accepted at the licensee's
   or applicant's laboratory is analyzed at the licensee's or
   applicant's laboratory;
2. Each proficiency testing sample is tested within the maxi-
   mum holding times allowed for its parameter, using the
   same procedures and techniques employed for routine
   sample testing, and calculating the holding time from the
   time the sample seal is broken or as indicated in the
   instructions accompanying the sample;
3. A proficiency testing service provides proficiency testing
   results directly to the Department;
4. If proficiency testing is provided by the Department, the
   licensee or applicant submits to the Department payment
   for the actual costs of the proficiency testing materials; and
5. If proficiency testing is not provided by the Department
   or the EPA, the licensee or applicant selects a proficiency
   testing service and contracts with and pays the pro-
   ficiency testing service directly for proficiency testing.

D. The Department may submit blind proficiency testing samples
to a licensed laboratory at any time during the license period.

Historical Note
Adopted effective December 20, 1991 (Supp. 91-4). For-
ter Section R9-14-609 renumbered to R9-14-610; new
Section R9-14-609 renumbered from R9-14-608 and amended
effective June 20, 1997 (Supp. 97-2). Former Section R9-
14-609 renumbered to R9-14-611; new Section R9-
14-609 renumbered to R9-14-607 and amended by final rule-
making at 7 A.A.R. 184, effective December 15, 2000 (Supp.
00-4). Amended by final rulemaking at 12 A.A.R. 4798, effec-
tive December 5, 2006 (Supp. 06-4). Amended by final rule-
making at 22 A.A.R. 2683, effective October 1, 2016 (Supp.
16-3).

R9-14-610. Approved Methods and References
A. A licensee or applicant shall ensure that compliance testing is
performed according to an approved method and may use
method alterations approved by the Department under subsec-
tion (C).
B. The approved methods listed by parameter in Tables 6.2.A
through 6.2.D are found in the following references, which are
incorporated by reference with the modifications described
below; are on file with the Department; include no future edi-
tions or amendments; and are available as provided below.

Table 1. Key Reference
A Environmental Monitoring and Support Laboratory–Cincin-
nati, EPA, Pub. No. EPA/600/4-79-020 (600476920), Methods
for Chemical Analysis of Water and Wastes (rev. March 1983),
or by calling (800) 490-9198.
A1 Environmental Monitoring and Support Laboratory–Cincin-
nati, EPA, Pub. No. EPA/600/R-94/111 (600R94111), Methods
for the Determination of Metals in Environmental Samples:
EPA/html/pubs/pubtitle.html or by calling (800) 490-9198.
A2 Environmental Monitoring Systems Laboratory, EPA, Pub.
No. EPA/600/R-93/100 (600R93100), Methods for the Deter-
mination of Inorganic Substances in Environmental Samples
pubs/pubtitle.html or by calling (800) 490-9198.
A3 Technicon Industrial Systems, Industrial Method No. 380-
75WE, Fluoride in Water and Wastewater (February 1976),
available from Mequon Technology Center, 10520-C North
Baehr Road, Mequon, WI 53092 or by calling (262) 241-7900.
A4 National Service Center for Environmental Publications
(NSCEP), Online EPA Publication Title List available at http://
nepis.epa.gov/EPA/html/pubs/pubtitle.html or by calling
(800) 490-9198. Publication numbers for the methods that are listed under this reference are:
1. Method 317.0, Rev 2.0, July 2001, EPA 815-B-01-001
3. Method 326.0, Rev 1.0, June 2000, EPA 815-R-03-007
4. Method 327.0, Rev 1.1, May 2005, EPA 815-R-05-008
5. Method 331.0, Rev 1.0, January 2005, EPA 815-R-05-007
6. Method 515.4, Rev 1.0, April 2000, EPA 800-R-00-016
7. Method 527, Rev 1.0, April 2005, EPA 815-R-05-005
9. Method 552.3, Rev 1.0, July 2003, EPA 815-B-03-002
17. Method 1631, Rev E, August 2002, EPA 821-R-02-019
18. Method 557, Version 1.0, September 2009, 815-B-09-012
25. Method 1638, April 1995, EPA 821-R-95-031
27. Method 1627, December 2011, Acid Mine Drainage, EPA 821-R-09-002
28. PCBs in Transformer Fluid and Oils, September 1982, EPA 600/4-81-045
29. Asbestos in Bulk Samples, December 1982, EPA 600/M4-82-020
30. Method 100.1, Asbestos Fibers, September 1993, EPA 600/M4-83-045
31. Method 100.2, Asbestos Structures over 10m in Length, EPA/600/R-94/134
32. Method 1622, Cryptosporidium in Water, December 2005, EPA 815-R-05-001
33. Method 1623.1, Cryptosporidium and Giardia in Water, January 2012, EPA 816-R-12-001
34. Method 1682, Salmonella in Sewage Sludge, July 2006, EPA 821-R-06-004
35. Method 1605, Aeromonas in Finished Water by MF, October 2001, EPA 821/R-01/034
36. Method 1604, Total coliforms and E.coli by MF, September 2002, EPA-821-02-024
37. Method 1601, Coliphage, April 2001, EPA 821-R-01-030
38. Method 1602, Coliphage, April 2001, EPA 821-R-01-029
40. Method 537, September 2009, EPA/600/R-08/002
41. Method 502.0, September 2009, EPA-815-B-09-014
42. Method 539, November 2010, EPA 815-B-10-001
43. Method 218.7, November 2011, EPA 815-R-11-005
44. Method 334.0, September 2009, EPA 815-B-09-013
A5 EPA Pub. No. EPA 815-R-00-014 (815R00014), Volume 1, Methods for the Determination of Organic and Inorganic Compounds in Drinking Water (August 2000), available at http://heplis.epa.gov/EPA/html/Pubs/pubtitle.html or by calling (800) 490-9198, modified to require the following when testing for bromate using method 321.8: Samples must be preserved at the time of sampling with 50 mg ethylendiamine (EDA)/L of sample and must be analyzed within 28 days. Ion chromatography and post-column reaction or IC/ICP-MS must be used for monitoring of bromate for purposes of demonstrating eligibility of reduced monitoring, as prescribed in 40 CFR 141.132(b)(3)(ii).
A6 Lachat Instruments, QuikChem Method 10-204-00-1-X, Digestion and Distillation of Total Cyanide in Drinking and Wastewaters Using MICRO DIST and Determination of Cyanide by Flow Injection Analysis (rev. 2.1 November 30, 2000), available from Lachat Instruments, 6645 W. Mill Rd., Milwauk ee, WI 53218-0204.
C American Public Health Association et al., Standard Methods for the Examination of Water and Wastewater (22nd edition 2012), available from American Public Health Association, 800 I Street, NW, Washington, DC 20001 or at http://www.standardmethods.org, with the approved method having the same last two digits in the method number as the year in which the method was approved by the Standard Methods Committee, as published for the individual methods in the 22nd edition.
C3 Hach Method 10760, Luminescence Measurement of Dissolved Oxygen in Water and Wastewater and for Use in the Determination of BOD5 and cBOD5, Revision 1.2, October 2011, available from Hach Company, P.O. Box 389, Loveland, CO 80539-0389.


O1 Compendium of Methods for the Determination of Inorganic Compounds in Ambient Air, Compendium Method 10-3,4.
Title 9, Ch. 14  Arizona Administrative Code  9 A.A.C. 14

Department of Health Services - Laboratories


P3 Charles P. Gerber, University of Arizona, U of A 2000: Ascaris lumbricoides in Water (1999), available from the University of Arizona, Microbial Analytical Laboratory, Building No. 90, Rm. 406, Tucson, Arizona 85721.


Y Method OIA-1677-09, Available Cyanide by Ligand Exchange and Flow Injection Analysis (FIA), 2010, available from ALPKEM, a Division of OI Analytical, 151 Graham Road, College Station, TX 77845 or by calling (979) 690-1711.

Z IDEXX Colilert*-18 and Quanti-Trap* Test Method for the Detection of Fecal Coliforms in Wastewater, available from IDEXX Laboratories, Inc., One IDEXX Dr., Westbrook, ME 04092 or by calling 1-800-548-6733.


Z6 m-ColiBlue 24 Test, Total Coliforms and E. coli Membrane Filtration Method with m-ColiBlue 24 Broth, Method No. 10029, Revision 2, August 17, 1999, available at Hach Company, P.O. Box 389, Loveland, Colorado 80539-0389 or by calling 1-800-227-4224.

Z7 Colisure Test, IDEXX Laboratories Inc., February 28, 1994, available from IDEXX Laboratories, Inc., One IDEXX Dr, Westbrook, ME 04092 or by calling 1-800-548-6733.


Z9 OIA Analytical/ALPKEM, Nitrogen, Total Kjeldahl, Method PAL-DK01 (Block Digestion, Steam Distillation, Titrimetric
Detection) (rev. December 22, 1994), available from OI Analytical/ALPKEM, P.O. Box 9010, College Station, TX 77842.

Z10 OI Analytical/ALPKEM, Nitrogen, Total Kjeldahl, Method PAI-DK02 (Block Digestion, Steam Distillation, Colorimetric Detection) (rev. December 22, 1994), available from OI Analytical/ALPKEM, P.O. Box 9010, College Station, TX 77842.

Z11 OI Analytical/ALPKEM, Nitrogen, Total Kjeldahl, Method PAI-DK03 (Block Digestion, Automated FIA Gas Diffusion) (rev. December 22, 1994), available from OI Analytical/ALPKEM, P.O. Box 9010, College Station, TX 77842.


C. If an approved method is not available for a particular parameter, or a method or method alteration that is not an approved method is required or authorized to be used for a particular parameter by the EPA, ADEQ, the U.S. Food and Drug Administration, or 9 A.A.C. 8, the Department may approve an alternate method or method alteration by submitting to the Department:

1. For an alternate method or method alteration required or authorized by the EPA, ADEQ, the U.S. Food and Drug Administration, or 9 A.A.C. 8, the following information:
   a. The name, address, and telephone number of the laboratory for which approval of the alternate method or method alteration is requested;
   b. Identification of the parameter for which approval of the alternate method or method alteration is requested; and
   c. Written justification for using the alternate method or method alteration for which approval is requested, including the following:
      i. A detailed description of the alternate method or method alteration;
      ii. References to published or other studies confirming the general applicability of the alternate method or method alteration to the parameter for which its use is intended;
      iii. Reference to the EPA, ADEQ, U.S. Food and Drug Administration, or 9 A.A.C. 8 requirement to test the parameter; and
      iv. Data that demonstrate the performance of the alternate method or method alteration in terms of accuracy, precision, reliability, ruggedness, ease of use, and ability to achieve a detection limit appropriate for the proposed use of the alternate method or method alteration; and
   d. A detailed description of the alternate method or method alteration approved, including:
      i. The name, address, and telephone number of the laboratory for which approval of the alternate method or method alteration is requested;
      ii. Identification of the parameter for which approval of the alternate method or method alteration is requested; and
      iii. Written justification for using the alternate method or method alteration for which approval is requested, including the following:
         a. A detailed description of the alternate method or method alteration;
         b. Identification of the parameter for which approval of the alternate method or method alteration is requested; and
         c. Written justification for using the alternate method or method alteration for which approval is requested, including:
            i. A detailed description of the alternate method or method alteration;
            ii. References to published or other studies confirming the general applicability of the alternate method or method alteration to the parameter for which its use is intended;
            iii. Reference to the EPA, ADEQ, U.S. Food and Drug Administration, or 9 A.A.C. 8 requirement to test the parameter; and
   e. An alternate method or method alteration approval fee of $50, payable to the Arizona Department of Health Services, in the form of a certified check, business check, money order, or credit card payment.

D. Before approving an alternate method or method alteration that is not required or authorized by the EPA, ADEQ, the U.S. Food and Drug Administration, or 9 A.A.C. 8, the Department may require that the alternate method or method alteration be performed by a laboratory designated by the Department to verify that, using the parameter for which its use is intended, the alternate method or method alteration produces data that comply with subsection (C)(2)(d)(iv).

E. The Department may approve an alternate method or method alteration if the Department determines:

1. One of the following:
   a. Use of the alternate method or method alteration is required or authorized by the EPA, ADEQ, the U.S. Food and Drug Administration, or 9 A.A.C. 8.
   b. Use of the alternate method or method alteration is justified as described in subsection (C)(2)(d);
   c. If the alternate method or method alteration pertains to drinking water compliance testing, the EPA concurs that the alternate method or method alteration may be used.

F. The Department may rescind the approval of an alternate method or method alteration approved by the Department according to subsection (E), if, as applicable:

1. For an alternate method or method alteration approved under subsection (C)(1), the alternate method or method alteration is no longer required or authorized by the EPA, ADEQ, the U.S. Food and Drug Administration, or 9 A.A.C. 8;
2. For an alternate method or method alteration requested under subsection (C)(2), an approved method becomes available for the particular parameter.

Historical Note
Adopted effective December 20, 1991 (Supp. 91-4). Former Section R9-14-610 renumbered to R9-14-611; new Section R9-14-610 renumbered from R9-14-609 and amended effective June 20, 1997 (Supp. 97-2). Former Section R9-14-610 renumbered to R9-14-612; new Section R9-14-610 renumbered from R9-14-608 and amended by final rulemaking at 7 A.A.R. 184, effective December 15, 2000 (Supp. 00-4). Amended by final rulemaking at 10 A.A.R. 152, effective April 6, 2004 (Supp. 04-2). Amended by final rulemaking at 12 A.A.R.
4798, effective December 5, 2006 (Supp. 06-4). Amended by final rulemaking at 22 A.A.R. 2683, effective October 1, 2016 (Supp. 16-3).

R9-14-611. Compliance Testing for Drinking Water Parameters
A. A licensee for a laboratory at which compliance testing for drinking water parameters is performed, including compliance testing performed according to 9 A.A.C. 8, Article 2, shall ensure that:
1. Except as provided in subsection (B), the laboratory is operated in compliance with the guidelines in Key References D4, D5, and D6, excluding the requirements for laboratory personnel education and experience;
2. Each sample for Arizona drinking water parameter compliance testing is analyzed:
   a. Using an approved method:
      i. Listed in Table 6.2.A; or
      ii. Approved by the Department for compliance testing for drinking water parameters under R9-14-610(E); and
   b. If the approved method is from Key Reference C, following the quality control guidelines in Key Reference C associated with the approved method; and
3. If the licensee requests approval to perform testing for vinyl chloride, the licensee also obtains approval to perform testing for each of the analytes listed in 40 CFR 141.61(a)(2)(21).
B. If an approved method does not include a specific quality control guideline, a licensee for a laboratory at which compliance testing for drinking water parameters is performed shall ensure that the laboratory is operated in compliance with the guidelines in Key References C4, D7, D9, D10, D11, D12, D13, or D14, as applicable.

Historical Note
Adopted effective December 20, 1991 (Supp. 91-4). Former Section R9-14-611 renumbered to R9-14-612; new Section R9-14-611 renumbered from R9-14-610 and amended effective June 20, 1997 (Supp. 97-2). Former Section R9-14-611 renumbered to R9-14-613; new Section R9-14-611 renumbered from R9-14-609 and amended by final rulemaking at 7 A.A.R. 184, effective December 15, 2000 (Supp. 00-4). Amended by final rulemaking at 12 A.A.R. 4798, effective December 5, 2006 (Supp. 06-4). Amended by final rulemaking at 22 A.A.R. 2683, effective October 1, 2016 (Supp. 16-3).

R9-14-612. Compliance Testing for Wastewater Parameters
A licensee for a laboratory at which compliance testing for wastewater parameters is performed shall ensure that:
1. The laboratory is operated in compliance with the guidelines in Key References C5 and C6; and
2. Each sample for Arizona wastewater parameter compliance testing is analyzed:
   a. Using an approved method:
      i. Listed in Table 6.2.B; or
      ii. Approved by the Department for wastewater parameter compliance testing under R9-14-610(E); and
   b. If the approved method is from Key Reference C, following the quality control guidelines in Key Reference C associated with the approved method.

Historical Note
Adopted effective December 20, 1991 (Supp. 91-4). Former Section R9-14-612 renumbered to R9-14-614; new Section R9-14-612 renumbered from R9-14-610 and amended effective June 20, 1997 (Supp. 97-2). Former Section R9-14-612 renumbered to R9-14-613; new Section R9-14-612 renumbered from R9-14-610 and amended by final rulemaking at 7 A.A.R. 184, effective December 15, 2000 (Supp. 00-4). Amended by final rulemaking at 12 A.A.R. 4798, effective December 5, 2006 (Supp. 06-4). Amended by final rulemaking at 22 A.A.R. 2683, effective October 1, 2016 (Supp. 16-3).

R9-14-613. Compliance Testing for Waste Parameters
A. A licensee for a laboratory at which compliance testing for waste parameters is performed shall ensure that each waste sample for Arizona compliance testing is analyzed using an approved method:
1. Listed in Table 6.2.C; or
2. Approved by the Department for waste compliance testing under R9-14-610(E).
B. A licensee for a laboratory at which compliance testing for waste parameters is performed using an 8000 series method from Key Reference F shall:
1. If the method includes specific quality control requirements, follow the specific quality control requirements in the method;
2. If the method does not include specific quality control requirements, follow all requirements in Key Reference F14; and
3. If the method does not include specific sample extraction procedures, follow the procedures in the following from Key Reference F, as applicable:
   a. Method 3500B;
   b. Method 3600C; or
   c. Method 5000.
C. A licensee for a laboratory at which compliance testing for waste parameters is performed using a non-8000 series method from Key Reference F shall comply with Chapters I through 8 of Update IV, February 2007, of Key Reference F, as applicable, according to the requirements of the specific method.

Historical Note
Adopted effective December 20, 1991 (Supp. 91-4). Former Section R9-14-613 renumbered to R9-14-614; new Section R9-14-613 renumbered from R9-14-610 and amended effective June 20, 1997 (Supp. 97-2). Former Section R9-14-613 renumbered to R9-14-615; new Section R9-14-613 renumbered from R9-14-610 and amended by final rulemaking at 7 A.A.R. 184, effective December 15, 2000 (Supp. 00-4). Amended by final rulemaking at 12 A.A.R. 4798, effective December 5, 2006 (Supp. 06-4). Amended by final rulemaking at 22 A.A.R. 2683, effective October 1, 2016 (Supp. 16-3).

R9-14-614. Compliance Testing for Air and Stack Parameters
A licensee for a laboratory at which compliance testing for air or stack parameters is performed shall ensure that each air or stack sample for Arizona compliance testing is analyzed using an approved method:
1. Listed in Table 6.2.D; or
2. Approved by the Department for compliance testing for air or stack parameters under R9-14-610(E).
ARIZONA STATE RETIREMENT SYSTEM
Title 2, Chapter 8

Amend: R2-8-104, R2-8-115, R2-8-126, R2-8-128, R2-8-130, R2-8-131,
R2-8-801, R2-8-1103
GOVERNOR’S REGULATORY REVIEW COUNCIL

ATTORNEY MEMORANDUM - REGULAR RULEMAKING

MEETING DATE: July 6, 2022

TO: Members of the Governor’s Regulatory Review Council (Council)

FROM: Council Staff

DATE: June 10, 2022

SUBJECT: Arizona State Retirement System Board

Title 2, Chapter 8, State Retirement System Board

Amend R2-8-104
Amend R2-8-115
Amend R2-8-126
Amend R2-8-128
Amend R2-8-130
Amend R2-8-131
Amend R2-8-801
Amend R2-8-1103

Summary:

This regular rulemaking from the Arizona State Retirement System Board (ASRS) relates to rules in Title 2, Chapter 8. ASRS seeks to amend its rules relating to Domestic Relation Order (DRO) requirements. The ASRS is required to disburse benefits to alternate payees pursuant to acceptable. DROs on file with the ASRS. Specifically, this rulemaking will amend its transfer rules to clarify how and if a member may transfer service credit in or out of the ASRS if the member has a DRO on file. Additionally, the rulemaking will also amend its retirement rules to clarify how community property is split with regard to retirement benefits based on a DRO and how a former spouse may renounce a community property assertion with regard to retirement benefits.
The ASRS received an exception to the rule moratorium from the Governor’s Office on June 1, 2021, and final approval to submit to the Council on May 6, 2022.

1. **Are the rules legal, consistent with legislative intent, and within the agency’s statutory authority?**

   Yes, the ASRS cites to both general and specific statutory authority.

2. **Do the rules establish a new fee or contain a fee increase?**

   No, the rules do not establish a new fee or fee increase.

3. **Does the preamble disclose a reference to any study relevant to the rules that the agency reviewed and either did or did not rely upon?**

   No, the ASRS indicates they did not rely on any study.

4. **Summary of the agency’s economic impact analysis:**

   The Arizona State Retirement System (ASRS) is amending its rules relating to Domestic Relations Order (DRO) requirements. The ASRS is required to disburse benefits to alternate payees pursuant to acceptable DROs on file with the ASRS. In particular, the ASRS is amending its transfer rules to clarify:

   - how and if a member may transfer service credit in or out of the ASRS if the member has a DRO on file with the ASRS,
   - how community property is split with regard to retirement benefits based on a DRO and,
   - how a former spouse may renounce a community property assertion with regard to retirement benefits.

   The ASRS is also making clarifying changes to ensure its rules are consistent regarding DRO requirements. These rules will increase understandability of how the ASRS uses DROs, but the rules do not impose any additional requirements or burdens on members. Thus, there is little to no economic, small business, or consumer impact, other than the minimal cost to the ASRS to prepare the rule package. The rule will have minimal economic impact, if any, because it merely clarifies in further detail how ASRS uses DROs.
5. **Has the agency analyzed the costs and benefits of the rulemaking and determined that the rules impose the least burden and costs to those who are regulated?**

The ASRS believes this is the least costly and least intrusive method because it will clarify how the ASRS processes DROs without imposing additional requirements on the public.

6. **What are the economic impacts on stakeholders?**

According to the ASRS, all members of the ASRS, as well as their beneficiaries and alternate payees, will be directly affected by, bear the costs of, and directly benefit from this rulemaking. The ASRS incurred the cost of the rulemaking. The ASRS currently has a total membership of approximately 627,975.

Members and alternate payees may be affected based on how a DRO may be submitted to the ASRS. This rule will provide direction to the public about how to submit an acceptable DRO. Such clarification will benefit members and alternate payees by increasing the readability of the rules and DRO requirements.

7. **Are the final rules a substantial change, considered as a whole, from the proposed rules and any supplemental proposals?**

No, the ASRS did not make any changes to the rules between the Notice of Proposed Rulemaking and the Notice of Final Rulemaking.

8. **Does the agency adequately address the comments on the proposed rules and any supplemental proposals?**

Yes, the ASRS indicates they did not receive any comments.

9. **Do the rules require a permit or license and, if so, does the agency comply with A.R.S. § 41-1037?**

No, the rules do not require the issuance of a general permit or license.

10. **Are the rules more stringent than corresponding federal law and, if so, is there statutory authority to exceed the requirements of federal law?**

No, the ASRS indicates there are corresponding federal laws to the rules.

11. **Conclusion**

This regular rulemaking seeks to amend its rules relating to Domestic Relations Orders. The rules will increase understandability of how the ASRS uses DROs, and will not impose any additional requirements or burdens on members.
The ASRS is seeking the standard 60-day delayed effective date for this rulemaking. Council staff recommends approval of this rulemaking.
4/28/2022

Ms. Nicole Sornsin, Chair
The Governor's Regulatory Review Council
100 North 15th Avenue, Ste. 305
Phoenix, AZ 85007

Re: A.A.C. Title 2. Administration
Chapter 8. State Retirement System Board

Dear Ms. Sornsin:

The attached final rule package is submitted for review and approval by the Council. The following information is provided for Council's use in reviewing the rule package:

1. Close of record date: The rulemaking record was closed on April 25, 2022 following a period for public comment and an oral proceeding.

2. Relation of the rulemaking to a five-year-review report: This rulemaking does not relate to a Five-year Review Report.

3. New fee or fee increase: This rulemaking does not establish a new fee or increase an existing fee.

4. Immediate effective date: An immediate effective date is not requested pursuant to A.R.S. § 41-1032(A).

5. Certification regarding studies: I certify that the Board did not rely on any studies for this rulemaking.

6. Certification that the preparer of the EIS notified the JLBC of the number of new full-time employees necessary to implement and enforce the rule: I certify that the rules in this rulemaking will not require a state agency to employ a new full-time employee. No notification was provided to JLBC.

7. List of documents enclosed:
   a. Cover letter signed by the Board's Assistant Director;
   b. Notice of Final Rulemaking including the preamble, table of contents for the rulemaking, and rule text; and

Sincerely,

[Signature]
Jeremiah Scott
Assistant Director
NOTICE OF FINAL RULEMAKING
TITLE 2. ADMINISTRATION
CHAPTER 8. STATE RETIREMENT SYSTEM BOARD
PREAMBLE

1. Articles, Parts, and Sections Affected

<table>
<thead>
<tr>
<th>Rulemaking Action</th>
</tr>
</thead>
<tbody>
<tr>
<td>Amend</td>
</tr>
</tbody>
</table>

2. Citations to the agency's statutory rulemaking authority to include both the authorizing statute (general) and the implementing statute (specific):

Authorizing statute: A.R.S. § 38-714(E)(4)
Implementing statutes: A.R.S. §§ 38-711 et seq.

3. The effective date for the rules:

a. If the agency selected a date earlier than the 60 day effective date as specified in A.R.S. § 41-1032(A), include the earlier date and state the reason or reasons the agency selected the earlier effective date as provided in A.R.S. § 41-1032(A)(1) through (5):

Not applicable

b. If the agency selected a date later than the 60 day effective date as specified in A.R.S. § 41-1032(A), include the later date and state the reason or reasons the agency selected the later effective date as provided in A.R.S. § 41-1032(B):

None

4. Citations to all related notices published in the Register as specified in R1-1-409(A) that pertain to the record of the final rulemaking package:

Notice of Rulemaking Docket Opening: 27 A.A.R. 2699, November 19, 2021
Notice of Proposed Rulemaking: 27 A.A.R. 2675, November 19, 2021
Notice of Supplemental Proposed Rulemaking: 28 A.A.R. 643, March 25, 2022

5. **The agency's contact person who can answer questions about the rulemaking:**
   
   Name: Jessica A.R. Thomas, Rules Writer  
   Address: Arizona State Retirement System  
            3300 N. Central Ave., Ste. 1400  
            Phoenix, AZ 85012-0250  
   Telephone: (602) 240-2039  
   E-Mail: Ruleswriter@azasrs.gov

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

   The ASRS needs to amend its rules relating to Domestic Relations Order (DRO) requirements. The ASRS is required to disburse benefits to alternate payees pursuant to acceptable DROs on file with the ASRS. In particular, the ASRS needs to amend its transfer rules to clarify how and if a member may transfer service credit in or out of the ASRS if the member has a DRO on file with the ASRS. The ASRS also needs to amend its retirement rules to clarify how community property is split with regard to retirement benefits based on a DRO and how a former spouse may renounce a community property assertion with regard to retirement benefits. Finally, the ASRS needs to make additional clarifying changes to ensure its rules are consistent regarding DRO requirements. These rules will increase understandability of how the ASRS uses DROs, but the rules do not impose any additional requirements or burdens on members.

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

   No study was reviewed.

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

   Not applicable.

9. **A summary of the economic, small business, and consumer impact:**

   The ASRS promulgates rules that allow the agency to provide for the proper administration of the state retirement trust fund. ASRS rules affect ASRS members and ASRS employers regarding how they contribute to, and receive benefits from, the ASRS. The ASRS effectively administers how public-sector employers and employees participate in the ASRS. As such, the ASRS does not issue permits or licenses, or charge fees, and its rules
have little to no economic impact on private-sector businesses, with the exception of some employer partner charter schools, which have voluntarily contracted to join the ASRS. Thus, there is little to no economic, small business, or consumer impact, other than the minimal cost to the ASRS to prepare the rule package. The rule will have minimal economic impact, if any, because it merely clarifies in further detail how ASRS uses DROs.

10. A description of any changes between the proposed rulemaking, including supplemental notices, and the final rulemaking:
None

11. An agency’s summary of the public or stakeholder comments made about the rulemaking and the agency response to the comments:
The ASRS received no written comments regarding the rulemaking. No one attended the oral proceedings on December 20, 2021 or April 25, 2022.

12. All agencies shall list any other matters prescribed by statute applicable to the specific agency or to any specific rule or class of rules. Additionally, an agency subject to Council review under A.R.S. §§ 41-1052 and 41-1055 shall respond to the following questions:
None.

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

b. Whether a federal law is applicable to the subject of the rule, whether the rule is more stringent than federal law and if so, citation to the statutory authority to exceed the requirements of federal law:
There are no federal laws applicable to these rules.

c. Whether a person submitted an analysis to the agency that compares the rule's impact of the competitiveness of business in this state to the impact on business in other states:
No analysis was submitted.

13. A list of any incorporated by reference material as specified in A.R.S. § 41-1028 and its location in the rule:
No materials are incorporated by reference.
14. Whether the rule was previously made, amended, or repealed as an emergency rule. If so, cite the notice published in the *Register* as specified in R1-1-409(A). Also, the agency shall state where the text was changed between the emergency and the final rulemaking packages:

Not applicable.

15. The full text of the rules follows:
TITLE 2. ADMINISTRATION
CHAPTER 8. STATE RETIREMENT SYSTEM BOARD
ARTICLE 1. RETIREMENT SYSTEM

Section
R2-8-104. Definitions

R2-8-115. Return of Contributions Upon Termination of Membership by Separation from All ASRS Employment by Other Than Retirement or Death

R2-8-126. Retirement Application

R2-8-128. Joint and Survivor Retirement Benefit Options

R2-8-130. Rescind or Revert Retirement Election; Change of Contingent Annuitant

R2-8-131. Designating a Beneficiary; Spousal Consent to Beneficiary Designation

ARTICLE 8. RECOVERY OF OVERPAYMENTS

R2-8-801. Definitions

ARTICLE 11. TRANSFER OF SERVICE CREDIT

R2-8-1103. Transferring Service to Other Retirement Plans
ARTICLE 1. RETIREMENT SYSTEM

R2-8-104. Definitions

A. The definitions in A.R.S. § 38-711 apply to this Chapter.

B. Unless otherwise specified, in this Chapter:

1. “Actuarial assumption” means an estimate of an uncertain future event that affects pension liabilities, or assets, or both.

2. “Assumed actuarial investment earnings rate” means the assumed rate of investment return approved by the Board and contained in R2-8-118(A).

3. “Authorized employer representative” means an individual specified by the Employer to provide the ASRS with information about a member who previously worked for the ASRS employer.

4. “Contribution” means:
   a. Amounts required by A.R.S. Title 38, Chapter 5, Articles 2 and 2.1 to be paid to the ASRS by a member or an employer on behalf of a member;
   b. Any voluntary amounts paid to the ASRS pursuant to 2 A.A.C. 8, Article 5 by a member to be placed in the member’s account; and
   c. Amounts credited by transfer under 2 A.A.C. 8, Article 11.

5. “Day” means a calendar day, and excludes the:
   a. Day of the act or event from which a designated period of time begins to run; and
   b. Last day of the period if a Saturday, Sunday, or official state holiday.

6. “Designated beneficiary” means the same as in A.R.S. § 38-762(G) or another person designated as a beneficiary by law.

7. “Director” means the Director appointed by the Board as provided in A.R.S. § 38-715.
8. “Individual retirement account” or “IRA” means the types of eligible retirement plans specified in A.R.S. § 38-770(D)(3)(a) and (b).

9. “DRO” means a copy of an original domestic relations order specified in A.R.S. § 38-773(H)(1) that contains all of the following:

   a. The requirements of A.R.S. § 38-773(C);
   b. The date of the member and alternate payee’s marriage;
   c. The date of divorce or the date in which the community property interest ended;
   d. A court stamp indicating the domestic relations order is a true and correct copy of the original domestic relations order on file with the court;
   e. How the member’s ASRS benefits should be split in specific amounts for the following possible events;
      i. The member’s retirement;
      ii. Return of contributions and termination of membership according to R2-8-115; and
      iii. The death of the member prior to retirement;
   f. Whether the member may transfer all ASRS service credit to another retirement system;
   g. Whether the member is required to maintain the alternate payee as the member’s beneficiary;
   h. Whether the member may rescind their retirement option according to A.R.S. § 38-760; and
   i. The judge’s dated signature.
“Party” means the same as in A.R.S. § 41-1001(14).

“Person” means the same as in A.R.S. § 41-1001(15).

“Plan” means the same as “defined benefit plan” in A.R.S. § 38-712(B), and as administered by the ASRS.

“Retirement account” means the same as in A.R.S. § 38-771(J)(2).

“Rollover” means a contribution to the ASRS by an eligible member of an eligible rollover distribution from one or more of the retirement plans listed in A.R.S. § 38-747(H)(2) and (H)(3).

“Terminate employment” means to end the employment relationship between a member and an ASRS employer with the intent that the member does not return to employment with an ASRS employer.

“United States” means the same as in A.R.S. § 1-215(39).

R2-8-115. Return of Contributions Upon Termination of Membership by Separation from All ASRS Employment by Other Than Retirement or Death

A. The following definitions apply to this Section unless otherwise specified:

1. “DRO” means the same as “domestic relations order” in A.R.S. § 38-773(H)(1).

2. “Eligible retirement plan” means the same as in A.R.S. § 38-770(D)(3).

3. “Employer Number” means a unique identifier the ASRS assigns to a member employer.

4. “Employer plan” means the types of eligible retirement plans specified in A.R.S. § 38-770(D)(3)(c), (d), (e), and (f).

5. “LTD” Means the same as in R2-8-301.
6-5. “On File” means ASRS has received the information.

7-6. “Process date” means the calendar day the ASRS generates contribution withdrawal documents to be sent to a member.

8-7. “Warrant” means a voucher authorizing payment of funds due to a member.

B. A member who terminates from all ASRS employment by other than retirement or death and desires a return of the member’s contributions, including amounts received for the purchase of service, any employer contributions authorized under A.R.S. § 38-740, and interest on the contributions, shall request from the ASRS, in writing or verbally, the documents necessary to apply for the withdrawal of the member’s contributions.

C. Upon request to withdraw by the member, the ASRS shall provide:

1. An Application for Withdrawal of Contributions and Termination of Membership form to the member, and

2. An Ending Payroll Verification - Withdrawal of Contribution and Termination of Membership form to the employer, if ASRS has received contributions for the member within the six months immediately preceding the date the member submitted the request to ASRS.

D. The member shall complete and return to the ASRS the Application for Withdrawal of Contributions and Termination of Membership form that includes the following information:

1. The member’s full name;

2. The member’s Social Security number or U.S. Tax Identification number;

3. The member’s current mailing address, if not On File with ASRS;

4. The member’s birth date, if not On File with ASRS;

5. Notarized signature of the member certifying that the member:
a. Is no longer employed by any Employer;

b. Is neither under contract nor has any verbal or written agreement for future employment with an Employer;

c. Is not currently in a leave of absence status with an Employer;

d. Understands that each of the member’s former Employers will complete an ending payroll verification form if ASRS has received contributions for the member within the six months immediately preceding the date the member submitted the request to ASRS;

e. Understands that the member’s most recent Employer will complete an ending payroll verification form for the member if the member has reached the member’s required beginning date pursuant to A.R.S. § 38-775;

f. Has read and understands the Special Tax Notice Regarding Plan Payments the member received with the application and the member elects to waive the member’s 30-day waiting period to consider a roll over or a cash distribution;

g. Understands that the member is forfeiting all future retirement rights and privileges of membership with ASRS;

h. Understands that LTD benefits will be canceled if the member elects to withdraw contributions while receiving or electing to receive long-term disability benefits;

i. Understands that if the member elects to roll over all or any portion of the member’s distribution to another employer plan, it is the member’s responsibility to verify that the receiving employer plan will accept the rollover and, if applicable, agree to separately account for the pre-tax and post-tax amounts rolled over and the related subsequent earnings on the amounts;
j. Understands that if the member elects to roll over all or any portion of the member’s distribution to an individual retirement account, it is the member’s responsibility to separately account for pre-tax and post-tax amounts; and

k. Understands that if the member elects a rollover to another employer plan or individual retirement account, any portion of the distribution not designated for rollover will be paid directly to the member and any taxable amounts will be subject to applicable state and federal tax withholding;

l. Understands that the member is not considered terminated and cannot withdraw the member’s ASRS contribution if the member was called to active military service and is not currently performing services for an Employer;

m. Understands that any person who knowingly makes any false statement with an intent to defraud the ASRS is guilty of a Class 6 felony in accordance with A.R.S. § 38-793.

6. Specify that:
   a. The entire amount of the distribution be paid directly to the member,
   b. The entire amount of the distribution be rolled over to an eligible retirement plan, or
   c. An identified amount of the distribution be rolled over to an eligible retirement plan and the remaining amount be paid directly to the member; and

7. If the member selects all or a portion of the withdrawal be rolled over to an eligible retirement plan, specify;
   a. The type of eligible retirement plan; and
   b. The name and mailing address of the eligible retirement plan.

E. If ASRS has received contributions for the member within six months immediately preceding the date the member submitted the request to ASRS each Employer shall complete an Ending
Payroll Verification - Withdrawal of Contributions and Termination of Membership form electronically that includes the following information:

1. The member’s full name;

2. The member’s Social Security number or U.S. Tax Identification number;

3. The member’s termination date;

4. The member’s final pay period ending date;

5. The final amount of contributions, including any adjustments or corrections, but not including any long-term disability contributions;

6. The Employer’s name and telephone number;

7. The Employer Number;

8. The name and title of the authorized Employer representative;

9. Certification by the authorized Employer representative that:
   
   a. The member Terminated Employment and is neither under contract nor bound by any verbal or written agreement for employment with the Employer;
   
   b. There is no agreement to re-employ the member;
   
   c. Any person who knowingly makes any false statement or who falsifies any record of the retirement plan with an intent to defraud the plan, is guilty of a Class 6 felony according to A.R.S. § 38-793; and
   
   d. The authorized Employer representative certifies that they are the Employer user named on the Ending Payroll Verification - Withdrawal of Contributions and Termination of Membership form and their title and contact information is current and correct.
F. If the member has attained a required beginning distribution date as of the date the member submitted the request to ASRS, the most recent Employer shall complete an Ending Payroll Verification - Withdrawal of Contributions and Termination of Membership form electronically that includes the information contained in subsection (E).

G. If the member requests a return of contributions and a Warrant is distributed during the fiscal year that the member began membership in the ASRS, no interest is paid to the account of the member.

H. If the member requests a return of contributions after the first fiscal year of membership, the ASRS shall credit interest at the rate specified in Column 3 of the table in R2-8-118(A) to the account of the member as of June 30 of each year, on the basis of the balance in the account of the member as of the previous June 30. The ASRS shall credit interest for a partial fiscal year of membership in the ASRS on the previous June 30 balance based on the number of days of membership up to and including the day the ASRS issues the Warrant divided by the total number days in the fiscal year. Contributions made after the previous June 30 are returned without interest.

I. Upon submitting to the ASRS the completed and accurate Application for Withdrawal of Contributions and Termination of Membership form and, if applicable, after the ASRS has received any Ending Payroll Verification - Withdrawal of Contributions and Termination of Membership forms, a member is entitled to payment of the amount due to the member as specified in subsection (G) or (H) unless a present or former spouse submits to the ASRS a certified copy or original DRO that specifies entitlement to all or part of the return of contributions under A.R.S. § 38-773. ASRS has received a DRO before the ASRS returns the contributions as specified by the member.
J. A member may cancel an Application for Withdrawal of Contributions and Termination of Membership form at any time before the return of contributions is disbursed by submitting written notice to ASRS to cancel the request.

K. If an Application for Withdrawal of Contributions and Termination of Membership form is completed through the member’s secure ASRS account, the secure login and successful submission of the knowledge based answers shall serve as the member’s notarized signature required under subsection (D)(5).

R2-8-126. Retirement Application

A. For the purposes of this Section, the following definitions apply, unless stated otherwise:

1. “Acceptable documentation” means any written request containing all the accurate, required information, dates, and signatures necessary to process the request.

2. “Acceptable form” means any ASRS form request containing all the accurate, required information, dates, and signatures necessary to process the form request.

3. “Applicable retirement date” means the later of:
   a. The date a member retires from the ASRS for the first time; or
   b. The date a member re-retires from the ASRS after returning to active membership.

4. “Conservator” means the same as in A.R.S. § 14-7651.

5. “DRO” means the same as in R2-8-115.


7. “Legal documentation” means:
   a. One document issued from a United States government entity; or
b. Two documents issued from one or more federal, state, local, sovereign, medical, or religious institution.

8.7. “LTD” means the same as in R2-8-301.

9.8. “Irrevocable PDA” means the same as in R2-8-501.

10.9. “On File” means the same as in R2-8-115.

11.10. “Original retirement date” means the later of:
   a. The date a member retires from the ASRS for the first time; or
   b. The date a member re-retires from the ASRS after returning to active membership for 60 consecutive months or more according to A.R.S. § 38-766(C).


12. “Spouse” means the individual to whom a member is married under Arizona law.

13. “Straight life annuity” means the same as monthly life annuity according to A.R.S. § 38-757.

B. A member may retire from the ASRS by submitting a Retirement Application to the ASRS that contains the following information:

1. The member’s full name;

2. The member’s Social Security number or U.S. Tax Identification number;

3. The member’s marital status, if not On File with ASRS;

4. The member’s current mailing address; if not On File with ASRS;

5. The member’s date of birth, if not On File with ASRS;

6. A retirement date according to A.R.S. § 38-764(A);

7. The retirement option the member is electing;
8. If the member is electing to roll over a lump sum distribution amount to another retirement account, then:
   a. The type of account and account number, if applicable, to which the member is electing to roll over the lump sum distribution; and
   b. The name and address of the financial institution of the account to which the member is electing to roll over the lump sum distribution;

9. The following information for each primary beneficiary, unless the member is receiving a mandatory lump sum distribution under subsection (M):
   a. The beneficiary’s full name;
   b. The beneficiary’s Social Security number, if the beneficiary is a U.S. citizen;
   c. The beneficiary’s date of birth;
   d. The beneficiary’s relationship to the member; and
   e. The percent of benefit the beneficiary may receive upon death of the member, if the member is designating more than one beneficiary.

10. Whether the member is electing the Optional Health Insurance Premium Benefit;

11. The following spousal consent information, if the member is married and is electing a retirement option other than a Joint and Survivor Retirement Benefit Option with at least 50% of the retirement benefit designated to the member’s spouse:
   a. Whether the member’s spouse consents to the member making a beneficiary election that provides the member’s spouse with less than 50% of the member’s account balance;
   b. Whether the member’s spouse consents to the member electing a retirement option other than a Joint and Survivor Retirement Benefit Option;
c. The member’s spouse’s full name; and

d. The member’s spouse’s notarized signature;

12. Whether the member is electing to receive a partial lump sum distribution according to A.R.S. § 38-760 and if so:

a. How many months of annuity, up to 36 months, the member is electing to receive as a partial lump sum;

b. Whether the member is electing to directly receive the partial lump sum distribution reduced by applicable tax withholding amounts;

c. Whether the member is electing to roll over all or a portion of the partial lump sum distribution amount to one other retirement account; and

d. Whether the member is electing to use the partial lump sum distribution to purchase service credit with ASRS based on a service purchase request dated before January 6, 2013;

13. Acknowledgement of the following statements of understanding:

a. The member is aware of the member’s LTD stop-payment date and any disability benefits the member is receiving shall cease upon the retirement date the member elects according to subsection (B)(6);

b. The member understands that if an overpayment exists, ASRS shall collect the remaining overpayment amount according to 2 A.A.C. 8, Article 8 and all repayment plans previously established with ASRS LTD claims administrator shall cease;

c. The member understands that if the member is submitting written notice of a changed retirement date, benefit option, or partial lump sum increment selection, ASRS shall distribute the member’s benefit as of the later of:
i. The date ASRS receives the most recent Acceptable Documentation; or
ii. The retirement date contained in the most recent Acceptable Documentation.

d. The member has received the Special Tax Notice Regarding Plan Payments;
e. The member has received the Return to Work information and will comply with the laws and rules governing the member’s return to work;
f. The member authorizes ASRS and the banking institution identified in subsection (W) to debit the member’s account for the purposes of correcting errors and returning any payments inadvertently made after the member’s death;
g. The member understands that the member may have a one-time option to rescind a Joint and Survivor Retirement Benefit Option or a Period Certain and Life Annuity Retirement Benefit Option according to R2-8-130;
h. The member understands that any person who knowingly makes any false statement with the intent to defraud ASRS is guilty of a Class 6 felony in accordance with A.R.S. § 38-793; and
i. The member acknowledges that the member has complied with A.R.S. §§ 38-755 and 38-776 regarding spousal consent; and

14. The member’s notarized signature.

C. If a Retirement Application is completed through the member’s secure ASRS account, the member’s notarized signature is not required under subsection (B)(14).

D. If the retirement date the member elects according to subsection (B)(6) is not allowed, the ASRS shall change the retirement date to the earliest eligible date according to A.R.S. 38-764(A), unless the member is not eligible to retire.
E. A member who elects to roll over all or a portion of the partial lump sum distribution amount according to subsection (B)(12)(c), shall submit the following written information to the ASRS:

1. The type of account and account number to which the member is electing to roll over;
2. The name and address of the financial institution of the account to which the member is electing to roll over; and
3. If the member is electing to roll over a portion of the partial lump sum distribution, then the amount the member is electing to roll over.

F. If the member elects to roll over all or a portion of their lump sum or partial lump sum distribution, the ASRS shall only roll over the distribution to one retirement account.

G. Any portion of the partial lump sum distribution that is not rolled over to another retirement account according to subsection (B) shall be distributed directly to the member.

H. If the member elects to use the partial lump sum distribution to purchase service credit according to subsection (B)(12)(d) the member shall submit the following written information to the ASRS:

1. The number of the service purchase invoice;
2. Whether the member is electing to apply the partial lump sum distribution to all eligible service on that invoice;
3. If the member is not electing to apply the partial lump sum distribution to all eligible service on that invoice, then:
   a. The amount of the partial lump sum distribution to be applied to that invoice; or
   b. The number of years on that invoice the member is electing to purchase with the partial lump sum distribution;
4. If the member is electing to make a payment on that service purchase invoice with after-tax payments, a rollover, or termination pay according to A.R.S. § 38-747;

5. Whether the member is electing to authorize the ASRS to increase the number of months of annuity, not to exceed 36 months, to purchase the eligible service on that service purchase invoice, if the member elected an insufficient number of months of annuity to receive as a partial lump sum according to subsection (G) to complete the service purchase invoice;

6. If the member does not have eligible service to purchase on that invoice, whether the member is electing to cancel the member’s election to receive a partial lump sum distribution.

**I.** A member who elects to receive a partial lump sum distribution shall receive an actuarially reduced annuity retirement benefit according to A.R.S. § 38-760.

**J.** ASRS shall disburse any partial lump sum amount that is not applied to a service purchase invoice according to subsection (G) directly to the member after withholding applicable taxes.

**K.** After submitting a Retirement Application according to subsection (B), a member may make changes to the member’s Retirement Application by submitting written notice to the ASRS of the specific changes according to A.R.S. § 38-764(H).

**L.** If ASRS has received contributions for the member within the three years immediately preceding the member’s retirement date, the ASRS shall send a New Retirement Ending Payroll Verification form to the Employer. If ASRS has received contributions for the member within the six months immediately preceding the member’s retirement date and the
member shall receive a one-time lump sum payment according to subsection (P), the ASRS shall send a New Retirement Ending Payroll Verification form to the Employer.

M. If the member has reached the age for minimum required distribution according to A.R.S. § 38-775(H)(4), the ASRS shall send a New Retirement Ending Payroll Verification form to the member’s most recent Employer.

N. The Employer shall submit the completed New Retirement Ending Payroll Verification form to ASRS with the following information:

1. The member’s Termination date or last day of ASRS membership with that Employer, if applicable;
2. The member’s total salary paid during their last fiscal year;
3. The member’s compensation for the last pay period;
4. The name and title of the authorized Employer representative;
5. Certification by the authorized Employer representative that:
   a. Any person who knowingly makes any false statement or who falsifies any record of the retirement plan with an intent to defraud the plan, is guilty of a Class 6 felony according to A.R.S. § 38-793; and
   b. The authorized Employer representative certifies that they are the Employer user named on the New Retirement Ending Payroll Verification form and their title and contact information is current and correct.

O. The ASRS shall cancel a member’s Retirement Application if ASRS does not receive all forms and information required under this Section within six months immediately after the member’s retirement date.
P. As authorized under A.R.S. § 38-764(F), if a member’s Straight Life Annuity, after any applicable early retirement reduction factor, is less than a monthly amount of $100, the ASRS shall not pay the annuity. Instead, the ASRS shall make a one-time mandatory lump sum payment in the amount determined by using appropriate actuarial assumptions.

Q. For purposes of calculating a member’s retirement benefit according to A.R.S. §§ 38-758 and 38-759, ASRS shall calculate age to the nearest day as of the member’s retirement date.

R. Based on the retirement option the member elects according to A.R.S. § 38-760, the ASRS shall calculate a member’s actuarially reduced benefits, based on the attained age of the member, and if necessary, the attained age of the contingent annuitant as of the date of the member’s retirement as follows:

1. For a partial lump sum retirement benefit option, ASRS shall calculate age to the nearest day as of the member’s retirement date;

2. For a Joint and Survivor Retirement Benefit Option, ASRS shall calculate age to the nearest day as of the member’s retirement date; and

3. For a mandatory lump sum payment according to subsection (O) or a Period Certain and Life Annuity Retirement Benefit Option, ASRS shall calculate age to the nearest full month in addition to calculating age according to subsection (P) as necessary.

S. If the ASRS is unable to verify the age of the member or a contingent annuitant, the member or contingent annuitant shall provide Legal Documentation showing the member’s or contingent annuitant’s age.

T. If a member does not retire by the date minimum distribution payments are required according to A.R.S. §§ 38-759 and 38-775, the required minimum distribution payments will
accrue interest at the Assumed Actuarial Investment Earnings Rate specified in R2-8-118(A) and in effect on the date the required minimum distribution payments should have begun.

U. The ASRS shall distribute any required minimum distribution payments with interest according to subsection (T) with the member’s first finalized benefits payment.

V. If a member submits a retirement application after the member’s minimum required distribution date, the ASRS shall determine that the member’s Applicable Retirement Date is the date the required minimum distribution payments should have begun.

W. Notwithstanding any other Section, an inactive member who does not have contributions related to compensation is not eligible for retirement.

X. The ASRS shall issue a debit benefit card, if the annuitant does not provide the following direct deposit information through the annuitant’s secure ASRS account or by a notarized Direct Deposit form:
   1. The member’s full name;
   2. The member’s bank account routing number;
   3. The member’s bank account number; and
   4. The type of the account.

Y. The ASRS shall disburse benefits payments according to subsection (R), only retroactive to the later date specified in A.R.S. § 38-759(B).

Z. ASRS shall not issue additional estimate checks to a member whose retirement is canceled.

R2-8-128. Joint and Survivor Retirement Benefit Options

A. The definitions in R2-8-126 apply to this Section.
B. A member who is ten years and one day, or more, older than the member’s non-spouse contingent annuitant is not eligible to elect a 100% Joint and Survivor Retirement Benefit Option.

C. A member who is 24 years and one day, or more, older than the member’s non-spouse contingent annuitant is not eligible to elect a 66 2/3% Joint and Survivor Retirement Benefit Option.

D. For members whose Original Retirement Date is on or after March 6, 2016, notwithstanding subsection (B), a member who is ten years and one day, or more, older than the member’s ex-spouse contingent annuitant is eligible to participate in a 100% Joint and Survivor Retirement Benefit Option, if:
   1. The member elected the ex-spouse as the contingent annuitant prior to divorce from the ex-spouse; and
   2. The member submits an original or certified copy of a DRO to ASRS which requires the ex-spouse to remain as the contingent annuitant on the member’s account.

E. For members whose Original Retirement Date is on or after March 6, 2016, notwithstanding subsection (C), a member who is 24 years and one day, or more, older than the member’s ex-spouse contingent annuitant is eligible to participate in a 66 2/3% Joint and Survivor Retirement Benefit Option, if:
   1. The member elected the ex-spouse as the contingent annuitant prior to divorce from the ex-spouse; and
   2. The member submits an original or certified copy of a DRO to the ASRS which requires the ex-spouse to remain as the contingent annuitant on the member’s account.
F. Notwithstanding any other Section, for purposes of determining whether a member is eligible to participate in a Joint and Survivor Retirement Benefit Option, the ASRS shall calculate the difference in a member’s age and the contingent annuitant’s age based on the birthdates of the member and the contingent annuitant. For purposes of this Section, a contingent annuitant must be a living person.

R2-8-130. Rescind or Revert Retirement Election; Change of Contingent Annuitant

A. The definitions in R2-8-126 apply to this Section.

B. According to A.R.S. § 38-760(B)(2), for a member whose Original Retirement Date is after August 9, 2001, upon the expiration of a member’s period certain term the ASRS shall rescind the member’s election and the ASRS shall provide the member a Straight Life Annuity retirement benefit subject to any retirement reductions applicable at the member’s Original Retirement Date.

C. According to A.R.S. § 38-760(B)(2), a member whose Original Retirement Date is after August 9, 2001 and before July 1, 2008 and who elected a Period Certain and Life Annuity Retirement Benefit Option, may rescind the election and elect to receive a Straight Life Annuity retirement benefit prior to the expiration of the member’s period certain term.

D. According to A.R.S. § 38-760(B)(1), a member whose Original Retirement Date is before July 1, 2008 and who elected a Joint and Survivor Retirement Benefit Option may rescind the election and elect to receive a Straight Life Annuity retirement benefit prior to the member’s death.

E. A member whose Original Retirement Date is on or after July 1, 2008 and who elected a Period Certain and Life Annuity Retirement Benefit Option may exercise a one-time election
to rescind the election and elect to receive a Straight Life Annuity retirement benefit prior to the expiration of the member’s period certain term if the member provides proof to ASRS of the death of the primary beneficiary or an original or certified copy of a DRO showing that the primary beneficiary has ceased to be a primary beneficiary.

**F.** A member whose Original Retirement Date is on or after July 1, 2008 and who elected a Joint and Survivor Retirement Benefit Option may exercise a one-time election to rescind the election and elect to receive a Straight Life Annuity retirement benefit prior to the death of the member if the member provides proof to ASRS of the death of the contingent annuitant or an original or certified copy of a DRO showing that the contingent annuitant has ceased to be a contingent annuitant.

**G.** A member who elected to rescind a Period Certain and Life Annuity Retirement Benefit Option according to subsection (C) may elect to revert to the Period Certain and Life Annuity Retirement Benefit Option by submitting an Application to Rescind, Revert or Change Contingent Annuitant as specified in subsection (M).

**H.** A member who elected to rescind a Joint and Survivor Retirement Benefit Option according to subsection (D) may elect to revert to the Joint and Survivor Retirement Benefit Option by submitting an Application to Rescind, Revert or Change Contingent Annuitant as specified in subsection (M).

**I.** A member may only revert to the same Period Certain and Life Annuity Retirement Benefit Option the member rescinded according to subsection (C) prior to the expiration of the period certain term the member elected at the member’s most recent retirement.
J. A member who rescinds their election according to subsections (E) or (F) is not eligible to revert to a Period Certain and Life Annuity Retirement Benefit Option or a Joint and Survivor Retirement Benefit Option.

K. Notwithstanding any other provision, the time period of a Period Certain and Life Annuity Retirement Benefit Option shall be continuous from the member’s retirement date until the term expires regardless of whether the member rescinds or reverts to another retirement option.

L. A member who wants to rescind or revert a retirement election according to subsections (C) through (H) shall ensure ASRS receives an Application to Rescind, Revert or Change Contingent Annuitant at least one day prior to the member’s death.

M. In order to rescind, revert, or change a contingent annuitant, the member shall submit an Application to Rescind, Revert or Change Contingent Annuitant with the following information:

1. The member’s full name;
2. The member’s Social Security number or U.S. Tax Identification number;
3. The member’s marital status, if not On File with ASRS;
4. Whether the member is electing to rescind, revert, or change a contingent annuitant;
5. The member’s notarized signature acknowledging the following statements of understanding:
   a. For rescinding a retirement election:
      i. By this action, and the member’s signature, the member is aware that the member’s designated beneficiary or contingent annuitant will not continue with monthly benefits after the member’s death;
ii. The member is aware that a certified copy of the member’s designated beneficiary’s or contingent annuitant’s death certificate or an original or certified copy of a DRO is required if the member retired or re-retired on or after July 1, 2008;

iii. At the time of the member’s death, if the ASRS has not disbursed the total employee contributions on the member’s account, plus interest at the Assumed Actuarial Investment Earnings Rate specified in R2-8-118(A) through the month prior to the member’s retirement date, the balance will be payable in a lump sum to the beneficiary named on the member’s most recent Acceptable Form.

b. For changing a contingent annuitant or beneficiary:

i. For a Joint and Survivor Retirement Benefit Option, by this action, and the member’s signature, the contingent annuitant named on the member’s most recent Acceptable Form will receive the previously elected percentage amount of the member’s monthly benefit for their lifetime following the member’s death;

ii. For a Joint and Survivor Retirement Benefit Option, the member is aware that a copy of the contingent annuitant’s Legal Documentation is required and the member’s benefit will be recalculated based on the member’s age and the age of the member’s new contingent annuitant as of the effective date of the member’s request according to this Section;

iii. For a Joint and Survivor Retirement Benefit Option, the member is in compliance with the age difference limitations in R2-8-128; and
iv. For a Period Certain and Life Annuity Retirement Benefit Option, by this action, and the member’s signature, the beneficiary named on the member’s most recent Acceptable Form will receive the remaining term of monthly payments.

c. For reverting to a previously elected retirement benefit option according to A.R.S. § 38-760:

i. For a Joint and Survivor Retirement Benefit Option, by this action, and the member’s signature, the contingent annuitant named the member’s most recent Acceptable Form will receive the previously elected percentage amount of the member’s monthly benefit for their lifetime following the member’s death;

ii. For a Joint and Survivor Retirement Benefit Option, the member is aware that a copy of Legal Documentation showing the contingent annuitant’s date of birth is required and the member’s benefit will be recalculated based on the member’s age and the age of the member’s contingent annuitant as of the effective date of the member’s request according to this Section;

iii. For a Joint and Survivor Retirement Benefit Option, the member is in compliance with the age difference limitations in R2-8-128; and

iv. For a Period Certain and Life Annuity Retirement Benefit Option, by this action, and the member’s signature, the beneficiary named on the member’s most recent Acceptable Form will receive the remaining term of monthly payments.

6. If the member is electing to change a contingent annuitant, the following information for the new contingent annuitant:

a. Full name;

b. Social Security number, if the contingent annuitant is a U.S. citizen;
c. Date of birth; and
d. Legal relationship to the member.

7. If the member is married, whether the member’s spouse consents to the following with the spouse’s notarized signature:
   a. The member making a beneficiary designation that provides the member’s spouse with less than 50% of the member’s account balance;
   b. The member electing a retirement option other than a Joint and Survivor Retirement Benefit Option; or
   c. The member changing or ending the spouse’s contingent annuitant status.

8. Whether the spouse’s consent is not required because:
   a. The spouse predeceased the member and if so, provide a copy of the spouse’s death certificate; or
   b. The member is divorced and if so, provide an original or certified copy of a DRO.

N. If the ASRS is unable to verify the age of the member or a contingent annuitant, the member or contingent annuitant shall provide Legal Documentation showing the member’s or contingent annuitant’s age.

O. The effective date of the member’s request according to this Section is the date on which ASRS receives the Application to Rescind, Revert or Change Contingent Annuitant.

P. According to A.R.S. § 38-760(B)(2), a member whose Original Retirement Date is on or after July 1, 2008 and who elects a Period Certain and Life Annuity Retirement Benefit Option, may rescind the election according to subsection (E) and elect to receive a Straight Life Annuity prior to the expiration of the member’s period certain term if one or more of the
member’s primary beneficiaries dies or ceases to be a beneficiary according to the terms of an original or certified copy of a DRO.

Q. The ASRS shall cancel a member’s Application to Rescind, Revert, or Change Contingent Annuitant if ASRS does not receive all forms and information required under this Section within six months immediately after the ASRS receives the application.

R2-8-131. Designating a Beneficiary; Spousal Consent to Beneficiary Designation

A. The definitions in R2-8-126 apply to this Section.

B. In order to designate a beneficiary, a member shall submit an Acceptable Form containing the following information:

1. The Member’s full name and one or more of the following information:
   a. The Member’s Social Security number or U.S. Tax Identification number; or
   b. The Member’s address; or
   c. The Member’s date of birth;

2. The following information for the beneficiary:
   a. The full name of the person or entity the member is designating as beneficiary;
   b. Whether the beneficiary is being designated as primary or secondary beneficiary;
   c. The percentage of the benefit the member is allocating to the beneficiary; and

3. The member’s notarized signature.

C. If a change in a designated beneficiary is completed through the member’s secure ASRS account, the member’s notarized signature is not required under subsection (B)(3).

D. If a member submits an Acceptable Form designating a beneficiary without indicating the percentage of the benefit the member is allocating to the beneficiary, the ASRS shall determine that each beneficiary is designated to receive an equal amount of the benefit.
E. Effective July 1, 2013, a married member:

1. Who is not retired shall name and maintain the member’s current spouse as primary beneficiary of at least 50% of the member’s retirement account unless:
   a. Naming or maintaining the current spouse as beneficiary violates another law, existing contract, or court order; or
   b. The spouse consents to an alternate beneficiary;

2. Who retires shall choose a Joint and Survivor Retirement Benefit Option and name the member’s current spouse as contingent annuitant unless:
   a. Naming or maintaining the current spouse as contingent annuitant violates another law, existing contract, or court order; or
   b. The spouse consents to an alternate contingent annuitant; or
   c. The spouse consents to an alternate annuity option under A.R.S. §§ 38-757 or 38-760.

F. The ASRS shall honor a beneficiary designation last made or a retirement election submitted before July 1, 2013, even if the beneficiary designation or retirement election fails to comply with subsection (E).

G. Subsection (E) does not apply to a member who is receiving a mandatory lump sum distribution according to A.R.S. § 38-764.

H. Subsection (E) does not apply to a member who submits a Spousal Consent Exception form that contains the member’s notarized signature to the ASRS affirming under penalty of perjury that the member’s spouse’s consent is not required because of one of the reasons specified in A.R.S. § 38-776(C).

I. In order to change a beneficiary designation, a member shall submit the information contained in subsection (B) and:
1. A married member who changes a beneficiary designation on or after July 1, 2013, shall ensure the new beneficiary designation is consistent with subsection (E); or

2. A married member who retired before July 1, 2013, and who wishes to change the contingent annuitant or beneficiary, shall ensure that the new designation is consistent with subsection (E).

J. A married member who re-retires according to A.R.S. § 38-766:

1. Within less than 60 consecutive months of active membership from the member’s previous retirement date, is not eligible to elect a different annuity option or different beneficiary than the member elected at the time of the previous retirement; or

2. At least 60 consecutive months of active membership after the member’s previous retirement date, may elect a different annuity option and different beneficiary than the member elected at the time of the previous retirement, and the election shall comply with subsection (E).

K. If a married member submits a retirement application that fails to comply with subsection (E), the member shall submit a new retirement application or written notice of new retirement elections that comply with subsection (E) within six months of the member’s Original Retirement Date. The member’s new Original Retirement Date is the date ASRS receives the new application or written notice unless the member elects a later date according to A.R.S. § 38-764.

L. If a married member made a beneficiary designation on or after July 1, 2013 that is not consistent with the requirements specified in subsection (E), the ASRS shall, at the time of the member’s death:

1. Notify both the spouse and designated beneficiary and:
a. Provide the spouse with an opportunity to waive the right under subsection (E); and
b. Provide the designated beneficiary with an opportunity to provide documentation that
revokes the spouse’s right under subsection (E); and

2. Designate 50% of the member’s retirement benefit to the spouse if neither the spouse nor
designated beneficiary respond to notification according to subsection (L)(1) within 30
days after notification.

M. If a married member designated a beneficiary before July 1, 2013 that does not comply with
subsection (E), upon the death of the member, the member’s spouse may submit written
notice to the ASRS prior to disbursement of the member’s account with the following
information:

1. The member’s full name;
2. The member’s Social Security number or U.S. Tax Identification number;
3. The spouse’s assertion to the spouse’s right to community property;
4. An original or copy of the marriage certificate; and
5. An original or certified copy of the member’s death certificate.

N. If a spouse submits written notice according to subsection (M), the ASRS shall designate the
spouse as beneficiary of a percentage of the member’s account according to A.R.S. §§ 25-
211 and 25-214 and notify the member’s designated beneficiary of the spouse’s assertion.

O. The ASRS shall determine a spouse’s percentage of the member’s account according to
subsection (L) based on the amount of service credit the member acquired during the
marriage divided by the total amount of service credit the member acquired, multiplied by
50%.
P. If a beneficiary is notified of a spouse’s assertion according to subsection (N), then before ASRS disburses a survivor benefit, the beneficiary may notify ASRS of the beneficiary’s intent to appeal the spouse’s right to a survivor benefit.

Q. Within 30 days, a beneficiary who has notified ASRS of the beneficiary’s intent to appeal a survivor benefit disbursement according to subsection (P), shall submit an appeal to ASRS according to 2 A.A.C. 8, Article 4.

R. An original or certified copy of a DRO may supersede the requirements in subsection (B).

S. To consent to an alternative retirement benefit option or beneficiary designation, a member’s spouse shall complete and have notarized a Spousal Consent form containing the following information:

1. Member’s full name;

2. Member’s Social Security number or U.S. Tax Identification number;

3. Whether the member’s spouse is consenting to one or more of the following:
   a. The member making a beneficiary designation that provides the spouse with less than 50% of the member’s account balance;
   b. The member electing a retirement option other than a Joint and Survivor Retirement Benefit Option;
   c. The member naming a contingent annuitant other than the spouse; and
   d. The spouse’s notarized signature.

T. A member’s spouse may revoke the spouse’s consent to an alternative retirement benefit option or beneficiary designation by sending written notice to ASRS with the following information:

1. The member’s full name
2. The member’s Social Security number or U.S. Tax Identification number;
3. The spouse’s full name;
4. The spouse’s dated signature indicating the spouse is revoking all previous Spousal Consent forms.

U. A spouse who is revoking a Spousal Consent form shall ensure the written notice is received no later than the earlier of one day before the member dies or ASRS disburses a retirement benefit to the member.

ARTICLE 8. RECOVERY OF OVERPAYMENTS

R2-8-801. Definitions

For purposes of this article, the following definitions apply, unless specified otherwise:

1. “DRO” means the same as in R2-8-120.

2-1. “Estimated Social Security disability income amount” and “Revised Social Security disability income amount” mean the amount of funds the ASRS is entitled to collect pursuant to R2-8-802.

3-2. “LTD” means long-term disability program as described in A.R.S. § 38-797 et seq.

4-3. “LTD benefit” means the same as in R2-8-301

5-4. “Overpayment” means:

   a. Any funds the ASRS distributes in excess of the amount to which the recipient is legally entitled; and

   b. Any estimated social security disability income amount or revised social security disability income amount the ASRS is entitled to collect pursuant to A.R.S. § 38-765.
ARTICLE 11. TRANSFER OF SERVICE CREDIT

R2-8-1103. Transferring Service to Other Retirement Plans

A. Upon receipt of a request to transfer a member’s service credit from the ASRS to the Other Retirement Plan, the ASRS shall calculate:

1. The ASRS Funded Actuarial Present Value pursuant to A.R.S. §§ 38-730 and 38-922;

and

2. The Member’s Accumulated Contribution Account Balance in the ASRS.

B. Upon completing the calculations specified in subsection (A), the ASRS shall submit the calculations and member information to the Other Retirement Plan with a due date for the Other Retirement Plan to submit a fund request to the ASRS pursuant to subsection (C).

C. If a member elects to transfer service credit to the Other Retirement Plan, the member shall ensure that the Other Retirement Plan submits a fund request on the Other Retirement Plan’s letterhead by the due date specified in subsection (B) to the ASRS with the following information:

1. The member’s full name;

2. The last four digits of the member’s Social Security number;

3. The name of the Other Retirement Plan; and

4. The Actuarial Present Value necessary to transfer full service credit to the Other Retirement Plan.

D. Upon receipt of the information specified in subsection (C), the ASRS shall compare the calculations specified in subsection (A) to the Other Retirement Plan’s Actuarial Present Value specified in subsection (C) and transfer funds as follows:
1. If the Other Retirement Plan’s Actuarial Present Value specified in subsection (C) is greater than the ASRS Funded Actuarial Present Value specified in subsection (A), then the ASRS shall transfer the greater of:
   a. The ASRS Funded Actuarial Present Value specified in subsection (A); or
   b. The Member’s Accumulated Contribution Account Balance in the ASRS.

2. If the Other Retirement Plan’s Actuarial Present Value specified in subsection (C) is less than or equal to the ASRS Funded Actuarial Present Value, then the ASRS shall transfer the greater of:
   a. The Other Retirement Plan’s Actuarial Present Value specified in subsection (C); or
   b. The Member’s Accumulated Contribution Account Balance in the ASRS.

E. Transferring service credit to the Other Retirement Plan pursuant to this Section constitutes a withdrawal from ASRS membership and results in a forfeiture of all other benefits under ASRS.

F. Notwithstanding subsection (E), pursuant to A.R.S. § 38-750, a transferred employee who continues an Irrevocable PDA after transferring service credit to the Other Retirement Plan may be eligible to:

1. Transfer service credit associated with the remaining balance of the Irrevocable PDA for which the transferred employee paid for the purchase of service credit plus interest at the Assumed Actuarial Investment Earnings Rate pursuant to A.R.S. § 38-922, not including any administrative interest charge the transferred employee paid pursuant to an Irrevocable PDA; or

2. Receive a return of contributions plus interest as specified in R2-8-118(A), column 3, pursuant to A.R.S. § 38-740.
G. If the ASRS has a DRO on file for a member, the ASRS shall not transfer a member’s service credit from the ASRS to the Other Retirement Plan unless the DRO indicates whether the member may transfer all ASRS service credit to the Other Retirement Plan.

H. Notwithstanding subsection (G), if the ASRS has a DRO on file for a member that does not indicate whether the member may transfer all ASRS service credit to the Other Retirement Plan, the ASRS shall not transfer a member’s service credit from the ASRS to the Other Retirement Plan unless the alternate payee submits written acceptance of the transfer with the alternate payee’s notarized signature.
1. Identification of the rulemaking:

The ASRS needs to amend its rules relating to Domestic Relations Order (DRO) requirements. The ASRS is required to disburse benefits to alternate payees pursuant to acceptable DROs on file with the ASRS. In particular, the ASRS needs to amend its transfer rules to clarify how and if a member may transfer service credit in or out of the ASRS if the member has a DRO on file with the ASRS. The ASRS also needs to amend its retirement rules to clarify how community property is split with regard to retirement benefits based on a DRO and how a former spouse may renounce a community property assertion with regard to retirement benefits. Finally, the ASRS needs to make additional clarifying changes to ensure its rules are consistent regarding DRO requirements. These rules will increase understandability of how the ASRS uses DROs, but the rules do not impose any additional requirements or burdens on members.

a. The conduct and its frequency of occurrence that the rule is designed to change:

Each year, the ASRS processes approximately 1,200 DROs. With the changes completed in this rulemaking, the processes for submitting an acceptable DRO, will be clearer and more effective. Ultimately, the rules will clarify how a member may submit a DRO.

b. The harm resulting from the conduct the rule is designed to change and the likelihood it will continue to occur if the rule is not changed:

If adequate data are not reasonably available, the agency shall explain the limitations of the data, the methods used in an attempt to obtain the data, and characterize the probable impacts in qualitative terms. (A.R.S. § 41-1055(C)).
This rulemaking will ensure that members are aware of how to submit an acceptable DRO which will reduce mistakes on DROs and increase efficiency in processing DROs. Implementing clear and concise language will ensure members understand how the ASRS will process such requests. This rulemaking will ensure the ASRS is consistent with Arizona statutes.

c. The estimated change in frequency of the targeted conduct expected from the rule change:

Arizona statutes require the ASRS to review DROs to determine whether they meet statutory requirements related to retirement benefits. This rulemaking simply clarifies those statutory requirements. As discussed above and below, this rulemaking will increase the clarity of submitting an acceptable DRO, which will incorporate consistent language and reduce confusion.

2. A brief summary of the information included in the economic, small business, and consumer impact statement:

The ASRS promulgates rules that allow the agency to provide for the proper administration of the state retirement trust fund. ASRS rules affect ASRS members and ASRS employers regarding how they contribute to, and receive benefits from, the ASRS. The ASRS effectively administrates how public-sector employers and employees participate in the ASRS. As such, the ASRS does not issue permits or licenses, or charge fees, and its rules have little to no economic impact on private-sector businesses, with the exception of some employer partner charter schools, which have voluntarily contracted to join the ASRS. Thus, there is little to no economic, small business, or consumer impact, other than the minimal cost to the ASRS to prepare the rule package. The rule will have minimal economic impact, if any, because it merely clarifies in further detail how ASRS uses DROs.

3. The person to contact to submit or request additional data on the information included in the economic, small business, and consumer impact statement:

Name: Jessica A.R. Thomas, Rules Writer
4. **Persons who will be directly affected by, bear the costs of, or directly benefit from the rulemaking:**

In general, all members of the ASRS, as well as their beneficiaries and alternate payees, will be directly affected by, bear the costs of, and directly benefit from this rulemaking. The ASRS incurred the cost of the rulemaking. The ASRS currently has a total membership of approximately 627,975.

Specifically, members and alternate payees may be affected based on how a DRO may be submitted to the ASRS. This rule will provide direction to the public about how to submit an acceptable DRO. Such clarification will benefit members and alternate payees by increasing the readability of the rules and DRO requirements.

5. **Cost-benefit analysis:**

   a. **Costs and benefits to state agencies directly affected by the rulemaking**
      
      including the number of new full-time employees at the implementing agency required to implement and enforce the proposed rule:

      This rulemaking does not directly affect state agencies and the ASRS has determined that no new full-time employees will be required to implement and enforce the rules.

   b. **Costs and benefits to political subdivisions directly affected by the rulemaking:**

      This rulemaking does not provide any benefits or impose any costs on political subdivisions.

   c. **Costs and benefits to businesses directly affected by the rulemaking:**

      No businesses are directly affected by the rulemaking.
6. **Impact on private and public employment:**
   The rulemaking will have no impact on private or public employment.

7. **Impact on small businesses:2**
   a. **Identification of the small business subject to the rulemaking:**
      No businesses, regardless of size, are subject to the rulemaking.
   
   b. **Administrative and other costs required for compliance with the rulemaking:**
      Not applicable.
   
   c. **Description of methods that may be used to reduce the impact on small businesses:**
      Not applicable.

8. **Cost and benefit to private persons and consumers who are directly affected by the rulemaking:**
   All ASRS members and alternate payees are directly affected by the rulemaking. The effect has been previously described above.

9. **Probable effects on state revenues:**
   There will be no effect on state revenues.

10. **Less intrusive or less costly alternative methods considered:**
    The ASRS believes this is the least costly and least intrusive method because it will clarify how the ASRS processes DROs without imposing additional requirements on the public.

---

2 Small business has the meaning specified in A.R.S. § 41-1001(20).
TITLE 2. ADMINISTRATION

CHAPTER 8. STATE RETIREMENT SYSTEM BOARD

Supp. 21-1

This Chapter contains rule Sections that were filed to be codified in the Arizona Administrative Code between the dates of January 1, 2021 through March 31, 2021.

Questions about these rules? Contact:
Name: Jessica A.R. Thomas, Rules Writer
Address: Arizona State Retirement System
3300 N. Central Ave., Suite 1400
Phoenix, AZ 85012-0250
Telephone: (602) 240-2039
E-mail: Ruleswriter@azasrs.gov
CHAPTER 8. STATE RETIREMENT SYSTEM BOARD

TITLE 2. ADMINISTRATION
CHAPTER 8. STATE RETIREMENT SYSTEM BOARD

Authority: A.R.S. § 38-701 et seq.

ARTICLE 1. RETIREMENT SYSTEM

Section
R2-8-101. Repealed ............................................................. 4
R2-8-102. Repealed ............................................................. 4
R2-8-103. Repealed ............................................................. 4
R2-8-104. Definitions .......................................................... 4
R2-8-105. Repealed ............................................................. 4
R2-8-106. Reserved ............................................................. 4
R2-8-107. Reserved ............................................................. 4
R2-8-108. Reserved ............................................................. 4
R2-8-109. Reserved ............................................................. 4
R2-8-110. Reserved ............................................................. 4
R2-8-111. Reserved ............................................................. 4
R2-8-112. Reserved ............................................................. 4
R2-8-113. Emergency Expired ............................................. 4
R2-8-114. Emergency Expired ............................................. 5
R2-8-115. Return of Contributions Upon Termination of Membership by Separation from All ASRS Employment by Other Than Retirement or Death 5
R2-8-116. Alternate Contribution Rate .................................... 6
R2-8-117. Return to Work After Retirement ......................... 7
R2-8-118. Application of Interest Rates ................................. 7
R2-8-119. Expired ............................................................... 8
R2-8-120. Repealed ............................................................. 8
R2-8-121. Employer Payments for Ineligible Contributions; Unfunded Liability Invoice .................. 8
R2-8-122. Remittance of Contributions .................................. 8
R2-8-123. Actuarial Assumptions and Actuarial Value of Assets 8
Table 1. Expired ............................................................... 9
Table 2. Expired ............................................................... 9
Table 3. Repealed ............................................................. 9
Table 3A. Expired ............................................................. 9
Table 3B. Expired ............................................................. 9
Table 4. Expired ............................................................... 9
Table 4A. Repealed ........................................................... 10
Table 4B. Repealed ........................................................... 10
Table 4C. Repealed ........................................................... 10
Table 5. Expired ............................................................... 10
Table 6. Expired ............................................................... 10
Table 7. Expired ............................................................... 10
R2-8-124. Termination Incentive Program by Agreement; Unfunded Liability Calculations ........... 10
R2-8-125. Termination Incentive Program by 30% Salary Increase; Unfunded Liability Calculations 11
R2-8-126. Retirement Application ......................................... 12
R2-8-127. Re-Retirement Application ................................. 14
R2-8-128. Joint and Survivor Retirement Benefit Options ........ 15
R2-8-129. Period Certain and Life Annuity Retirement Options
CHAPTER 8. STATE RETIREMENT SYSTEM BOARD

R2-8-130. Rescind or Revert Retirement Election; Change of Contingent Annuitant ............................................. 15
R2-8-131. Designating a Beneficiary; Spousal Consent to Beneficiary Designation .................................................. 17
R2-8-132. Survivor Benefit Options .................................................. 18
R2-8-133. Survivor Benefit Applications ......................................... 19

Table 1. Repealed .......................................................... 21
Table 2. Repealed .......................................................... 21
Table 3. Repealed .......................................................... 21
Table 4. Repealed .......................................................... 22
Table 5. Repealed .......................................................... 22
Table 6. Repealed .......................................................... 22
Table 7. Repealed .......................................................... 22
Table 8. Repealed .......................................................... 22
Table 9. Repealed .......................................................... 22
Table 10. Repealed ......................................................... 22
Table 11. Repealed ......................................................... 22
Exhibit A. Repealed ......................................................... 22
Exhibit B, Table 1. Repealed ................................................. 22
Exhibit B, Table 2. Repealed ................................................. 22
Exhibit B, Table 3. Repealed ................................................. 22
Exhibit C. Repealed ......................................................... 23
Exhibit D, Table 1. Repealed ................................................. 23
Exhibit D, Table 2. Repealed ................................................. 23
Exhibit D, Table 3. Repealed ................................................. 23
Exhibit D, Table 4. Repealed ................................................. 23
Exhibit D, Table 5. Repealed ................................................. 23
Exhibit D, Table 6. Repealed ................................................. 23
Exhibit E, Table 1. Repealed ................................................. 23
Exhibit E, Table 2. Repealed ................................................. 23
Exhibit E, Table 3. Repealed ................................................. 23
Exhibit E, Table 4. Repealed ................................................. 24
Exhibit E, Table 5. Repealed ................................................. 24
Exhibit E, Table 6. Repealed ................................................. 24
Exhibit F, Table 1. Repealed ................................................. 24
Exhibit F, Table 2. Repealed ................................................. 24
Exhibit F, Table 3. Repealed ................................................. 24
Exhibit F, Table 4. Repealed ................................................. 24
Exhibit F, Table 5. Repealed ................................................. 24
Exhibit F, Table 6. Repealed ................................................. 24
Exhibit G. Repealed ......................................................... 24
Exhibit H. Repealed ......................................................... 25
Exhibit I. Repealed ......................................................... 25
Exhibit J. Repealed ......................................................... 25
Exhibit K. Repealed ......................................................... 25
Exhibit L, Table 1. Repealed ................................................. 25
Exhibit L, Table 2. Repealed ................................................. 25
Exhibit L, Table 3. Repealed ................................................. 25
Exhibit L, Table 4. Repealed ................................................. 25
Exhibit L, Table 5. Repealed ................................................. 25
Exhibit L, Table 6. Repealed ................................................. 26
Exhibit L, Table 7. Repealed ................................................. 26
Exhibit M, Table 1. Repealed ................................................. 26
Exhibit M, Table 2. Repealed ................................................. 26
Exhibit M, Table 3. Repealed ................................................. 26
Exhibit M, Table 4. Repealed ................................................. 26
Exhibit M, Table 5. Repealed ................................................. 26
Exhibit M, Table 6. Repealed ................................................. 26
CHAPTER 8. STATE RETIREMENT SYSTEM BOARD

ARTICLE 2. HEALTH INSURANCE PREMIUM BENEFIT

Article 2, consisting of R2-8-201 through R2-8-207, made by final rulemaking at 23 A.A.R. 1414, effective July 3, 2017; under the authority of A.R.S. § 38-714(E)(4) (Supp. 17-2).

Article 2, consisting of R2-8-201 through R2-8-207, made by final rulemaking at 10 A.A.R. 1962, effective May 4, 2004 (Supp. 04-2).

Section
R2-8-201. Definitions ........................................................ 26
R2-8-202. Premium Benefit Eligibility and Benefit Determination 27
R2-8-203. Payment of Premium Benefit .............................. 27
R2-8-204. Premium Benefit Calculation ............................ 28
R2-8-205. Premium Benefit Documentation ..................... 28
R2-8-206. Six-Month Reimbursement Program ................ 28
R2-8-207. Optional Premium Benefit ................................. 29

ARTICLE 3. LONG-TERM DISABILITY

Article 3, consisting of R2-8-301 through R2-8-306, made by final rulemaking at 23 A.A.R. 2746, effective November 13, 2017 (Supp. 17-3).

Section
R2-8-301. Definitions ........................................................ 30
R2-8-302. Application for Long-Term Disability Benefit . 30
R2-8-303. Long-Term Disability Calculation .................... 30
R2-8-304. Payment of Long-Term Disability Benefit ...... 30
R2-8-305. Social Security Disability Appeal ..................... 31
R2-8-306. Approval of Social Security Disability .......... 31

ARTICLE 4. PRACTICE AND PROCEDURE BEFORE THE BOARD

Article 4, consisting of R2-8-401 through R2-8-405, made by final rulemaking at 11 A.A.R. 444, effective January 4, 2005 (Supp. 05-1).

Section
R2-8-401. Definitions ........................................................ 31
R2-8-402. General Procedures ............................................ 31
R2-8-403. Letters of Appeal; Request for a Hearing of an Appealable Agency Action 31
R2-8-404. Board Decisions on Hearings before the Office of Administrative Hearings 32
R2-8-405. Motion for Rehearing Before the Board; Motion for Review of a Final Decision 32

ARTICLE 5. PURCHASING SERVICE CREDIT

Article 5, consisting of R2-8-501 through R2-8-521, made by final rulemaking at 11 A.A.R. 2640, effective June 30, 2005 (Supp. 05-2).

Section
R2-8-501. Definitions ........................................................ 33
R2-8-502. Request to Purchase Service Credit and Notification of Cost 34
R2-8-503. Requirements Applicable to All Service Credit Purchases 34
R2-8-504. Service Credit Calculation for Purchasing Service Credit 34
R2-8-505. Restrictions on Purchasing Overlapping Service Credit 35
R2-8-506. Cost Calculation for Purchasing Service Credit 35
R2-8-507. Required Documentation and Calculations for Forfeited Service Credit 35
R2-8-508. Required Documentation and Calculations for Leave of Absence Service Credit 35
R2-8-509. Required Documentation and Calculations for Military Service Credit 36
R2-8-510. Required Documentation and Calculations for Military Call-up Service Credit 36
CHAPTER 8. STATE RETIREMENT SYSTEM BOARD

R2-8-511. Required Documentation and Calculations for Other Public Service Credit ........................................ 37
R2-8-512. Purchasing Service Credit by Check, Cashier’s Check, or Money Order .................................................. 37
R2-8-513. Purchasing Service Credit by Irrevocable PDA .................................................................................. 37
R2-8-513.01. Irrevocable PDA and Transfer of Employment to a Different Employer ............................................. 39
R2-8-513.02. Termination Date ......................................................................................................................... 39
R2-8-514. Purchasing Service Credit by Direct Rollover or Trustee-to-Trustee Transfer ............................................ 39
R2-8-515. Repealed ................................................................................................................................. 40
R2-8-516. Expired .................................................................................................................................. 40
R2-8-517. Expired .................................................................................................................................. 41
R2-8-518. Repealed .................................................................................................................................. 41
R2-8-519. Purchasing Service Credit by Termination Pay ..................................................................................... 41
R2-8-520. Termination of Employment and Request Return of Retirement Contributions or Death of Member While Purchasing Service Credit by an Irrevocable PDA ......................................................................................... 41
R2-8-521. Adjustment of Errors ................................................................................................................. 42

ARTICLE 6. PUBLIC PARTICIPATION IN RULEMAKING

Article 6, consisting of R2-8-601 through R2-8-607, made by final rulemaking at 12 A.A.R. 964, effective March 7, 2006 (Supp. 06-1).

Section
R2-8-601. Definitions ................................................................................................................................. 42
R2-8-602. Reviewing Agency Rulemaking Record and Directory of Substantive Policy Statements ......................... 42
R2-8-603. Petition for Rulemaking ............................................................................................................ 42
R2-8-604. Review of a Rule, Agency Practice, or Substantive Policy Statement .................................................. 42
R2-8-605. Objection to Rule Based Upon Economic, Small Business and Consumer Impact ............................... 42
R2-8-606. Oral Proceedings ....................................................................................................................... 43
R2-8-607. Petition for Delayed Effective Date .............................................................................................. 43

ARTICLE 7. CONTRIBUTIONS NOT WITHHELD

Article 7, consisting of R2-8-701 through R2-8-709, made by final rulemaking at 12 A.A.R. 4793, effective December 5, 2006 (Supp. 06-4).

Section
R2-8-701. Definitions ................................................................................................................................. 43
R2-8-702. General Information .................................................................................................................. 43
R2-8-703. Employer’s Discovery of Error .................................................................................................... 44
R2-8-704. Member’s Discovery of Error ....................................................................................................... 44
R2-8-705. ASRS’ Discovery of Error .......................................................................................................... 44
R2-8-706. Determination of Contributions Not Withheld ............................................................................. 44
R2-8-707. Submission of Payment .............................................................................................................. 45
CHAPTER 8. STATE RETIREMENT SYSTEM BOARD

R2-8-708. Expired ............................................................. 45
R2-8-709. Repealed ............................................................. 45

ARTICLE 8. RECOVERY OF OVERPAYMENTS

Article 8, consisting of R2-8-801 through R2-8-810, made by final rulemaking at 23 A.A.R. 2750, effective November 13, 2017 (Supp. 17-3).

Section
R2-8-801. Definitions ........................................................ 45
R2-8-802. Estimated Social Security Disability Income Amount and Revised Social Security Disability Income Amount ................................................................. 45
R2-8-803. Reimbursement of Overpayments ........................ 46
R2-8-804. Collection of Overpayments from Forfeiture ......... 46
R2-8-805. Collection of Overpayments from Retirement Benefit ................................................................. 46
R2-8-806. Collection of Overpayments from Survivor Benefit ................................................................. 46
R2-8-807. Collection of Overpayments from LTD Benefit .... 46
R2-8-808. Collection of Overpayments by the Attorney General ................................................................. 47
R2-8-809. Collection of Overpayments by the Arizona Department of Revenue ................................................................. 47
R2-8-810. Collection of Overpayments by Garnishment or Levy ................................................................. 47

ARTICLE 9. COMPENSATION

Article 9, consisting of new Sections R2-8-901 through R2-8-904, made by final rulemaking at 27 A.A.R. 91, effective March 9, 2021 (Supp. 20-1).

Article 9, consisting of R2-8-901 through R2-8-905, made by final rulemaking at 23 A.A.R. 2754, effective January 1, 2018 (Supp. 17-3).

Article 9, consisting of R2-8-901 through R2-8-905, expired at 24 A.A.R. 1872, effective June 12, 2018 (Supp. 18-2).

Section
R2-8-901. Definitions ........................................................ 47
R2-8-902. Remitting Contributions ..................................... 47
R2-8-903. Accrual of Credited Service ................................. 47
R2-8-904. Compensation from An Additional Employer .... 47
R2-8-905. Expired ............................................................. 48

ARTICLE 10. MEMBERSHIP

Article 10, consisting of Sections R2-8-1001 through R2-8-1005, made by final rulemaking at 24 A.A.R. 3407, effective February 4, 2019 (Supp. 18-4).

Section
R2-8-1001. Definitions ....................................................... 48
R2-8-1002. Employee Membership ...................................... 48
R2-8-1003. Charter School Employer Membership .......... 49
R2-8-1004. Other Political Subdivision and Political Subdivision Entity Employer Membership ................. 49
R2-8-1005. Employer Reporting ........................................... 50
R2-8-1006. Prior Service Purchase Cost for New Employers
### Article 11. Transfer of Service Credit

<table>
<thead>
<tr>
<th>Section Reference</th>
<th>Description</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>R2-8-1101</td>
<td>Definitions</td>
<td>51</td>
</tr>
<tr>
<td>R2-8-1102</td>
<td>Required Documentation and Calculations for Transfer In Service Credit</td>
<td>52</td>
</tr>
<tr>
<td>R2-8-1103</td>
<td>Transferring Service to Other Retirement Plans</td>
<td>53</td>
</tr>
</tbody>
</table>
ARTICLE 1. RETIREMENT SYSTEM

R2-8-101. Repealed

Historical Note
Former Rule, Social Security Regulation 1; Former Section R2-8-01 renumbered as Section R2-8-101 without change effective May 21, 1982 (Supp. 82-3). Amended subsections (A) and (C) effective April 12, 1984 (Supp. 84-2). Section repealed by final rulemaking at 10 A.A.R. 669, effective February 3, 2004 (Supp. 04-1).

R2-8-102. Repealed

Historical Note
Former Rule, Social Security Regulation 2; Amended effective April 15, 1980 (Supp. 80-2). Former Section R2-8-02 renumbered as Section R2-8-102 without change effective May 21, 1982 (Supp. 82-3). Amended as an emergency by adding subsection (E) effective January 1, 1984, pursuant to A.R.S. § 41-1003, valid for only 90 days (Supp. 83-6). Emergency expired. Permanent rule, subsections (A), (B), and (D), amended effective April 12, 1984 (Supp. 84-2). Correction, subsection (B), as amended effective April 12, 1984 (Supp. 84-3). Section repealed by final rulemaking at 10 A.A.R. 669, effective February 3, 2004 (Supp. 04-1).

R2-8-103. Repealed

Historical Note
Former Rule, Social Security Regulation 3; Amended effective April 15, 1980 (Supp. 80-2). Former Section R2-8-03 renumbered as Section R2-8-103 without change effective May 21, 1982 (Supp. 82-3). Amended as an emergency by adding subsection (E) effective January 1, 1984, pursuant to A.R.S. § 41-1003, valid for only 90 days (Supp. 83-6). Emergency expired. Permanent rule, subsections (A) thru (C), amended effective April 12, 1984 (Supp. 84-2). Section repealed by final rulemaking at 10 A.A.R. 669, effective February 3, 2004 (Supp. 04-1).

R2-8-104. Definitions
A. The definitions in A.R.S. § 38-711 apply to this Chapter.
B. Unless otherwise specified, in this Chapter:
1. “Actuarial assumption” means an estimate of an uncertain future event that affects pension liabilities, or assets, or both.
2. “Assumed actuarial investment earnings rate” means the assumed rate of investment return approved by the Board and contained in R2-8-118(A).
3. “Authorized employer representative” means an individual specified by the Employer to provide the ASRS with information about a member who previously worked for the ASRS employer.
4. “Contribution” means:
   a. Amounts required by A.R.S. Title 38, Chapter 5, Articles 2 and 2.1 to be paid to the ASRS by a member or an employer on behalf of a member;
   b. Any voluntary amounts paid to the ASRS pursuant to 2 A.A.C. 8, Article 5 by a member to be placed in the member’s account; and
   c. Amounts credited by transfer under 2 A.A.C. 8, Article 11.
5. “Day” means a calendar day, and excludes the:
   a. Day of the act or event from which a designated period of time begins to run; and
   b. Last day of the period if a Saturday, Sunday, or official state holiday.
6. “Designated beneficiary” means the same as in A.R.S. § 38-762(G) or another person designated as a beneficiary by law.
7. “Director” means the Director appointed by the Board as provided in A.R.S. § 38-715.
8. “Individual retirement account” or “IRA” means the types of eligible retirement plans specified in A.R.S. § 38-770(D)(3)(a) and (b).
10. “Person” means the same as in A.R.S. § 41-1001(15).
11. “Plan” means the same as “defined benefit plan” in A.R.S. § 38-712(B), and as administered by the ASRS.
13. “Rollover” means a contribution to the ASRS by an eligible member of an eligible rollover distribution from one or more of the retirement plans listed in A.R.S. § 38-747(H)(2) and (H)(3).
14. “Terminate employment” means to end the employment relationship between a member and an ASRS employer with the intent that the member does not return to employment with an ASRS employer.
15. “United States” means the same as in A.R.S. § 1-215(39).

Historical Note
Former Rule, Social Security Regulation 4; Former Section R2-8-04 renumbered as Section R2-8-104 without change effective May 21, 1982 (Supp. 82-3). Amended subsections (G), (J), and (K) effective April 12, 1984 (Supp. 84-2). Typographical error corrected in subsection (5)(c) “required” corrected to “required” (Supp. 97-1). Amended by final rulemaking at 21 A.A.R. 2515, ef-
R2-8-105. Repealed

Historical Note
Former Rule, Social Security Regulation 5; Amended effective April 15, 1980 (Supp. 80-2). Former Section R2-8-05 renumbered as Section R2-8-105 without change effective May 21, 1982 (Supp. 82-2). Amended as an emergency by adding subsection (E) effective January 1, 1984, pursuant to A.R.S. § 41-1003, valid for only 90 days (Supp. 83-6). Emergency expired. Permanent rule amended effective April 12, 1984 (Supp. 84-2). Section repealed by final rulemaking at 10 A.A.R. 669, effective February 3, 2004 (Supp. 04-1).

R2-8-106. Reserved

R2-8-107. Reserved

R2-8-108. Reserved

R2-8-109. Reserved

R2-8-110. Reserved

R2-8-111. Reserved

R2-8-112. Reserved

R2-8-113. Emergency Expired

Historical Note
New Section made by emergency rulemaking at 11 A.A.R. 579, effective January 4, 2005 (05-1). Emergency rule expired (Supp. 05-2).

R2-8-114. Emergency Expired

Historical Note
New Section made by emergency rulemaking at 11 A.A.R. 579, effective January 4, 2005 (05-1). Emergency rule expired (Supp. 05-2).

R2-8-115. Return of Contributions Upon Termination of Membership by Separation from All ASRS Employment by Other Than Retirement or Death

A. The following definitions apply to this Section unless otherwise specified:
1. “DRO” means the same as “domestic relations order” in A.R.S. § 38-773(H)(1).
2. “Eligible retirement plan” means the same as in A.R.S. § 38-770(D)(3).
3. “Employer Number” means a unique identifier the ASRS assigns to a member employer.
4. “Employer plan” means the types of eligible retirement plans specified in A.R.S. § 38-770(D)(3)(c), (d), (e), and (f).
5. “LTD” Means the same as in R2-8-301.
6. “On File” means ASRS has received the information.
7. “Process date” means the calendar day the ASRS generates contribution withdrawal documents to be sent to a member.
8. “Warrant” means a voucher authorizing payment of funds due to a member.

B. A member who terminates from all ASRS employment by other than retirement or death and desires a return of the member’s contributions, including amounts received for the purchase of service, any employer contributions authorized under A.R.S. § 38-740, and interest on the contributions, shall request from the ASRS, in writing or verbally, the documents necessary to apply for the withdrawal of the member’s contributions.

C. Upon request to withdraw by the member, the ASRS shall provide:
1. An Application for Withdrawal of Contributions and Termination of Membership form to the member, and
2. An Ending Payroll Verification - Withdrawal of Contribution and Termination of Membership form to the employer, if ASRS has received contributions for the member within the six months immediately preceding the date the member submitted the request to ASRS.

D. The member shall complete and return to the ASRS the Application for Withdrawal of Contributions and Termination of Membership form that includes the following information:
1. The member’s full name;
2. The member’s Social Security number or U.S. Tax Identification number;
3. The member’s current mailing address, if not On File with ASRS;
4. The member’s birth date, if not On File with ASRS;
5. Notarized signature of the member certifying that the member:
   a. Is no longer employed by any Employer;
   b. Is neither under contract nor has any verbal or written agreement for future employment with an Employer;
   c. Is not currently in a leave of absence status with an Employer;
   d. Understands that each of the member’s former Employers will complete an ending payroll verification form if ASRS has received contributions for the member within the six months immediately preceding the date the member submitted the request to ASRS;
   e. Understands that the member’s most recent Employer will complete an ending payroll verification form for the member if the member has reached the member’s required beginning date pursuant to A.R.S. § 38-775;
   f. Has read and understands the Special Tax Notice Regarding Plan Payments the member received with the application and the member elects to waive the member’s 30-day waiting period to consider a rollover or a cash distribution;
   g. Understands that the member is forfeiting all future retirement rights and privileges of membership with ASRS;
   h. Understands that LTD benefits will be canceled if the member elects to withdraw contributions while receiving or electing to receive long-term disability benefits;
   i. Understands that if the member elects to roll over all or any portion of the member’s distribution to another employer plan, it is the member’s responsibility to verify that the receiving employer plan will accept the rollover and, if applicable, agree to separately account for the pre-tax and post-tax amounts rolled over and the related subsequent earnings on the amounts;
   j. Understands that if the member elects to roll over all or any portion of the member’s distribution to a retirement account, it is the member’s responsibility to separately account for pre-tax and post-tax amounts; and
   k. Understands that if the member elects a rollover to another employer plan or individual retirement account, any portion of the distribution not designated for rollover will be paid directly to the member and any taxable amounts will be subject to applicable state and federal tax withholding;
   l. Understands that the member is not considered terminated and cannot withdraw the member’s ASRS contribution if the member was called to active military service and is not currently performing services for an Employer;
   m. Understands that any person who knowingly makes any false statement with an intent to defraud the ASRS is guilty of a Class 6 felony in accordance with A.R.S. § 38-793.

6. Specify that:
   a. The entire amount of the distribution be paid directly to the member,
   b. The entire amount of the distribution be rolled over to an eligible retirement plan, or
   c. An identified amount of the distribution be rolled over to an eligible retirement plan and the remaining amount be paid directly to the member; and
7. If the member selects all or a portion of the withdrawal be rolled over to an eligible retirement plan, specify;
   a. The type of eligible retirement plan; and
   b. The name and mailing address of the eligible retirement plan.

E. If ASRS has received contributions for the member within six months immediately preceding the date the member submitted the request to ASRS each Employer shall complete an Ending Payroll Verification - Withdrawal of Contributions and Termination of Membership form electronically that includes the following information:
1. The member’s full name;
2. The member’s Social Security number or U.S. Tax Identification number;
3. The member’s termination date;
4. The member’s final pay period ending date;
5. The final amount of contributions, including any adjustments or corrections, but not including any long-term disability contributions;
6. The Employer’s name and telephone number;
7. The Employer Number;
8. The name and title of the authorized Employer representative;
9. Certification by the authorized Employer representative that:
   a. The member Terminated Employment and is neither under contract nor bound by any verbal or written agreement for employment with the Employer;
   b. There is no agreement to re-employ the member;
   c. Any person who knowingly makes any false statement or who falsifies any record of the retirement plan with an intent to defraud the plan, is guilty of a Class 6 felony according to A.R.S. § 38-793; and
   d. The authorized Employer representative certifies that they are the Employer user named on the Ending Payroll Verification - Withdrawal of Contributions and Termination of Membership form and their title and contact information is current and correct.

F. If the member has attained a required beginning distribution date as of the date the member submitted the request to ASRS, the most recent Employer shall complete an Ending Payroll Verification - Withdrawal of Contributions and Termination of Membership form electronically that includes the information contained in subsection (E).

G. If the member requests a return of contributions and a Warrant is distributed during the fiscal year that the member began membership in the ASRS, no interest is paid to the account of the member.
CHAPTER 8. STATE RETIREMENT SYSTEM BOARD

H. If the member requests a return of contributions after the first fiscal year of membership, the ASRS shall credit interest at the rate specified in Column 3 of the table in R2-8-118(A) to the account of the member as of June 30 of each year, on the basis of the balance in the account of the member as of the previous June 30. The ASRS shall credit interest for a partial fiscal year of membership in the ASRS on the previous June 30 balance based on the number of days of membership up to and including the day the ASRS issues the Warrant divided by the total number days in the fiscal year. Contributions made after the previous June 30 are returned without interest.

I. Upon submitting to the ASRS the completed and accurate Application for Withdrawal of Contributions and Termination of Membership form and, if applicable, after the ASRS has received any Ending Payroll Verification - Withdrawal of Contributions and Termination of Membership forms, a member is entitled to payment of the amount due to the member as specified in subsection (G) or (H) unless a present or former spouse submits to the ASRS a certified copy or original DRO that specifies entitlement to all or part of the return of contributions under A.R.S. § 38-773 before the ASRS returns the contributions as specified by the member.

J. A member may cancel an Application for Withdrawal of Contributions and Termination of Membership form at any time before the return of contributions is disbursed by submitting written notice to ASRS to cancel the request.

K. If an Application for Withdrawal of Contributions and Termination of Membership form is completed through the member’s secure ASRS account, the secure login and successful submission of the knowledge based answers shall serve as the member’s notarized signature required under subsection (D)(5).

Historical Note

R2-8-116. Alternate Contribution Rate

A. For purposes of this Section, the following definitions apply:
1. “ACR” means an alternate contribution rate pursuant to A.R.S. § 38-766.02, the resulting amount of which is not deducted from the employee’s compensation.
2. “Class of positions” means all employment positions of the employer that perform the same, or substantially similar, function or duties, for the employer as determined by the ASRS in subsection (B).
3. “Compensation” has the same meaning as A.R.S. § 38-711(7) and does not include ACR amounts.
4. “Leased from a third party” means:
   a. The employee is not employed by an employer; and
   b. A co-employment relationship, as defined in A.R.S. § 23-561(4), does not exist.

B. An employer that employs a retired member shall pay an ACR to the ASRS, unless the employer provides proof that:
1. The retired member is leased from a third party; and
2. All employees in the entire class of positions, to which the retired member’s position belongs, have been leased from a third party; and
3. No employee who has not been leased is performing the same, or substantially similar, function or duties, as the retired member.

C. In order to determine whether an employer satisfies the criteria in subsection (B), the employer shall submit information and documentation, pursuant to A.R.S. § 38-766.02(E), within 14 days of written request by the ASRS.

D. The employer shall directly remit payment of an ACR to the ASRS from the employer’s funds, through the employer’s secure ASRS account within 14 days of the first pay period end date after the hire of the retired member.

E. If the employer does not remit the ACR by the date it is due pursuant to subsection (D), the ASRS shall charge interest on the ACR amount from the date it was due to the date the ACR payment is remitted to the ASRS at the assumed actuarial investment earnings rate listed in R2-8-118(A).

F. A payment of an ACR on behalf of a retired member pursuant to A.R.S. § 38-766.02, shall not entitle a retired member to a refund of an ACR payment or any additional ASRS benefit as described in A.R.S. § 38-766.01(E).

Historical Note
Former Rule, Retirement System Regulation 2; Former Section R2-8-16 renumbered as Section R2-8-116 without change effective May 21, 1982 (Supp. 82-3). Section expired under A.R.S. § 41-1056(E) at 16 A.A.R. 1765, effective July 14, 2010 (Supp. 10-3). New Section made by final rulemaking at 22 A.A.R. 1341, effective July 4, 2016 (Supp. 16-2). Amended by final rulemaking at 24 A.A.R. 1861, effective June 11, 2018 (Supp. 18-2).

R2-8-117. Return to Work After Retirement

A. Unless otherwise specified, in this Section:
1. “Commencing employment” means the date a retired member who is not independently contracted or leased from a third party pursuant to R2-8-116(A)(4) renders services directly to an Employer for which the retired member is entitled to be paid.
2. “Returns to work” means the member retired from the ASRS prior to Commencing Employment with an Employer.
B. Pursuant to A.R.S. § 38-766.01(C), a retired member who returns to work directly with an Employer shall submit a Working After Retirement form to each of the retired member’s current Employers through the retired member’s secure website account within 30 days of the retired member Commencing Employment with an Employer.

C. Pursuant to A.R.S. § 38-766.02(E), within 14 days of receipt of a Working After Retirement form, an Employer shall verify the retired member’s employment information and submit the verified Working After Retirement form to the ASRS through the Employer’s secure website account for each retired member who returns to work with the Employer.

D. After a retired member returns to work, the Employer shall submit a verified Working After Retirement form to the ASRS through the Employer’s secure website account within 30 days of a change in the actual hours or intent of each retired member’s employment that results in:
   1. The member’s number of hours worked per week increasing from less than 20 hours per week to 20 or more hours per week; or
   2. The member’s number of weeks worked in a fiscal year increasing from less than 20 weeks per fiscal year to 20 or more weeks per fiscal year.

E. The Working After Retirement form shall contain the following information:
   1. The retired member’s Social Security number or U.S. Tax Identification number;
   2. The retired member’s full name;
   3. The date the member retired;
   4. Whether the retired member terminated employment, and if so, the date the retired member terminated employment;
   5. The first date of Commencing Employment upon the retired member’s return to work;
   6. The intent of the retired member’s employment reflected as:
      a. The anticipated number of hours the retired member is engaged to work per week and the anticipated number of weeks the retired member is engaged to work per fiscal year; or
      b. The actual number of hours the retired member works for an Employer per week and the actual number of weeks the retired member works for an Employer in a fiscal year.
   7. Acknowledgement by the retired member that the retired member has read the Return to Work information on the ASRS website and intends to submit the Working After Retirement form to the Employer and submit any additional Working After Retirement forms to the Employer as required.

F. Upon discovering that the retired member’s employment violates A.R.S. §§ 38-766 or 38-766.01, the ASRS shall send the retired member a Retiree Return to Work Notice of Non-Compliance with ASRS Statutes form.

G. By the due date specified on the Retiree Return to Work Notice of Non-Compliance with ASRS Statutes form, the retired member shall return the completed form and any supporting documentation to the ASRS indicating the action the retired member will take to correct the violation of A.R.S. §§ 38-766 or 38-766.01.

H. If the member does not submit the Retiree Return to Work Notice of Non-Compliance with ASRS Statutes form pursuant to subsection (G), the ASRS shall suspend the retired member’s retirement benefits from the date on the Retiree Return to Work Notice of Non-Compliance with ASRS Statutes form.

I. If the ASRS suspends the retired member’s retirement benefits pursuant to subsection (H), the ASRS shall reinstate the retired member’s retirement benefits upon notice from the Employer that all violations pursuant to subsection (F) have been corrected.

**Historical Note**
Former Rule, Retirement System Regulation 3; Former Section R2-8-17 renumbered as Section R2-8-117 without change effective May 21, 1982 (Supp. 82-3). Section repealed by final rulemaking at 11 A.A.R. 2640, effective June 30, 2005 (Supp. 05-2). New Section made by final rulemaking at 23 A.A.R. 209, effective March 5, 2017 (Supp. 17-1). Amended by final expedited rulemaking at 27 A.A.R. 479, with an immediate effective of March 5, 2021 (Supp. 21-1).

**R2-8-118. Application of Interest Rates**

A. Application of interest from inception of the ASRS Plan through the present is as follows:

<table>
<thead>
<tr>
<th>Effective Date of Interest Rate Change</th>
<th>Assumed Actuarial Investment Earnings Rate</th>
<th>Interest Rate Used to Determine Return of Contributions Upon Termination of Membership by Separation from Service by Other Than Retirement or Death</th>
</tr>
</thead>
<tbody>
<tr>
<td>7-1-1953</td>
<td>2.50%</td>
<td>2.50%</td>
</tr>
<tr>
<td>7-1-1959</td>
<td>3.00%</td>
<td>3.00%</td>
</tr>
<tr>
<td>7-1-1966</td>
<td>3.75%</td>
<td>3.75%</td>
</tr>
<tr>
<td>7-1-1969</td>
<td>4.25%</td>
<td>4.25%</td>
</tr>
<tr>
<td>7-1-1971</td>
<td>4.75%</td>
<td>4.75%</td>
</tr>
<tr>
<td>7-1-1975</td>
<td>5.50%</td>
<td>5.50%</td>
</tr>
</tbody>
</table>
B. At the beginning of each fiscal year, interest is credited to the retirement account of each member on the June 30 that marks the end of the fiscal year based on the balance in the member’s account as of the previous June 30. The balance on which interest is credited includes:
1. Employer and employee contributions;
2. Voluntary additional contributions made by members pursuant to A.R.S. §§ 38-742, 38-743, 38-744, and 38-745, if applicable;
3. Amounts credited by transfer under 2 A.A.C. 8, Article 11; and
4. Interest credited in previous years.
C. Notwithstanding subsection (B), the retirement account of each member stops accruing interest the last full month prior to the member’s retirement date.

Historical Note
Former Rule, Retirement System Regulation 4; Amended effective July 1, 1975 (Supp. 75-1). Amended effective June 23, 1976 (Supp. 76-3). Former Section R2-8-18 renumbered and amended as Section R2-8-118 effective May 21, 1982 (Supp. 82-3). Amended by final rulemaking at 11 A.A.R. 1416, effective April 5, 2005 (Supp. 05-2). Amended by final rulemaking at 19 A.A.R. 764, effective June 1, 2013 (Supp. 13-2). Amended by final rulemaking at 21 A.A.R. 2515, effective December 5, 2015 (Supp. 15-4). Amended by final rulemaking at 22 A.A.R. 79, effective March 6, 2016 (Supp. 16-1). Amended by final rulemaking at 24 A.A.R. 1861, effective June 11, 2018 (Supp. 18-2). Amended by final expedited rulemaking at 27 A.A.R. 479, with an immediate effective of March 5, 2021 (Supp. 21-1).

R2-8-119. Expired

Historical Note
Former Rule, Retirement System Regulation 5; Amended effective July 1, 1975 (Supp. 75-1). Amended effective June 23, 1976 (Supp. 76-3). Former Section R2-8-19 renumbered and amended as Section R2-8-119 effective May 21, 1982 (Supp. 82-3). Section R2-8-119 and Appendix A and B expired under A.R.S. § 41-1056(E) at 16 A.A.R. 1765, effective July 14, 2010 (Supp. 10-3).

R2-8-120. Repealed

Historical Note

R2-8-121. Employer Payments for Ineligible Contributions; Unfunded Liability Invoice
A. Upon calculating an unfunded liability amount under A.R.S. § 38-748, the ASRS shall send an Unfunded Liability Invoice to the Employer through the Employer’s secure ASRS account.
B. An Employer that owes an unfunded liability amount to the ASRS pursuant to A.R.S. § 38-748, shall remit full payment of the unfunded liability amount within 90 days of being notified of the unfunded liability pursuant to subsection (A).
C. Pursuant to A.R.S. § 38-735(C), if the ASRS does not receive full payment from the Employer of the unfunded liability amount within 90 days of being notified of the unfunded liability amount, the unpaid portion of the unfunded liability amount shall accrue interest at the assumed actuarial investment earnings rate listed in R2-8-118(A).
D. The ASRS may collect any unfunded liability and interest amount pursuant to A.R.S. §§ 38-723 and 38-735(C).

Historical Note
Former Rule, Retirement System Regulation 7; Amended effective April 15, 1980 (Supp. 80-2). Former Section R2-8-21 renumbered as Section R2-8-121 without change effective May 21, 1982 (Supp. 82-3). Amended subsection (A) effective May 30, 1985 (Supp. 85-3). Section repealed by final rulemaking at 11 A.A.R. 444, effective January 4, 2005 (05-1). New Section made by final rulemaking at 27 A.A.R. 458, effective May 2, 2021 (Supp. 21-1).
R2-8-122. Remittance of Contributions
A. Each Employer shall remit the amount of employee member contributions to the ASRS not later than 14 days after the last day of each payroll period. Payments of employee member contributions not received in the offices of the ASRS by the 14th day after the last day of the applicable payroll period shall become delinquent after that date and shall accrue interest at the assumed actuarial investment earnings rate listed in R2-8-118(A) per annum from and after the date of delinquency until payment is received by the ASRS.
B. Each Employer shall remit the amount of employer contributions to the ASRS not later than 14 days after the last day of each payroll period. Payments of employer contributions not received in the offices of the ASRS by the 14th day after the last day of the applicable payroll period shall become delinquent after that date and shall accrue interest at the assumed actuarial investment earnings rate listed in R2-8-118(A) per annum from and after the date of delinquency until payment is received by the ASRS.
C. Each Employer shall remit contributions pursuant to this Section based on the contribution rate in effect on the pay period end date.
D. Each Employer shall certify on each payroll that each employee included on that payroll has met the requirements for active member eligibility and that all contributions to be remitted are for eligible compensation under A.R.S. § 38-711.
E. If an Employer improperly certifies that an employee has met the requirements for active member eligibility and that all contributions remitted for the employee are eligible for compensation under subsection (D), the ASRS may charge the employer an unfunded liability amount under A.R.S. § 38-748.

Historical Note
Former Rule, Retirement System Regulation 8; Amended effective Dec. 8, 1978 (Supp. 78-6). Former Section R2-8-22 renumbered as Section R2-8-122 without change effective May 21, 1982 (Supp. 82-3). Amended by final rulemaking at 22 A.A.R. 79, effective March 6, 2016 (Supp. 16-1). Amended by final rulemaking at 24 A.A.R. 1861, effective June 11, 2018 (Supp. 18-2). Amended by final rulemaking at 26 A.A.R. 371, effective April 11, 2020 (Supp. 20-1). Section amended by final rulemaking at 27 A.A.R. 458, effective May 2, 2021 (Supp. 21-1).

R2-8-123. Actuarial Assumptions and Actuarial Value of Assets
A. For the purposes of this Section, “market value” means an estimated monetary worth of an asset based on the current demand for the asset and the amount of that type of asset available for sale.
B. The Board adopts the following actuarial assumptions and asset valuation method:
1. The interest and investment return rate assumptions are determined by the Board.
2. The actuarial value of assets equals the market value of assets:
   a. Minus a 10-year phase-in of the excess for years in which actual investment return exceeds expected investment return; and
   b. Plus a 10-year phase-in of the shortfall for years in which actual investment return falls short of expected investment return.

Historical Note
Adopted effective July 1, 1975 (Supp. 75-1). Amended effective June 23, 1976 (Supp. 76-3). Amended effective December 20, 1977 (Supp. 77-6). Former Section R2-8-23 renumbered and amended as Section R2-8-123 effective May 21, 1982 (Supp. 82-3).

Table 1. Expired

Historical Note

Table 2. Expired
CHAPTER 8. STATE RETIREMENT SYSTEM BOARD

Historical Note

Table 3. Repealed

Historical Note
Emergency adoption effective July 6, 1993, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 93-3). Emergency rule adopted again effective September 29, 1993, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 93-3). Permanent rule adopted effective December 22, 1993 (Supp. 93-4). Emergency amendments to Table 3 adopted effective January 30, 1997, pursuant to A.R.S. § 41-1026 for a maximum of 180 days (Supp. 97-1). Emergency expired. Permanent amendments adopted effective September 12, 1997 (Supp. 97-3). Table 3 repealed; new Table 3 renumbered from Table 4 by final rulemaking at 9 A.A.R. 4614, effective December 6, 2003 (Supp. 03-4). Table repealed by emergency rulemaking under A.R.S. § 41-1026 at 10 A.A.R. 2496, effective August 2, 2004 for 180 days (Supp. 04-2). Table repealed by final rulemaking at 10 A.A.R. 4012, effective November 13, 2004 (Supp. 04-3).

Table 3A. Expired

Historical Note
New Table made by emergency rulemaking under A.R.S. § 41-1026 at 10 A.A.R. 2496, effective August 2, 2004 for 180 days (Supp. 04-2). New Table made by final rulemaking at 10 A.A.R. 4012, effective November 13, 2004 (Supp. 04-3). Table expired under A.R.S. § 41-1056(E) at 16 A.A.R. 1765, effective July 14, 2010 (Supp. 10-3).

Table 3B. Expired

Historical Note
New Table made by emergency rulemaking under A.R.S. § 41-1026 at 10 A.A.R. 2496, effective August 2, 2004 for 180 days (Supp. 04-2). New Table made by final rulemaking at 10 A.A.R. 4012, effective November 13, 2004 (Supp. 04-3). Table expired under A.R.S. § 41-1056(E) at 16 A.A.R. 1765, effective July 14, 2010 (Supp. 10-3).

Table 4. Expired

Historical Note
Emergency adoption effective July 6, 1993, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 93-3). Emergency rule adopted again effective September 29, 1993, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 93-3). Permanent rule adopted effective December 22, 1993 (Supp. 93-4). Table 4 renumbered as Table 3 by final rulemaking at 9 A.A.R. 4614, effective August 2, 2004 for 180 days (Supp. 04-2). New Table made by emergency rulemaking under A.R.S. § 41-1026 at 10 A.A.R. 2496, effective December 6, 2003 (Supp. 03-4). New Table made by emergency rulemaking under A.R.S. § 41-1026 at 10 A.A.R. 2496, effective August 2, 2004 for 180 days (Supp. 04-2). New Table made by final rulemaking at 10 A.A.R. 4012, effective November 13, 2004 (Supp. 04-3). Table expired under A.R.S. § 41-1056(E) at 16 A.A.R. 1765, effective July 14, 2010 (Supp. 10-3).

Table 4A. Repealed

Historical Note
New Table made by final rulemaking at 9 A.A.R. 4614, effective December 6, 2003 (Supp. 03-4). Table repealed by emergency rulemaking under A.R.S. § 41-1026 at 10 A.A.R. 2496, effective August 2, 2004 for 180 days (Supp. 04-2). Table repealed by final rulemaking at 10 A.A.R. 4012, effective November 13, 2004 (Supp. 04-3).

Table 4B. Repealed
CHAPTER 8. STATE RETIREMENT SYSTEM BOARD

Historical Note
New Table made by final rulemaking at 9 A.A.R. 4614, effective December 6, 2003 (Supp. 03-4). Table repealed by emergency rulemaking under A.R.S. § 41-1026 at 10 A.A.R. 2496, effective August 2, 2004 for 180 days (Supp. 04-2). Table repealed by final rulemaking at 10 A.A.R. 4012, effective November 13, 2004 (Supp. 04-3).

Table 4C. Repealed

Historical Note
New Table made by final rulemaking at 9 A.A.R. 4614, effective December 6, 2003 (Supp. 03-4). Table repealed by emergency rulemaking under A.R.S. § 41-1026 at 10 A.A.R. 2496, effective August 2, 2004 for 180 days (Supp. 04-2). Table repealed by final rulemaking at 10 A.A.R. 4012, effective November 13, 2004 (Supp. 04-3).

Table 5. Expired

Historical Note
Emergency adoption effective July 6, 1993, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 93-3). Emergency rule adopted again effective September 29, 1993, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 93-3). Permanent rule adopted effective December 22, 1993 (Supp. 93-4). Table 5 repealed, new Table 5 adopted by emergency action effective January 30, 1997, pursuant to A.R.S. § 41-1026 for a maximum of 180 days (Supp. 97-1). Emergency expired. Table 5 repealed, new Table 5 adopted by regular rulemaking action effective September 12, 1997 (Supp. 97-3). Table 5 repealed; new Table 5 renumbered from Table 6 and amended by final rulemaking at 9 A.A.R. 4614, effective December 6, 2003 (Supp. 03-4). Table repealed; new Table made by emergency rulemaking under A.R.S. § 41-1026 at 10 A.A.R. 2496, effective August 2, 2004 for 180 days (Supp. 04-2). Former Table 5 renumbered to Table 6; new Table 5 made by final rulemaking at 10 A.A.R. 4012, effective November 13, 2004 (Supp. 04-3). Table expired under A.R.S. § 41-1056(E) at 16 A.A.R. 1765, effective July 14, 2010 (Supp. 10-3).

Table 6. Expired

Historical Note
Emergency adoption effective July 6, 1993, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 93-3). Emergency rule adopted again effective September 29, 1993, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 93-3). Permanent rule adopted effective December 22, 1993 (Supp. 93-4). Table 5 repealed, new Table 5 adopted by emergency action effective January 30, 1997, pursuant to A.R.S. § 41-1026 for a maximum of 180 days (Supp. 97-1). Emergency expired. Table 5 repealed, new Table 5 adopted by emergency rulemaking under A.R.S. § 41-1026 at 10 A.A.R. 2496, effective August 2, 2004 for 180 days (Supp. 04-2). Former Table 5 renumbered to Table 6; new Table 5 made by final rulemaking at 10 A.A.R. 4012, effective November 13, 2004 (Supp. 04-3). Table expired under A.R.S. § 41-1056(E) at 16 A.A.R. 1765, effective July 14, 2010 (Supp. 10-3).

Table 7. Expired

Historical Note
Emergency adoption effective July 6, 1993, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 93-3). Emergency rule adopted again effective September 29, 1993, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 93-3). Permanent rule adopted effective December 22, 1993 (Supp. 93-4). Table 5 repealed, new Table 5 adopted by emergency action effective January 30, 1997, pursuant to A.R.S. § 41-1026 for a maximum of 180 days (Supp. 97-1). Emergency expired. Table 5 repealed, new Table 5 adopted by regular rulemaking action effective September 12, 1997 (Supp. 97-3). Former Table 6 renumbered to Table 5; new Table 6 renumbered from Table 7 and amended by final rulemaking at 9 A.A.R. 4614, effective December 6, 2003 (Supp. 03-4). Table repealed; new Table made by emergency rulemaking under A.R.S. § 41-1026 at 10 A.A.R. 2496, effective August 2, 2004 for 180 days (Supp. 04-2). Former Table 6 renumbered to Table 7; new Table 6 renumbered from Table 5 and amended by final rulemaking at 10 A.A.R. 4012, effective November 13, 2004 (Supp. 04-3). Table expired under A.R.S. § 41-1056(E) at 16 A.A.R. 1765, effective July 14, 2010 (Supp. 10-3).

R2-8-124. Termination Incentive Program by Agreement; Unfunded Liability Calculations

A. The following definitions apply to this Section unless otherwise specified:
1. “Compensation” means the same as in A.R.S. § 38-711(7).

B. An Employer that intends to implement a Termination Incentive Program shall provide the following information to the ASRS through the Employer’s secure ASRS account:
1. Within 90 days before implementation of the program, a complete description of the program terms and conditions, including the program contract, understanding, or agreement; and
2. Within 90 days before implementation of the program, the following information for each member who may be eligible to participate in the program:
Upon receipt of all the information identified in subsection (E) and in consultation with the ASRS actuary, the ASRS shall calculate:

D. If the ASRS determines an estimated unfunded liability amount pursuant to subsection (C), the ASRS may send a Notice of Estimated Liability to the Employer through the Employer’s secure ASRS account, in order to notify the Employer of the estimated unfunded liability amount the Employer may owe to the ASRS as a result of implementing the Termination Incentive Program identified under subsection (B). An Employer may owe the ASRS more or less than the estimated unfunded liability amount based on actual employee participation in the Employer’s Termination Incentive Program pursuant to subsection (F).

E. Within 30 days of termination of employment of each member who participated in a Termination Incentive Program identified under subsection (B), the Employer shall provide the following information to the ASRS through the Employer’s secure ASRS account:
   1. The member’s full name;
   2. The member’s date of birth;
   3. The member’s Compensation at termination;
   4. The date the member terminated employment; and
   5. The amount and type of any additional pay the member received, or was entitled to receive, from the Employer as a result of participating in the Employer’s Termination Incentive Program.

Upon receipt of all the information identified in subsection (E) and in consultation with the ASRS actuary, the ASRS shall calculate the actual unfunded liability amount which resulted from the implementation of the Employer’s Termination Incentive Program.

If the ASRS calculates an unfunded liability of less than $0.00 for any member who participated in the Employer’s Termination Incentive Program, the amount will be applied against the aggregate unfunded liability of the Employer.

The ASRS may send the Employer a Termination Incentive Program Liability Invoice through the Employer’s secure ASRS account.

Pursuant to A.R.S. § 38-735(C), if the ASRS does not receive full payment from the Employer of the unfunded liability amount by the due date specified in the Termination Incentive Program Liability Invoice, the unpaid portion of the unfunded liability amount shall accrue interest at the assumed actuarial investment earnings rate listed in R2-8-118(A).

The ASRS may collect any unfunded liability amount pursuant to A.R.S. §§ 38-723 and 38-735(C).

Historical Note
Adopted as an emergency effective August 25, 1975 (Supp. 75-1). Former Section R2-8-24 renumbered as Section R2-8-124 without change effective May 21, 1982 (Supp. 82-3). Section repealed by final rulemaking at 10 A.A.R. 669, effective February 3, 2004 (Supp. 04-1). New Section made by final rulemaking at 23 A.A.R. 2743, effective January 1, 2018 (Supp. 17-3). Amended by final rulemaking at 24 A.A.R. 1861, effective June 11, 2018 (Supp. 18-2).

R2-8-125. Termination Incentive Program by 30% Salary Increase; Unfunded Liability Calculations

A. The following definitions apply to this Section unless otherwise specified:
   1. “Average monthly compensation” means the same as in A.R.S. § 38-711(5).
   2. “Baseline salary” means a member’s Average Monthly Compensation during the 12 consecutive months in which the member received Compensation immediately preceding the first month of Compensation used to calculate the member’s retirement benefit. The Baseline Salary shall include only Compensation from the Same Employer that paid the Compensation used in the calculation of a member’s retirement benefit. If the member has less than 12 consecutive months in which the member received Compensation immediately preceding the first month of Compensation used to calculate the member’s retirement benefit, then the ASRS will calculate the member’s Baseline Salary as the total of the 12 months of Compensation the member received:
      a. Starting with the first month of Compensation the member received in the 12 months immediately preceding the member’s Average Monthly Compensation, or within the Average Monthly Compensation; and
      b. Ending with the 12th month of Compensation the member received after the first month of Compensation used in subsection (A)(2)a).
   3. “Compensation” means the same as in A.R.S. § 38-711(7).
   4. “Job reclassification” means a change in the classification of an employment position made by the Employer when it finds the duties and responsibilities of the position have changed significantly, materially, and permanently from when the position was last classified.
   5. “Promotion” means, excluding a Salary Regrade or Job Reclassification, the act of advancing an employee to a higher salary or higher rank within the organization, which is characterized by:
      a. A change in the employee’s primary job responsibilities; and
      b. A pay increase that is supported by a standard salary administration practice that is documented by the Employer; and
      c. A competitive selection process or a noncompetitive selection process supported by a standard hiring practice that is documented by the Employer.
CHAPTER 8. STATE RETIREMENT SYSTEM BOARD

6. “Salary regrade” means a change in the salary scale of an employment position made by the Employer in order to align the position’s salary scale with market factors and/or the Employer’s current salary practices.
7. “Same employer” means the Employer has the same ownership as another Employer, except that for purposes of this Section, each agency, board, commission, and department of the State of Arizona shall be considered a separate Employer.

B. Upon a member’s retirement on or after January 1, 2018, the ASRS shall compare the member’s Baseline Salary to the Average Monthly Compensation for each consecutive 12 months of Compensation used to calculate the member’s retirement benefit in order to determine whether an Employer utilized a Termination Incentive Program as defined in A.R.S. § 38-749(D)(1). This subsection only applies to members who earned the Compensation used to calculate the member’s Baseline Salary, or on or after July 1, 2005.

C. Upon determining that a Termination Incentive Program exists under subsection (B), the ASRS shall send a Request for Documentation to the Employer through the Employer’s secure ASRS account, in order to notify the Employer that the ASRS has identified a Termination Incentive Program for a particular member and the Employer may be required to pay the ASRS for the unfunded liability resulting from the Termination Incentive Program, unless the Employer can prove the increase in the member’s salary was the result of a Promotion.

D. Within 90 days of the date on the Request for Documentation, the Employer shall respond to the Request for Documentation by:
   1. Submitting documentation through the Employer’s secure ASRS account that shows the member’s increase in Compensation was the result of a Promotion; or
   2. Acknowledging in writing that the increase in the member’s salary was not the result of a Promotion.

E. Pursuant to subsection (D), the Employer bears the burden of producing evidence that a Promotion has occurred as defined in subsection (A)(5).

F. The ASRS shall use any evidence the Employer submits to the ASRS pursuant to subsection (D) to determine whether a Promotion occurred.

G. If the Employer does not respond to the Request for Documentation within 90 days of the date on the Request for Documentation, the ASRS shall determine that the increase in the member’s salary was not the result of a Promotion.

H. If the ASRS determines that the increase in the member’s salary was not the result of a Promotion pursuant to subsections (F) or (G), the ASRS shall calculate the unfunded liability amount pursuant to subsection (I).

I. In consultation with the ASRS actuary, the ASRS shall use a determination under subsection (B) to calculate the unfunded liability resulting from the implementation of the Employer’s Termination Incentive Program.

J. Upon calculating an unfunded liability amount pursuant to subsection (I), the ASRS shall send a Request for Documentation to the Employer through the Employer’s secure ASRS account, in order to notify the Employer of the unfunded liability amount the Employer shall owe to the ASRS as a result of implementing the Termination Incentive Program identified under subsection (B).

K. An Employer that owes an unfunded liability amount to the ASRS pursuant to A.R.S. § 38-749, shall remit full payment of the unfunded liability amount by the due date specified in the Termination Incentive Program Liability Invoice.

L. Pursuant to A.R.S. § 38-735(C), if the ASRS does not receive full payment from the Employer of the unfunded liability amount by the due date specified in the Termination Incentive Program Liability Invoice, the unpaid portion of the unfunded liability amount shall accrue interest at the assumed actuarial investment earnings rate listed in R2-8-118(A).

M. The ASRS may collect any unfunded liability amount pursuant to A.R.S. §§ 38-723 and 38-735(C).

Historical Note
Adopted as an emergency effective July 30, 1975 (Supp. 75-1). Former Section R2-8-25 renumbered as Section R2-8-125 without change effective May 21, 1982 (Supp. 82-3). Section repealed by final rulemaking at 10 A.A.R. 669, effective February 3, 2004 (Supp. 04-1). New Section made by final rulemaking at 23 A.A.R. 2743, effective January 1, 2018 (Supp. 17-3). Amended by final rulemaking at 24 A.A.R. 1861, effective June 11, 2018 (Supp. 18-2).

R2-8-126. Retirement Application
A. For the purposes of this Section, the following definitions apply, unless stated otherwise:
   1. “Acceptable documentation” means any written request containing all the accurate, required information, dates, and signatures necessary to process the request.
   2. “Acceptable form” means any ASRS form request containing all the accurate, required information, dates, and signatures necessary to process the form request.
   3. “Applicable retirement date” means the later of:
      a. The date a member retires from the ASRS for the first time; or
      b. The date a member re-retires from the ASRS after returning to active membership.
   4. “Conservator” means the same as in A.R.S. § 14-7651.
   5. “DRO” means the same as in R2-8-115.
   7. “Legal documentation” means:
      a. One document issued from a United States government entity; or
      b. Two documents issued from one or more federal, state, local, sovereign, medical, or religious institution.
   8. “LTD” means the same as in R2-8-301.
   9. “Irrevocable PDA” means the same as in R2-8-501.
CHAPTER 8. STATE RETIREMENT SYSTEM BOARD

10. “On File” means the same as in R2-8-115.
11. “Original retirement date” means the later of:
   a. The date a member retires from the ASRS for the first time; or
   b. The date a member re-retires from the ASRS after returning to active membership for 60 consecutive months or more ac-
      cording to A.R.S. § 38-766(C).
13. “Spouse” means the individual to whom a member is married under Arizona law.
13. “Straight life annuity” means the same as monthly life annuity according to A.R.S. § 38-757.

B. A member may retire from the ASRS by submitting a Retirement Application to the ASRS that contains the following information:

1. The member’s full name;
2. The member’s Social Security number or U.S. Tax Identification number;
3. The member’s marital status, if not On File with ASRS;
4. The member’s current mailing address; if not On File with ASRS;
5. The member’s date of birth, if not On File with ASRS;
6. A retirement date according to A.R.S. § 38-764(A);
7. The retirement option the member is electing;
8. If the member is electing to roll over a lump sum distribution amount to another retirement account, then:
   a. The type of account and account number, if applicable, to which the member is electing to roll over the lump sum distribu-
      tion; and
   b. The name and address of the financial institution of the account to which the member is electing to roll over the lump sum
      distribution;
9. The following information for each primary beneficiary, unless the member is receiving a mandatory lump sum distribution un-
   der subsection (M):
   a. The beneficiary’s full name;
   b. The beneficiary’s Social Security number, if the beneficiary is a U.S. citizen;
   c. The beneficiary’s date of birth;
   d. The beneficiary’s relationship to the member; and
   e. The percent of benefit the beneficiary may receive upon death of the member, if the member is designating more than one
      beneficiary.
10. Whether the member is electing the Optional Health Insurance Premium Benefit;
11. The following spousal consent information, if the member is married and is electing a retirement option other than a Joint an-
    d Survivor Retirement Benefit Option with at least 50% of the retirement benefit designated to the member’s spouse:
   a. Whether the member’s spouse consents to the member making a beneficiary election that provides the member’s spouse
      with less than 50% of the member’s account balance;
   b. Whether the member’s spouse consents to the member electing a retirement option other than a Joint and Survivor Retire-
      ment Benefit Option;
   c. The member’s spouse’s full name; and
   d. The member’s spouse’s notarized signature;
12. Whether the member is electing to receive a partial lump sum distribution according to A.R.S. § 38-760 and if so:
   a. How many months of annuity, up to 36 months, the member is electing to receive as a partial lump sum;
   b. Whether the member is electing to directly receive the partial lump sum distribution reduced by applicable tax withholding
      amounts;
   c. Whether the member is electing to roll over all or a portion of the partial lump sum distribution amount to one other retire-
      ment account; and
   d. Whether the member is electing to use the partial lump sum distribution to purchase service credit with ASRS based on a
      service purchase request dated before January 6, 2013;
13. Acknowledgement of the following statements of understanding:
   a. The member is aware of the member’s LTD stop-payment date and any disability benefits the member is receiving shall
      cease upon the retirement date the member elects according to subsection (B)(6);
   b. The member understands that if an overpayment exists, ASRS shall collect the remaining overpayment amount according to
      2 A.A.C. 8, Article 8 and all repayment plans previously established with ASRS LTD claims administrator shall cease;
   c. The member understands that if the member is submitting written notice of a changed retirement date, benefit option, or par-
      tial lump sum increment selection, ASRS shall distribute the member’s benefit as of the later of:
      i. The date ASRS receives the most recent Acceptable Documentation; or
      ii. The retirement date contained in the most recent Acceptable Documentation.
   d. The member has received the Special Tax Notice Regarding Plan Payments;
   e. The member has received the Return to Work information and will comply with the laws and rules governing the member’s
      return to work;
   f. The member authorizes ASRS and the banking institution identified in subsection (W) to debit the member’s account for the
      purposes of correcting errors and returning any payments inadvertently made after the member’s death;
As authorized under A.R.S. § 38-764(F), if a member’s Straight Life Annuity, after any applicable early retirement reduction factor, is

O.

M.

L.

K.

J.

I.

F.

H.

G.

D.

March 31, 2021

Title 2

Arizona Administrative Code

CHAPTER 8. STATE RETIREMENT SYSTEM BOARD

g. The member understands that the member may have a one-time option to rescind a Joint and Survivor Retirement Benefit Option or a Period Certain and Life Annuity Retirement Benefit Option according to R2-8-130;

h. The member understands that any person who knowingly makes any false statement with the intent to defraud ASRS is guilty of a Class 6 felony in accordance with A.R.S. § 38-793; and

i. The member acknowledges that the member has complied with A.R.S. §§ 38-755 and 38-776 regarding spousal consent; and

14. The member’s notarized signature.

C. If a Retirement Application is completed through the member’s secure ASRS account, the member’s notarized signature is not required under subsection (B)(14).

D. If the retirement date the member elects according to subsection (B)(6) is not allowed, the ASRS shall change the retirement date to the earliest eligible date according to A.R.S. 38-764(A), unless the member is not eligible to retire.

E. A member who elects to roll over all or a portion of the partial lump sum distribution amount according to subsection (B)(12)(c), shall submit the following written information to the ASRS:

1. The type of account and account number to which the member is electing to roll over;

2. The name and address of the financial institution of the account to which the member is electing to roll over; and

3. If the member is electing to roll over a portion of the partial lump sum distribution, then the amount the member is electing to roll over.

F. If the member elects to roll over all or a portion of their lump sum or partial lump sum distribution, the ASRS shall only roll over the distribution to one retirement account.

G. Any portion of the partial lump sum distribution that is not rolled over to another retirement account according to subsection (B) shall be distributed directly to the member.

H. If the member elects to use the partial lump sum distribution to purchase service credit according to subsection (B)(12)(d) the member shall submit the following written information to the ASRS:

1. The number of the service purchase invoice;

2. Whether the member is electing to apply the partial lump sum distribution to all eligible service on that invoice;

3. If the member is not electing to apply the partial lump sum distribution to all eligible service on that invoice, then:
   a. The amount of the partial lump sum distribution to be applied to that invoice; or
   b. The number of years on that invoice the member is electing to purchase with the partial lump sum distribution;

4. If the member is electing to make a payment on that service purchase invoice with after-tax payments, a rollover, or termination pay according to A.R.S. § 38-747;

5. Whether the member is electing to authorize the ASRS to increase the number of months of annuity, not to exceed 36 months, to purchase the eligible service on that service purchase invoice, if the member elected an insufficient number of months of annuity to receive as a partial lump sum according to subsection (G) to complete the service purchase invoice;

6. If the member does not have eligible service to purchase on that invoice, whether the member is electing to cancel the member’s election to receive a partial lump sum distribution.

I. A member who elects to receive a partial lump sum distribution shall receive an actuarially reduced annuity retirement benefit according to A.R.S. § 38-760.

J. ASRS shall disburse any partial lump sum amount that is not applied to a service purchase invoice according to subsection (G) directly to the member after withholding applicable taxes.

K. After submitting a Retirement Application according to subsection (B), a member may make changes to the member’s Retirement Application by submitting written notice to the ASRS of the specific changes according to A.R.S. § 38-764(H).

L. If ASRS has received contributions for the member within the three years immediately preceding the member’s retirement date, the ASRS shall send a New Retirement Ending Payroll Verification form to the Employer. If ASRS has received contributions for the member within the six months immediately preceding the member’s retirement date and the member shall receive a one-time lump sum payment according to subsection (P), the ASRS shall send a New Retirement Ending Payroll Verification form to the Employer.

M. If the member has reached the age for minimum required distribution according to A.R.S. § 38-775(H)(4), the ASRS shall send a New Retirement Ending Payroll Verification form to the member’s most recent Employer.

N. The Employer shall submit the completed New Retirement Ending Payroll Verification form to ASRS with the following information:

1. The member’s Termination date or last day of ASRS membership with that Employer, if applicable;

2. The member’s total salary paid during their last fiscal year;

3. The member’s compensation for the last pay period;

4. The name and title of the authorized Employer representative;

5. Certification by the authorized Employer representative that:
   a. Any person who knowingly makes any false statement or who falsifies any record of the retirement plan with an intent to defraud the plan, is guilty of a Class 6 felony according to A.R.S. § 38-793; and
   b. The authorized Employer representative certifies that they are the Employer user named on the New Retirement Ending Payroll Verification form and their title and contact information is current and correct.

O. The ASRS shall cancel a member’s Retirement Application if ASRS does not receive all forms and information required under this Section within six months immediately after the member’s retirement date.

P. As authorized under A.R.S. § 38-764(F), if a member’s Straight Life Annuity, after any applicable early retirement reduction factor, is less than a monthly amount of $100, the ASRS shall not pay the annuity. Instead, the ASRS shall make a one-time mandatory lump sum payment in the amount determined by using appropriate actuarial assumptions.
Q. For purposes of calculating a member’s retirement benefit according to A.R.S. §§ 38-758 and 38-759, ASRS shall calculate age to the nearest day as of the member’s retirement date.

R. Based on the retirement option the member elects according to A.R.S. § 38-760, the ASRS shall calculate a member’s actuarially reduced benefits, based on the attained age of the member, and if necessary, the attained age of the contingent annuitant as of the date of the member’s retirement as follows:

1. For a partial lump sum retirement benefit option, ASRS shall calculate age to the nearest day as of the member’s retirement date;
2. For a Joint and Survivor Retirement Benefit Option, ASRS shall calculate age to the nearest day as of the member’s retirement date; and
3. For a mandatory lump sum payment according to subsection (O) or a Period Certain and Life Annuity Retirement Benefit Option, ASRS shall calculate age to the nearest full month in addition to calculating age according to subsection (P) as necessary.

S. If the ASRS is unable to verify the age of the member or a contingent annuitant, the member or contingent annuitant shall provide Legal Documentation showing the member’s or contingent annuitant’s age.

T. If a member does not retire by the date minimum distribution payments are required according to A.R.S. §§ 38-759 and 38-775, the required minimum distribution payments will accrue interest at the Assumed Actuarial Investment Earnings Rate specified in R2-8-118(A) and in effect on the date the required minimum distribution payments should have begun.

U. The ASRS shall distribute any required minimum distribution payments with interest according to subsection (T) with the member’s first finalized benefits payment.

V. If a member submits a retirement application after the member’s minimum required distribution date, the ASRS shall determine that the member’s Applicable Retirement Date is the date the required minimum distribution payments should have begun.

W. Notwithstanding any other Section, an inactive member who does not have contributions related to compensation is not eligible for retirement.

X. The ASRS shall issue a debit benefit card, if the annuitant does not provide the following direct deposit information through the annuitant’s secure ASRS account or by a notarized Direct Deposit form:

1. The member’s full name;
2. The member’s bank account routing number;
3. The member’s bank account number; and
4. The type of the account.

Y. The ASRS shall disburse benefits payments according to subsection (R), only retroactive to the later date specified in A.R.S. § 38-759(B).

Z. ASRS shall not issue additional estimate checks to a member whose retirement is canceled.

Historical Note

R2-8-127. Re-Retirement Application
A. The definitions in R2-8-126 apply to this Section.
B. If a member has previously retired from ASRS, the member may re-retire from ASRS by submitting a Re-Retirement Application to the ASRS that contains:

1. The information identified in R2-8-126(B)(1) through (B)(8);
2. The retirement option the member is electing, if the member suspended the member’s annuity from the member’s previous retirement from ASRS and returned to work for 60 consecutive months or more according to A.R.S. § 38-766(C);
3. The information identified in R2-8-126(B)(11);
4. Whether the member is electing the Optional Health Insurance Premium Benefit, if the member suspended the member’s annuity from the member’s previous retirement from ASRS and returned to work for 60 consecutive months or more according to A.R.S. § 38-766(C);
5. The information identified in R2-8-126(B)(13), if the member suspended the member’s annuity from the member’s previous retirement from ASRS and returned to work for 60 consecutive months or more according to A.R.S. § 38-766(C);
6. Acknowledgement of the following statements of understanding:
   a. The member’s signature confirms the member’s intent to re-retire and applies to all the sections included in the Re-Retirement Application.
b. The member understands that as a re-retiree, the member must keep the same retirement option and beneficiary the member elected when the member previously retired from ASRS, unless the member returned to active membership for 60 consecutive months or more according to A.R.S. § 38-766(C);

c. The member may change the member’s beneficiary after re-retiring and changing the beneficiary may change the member’s monthly annuity;

d. The member has complied with A.R.S. §§ 38-755 and 38-766 regarding spousal consent;

e. The member certifies that the member has read and understands the instructions and Special Tax Notice Regarding Plan Payments;

f. The member authorizes ASRS and the banking institution the member listed for direct deposit to debit the member’s account for the purpose of correcting errors and returning any payments inadvertently paid after the member’s death;

g. The member understands that any person who knowingly makes any false statement with the intent to defraud ASRS is guilty of a Class 6 felony in accordance with A.R.S. § 38-793; and

h. The member understands that if an overpayment exists, the ASRS shall collect the remaining overpayment amount according to 2 A.A.C. 8, Article 8 and all repayment plans previously established with the ASRS LTD claims administrator shall cease.

7. The member’s notarized signature.

C. If the retirement date the member elects according to R2-8-126(B)(6) is not allowed, the ASRS shall change the retirement date to the earliest eligible date according to A.R.S. 38-764(A), unless the member is not eligible to retire.

Historical Note
New Section made by final rulemaking at 26 A.A.R. 2036, effective November 8, 2020 (Supp. 20-3).

R2-8-128. Joint and Survivor Retirement Benefit Options

A. The definitions in R2-8-126 apply to this Section.

B. A member who is ten years and one day, or more, older than the member’s non-spouse contingent annuitant is not eligible to elect a 100% Joint and Survivor Retirement Benefit Option.

C. A member who is 24 years and one day, or more, older than the member’s non-spouse contingent annuitant is not eligible to elect a 66 2/3% Joint and Survivor Retirement Benefit Option.

D. For members whose Original Retirement Date is on or after March 6, 2016, notwithstanding subsection (B), a member who is ten years and one day, or more, older than the member’s ex-spouse contingent annuitant is eligible to participate in a 100% Joint and Survivor Retirement Benefit Option, if:

1. The member elected the ex-spouse as the contingent annuitant prior to divorce from the ex-spouse; and

2. The member submits an original or certified copy of a DRO to ASRS which requires the ex-spouse to remain as the contingent annuitant on the member’s account.

E. For members whose Original Retirement Date is on or after March 6, 2016, notwithstanding subsection (C), a member who is 24 years and one day, or more, older than the member’s ex-spouse contingent annuitant is eligible to participate in a 66 2/3% Joint and Survivor Retirement Benefit Option, if:

1. The member elected the ex-spouse as the contingent annuitant prior to divorce from the ex-spouse; and

2. The member submits an original or certified copy of a DRO to the ASRS which requires the ex-spouse to remain as the contingent annuitant on the member’s account.

F. Notwithstanding any other Section, for purposes of determining whether a member is eligible to participate in a Joint and Survivor Retirement Benefit Option, the ASRS shall calculate the difference in a member’s age and the contingent annuitant’s age based on the birthdates of the member and the contingent annuitant. For purposes of this Section, a contingent annuitant must be a living person.

Historical Note
New Section made by final rulemaking at 26 A.A.R. 2036, effective November 8, 2020 (Supp. 20-3).

R2-8-129. Period Certain and Life Annuity Retirement Options

A. The definitions in R2-8-126 apply to this Section.

B. An individual who is 104 years of age or older at the time of retirement is not eligible to elect a Period Certain and Life Annuity Retirement Benefit Option.

C. An individual who is 93 years of age or older at the time of retirement is not eligible to elect a Period Certain and Life Annuity Retirement Benefit Option with ten years certain or 15 years certain.

D. An individual who is 85 years of age or older at the time of retirement is not eligible to elect a Period Certain and Life Annuity Retirement Benefit Option with 15 years certain.

E. The ASRS shall calculate the period certain term as beginning on the first day of the first full calendar month following the member’s Applicable Retirement Date.

F. Notwithstanding subsection (E), the ASRS shall calculate the period certain term as beginning on the member’s Applicable Retirement Date if the member’s Applicable Retirement Date is the first day of the month.

Historical Note
New Section made by final rulemaking at 26 A.A.R. 2036, effective November 8, 2020 (Supp. 20-3).
R2-8-130. Rescind or Revert Retirement Election; Change of Contingent Annuitant

A. The definitions in R2-8-126 apply to this Section.

B. According to A.R.S. § 38-760(B)(2), for a member whose Original Retirement Date is after August 9, 2001, upon the expiration of a member’s period certain term the ASRS shall rescind the member’s election and the ASRS shall provide the member a Straight Life Annuity retirement benefit subject to any retirement reductions applicable at the member’s Original Retirement Date.

C. According to A.R.S. § 38-760(B)(2), a member whose Original Retirement Date is after August 9, 2001 and before July 1, 2008 and who elected a Period Certain and Life Annuity Retirement Benefit Option, may rescind the election and elect to receive a Straight Life Annuity retirement benefit prior to the expiration of the member’s period certain term.

D. According to A.R.S. § 38-760(B)(1), a member whose Original Retirement Date is before July 1, 2008 and who elected a Joint and Survivor Retirement Benefit Option may rescind the election and elect to receive a Straight Life Annuity retirement benefit prior to the member’s death.

E. A member whose Original Retirement Date is on or after July 1, 2008 and who elected a Period Certain and Life Annuity Retirement Benefit Option may exercise a one-time election to rescind the election and elect to receive a Straight Life Annuity retirement benefit prior to the expiration of the member’s period certain term if the member provides proof to ASRS of the death of the primary beneficiary or an original or certified copy of a DRO showing that the primary beneficiary has ceased to be a primary beneficiary.

F. A member whose Original Retirement Date is on or after July 1, 2008 and who elected a Joint and Survivor Retirement Benefit Option may exercise a one-time election to rescind the election and elect to receive a Straight Life Annuity retirement benefit prior to the death of the member if the member provides proof to ASRS of the death of the contingent annuitant or an original or certified copy of a DRO showing that the contingent annuitant has ceased to be a contingent annuitant.

G. A member who elected to rescind a Period Certain and Life Annuity Retirement Benefit Option according to subsection (C) may elect to revert to the Period Certain and Life Annuity Retirement Benefit Option by submitting an Application to Rescind, Revert or Change Contingent Annuitant as specified in subsection (M).

H. A member who elected to rescind a Joint and Survivor Retirement Benefit Option according to subsection (D) may elect to revert to the Joint and Survivor Retirement Benefit Option by submitting an Application to Rescind, Revert or Change Contingent Annuitant as specified in subsection (M).

I. A member may only revert to the same Period Certain and Life Annuity Retirement Benefit Option the member rescinded according to subsection (C) prior to the expiration of the period certain term the member elected at the member’s most recent retirement.

J. A member who rescinds their election according to subsections (E) or (F) is not eligible to revert to a Period Certain and Life Annuity Retirement Benefit Option or a Joint and Survivor Retirement Benefit Option.

K. Notwithstanding any other provision, the time period of a Period Certain and Life Annuity Retirement Benefit Option shall be continuous from the member’s retirement date until the term expires regardless of whether the member rescinds or reverts to another retirement option.

L. A member who wants to rescind or revert a retirement election according to subsections (C) through (H) shall ensure ASRS receives an Application to Rescind, Revert or Change Contingent Annuitant at least one day prior to the member’s death.

M. In order to rescind, revert, or change a contingent annuitant, the member shall submit an Application to Rescind, Revert or Change Contingent Annuitant with the following information:

1. The member’s full name;
2. The member’s Social Security number or U.S. Tax Identification number;
3. The member’s marital status, if not On File with ASRS;
4. Whether the member is electing to rescind, revert, or change a contingent annuitant;
5. The member’s notarized signature acknowledging the following statements of understanding:
   a. For rescinding a retirement election:
      i. By this action, and the member’s signature, the member is aware that the member’s designated beneficiary or contingent annuitant will not continue with monthly benefits after the member’s death;
      ii. The member is aware that a certified copy of the member’s designated beneficiary’s or contingent annuitant’s death certificate or an original or certified copy of a DRO is required if the member retired or re-retired on or after July 1, 2008;
      iii. At the time of the member’s death, if the ASRS has not disbursed the total employee contributions on the member’s account, plus interest at the Assumed Actuarial Investment Earnings Rate specified in R2-8-118(A) through the month prior to the member’s retirement date, the balance will be payable in a lump sum to the beneficiary named on the member’s most recent Acceptable Form.
   b. For changing a contingent annuitant or beneficiary:
      i. For a Joint and Survivor Retirement Benefit Option, by this action, and the member’s signature, the contingent annuitant named on the member’s most recent Acceptable Form will receive the previously elected percentage amount of the member’s monthly benefit for their lifetime following the member’s death;
      ii. For a Joint and Survivor Retirement Benefit Option, the member is aware that a copy of the contingent annuitant’s legal documentation is required and the member’s benefit will be recalculated based on the member’s age and the age of the member’s new contingent annuitant as of the effective date of the member’s request according to this Section;
      iii. For a Joint and Survivor Retirement Benefit Option, the member is in compliance with the age difference limitations in R2-8-128; and
      iv. For a Period Certain and Life Annuity Retirement Benefit Option, by this action, and the member’s signature, the beneficiary named on the member’s most recent Acceptable Form will receive the remaining term of monthly payments.
For reverting to a previously elected retirement benefit option according to A.R.S. § 38-760:

i. For a Joint and Survivor Retirement Benefit Option, by this action, and the member’s signature, the contingent annuitant named the member’s most recent Acceptable Form will receive the previously elected percentage amount of the member’s monthly benefit for their lifetime following the member’s death;

ii. For a Joint and Survivor Retirement Benefit Option, the member is aware that a copy of Legal Documentation showing the contingent annuitant’s date of birth is required and the member’s benefit will be recalculated based on the member’s age and the age of the member’s contingent annuitant as of the effective date of the member’s request according to this Section;

iii. For a Joint and Survivor Retirement Benefit Option, the member is in compliance with the age difference limitations in R2-8-128; and

iv. For a Period Certain and Life Annuity Retirement Benefit Option, by this action, and the member’s signature, the beneficiary named on the member’s most recent Acceptable Form will receive the remaining term of monthly payments.

6. If the member is electing to change a contingent annuitant, the following information for the new contingent annuitant:

a. Full name;

b. Social Security number, if the contingent annuitant is a U.S. citizen;

c. Date of birth; and

d. Legal relationship to the member.

7. If the member is married, whether the member’s spouse consents to the following with the spouse’s notarized signature:

a. The member making a beneficiary designation that provides the member’s spouse with less than 50% of the member’s account balance;

b. The member electing a retirement option other than a Joint and Survivor Retirement Benefit Option; or

c. The member changing or ending the spouse’s contingent annuitant status.

8. Whether the spouse’s consent is not required because:

a. The spouse predeceased the member and if so, provide a copy of the spouse’s death certificate; or

b. The member is divorced and if so, provide an original or certified copy of a DRO.

If the ASRS is unable to verify the age of the member or a contingent annuitant, the member or contingent annuitant shall provide Legal Documentation showing the member’s or contingent annuitant’s age.

The effective date of the member’s request according to this Section is the date on which ASRS receives the Application to Rescind, Revert or Change Contingent Annuitant.

According to A.R.S. § 38-760(B)(2), a member whose Original Retirement Date is on or after July 1, 2008 and who elects a Period Certain and Life Annuity Retirement Benefit Option, may rescind the election according to subsection (E) and elect to receive a Straight Life Annuity prior to the expiration of the member’s period certain term if one or more of the member’s primary beneficiaries dies or ceases to be a beneficiary according to the terms of an original or certified copy of a DRO.

The ASRS shall cancel a member’s Application to Rescind, Revert, or Change Contingent Annuitant if ASRS does not receive all forms and information required under this Section within six months immediately after the ASRS receives the application.

Historical Note

New Section made by final rulemaking at 26 A.A.R. 2036, effective November 8, 2020 (Supp. 20-3).
The ASRS shall honor a beneficiary designation last made or a retirement election submitted before July 1, 2013, even if the beneficiary designation or retirement election fails to comply with subsection (E).

Subsection (E) does not apply to a member who is receiving a mandatory lump sum distribution according to A.R.S. § 38-764.

Subsection (E) does not apply to a member who submits a Spousal Consent Exception form that contains the member’s notarized signature to the ASRS affirming under penalty of perjury that the member’s spouse’s consent is not required because of one of the reasons specified in A.R.S. § 38-776(C).

In order to change a beneficiary designation, a member shall submit the information contained in subsection (B) and:

1. A married member who changes a beneficiary designation on or after July 1, 2013, shall ensure the new beneficiary designation is consistent with subsection (E); or
2. A married member who retired before July 1, 2013, and who wishes to change the contingent annuitant or beneficiary, shall ensure that the new designation is consistent with subsection (E).

A married member who re-retires according to A.R.S. § 38-766:

1. Within less than 60 consecutive months of active membership, from the member’s previous retirement date, is not eligible to elect a different annuity option or different beneficiary than the member elected at the time of the previous retirement; or
2. At least 60 consecutive months of active membership after the member’s previous retirement date, may elect a different annuity option and different beneficiary than the member elected at the time of the previous retirement, and the election shall comply with subsection (E).

If a married member submits a retirement application that fails to comply with subsection (E), the member shall submit a new retirement application or written notice of new retirement elections that comply with subsection (E) within six months of the member’s Original Retirement Date. The member’s new Original Retirement Date is the date ASRS receives the new application or written notice unless the member elects a later date according to A.R.S. § 38-764.

If a married member made a beneficiary designation on or after July 1, 2013 that is not consistent with the requirements specified in subsection (E), the ASRS shall, at the time of the member’s death:

1. Notify both the spouse and designated beneficiary and:
   a. Provide the spouse with an opportunity to waive the right under subsection (E); and
   b. Provide the designated beneficiary with an opportunity to provide documentation that revokes the spouse’s right under subsection (E); and
2. Designate 50% of the member’s retirement benefit to the spouse if neither the spouse nor designated beneficiary respond to notification according to subsection (L)(1) within 30 days after notification.

If a married member designated a beneficiary before July 1, 2013 that does not comply with subsection (E), upon the death of the member, the member’s spouse may submit written notice to the ASRS prior to disbursement of the member’s account with the following information:

1. The member’s full name;
2. The member’s Social Security number or U.S. Tax Identification number;
3. The spouse’s assertion to the spouse’s right to community property;
4. An original or copy of the marriage certificate; and
5. An original or certified copy of the member’s death certificate.

If a spouse submits written notice according to subsection (M), the ASRS shall designate the spouse as beneficiary of a percentage of the member’s account according to A.R.S. §§25-211 and 25-214 and notify the member’s designated beneficiary of the spouse’s assertion.

The ASRS shall determine a spouse’s percentage of the member’s account according to subsection (L) based on the amount of service credit the member acquired during the marriage divided by the total amount of service credit the member acquired, multiplied by 50%.

If a beneficiary is notified of a spouse’s assertion according to subsection (N), then before ASRS disburses a survivor benefit, the beneficiary may notify ASRS of the beneficiary’s intent to appeal the spouse’s right to a survivor benefit.

Within 30 days, a beneficiary who has notified ASRS of the beneficiary’s intent to appeal a survivor benefit disbursement according to subsection (P), shall submit an appeal to ASRS according to 2 A.A.C. 8, Article 4.

An original or certified copy of a DRO may supersede the requirements in subsection (B).

To consent to an alternative retirement benefit option or beneficiary designation, a member’s spouse shall complete and have notarized a Spousal Consent form containing the following information:

1. Member’s full name;
2. Member’s Social Security number or U.S. Tax Identification number;
3. Whether the member’s spouse is consenting to one or more of the following:
   a. The member making a beneficiary designation that provides the spouse with less than 50% of the member’s account balance;
   b. The member electing a retirement option other than a Joint and Survivor Retirement Benefit Option;
   c. The member naming a contingent annuitant other than the spouse; and
   d. The spouse’s notarized signature.

A member’s spouse may revoke the spouse’s consent to an alternative retirement benefit option or beneficiary designation by sending written notice to ASRS with the following information:
CHAPTER 8. STATE RETIREMENT SYSTEM BOARD

R2-8-132. Survivor Benefit Options

A. The definitions in R2-8-126 apply to this Section.

B. If the beneficiary is eligible to elect the survivor benefit as monthly income for life according to A.R.S. § 38-762(C), the ASRS shall calculate the benefits based on the attained age of the beneficiary, calculated to the nearest full month, as of the date of the member’s death.

C. If the beneficiary elects to receive the survivor benefit as monthly income for life according to A.R.S. § 38-762(C), the ASRS shall calculate the benefits effective date as of the day after the member’s death and the ASRS shall pay interest up to the benefits effective date.

D. According to A.R.S. § 38-763, if the member elected a Period Certain and Life Annuity Retirement Benefit Option and deceases prior to the expiration of the period certain term, the member’s beneficiary may elect to complete the remaining period certain term or the beneficiary may elect to receive a lump sum distribution which is the greater of:
   1. The present value of the benefits based on the remaining period certain term; or
   2. The member’s ASRS account balance plus interest at the Assumed Actuarial Investment Earnings Rate specified in R2-8-118(A) through the month prior to the member’s retirement date, reduced by all retirement benefits due to the member.

E. Notwithstanding subsection (D), a beneficiary is not eligible to elect to complete the remaining period certain term if the period certain term has expired.

F. If the beneficiary elects to complete the remaining period certain term or elects to receive a lump sum that is the present value of the benefits based on the remaining period certain term according to subsection (D), the ASRS shall not pay interest.

G. If a member’s beneficiary or contingent annuitant does not want to receive a survivor benefit according to 26 U.S.C. § 2518, within nine months after the member’s death, the beneficiary or contingent annuitant may submit a written request to the ASRS with the following information for the beneficiary or contingent annuitant:
   1. Full name;
   2. Social Security number if the beneficiary or contingent annuitant is a U.S. citizen;
   3. Address; and
   4. Notarized signature acknowledging the following statements:
      a. The beneficiary or contingent annuitant is aware that, as a beneficiary or contingent annuitant of the member, the beneficiary or contingent annuitant is entitled to a survivor benefit in the amount specified by the ASRS;
      b. The beneficiary is renouncing a portion or all of the beneficiary’s rights to the member’s benefit;
      c. The contingent annuitant is renouncing all of the contingent annuitant’s rights to the member’s benefit;
      d. The beneficiary understands that by renouncing rights to the member’s benefit, the portion that the beneficiary is renouncing will be paid to any other survivor on the member’s account, or if there is no other designated survivor, the benefit will be paid to the member’s estate; and
      e. The contingent annuitant understands that by renouncing rights to the member’s benefit, the ASRS shall pay the member’s ASRS account balance plus interest at the Assumed Actuarial Interest and Investment Return Rate specified in R2-8-118(A) through the month prior to the member’s retirement date, reduced by all retirement benefits due to the member, to any other survivor on the member’s account, or if there is no other designated survivor, to the member’s estate.

H. According to 26 U.S.C. § 2518, a minor beneficiary’s or contingent annuitant’s survivor benefit cannot be renounced.

R2-8-133. Survivor Benefit Applications

A. The definitions in R2-8-126 apply to this Section.

B. The ASRS shall not distribute a survivor benefit until a claimant notifies the ASRS of a member’s death by telephone or submission of a death certificate, unless the member elected a Joint and Survivor Benefit Option upon retirement.

C. Upon notification of the death of a member, the ASRS shall distribute the survivor benefits according to the most recent, Acceptable Form that is On File with the ASRS that was received at least one day prior to the date of the member’s death, unless otherwise provided by law.

D. The designated beneficiary or other person specified in A.R.S. § 38-762(E) shall provide the following:
   1. An original certified death certificate or a certified copy of a court order that establishes the member’s death;
   2. If the claimant is not a designated beneficiary, but is a person specified in A.R.S. § 38-762(E), a copy of a document issued from a federal, state, local, sovereign, or medical institution showing the claimant’s relationship to the deceased member;
   3. A certified copy of the court order of appointment as administrator, if applicable; and
CHAPTER 8. STATE RETIREMENT SYSTEM BOARD

4. Except if the deceased member was retired and elected the joint and survivor option, complete and have notarized an Application for Survivor Benefits, provided by the ASRS that includes:
   a. The deceased member’s full name,
   b. The deceased member’s Social Security number or U.S. Tax Identification number,
   c. The benefit the designated beneficiary or other person specified in A.R.S. § 38-762(E) is electing;
   d. If the designated beneficiary or other person specified in A.R.S. § 38-762(E) is electing to roll over a benefit, the following information:
      i. The claimant’s full name;
      ii. The name of the institution to which the claimant is electing to roll over;
      iii. The address of the institution to which the claimant is electing to roll over;
      iv. The full name of the authorized representative of the institution to which the claimant is electing to roll over;
      v. The signature of the authorized representative of the institution to which the claimant is electing to roll over;
   e. If the beneficiary is electing to have any of the survivor benefits directly deposited into a bank account, the following information:
      i. Whether the bank account is a checking or savings account;
      ii. The name of the banking institution to which the benefit is being sent;
      iii. The routing number;
      iv. The account number; and
   f. The following information for the designated beneficiary or other person specified in A.R.S. § 38-762(E):
      i. Full name;
      ii. Mailing address, if not On File with ASRS;
      iii. Date of birth, if applicable; and
      iv. Social Security number or U.S. Tax Identification number, if not On File with ASRS.
   g. The following statements of understanding:
      i. The designated beneficiary or other person specified in A.R.S. § 38-762(E) has read and understands the Special Tax Notice Regarding Plan Payments they received with this application;
      ii. The designated beneficiary or other person specified in A.R.S. § 38-762(E) authorizes the ASRS to make payments as indicated above and agree on behalf of themselves and their heirs that such payments shall be a complete discharge of the claim and shall constitute a release of the ASRS from any further obligation on account of the benefit;
      iii. The designated beneficiary or other person specified in A.R.S. § 38-762(E) authorizes the ASRS and the Banking Institution listed above to debit their account for the purposes of correcting errors and returning any payments inadvertently made after their death;
      iv. Under penalties of perjury, the designated beneficiary or other person specified in A.R.S. § 38-762(E) certifies that:
         (1) The Social Security number or U.S. Tax Identification number shown on this application is correct;
         (2) They are not subject to backup withholding because:
            (a) They are exempt from backup withholding, or
            (b) They have not been notified by the Internal Revenue Service that they are subject to backup withholding as a result of a failure to report all interest or dividends, or
            (c) The Internal Revenue Service has notified them that they are no longer subject to backup withholding; and
         (3) They are a legal resident of the United States, unless they are an estate or trust.
      v. The designated beneficiary or other person specified in A.R.S. § 38-762(E) understands their right to a 30-day notice period to consider a rollover or a cash distribution and they elect to waive the notice period by their election for payment on this application;
      vi. The designated beneficiary or other person specified in A.R.S. § 38-762(E) understands if they elect to roll over all or any portion of their distribution to another eligible retirement plan, it is their responsibility to verify that the receiving plan will accept the rollover and, if applicable, agree to separately account for the taxable and nontaxable amounts rolled over and the related subsequent earnings on such amounts;
      vii. The designated beneficiary or other person specified in A.R.S. § 38-762(E) understands if they elect to roll over all or any portion of their distribution to an IRA plan, it is their responsibility to verify that the receiving IRA institution will accept the rollover and, if applicable, it is their responsibility to separately account for taxable and nontaxable amounts rolled over and the related subsequent earnings on such amounts;
      viii. The designated beneficiary or other person specified in A.R.S. § 38-762(E) understands if they elect to roll over to another eligible retirement plan, any portion of the distribution not designated for a rollover will be paid directly to them and any taxable amounts will be subject to federal and state income tax withholding;
      ix. The designated beneficiary or other person specified in A.R.S. § 38-762(E) understands if they elect to roll over to an inherited IRA plan, any portion of the distribution not designated for a rollover will be paid directly to them and any taxable amounts will be subject to federal and state income tax withholding;
      xi. The designated beneficiary or other person specified in A.R.S. § 38-762(E) understands if they elect to roll over to an inherited IRA plan, they may be required to receive a minimum distribution and they certify that the date of birth shown on this form is correct.

5. For a member who elected a Joint and Survivor Retirement Benefit Option, a contingent annuitant shall submit a Joint and Survivor Certification form containing:
   a. The following information for the member:
CHAPTER 8. STATE RETIREMENT SYSTEM BOARD

i. Full name;
ii. Social Security number or U.S. Tax Identification number;
iii. Date of death; and

b. The following information for the beneficiary:
   i. Legal relationship to the member;
   ii. Full name;
   iii. Social Security number or United States Tax Identification number, if not On File with ASRS;
   iv. Mailing address, if not On File with ASRS;
   v. Date of birth, if not On File with ASRS;
   vi. If the contingent annuitant is electing to have any of the survivor benefits directly deposited into a bank account, the
       following information:
       (1) Whether the bank account is a checking or savings account;
       (2) The name of the banking institution to which the benefit is being sent;
       (3) The routing number;
       (4) The account number; and

c. The following statements of understanding:
   i. The contingent annuitant has read and understands the Special Tax Notice Regarding Plan Payments they received with
      the Joint and Survivor Certification form;
   ii. The contingent annuitant authorizes the ASRS to make payments as indicated above and agree on behalf of themselves
      and their heirs that such payments shall be a complete discharge of the claim and shall constitute a release of the ASRS
      from any further obligation on account of the benefit; and
   iii. The contingent annuitant authorizes the ASRS and the Banking Institution listed above to debit their account for the
       purposes of correcting errors and returning any payments inadvertently made after their death.

   d. The contingent annuitant’s notarized signature.

E. Notwithstanding R2-8-132(H), if the beneficiary or contingent annuitant is a minor as of the date of the member’s death, the benefi-
   ciary or contingent annuitant may submit a written request with the information contained in R2-8-132(G)(1) through (4) within nine
   months after the minor attains 18 years of age.

F. For a member who deceases prior to the member’s retirement date, if there is no designation of beneficiary or if the designated benefi-
   ciary predeceases the member, the ASRS shall pay a survivor benefit as specified in A.R.S. § 38-762(E).

G. The ASRS shall begin disbursing a survivor benefit to a contingent annuitant according to A.R.S. § 38-760(B)(1) upon notification
   and verification of the member’s death by a third party.

H. The ASRS shall suspend a survivor benefit for a contingent annuitant unless the contingent annuitant provides the information in sub-
   section (D) within two months of the ASRS disbursing a survivor benefit.

I. If the member is domiciled in Arizona, according to A.R.S. § 14-3971, and there is no designated beneficiary, the ASRS shall distrib-
   ute the balance of a member’s account to a claimant if the claimant submits an Affidavit for Collection of Personal Property to ASRS
   with the following:
   1. The claimant’s name;
   2. The claimant’s Social Security number or U.S. Tax Identification number;
   3. The claimant’s mailing address;
   4. The member’s name;
   5. The member’s Social Security number or U.S. Tax Identification number;
   6. The date of the member’s death;
   7. The state and county where the member died;
   8. Statements indicating:
      a. According to A.R.S. § 14-3971(B)(2)(a), no application or petition for the appointment of a personal representative is pend-
         ing or has been granted in any jurisdiction and the value of the member’s entire estate, less liens and encumbrances, does not
         exceed the amount in A.R.S. § 14-3971 as valued as of the date of the member’s death;
      b. According to A.R.S. § 14-3971(B)(2)(b), the personal representative has been discharged, or more than a year has elapsed
         since a closing statement has been filed and the value of the member’s entire estate, less liens and encumbrances, does not
         exceed the amount in A.R.S. § 14-3971 as valued as of the date the ASRS receives the Affidavit for Collection of Personal
         Property;
      c. The claimant is the successor of the member and is entitled to the member’s personal property because:
         i. The claimant is named in the member’s will; or
         ii. The member did not have a will and the claimant is entitled to the member’s personal property by right of intestate
             succession according to A.R.S. § 14-2103;
      d. If the claimant is entitled to the member’s personal property according to subsection (I)(8)(c)(i), then a copy of the mem-
         ber’s will;
      e. If the claimant is entitled to the member’s personal property according to subsection (I)(8)(c)(ii), then the relationship be-
         tween the member and the claimant and whether there are other surviving heirs;
      f. If there are other surviving heirs, then the name and relationship of each surviving heir;
      g. A statement indicating the claimant is making the Affidavit for Collection of Personal Property according to A.R.S. §
         14-3971 for the purpose of making a claim to the member’s ASRS account; and
CHAPTER 8. STATE RETIREMENT SYSTEM BOARD

h. The claimant’s notarized signature.

J. If the member is not domiciled in Arizona and there is no designated beneficiary, the ASRS shall distribute the balance of a member’s account to a claimant if the claimant submits legal documentation to claim the member’s ASRS account that complies with the statutory requirements of the state in which the member was domiciled at the time of the member’s death.

K. Notwithstanding any other provision, if the amount of the survivor benefit as valued at the date of disbursement is less than $10,000 per annum, the ASRS shall not distribute a survivor benefit to a minor beneficiary unless the minor beneficiary’s legal guardian submits the following written information:
   1. The member’s full name;
   2. The member’s Social Security number or U.S. Tax Identification number;
   3. The minor beneficiary’s full name;
   4. The minor beneficiary’s Social Security number or U.S. Tax Identification number;
   5. The full name of the minor beneficiary’s legal guardian;
   6. The minor beneficiary’s legal guardian’s address, if not On File with ASRS; and
   7. The minor beneficiary’s legal guardian’s signature certifying the minor beneficiary’s legal guardian has care and custody of the minor beneficiary.

L. Notwithstanding any other provision, if the amount of the survivor benefit as valued at the date of disbursement is $10,000 or more per annum, the ASRS shall not distribute a survivor benefit to a minor beneficiary unless the minor beneficiary’s conservator submits proof of court-appointed fiduciary responsibility for the minor beneficiary.

M. The ASRS shall remit payment to the minor beneficiary according to subsection (K) by sending the minor beneficiary’s conservator a check, if the document providing proof of the court-appointed fiduciary responsibility requires payment to be made to a restricted or secure account.

N. If a person claims that a beneficiary or claimant is not entitled to a survivor benefit, then before ASRS disburses a survivor benefit, the person may notify ASRS of the person’s intent to appeal the beneficiary’s or claimant’s right to a survivor benefit.

O. Within 30 days, a person who has notified ASRS of the person’s intent to appeal a survivor benefit disbursement according to subsection (N), shall submit an appeal to ASRS according to 2 A.A.C. 8, Article 4.

P. If the ASRS receives documentation from, or confirmed by, a law enforcement agency, that a beneficiary or claimant may be guilty of the felonious and intentional killing of the member, the ASRS shall not distribute any benefits to the beneficiary or claimant that may be guilty of the felonious and intentional killing of the member until the matter has been adjudicated.

Q. If the member’s estate has an appointed personal representative, the member’s estate shall submit a court document identifying the personal representative for the member’s estate before ASRS may distribute a survivor benefit.

R. If the member’s estate is closed, the person claiming a right to the member’s ASRS account shall provide a court document proving the estate is closed.

S. If the survivor receives a monthly annuity and does not provide the direct deposit information according to subsection (D)(4)(e) or (D)(5)(b)(vi), ASRS shall issue a debit benefit card.

Historical Note
New Section made by final rulemaking at 26 A.A.R. 2036, effective November 8, 2020 (Supp. 20-3).

Table 1. Repealed

Historical Note
Adopted effective September 12, 1977 (Supp. 77-5). Table 1 repealed, new Table 1 adopted effective July 24, 1985 (Supp. 85-4).
Repealed by emergency effective July 6, 1993, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 93-3). Repealed again by emergency effective September 29, 1993, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 93-3). Repealed effective December 22, 1993 (Supp. 93-4).

Table 2. Repealed

Historical Note
Adopted effective September 12, 1977 (Supp. 77-5). Table 2 repealed, new Table 2 adopted effective July 24, 1985 (Supp. 85-4).
Repealed by emergency effective July 6, 1993, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 93-3). Repealed again by emergency effective September 29, 1993, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 93-3). Repealed effective December 22, 1993 (Supp. 93-4).

Table 3. Repealed

Historical Note
Adopted effective September 12, 1977 (Supp. 77-5). Table 3 repealed, new Table 3 adopted effective July 24, 1985 (Supp. 85-4).
Repealed by emergency effective July 6, 1993, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 93-3). Repealed again by emergency effective September 29, 1993, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 93-3). Repealed effective December 22, 1993 (Supp. 93-4).

Table 4. Repealed

Historical Note
Adopted effective September 12, 1977 (Supp. 77-5). Table 4 repealed, new Table 4 adopted effective July 24, 1985 (Supp. 85-4).
Repealed by emergency effective July 6, 1993, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 93-3). Repealed again by emergency effective September 29, 1993, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 93-3). Repealed effective December 22, 1993 (Supp. 93-4).
CHAPTER 8. STATE RETIREMENT SYSTEM BOARD

Historical Note
Adopted effective September 12, 1977 (Supp. 77-5). Table 4 repealed, new Table 4 adopted effective July 24, 1985 (Supp. 85-4). Repealed by emergency effective July 6, 1993, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 93-3). Repealed again by emergency effective September 29, 1993, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 93-3). Repealed effective December 22, 1993 (Supp. 93-4).

Table 5. Repealed

Historical Note
Adopted effective September 12, 1977 (Supp. 77-5). Table 5 repealed, new Table 5 adopted effective July 24, 1985 (Supp. 85-4). Repealed by emergency effective July 6, 1993, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 93-3). Repealed again by emergency effective September 29, 1993, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 93-3). Repealed effective December 22, 1993 (Supp. 93-4).

Table 6. Repealed

Historical Note
Adopted effective September 12, 1977 (Supp. 77-5). Table 6 repealed, new Table 6 adopted effective July 24, 1985 (Supp. 85-4). Repealed by emergency effective July 6, 1993, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 93-3). Repealed again by emergency effective September 29, 1993, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 93-3). Repealed effective December 22, 1993 (Supp. 93-4).

Table 7. Repealed

Historical Note
Adopted effective September 12, 1977 (Supp. 77-5). Table 7 repealed, new Table 7 adopted effective July 24, 1985 (Supp. 85-4). Repealed by emergency effective July 6, 1993, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 93-3). Repealed again by emergency effective September 29, 1993, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 93-3). Repealed effective December 22, 1993 (Supp. 93-4).

Table 8. Repealed

Historical Note
Adopted effective September 12, 1977 (Supp. 77-5). Table 8 repealed, new Table 8 adopted effective July 24, 1985 (Supp. 85-4). Repealed by emergency effective July 6, 1993, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 93-3). Repealed again by emergency effective September 29, 1993, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 93-3). Repealed effective December 22, 1993 (Supp. 93-4).

Table 9. Repealed

Historical Note
Adopted effective September 12, 1977 (Supp. 77-5). Table 9 repealed, new Table 9 adopted effective July 24, 1985 (Supp. 85-4). Repealed by emergency effective July 6, 1993, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 93-3). Repealed again by emergency effective September 29, 1993, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 93-3). Repealed effective December 22, 1993 (Supp. 93-4).

Table 10. Repealed

Historical Note
Adopted effective October 18, 1984 (Supp. 84-5). Table 10 repealed, new Table 10 adopted effective July 24, 1985 (Supp. 85-4). Repealed by emergency effective July 6, 1993, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 93-3). Repealed again by emergency effective September 29, 1993, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 93-3). Repealed effective December 22, 1993 (Supp. 93-4).

Table 11. Repealed

Historical Note
Adopted effective October 18, 1984 (Supp. 84-5). Table 11 repealed, new Table 11 adopted effective July 24, 1985 (Supp. 85-4). Repealed by emergency effective July 6, 1993, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 93-3). Repealed again by emergency effective September 29, 1993, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 93-3). Repealed effective December 22, 1993 (Supp. 93-4).

Exhibit A. Repealed
CHAPTER 8. STATE RETIREMENT SYSTEM BOARD

Historical Note

Exhibit B, Table 1. Repealed

Historical Note

Exhibit B, Table 2. Repealed

Historical Note

Exhibit B, Table 3. Repealed

Historical Note

Exhibit C. Repealed

Historical Note

Exhibit D, Table 1. Repealed

Historical Note

Exhibit D, Table 2. Repealed

Historical Note

Exhibit D, Table 3. Repealed
CHAPTER 8. STATE RETIREMENT SYSTEM BOARD

Historical Note

Exhibit D, Table 4. Repealed

Historical Note

Exhibit D, Table 5. Repealed

Historical Note

Exhibit D, Table 6. Repealed

Historical Note

Exhibit E, Table 1. Repealed

Historical Note

Exhibit E, Table 2. Repealed

Historical Note

Exhibit E, Table 3. Repealed

Historical Note

Exhibit E, Table 4. Repealed
CHAPTER 8. STATE RETIREMENT SYSTEM BOARD

Historical Note

Exhibit E, Table 5. Repealed

Historical Note

Exhibit E, Table 6. Repealed

Historical Note

Exhibit F, Table 1. Repealed

Historical Note

Exhibit F, Table 2. Repealed

Historical Note

Exhibit F, Table 3. Repealed

Historical Note

Exhibit F, Table 4. Repealed

Historical Note

Exhibit F, Table 5. Repealed
CHAPTER 8. STATE RETIREMENT SYSTEM BOARD

Historical Note

Exhibit F, Table 6. Repealed

Historical Note

Exhibit G. Repealed

Historical Note

Exhibit H. Repealed

Historical Note

Exhibit I. Repealed

Historical Note

Exhibit J. Repealed

Historical Note

Exhibit K. Repealed

Historical Note

Exhibit L, Table 1. Repealed
CHAPTER 8. STATE RETIREMENT SYSTEM BOARD

Historical Note

Exhibit L, Table 2. Repealed

Historical Note

Exhibit L, Table 3. Repealed

Historical Note

Exhibit L, Table 4. Repealed

Historical Note

Exhibit L, Table 5. Repealed

Historical Note

Exhibit L, Table 6. Repealed

Historical Note

Exhibit L, Table 7. Repealed

Historical Note

Exhibit M, Table 1. Repealed
CHAPTER 8. STATE RETIREMENT SYSTEM BOARD

Historical Note

ARTICLE 2. HEALTH INSURANCE PREMIUM BENEFIT

R2-8-201. Definitions
The following definitions apply to this Article unless otherwise specified:
1. “Coverage” means a medical and/or dental insurance plan a retired member, Disabled member, or beneficiary obtains through the ASRS or an Employer.
2. “Contingent annuitant” means the same as in A.R.S. § 38-711(8) and the person is eligible for Coverage.
3. “Disabled” means the member has a disability and is receiving long-term disability benefits pursuant to A.R.S. § 38-797 et seq.
4. “Family calculation” means the family Coverage premium described in A.R.S. § 38-783(B).
5. “Joint & survivor” means the annuity option described in A.R.S. § 38-760(B)(1).
6. “Net premium” means the amount of the Coverage premium reduced by the amount of the Premium Benefit provided by the ASRS.
CHAPTER 8. STATE RETIREMENT SYSTEM BOARD

7. “On file” means the same as in R2-8-115.
8. “Original retirement date” means the same as in R2-8-126.
9. “Optional premium benefit” means the election, upon retirement, to have the Premium Benefit paid on behalf of the member’s Contingent Annuitant upon death of the member pursuant to A.R.S. § 38-783.
10. “Period-certain” means the annuity option described in A.R.S. § 38-760(B)(2).
11. “Premium benefit” means the amount the ASRS provides on behalf of a retired member or Disabled member in order to offset the Coverage premium of the retired or Disabled member pursuant to A.R.S. § 38-783.

Historical Note

R2-8-202. Premium Benefit Eligibility and Benefit Determination
A. A retired member or Disabled member who has five or more years of service and who elects to maintain Coverage is eligible for a Premium Benefit as follows:
1. A retired member or Disabled member who elects to maintain Coverage for the retired member or Disabled member only, is eligible for a Single Calculation of the Premium Benefit as described in R2-8-204(A);
2. A retired member or Disabled member who elects to maintain Coverage for the retired member or Disabled member and a dependent who is not a retired member or Disabled member is eligible for a Family Calculation of the Premium Benefit as described in R2-8-204(B).
3. A retired member or Disabled member who elects to maintain Coverage for the retired member or Disabled member and a dependent who is a retired member or Disabled member is eligible for the greater of:
   a. Two Single Calculations of the Premium Benefit described in R2-8-204(A); or
   b. One Family Calculation of the Premium Benefit described in R2-8-204(B).
4. A retired member or Disabled member who is enrolled as a dependent on a member’s insurance plan is eligible for a Single Calculation of the Premium Benefit described in R2-8-204(A) if:
   a. The retired member has an Original Retirement Date prior to August 2, 2012; or
   b. The Disabled member became Disabled prior to August 2, 2012;
5. A retired member or Disabled member who elects to maintain Coverage for the retired member or Disabled member and multiple dependents, some of whom are retired members or Disabled members, is eligible for the greater of:
   a. Two Single Calculations of the Premium Benefit described in R2-8-204(A); or
   b. One Family Calculation of the Premium Benefit described in R2-8-204(B).
B. Pursuant to A.R.S. § 38-783(E), a retired member who returns to work with an Employer and elects to maintain Coverage is eligible to receive a Premium Benefit if the member has an Original Retirement Date prior to August 2, 2012.
C. Pursuant to A.R.S. § 38-783(E), a Disabled member who elects to maintain Coverage is eligible to receive a Premium Benefit if the Disabled member became Disabled prior to August 2, 2012.
D. A member who receives a lump sum distribution from the ASRS upon retirement is eligible to receive a Premium Benefit pursuant to this Article.
E. Notwithstanding any other Section, a retired member who has an Original Retirement Date on or after August 2, 2012, or a Disabled member who became Disabled on or after August 2, 2012 is eligible to receive a Premium Benefit pursuant to this Article, only if Coverage is not Subsidized.

Historical Note

R2-8-203. Payment of Premium Benefit
A. Every month, the ASRS shall provide a Premium Benefit to the Employer on behalf of a retired member, Disabled member, or Contingent Annuitant who maintains Coverage and is eligible to receive a Premium Benefit pursuant to R2-8-202.
B. Notwithstanding subsection (A), if a retired member who is eligible to receive a Premium Benefit pursuant to R2-8-202 elects to maintain Coverage with the Arizona Department of Administration or the ASRS, the ASRS shall reduce the retired member’s pension amount by the amount of the retired member’s Net Premium for Coverage pursuant to this Article, unless the Net Premium exceeds the pension amount.
CHAPTER 8. STATE RETIREMENT SYSTEM BOARD

C. Notwithstanding subsection (A), if a retired member who is eligible to receive a Premium Benefit pursuant to R2-8-202 elects to maintain Coverage with the ASRS and the Net Premium exceeds the retired member’s pension amount, the retired member shall be responsible for remitting the Net Premium to the retired member’s insurance company and the ASRS shall:
1. Not reduce the retired member’s pension amount; and
2. Remit payment of the Premium Benefit to the retired member’s insurance company.

D. Notwithstanding subsection (A), if a retired member who is eligible to receive a Premium Benefit pursuant to R2-8-202 elects to maintain Coverage with the Arizona Department of Administration and the Net Premium exceeds the retired member’s pension amount, the retired member shall be responsible for remitting the Net Premium to the Arizona Department of Administration and the ASRS shall:
1. Not reduce the retired member’s pension amount; and
2. Remit payment of the Premium Benefit to the Arizona Department of Administration.

E. If a Disabled member who is eligible to receive a Premium benefit pursuant to R2-8-202 maintains Coverage with the Arizona Department of Administration, the ASRS shall remit the Premium Benefit to the Arizona Department of Administration, unless the Disabled member is participating in the Six-Month Reimbursement Program pursuant to R2-8-206.

F. If a Disabled member who is eligible to receive a Premium Benefit pursuant to R2-8-202 maintains Coverage with the ASRS, the ASRS shall remit the Premium Benefit to the Disabled member’s insurance company and the Disabled member shall be responsible for remitting the Net Premium to the Disabled member’s insurance company.

G. If a retired member or Disabled member who is eligible to receive a Premium Benefit pursuant to R2-8-202 maintains Coverage with an Employer other than the ASRS or the Arizona Department of Administration, the ASRS shall remit the Premium Benefit to the retired member’s or Disabled member’s Employer, unless the retired member or Disabled member is participating in the Six-Month Reimbursement Program pursuant to R2-8-206.

H. If a retired member or Disabled member is eligible to receive a Premium Benefit pursuant to R2-8-202, the ASRS shall provide the lesser of the following for any one retired member or Disabled member:
1. The actual cost of the Coverage premium; or
2. The greatest Premium Benefit calculation for which the retired member or Disabled member is eligible pursuant to R2-8-202.

I. If a retired member is eligible to receive a Premium Benefit pursuant to R2-8-202 and the member retires from the ASRS in addition to retiring from another State retirement system or plan described in A.R.S. § 38-921, each month, the ASRS shall remit any Premium Benefit for which the retired member is eligible under this Article to the other State retirement system or plan from which the member retired.

Historical Note

R2-8-204. Premium Benefit Calculation

A. A Single Calculation for a Premium Benefit is based on the retired member’s or Disabled member’s Coverage election, years of service, and Medicare or non-Medicare status.

B. A Family Calculation for a Premium Benefit is based on the retired member’s or Disabled member’s Coverage election, years of service, and Medicare or Non-Medicare status, and the Medicare or Non-Medicare status of any dependents for which the retired member or Disabled member has obtained Coverage.

C. A Contingent Annuitant who is eligible to receive an Optional Premium Benefit pursuant to R2-8-207 shall receive an Optional Premium Benefit amount based on:
1. The retired member’s years of service and optional retirement benefit election pursuant to A.R.S. § 38-760; and
2. The Contingent Annuitant’s Coverage and Medicare or non-Medicare status.

D. Notwithstanding R2-8-203(H), if a Contingent Annuitant is a retired member, the Contingent Annuitant may be entitled to receive more than one Premium Benefit.

Historical Note

R2-8-205. Premium Benefit Documentation

A. Every year, prior to the effective date of Coverage, an Employer shall report to the ASRS all the Coverage plans and premium rates the Employer offers to its retired or Disabled employees.

B. An Employer shall inform the ASRS of any changes to the retired member’s, Disabled member’s, or Contingent Annuitant’s Coverage, including enrollment in Coverage, maintained through the Employer within 30 days of the changes taking effect.

C. Using the Employer’s secure ASRS website account, or another ASRS approved method, an Employer shall submit the following health insurance enrollment, change, and/or deletion information pursuant to subsection (B):
1. The retired member’s, Disabled member’s, or Contingent Annuitant’s Social Security number or U.S. Tax Identification number;
2. The retired member’s, Disabled member’s, or Contingent Annuitant’s full name;
CHAPTER 8. STATE RETIREMENT SYSTEM BOARD

3. The retired member’s, Disabled member’s, or Contingent Annuitant’s date of birth;
4. The Coverage in which the retired member, Disabled member, or Contingent Annuitant is enrolling;
5. The type of change that is being made to the Coverage;
6. The following information for each dependent enrolled in, or to be enrolled in, Coverage:
   a. First and last name;
   b. Social Security number or U.S. Tax Identification number;
   c. Date of birth; and
   d. Medicare number, if applicable.
7. The old and new premium amounts for Coverage;
8. The effective date of the change, deletion, and/or enrollment;
9. The Employer’s name and telephone number;
10. A certification by the Employer representative’s dated signature that the information is current and correct.

Historical Note

R2-8-206. Six-Month Reimbursement Program
A. For a retired member or Disabled member who is eligible for a Premium Benefit pursuant to R2-8-202(A)(4) or (B), the ASRS shall remit the Premium Benefit to the retired member or Disabled member pursuant to subsection (B).
B. Pursuant to subsection (A), the ASRS shall remit the Premium Benefit to the retired member or Disabled member every six months, payable in July and January. For purposes of this Section, the Premium Benefit shall be the aggregate amounts of the Premium Benefit the retired member or Disabled member is entitled to receive during the previous six months.
C. In order to receive a Premium Benefit payment pursuant to subsection (B), a retired member or Disabled member shall submit to the ASRS the Reimbursement of Medical and/or Dental Cost (Six-Month Reimbursement Program) form after the last day of the last month for which the retired member or Disabled member is seeking reimbursement.
D. The Reimbursement of Medical and/or Dental Cost (Six-Month Reimbursement Program) form that a retired member or Disabled member submits pursuant to subsection (C) shall include the following information:
1. The retired member’s or Disabled member’s Social Security number or U.S. Tax Identification number;
2. The retired member’s or Disabled member’s full name;
3. The retired member’s or Disabled member’s mailing address and phone number;
4. The retired member’s or Disabled member’s date of birth;
5. The retired member’s or Disabled member’s status with the ASRS;
6. The retired member’s or Disabled member’s status with the retired member’s or Disabled member’s Employer;
7. The following Coverage information for the Coverage policy holder:
   a. First and last names;
   b. Social Security number or U.S. Tax Identification number;
   c. Date of birth; and
   d. Effective date of Coverage;
8. The following information for each dependent enrolled in, or to be enrolled in, Coverage:
   a. First and last name;
   b. Social Security number or U.S. Tax Identification number;
   c. Date of birth; and
   d. Effective date of Coverage;
9. Six-month reimbursement totals identified by:
   a. The month and year the premium is due for Coverage;
   b. The total medical plan premium per month;
   c. The total dental plan premium per month;
   d. The employee’s out-of-pocket payroll deduction for a medical premium per month;
   e. The employee’s out-of-pocket payroll deduction for a dental premium per month;
   f. The employee’s total out-of-pocket payroll deduction for medical and dental premiums per month;
10. The Employer’s name;
11. The Employer’s phone number;
12. The Employer’s email address;
13. The name of the Employer’s representative; and
14. The dated signature of the Employer’s representative.

Historical Note
New Section made by final rulemaking at 10 A.A.R. 1962, effective May 4, 2004 (Supp. 04-2). Section expired under A.R.S. § 41-1056(E) at 16 A.A.R. 1765, effective July 14, 2010 (Supp. 10-3). New Section made by final rulemaking at 23 A.A.R. 1414,
CHAPTER 8. STATE RETIREMENT SYSTEM BOARD

effective July 3, 2017 (Supp. 17-2). Amended by final expedited rulemaking at 27 A.A.R. 479, with an immediate effective of March 5, 2021 (Supp. 21-1).

R2-8-207. Optional Premium Benefit

A. A member who retires on or after January 1, 2004 is eligible to elect the Optional Premium Benefit to be effective on the date of the retired member’s retirement and may designate a Contingent Annuitant to receive the Optional Premium Benefit upon the death of the retired member if:

1. The retired member elects a retirement option under A.R.S. § 38-760; and
2. The retired member elects to maintain Coverage.

B. A retired member who returns to active membership for 60 consecutive months or more before retiring again, may elect or re-elect the Optional Premium Benefit pursuant to subsection (A).

C. A retired member who does not return to active membership for 60 consecutive months or more before retiring again is not eligible to elect the Optional Premium Benefit pursuant to subsection (A) unless the retired member elected the Optional Premium Benefit to be effective on the date of the retired member’s Original Retirement Date.

D. In order to elect, re-elect, or terminate the Optional Premium Benefit pursuant to subsection (A), the retired member shall submit to the ASRS the Optional Premium Benefit Program Election or Termination form containing the following information:

1. The retired member’s Social Security number or U.S. Tax Identification number;
2. Whether the retired member is electing, declining, or terminating the Optional Premium Benefit;
3. The following information for the Contingent Annuitant if the retired member is electing or re-electing the Optional Premium Benefit:
   a. The Social Security number or U.S. Tax Identification number;
   b. The full name; and
   c. The date of birth, if not On File; and
4. Certification of understanding by the retired member’s dated signature of the following statements:
   a. I have a one-time election at the time of retirement for this benefit, and have a retirement date on or after January 1, 2004;
   b. I must elect a Joint & Survivor or Period-Certain annuity option;
   c. If I elect to participate, my Contingent Annuitant must be either participating or eligible to participate in my retiree health care plan at the time of my death;
   d. I must provide proof of birth date for my Contingent Annuitant;
   e. The Premium Benefit will be actuarially reduced for the remainder of my benefit and my Contingent Annuitant’s benefit as long as the Optional Premium Benefit is elected; and
   f. I may rescind the election at any time and be eligible for the unreduced Premium Benefit payable as provided by law.

E. In order to elect or re-elect the Optional Premium Benefit, a member shall submit the Optional Premium Benefit Program Election or Termination form to the ASRS prior to the member’s Original Retirement Date.

F. A Contingent Annuitant the retired member designates to receive the Optional Premium Benefit upon the retired member’s death is eligible to receive a Premium Benefit if:

1. The retired member designates the Contingent Annuitant as the primary beneficiary on the member’s retirement account;
2. The Contingent Annuitant is enrolled in a Coverage plan at the time of the member’s death or the Contingent Annuitant enrolls in a Coverage plan within six months of the retired member’s death pursuant to A.R.S. § 38-782(A); and
3. The Contingent Annuitant is eligible to receive at least one monthly payment.

G. Upon the death of a retired member who elected the Optional Premium Benefit pursuant to subsection (A), the ASRS shall provide the Optional Premium Benefit on behalf of the retired member’s Contingent Annuitant who is eligible to receive the Optional Premium Benefit pursuant to subsection (F).

H. Notwithstanding subsection (G), the amount of the Optional Premium Benefit the ASRS provides on behalf of a Contingent Annuitant shall not exceed the actual amount of the Coverage premium.

I. Unless otherwise indicated by law, the Optional Premium Benefit shall not terminate upon the death of the retired member if a Contingent Annuitant is eligible for the Optional Premium Benefit pursuant to subsection (F).

Historical Note

ARTICLE 3. LONG-TERM DISABILITY

R2-8-301. Definitions
The following definitions apply to this Article unless otherwise specified:

1. “Attending Physician” means a provider:
   a. Who is a qualified medical provider or other legally qualified practitioner of a healing art that the claims administrator recognizes or is required by law to recognize;
   b. Whose medical training and clinical experience are qualified to treat the member’s disabling condition;
CHAPTER 8. STATE RETIREMENT SYSTEM BOARD

2. “Direct Care” means the member is actively receiving treatment from a provider for the member’s disability at least once per calendar year.
3. “Estimated Social Security disability income amount” means the same as in R2-8-801(2).
4. “LTD” means the Long-Term Disability program described in A.R.S. § 38-797 et seq.
5. “LTD benefit” means the amount of funds the member receives from the ASRS or the ASRS contracted LTD claims administrator, for the period of time a member has an eligible disability as described in A.R.S. § 38-797.07(A)(11).
6. “LTD contribution” means the amount of funds the member remits to the ASRS from the member’s compensation as payment for the LTD program.

Historical Note

R2-8-302. Application for Long-Term Disability Benefit
A. In order to claim an LTD benefit, a disabled member shall submit to the disabled member’s Employer all the completed forms prescribed by the ASRS contracted LTD claims administrator within 12 months of the date the disabled member became disabled.
B. Pursuant to A.R.S. § 38-797.07(D), in order to continue receiving an LTD benefit, a disabled member shall submit documentation regarding the disabled member’s ongoing disability and occupation as required by the ASRS contracted LTD claims administrator to determine the disabled member’s continuing eligibility for an LTD benefit.
C. Pursuant to A.R.S. § 38-797.07(11), in order to submit an application for an LTD benefit, a member must provide objective medical evidence from an Attending Physician.
D. Pursuant to A.R.S. § 38-797.07(7)(b)(i), in order to continue receiving an LTD benefit, the disabled member must be under the Direct Care of a doctor.

Historical Note

R2-8-303. Long-Term Disability Calculation
A. The ASRS contracted LTD claims administrator shall calculate an LTD benefit for a member using the member’s monthly compensation as described in A.R.S. § 38-797(11).
B. For a member whose monthly compensation is $0 as of the date of disability, the ASRS shall pay a monthly benefit of $50 unless the benefit is reduced pursuant to R2-8-807 or required to be reduced pursuant to A.R.S. § 38-797.07(A)(2).
C. The ASRS shall reduce a member’s LTD benefit in accordance with A.R.S. § 38-797.07(A).
D. Notwithstanding any other section, a member who became disabled on or after August 27, 2019, shall not receive a benefit under this article that would increase the member’s monthly compensation after disability to an amount that exceeds 100% of the member’s monthly compensation before disability.

Historical Note

R2-8-304. Payment of Long-Term Disability Benefit
A. The ASRS contracted LTD claims administrator shall begin providing an LTD benefit to an eligible disabled member no sooner than six months after the date the disabled member became disabled.
B. Notwithstanding subsection (A), the ASRS contracted LTD claims administrator may begin providing an LTD benefit to an eligible disabled member sooner than six months if the disability is related to the member’s disability that occurred within six months immediately preceding the disability.
C. The ASRS contracted LTD claims administrator may provide an eligible disabled member’s LTD benefit to a third party pursuant to A.R.S. § 38-797.09.

Historical Note
R2-8-305. Social Security Disability Appeal

A. Upon request by the ASRS contracted LTD claims administrator, a member who claims an LTD benefit pursuant to R2-8-302(A) shall submit a Social Security disability income application as prescribed by the ASRS contracted LTD claims administrator.

B. In order to continue receiving an LTD benefit, a member whose application for Social Security disability income has been denied or terminated must appeal the most recent determination of denial or termination through a hearing before an administrative law judge pursuant to A.R.S. § 38-797.07(A)(10)(a) until the ASRS contracted LTD claims administrator or the Social Security Claims Administrator determines the member is not eligible for a Social Security benefit.

C. Within 10 days after a member receives notice of the status of the member’s Social Security disability income application, the member shall notify:
   1. The ASRS of the member’s application status by submitting a copy of the notice identifying the status of the member’s Social Security disability income application to the ASRS, if the member is not receiving an LTD benefit; or
   2. The ASRS contracted LTD claims administrator of the member’s application status by submitting a copy of the notice identifying the status of the member’s Social Security disability income application to the ASRS contracted LTD claims administrator, if the member is not receiving an LTD benefit.

D. A member who disagrees with an LTD determination by the ASRS contracted LTD claims administrator may submit an appeal pursuant to 2 A.A.C. 8, Article 4.

Historical Note
New Section made by final rulemaking at 23 A.A.R. 2746, effective November 13, 2017 (Supp. 17-3).

R2-8-306. Approval of Social Security Disability

Upon receipt of a Social Security disability income benefit, a member shall immediately remit to:
   1. The ASRS the amount of the Social Security disability income benefit necessary to offset the LTD benefit; or
   2. The ASRS contracted LTD claims administrator the amount of the Social Security disability income benefit necessary to offset the LTD benefit.

Historical Note
New Section made by final rulemaking at 23 A.A.R. 2746, effective November 13, 2017 (Supp. 17-3).

ARTICLE 4. PRACTICE AND PROCEDURE BEFORE THE BOARD

R2-8-401. Definitions

The following definitions apply to this Article, unless otherwise specified:
   1. “Appealable agency action” has the same meaning as in A.R.S. § 41-1092.
   2. “Board” means, if established, a Committee designated by the Board to take action on appeals as described in A.R.S. § 38-714(E)(1) or, if a Committee is not established, the same as in A.R.S. § 38-711(6).
   3. “Final administrative action” has the same meaning as in A.R.S. § 41-1092 and is rendered by the Board.

Historical Note

R2-8-402. General Procedures

In computing any time period, parties shall exclude the day from which the designated time period begins to run. Parties shall include the last day of the period unless it falls on a Saturday, Sunday, or legal holiday. When the time period is 10 days or less, parties shall exclude Saturdays, Sundays, and legal holidays.

Historical Note
New Section made by final rulemaking at 11 A.A.R. 444, effective January 4, 2005 (Supp. 05-1).

R2-8-403. Letters of Appeal; Request for a Hearing of an Appealable Agency Action

A. After receipt of an agency decision, a person who is not satisfied with the agency decision, may submit a letter of appeal:
   1. To the ASRS’s vendor for long-term disability benefits, if the appeal relates to a long-term disability decision; or
   2. To the ASRS Member Services Division Assistant Director, or such director’s designee, if the appeal relates to an agency decision other than a long-term disability decision.

B. Upon receipt of a letter of appeal, the long-term disability vendor, or the Member Services Division Assistant Director, or such director’s designee, shall send a response letter to the person requesting the appeal notifying the person of:
   1. The decision the agency is making in response to the letter of appeal; and
   2. The person’s right to appeal the agency response by submitting a letter of appeal to the ASRS Director or such director’s designee.

C. A person who is not satisfied with the agency response pursuant to subsection (B) may submit a letter of appeal to the ASRS Director or such director’s designee within 60 days of the date on the agency response letter.
D. Within 30 days of the date the ASRS receives a letter of appeal pursuant to subsection (C), the ASRS director or such director’s designee shall send a response letter by certified mail to the person requesting the appeal that includes:
   1. The agency action the ASRS is taking in response to the letter of appeal; and
   2. Notice of Appealable Agency Action, as required pursuant to A.R.S. § 41-1092.03 informing the person requesting the appeal, that the person has a right to appeal the agency action by submitting a Request for Hearing pursuant to subsections (E) and (F).

E. For an appealable agency action, a person who is not satisfied with an agency action pursuant to subsection (D) may file a Request for a Hearing, in writing, with the ASRS. The date the Request is filed is established by the ASRS date stamp on the face of the first page of the Request. The Request shall include the following:
   1. The name and mailing address of the member, employer, or other person filing the Request;
   2. The name and mailing address of the attorney for the person filing the Request, if applicable;
   3. A concise statement of the reasons for the appeal.

F. The person requesting a hearing shall file the Request for a Hearing with the ASRS within 30 days after receiving a response letter including a Notice of an Appealable Agency Action, pursuant to subsection (E).

G. Upon receipt of the Request for a Hearing, the ASRS shall notify the Office of Administrative Hearings as required in A.R.S. § 41-1092.03(B).

H. Pursuant to subsection (B):
   1. The long-term disability vendor shall send a response letter to the person requesting the appeal within 120 days of the date the long-term disability vendor receives the letter of appeal; and
   2. The Member Services Division Assistant Director, or such director’s designee, shall send a response letter to the person requesting the appeal within 30 days of the date the ASRS receives the letter of appeal.

Historical Note
New Section made by final rulemaking at 11 A.A.R. 444, effective January 4, 2005 (Supp. 05-1). Amended by final rulemaking at 23 A.A.R. 487, effective April 8, 2017 (Supp. 17-1).

R2-8-404. Board Decisions on Hearings before the Office of Administrative Hearings
A recommended decision from the Office of Administrative Hearings that is sent to ASRS at least 30 days before the Board’s next regular meeting, shall be reviewed by the Board at that meeting. At the meeting, the Board shall render a decision to accept, reject, or modify the findings of fact, conclusions of law and recommendations in whole or in part. If the Board modifies or rejects a recommended decision, the Board shall state the reasons for the modification or rejection. The Board shall deliver the Board’s final decision to the Office of Administrative Hearings within five days after the meeting at which the Board made the final decision.

Historical Note
New Section made by final rulemaking at 11 A.A.R. 444, effective January 4, 2005 (Supp. 05-1). Amended by final expedited rulemaking at 27 A.A.R. 479, with an immediate effective of March 5, 2021 (Supp. 21-1).

R2-8-405. Motion for Rehearing Before the Board; Motion for Review of a Final Decision
A. Except as provided in subsection (H), within 30 days after service of the final administrative decision, any aggrieved party in an appealable agency action may file with the Board a Motion for Rehearing Before the Board, in writing, specifying the particular grounds for rehearing before the Board.

B. Except as provided in subsection (H), within 30 days after service of the final administrative decision, any aggrieved party in an appealable agency action may file with the Board a Motion for Review of a Final Decision, in writing, specifying the particular grounds for reviewing the Board’s final administrative decision.

C. A party may amend a Motion for Rehearing Before the Board or a Motion for Review of a Final Decision at any time before the Board rules on the motion. A party may file a response within 15 days after the motion or the amended motion is filed. The Board may require the filing of written briefs upon the issues raised in the motion or the amended motion, and may provide for oral argument.

D. The Board may grant a Motion for Rehearing Before the Board or a Motion for Review of a Final Decision for any of the following causes that materially affects the moving party’s rights:
   1. Irregularity in the administrative proceedings of the agency or the hearing officer, or any order or abuse of discretion that deprives the moving party of a fair hearing;
   2. Misconduct of the Board, the hearing officer, or the prevailing party;
   3. Accident or surprise that could not have been prevented by ordinary prudence;
   4. Newly discovered material evidence that could not with reasonable diligence have been discovered and produced at the original hearing;
   5. Excessive or insufficient penalties;
   6. Error in the admission or rejection of evidence or other errors of law occurring at the administrative hearing or during the process of the action; or
   7. That the decision, or findings of fact, is not justified by the evidence or is contrary to law.

E. The Board may affirm or modify the final administrative decision or grant a rehearing before the Board or review of final administrative decision to all or any of the parties on all or part of the issues for any of the reasons in subsection (C). An order granting a rehearing or review shall specify with particularity the grounds for the order.

F. Not later than 10 days after the final administrative decision, the Board may, after giving each party notice and an opportunity to be heard, order a rehearing or review of its final administrative decision for any reason for which it might have granted a rehearing or re-
view on motion of a party. After giving the parties or their counsel notice and an opportunity to be heard on the matter, the Board may grant a motion for rehearing or review for a reason not stated in the motion. In either case, the order granting a rehearing or review shall specify the grounds on which it is granted.

G. When a motion for rehearing or review is based upon an affidavit, the affidavit shall be filed with the motion. An opposing party may, within 15 days after filing, file an opposing affidavit. The Board may extend the period for filing an opposing affidavit for not more than 20 days for good cause shown or by written stipulation of the parties. The Board may permit a reply affidavit.

H. The Board shall rule on the motion within 15 days after the response to the motion is filed or if a response is not filed, within five days of the expiration of the response period.

I. If the Board makes a specific finding that the immediate effectiveness of a particular decision is necessary for the preservation of the public peace, health, and safety and that a rehearing or review of the decision is impracticable, unnecessary, or contrary to the public interest, the decision may be issued as a final decision without an opportunity for a rehearing or review. If a decision is issued as a final decision without an opportunity for rehearing or review, an application for judicial review of the decision may be made within the time limits permitted for applications for judicial review of the Board’s final decisions.

Historical Note
New Section made by final rulemaking at 11 A.A.R. 444, effective January 4, 2005 (Supp. 05-1). Amended by final rulemaking at 23 A.A.R. 487, effective April 8, 2017 (Supp. 17-1).

ARTICLE 5. PURCHASING SERVICE CREDIT

R2-8-501. Definitions
The following definitions apply to this Article unless otherwise specified:

1. “Active duty” means full-time duty in a branch of the United States uniformed service, other than Active Reserve Duty.
2. “Active reserve duty” means participating in required meetings and annual training in a Reserve or National Guard branch of the United States uniformed service.
3. “Actuarial present value” means an amount in today’s dollars of a member’s future retirement benefit calculated using appropriate actuarial assumptions and the:
   a. Eligible Member’s Current Years of Credited Service;
   b. Eligible Member’s age as of the date the Eligible Member submits to the ASRS a request to purchase service pursuant to this Article;
   c. Amount of Service Credit the member wishes to purchase; and
   d. Member’s current annual compensation.
4. “Authorized representative” means an individual who has been delegated the authority to act on behalf of a Custodian, Trustee, Plan Administrator, or a member, if the member’s IRA or 403(b) is not maintained by the member’s Employer.
5. “Current years of credited service” means the amount of credited service a member has earned or purchased, and the amount of Service Credit for which an Irrevocable PDA is in effect for which the member has not yet completed payment, but does not include any current requests to purchase Service Credit for which the member has not yet paid.
6. “Custodian” means a financial institution that holds financial assets for guaranteed safekeeping.
7. “Direct rollover” means distribution of Eligible Funds made payable to the ASRS as a contribution for the benefit of an eligible member from a retirement plan listed in A.R.S. § 38-747(H)(2) or (H)(3).
8. “Eligible funds” means payments listed in A.R.S. § 38-747(H)(2) and (H)(3).
9. “Eligible member” means a member who is eligible to purchase service pursuant to A.R.S. §§ 38-742, 38-743, 38-744, or 38-745.
10. “Forfeited service” means credited service for which the ASRS has returned retirement contributions to the member under A.R.S. § 38-740.
12. “Irrevocable PDA” means an irrevocable “Payroll Deduction Authorization” contract between an Eligible Member, an Employer, and the ASRS that requires the Employer to withhold payments from an Eligible Member’s pay for a specified amount and for a specified number of payments, as provided in A.R.S. § 38-747.
14. “LTD” means the same as in R2-8-301.
15. “Military Call-up service” means a member is called to Active Duty in a branch of the United States Uniformed Services.
16. “Military service” means Active Duty or Active Reserve Duty with any branch of the United States Uniformed Services or the Commissioned Corps of the National Oceanic and Atmospheric Administration.
17. “Military service record” means a United States Uniformed Services or National Oceanic and Atmospheric Administration document that provides the following information:
   a. The member’s full name;
   b. The member’s Social Security number;
   c. Type of discharge the member received; and
   d. Active Duty dates, if applicable; or
   e. Active Reserve Duty dates, if applicable; and
   f. Point history for Active Reserve Duty dates, if applicable.
19. “PDA pay-off invoice” means written correspondence from the ASRS to an Eligible Member that specifies the amount necessary to be paid by the Eligible Member to complete an Irrevocable PDA to receive the total credited service specified in the Irrevocable PDA.

20. “Plan administrator” means the person authorized to represent a specific eligible plan as addressed in IRC § 414(g).

21. “Service credit” means Forfeited Service, Leave of Absence Service, Military Service and Military Call-up Service under A.R.S. § 38-745, and Other Public Service that an Eligible Member may purchase.

22. “SP invoice” means a written correspondence from the ASRS informing an Eligible Member of the amount of money required to purchase a specified amount of Service Credit.

23. “Termination pay” means an Employer’s payment to the ASRS of an Eligible Member’s pay received as a result of terminating employment to purchase Service Credit as specified in A.R.S. § 38-747(B)(2).

24. “Three full calendar months” means the first day of the first full month through the last day of the third consecutive full month.

25. “Transfer employment” means to terminate employment with one Employer with which an Eligible Member has an Irrevocable PDA:
   a. After accepting an offer to work for a new Employer;
   b. While working as an active member for a different Employer; or
   c. Before returning to work with any Employer within 120 days of terminating employment.

26. “Trustee-to-Trustee transfer” means a transfer of assets to the ASRS as authorized in A.R.S. § 38-747(I), from a retirement program from which, at the time of the transfer, a member is not eligible to receive a distribution.

27. “Uniformed services” means the United States Army, Army Reserve, Army National Guard, Navy, Navy Reserve, Air Force, Air Force Reserve, Air Force National Guard, Marine Corps, Marine Corps Reserve, Coast Guard, Coast Guard Reserve, and the Commissioned Corps of the Public Health Service.

28. “Window credit” means overpayments made on previously purchased Service Credit by members of the ASRS as provided by Laws 1997, Ch. 280, § 21, and Laws 2003, Ch. 164, § 3.

**Historical Note**


**R2-8-502. Request to Purchase Service Credit and Notification of Cost**

A. An Eligible Member may request to purchase Service Credit electronically. The Eligible Member shall verify at the time of request, the following information for the Eligible Member:
   1. Name;
   2. Mailing address;
   3. Date of birth;
   4. Marital status;
   5. Gender;
   6. Primary email address;
   7. Primary phone number; and
   8. Which category of Service Credit the Eligible Member is requesting to purchase.

B. An Eligible Member who requests to purchase Service Credit pursuant to subsection (A) shall acknowledge the following statements of understanding:
   1. Any person who knowingly makes any false statement or who falsifies or permits to be falsified any record of the retirement plan with an intent to defraud the plan is guilty of a class 6 felony per A.R.S. § 38-793; and
   2. This transaction is subject to audit. If any errors or misrepresentations are discovered as a result of an audit, the Eligible Member’s total credited service with the ASRS will be adjusted as necessary and if the Eligible Member is retired, the Eligible Member’s retirement benefit will also be adjusted. Any overpayment or overpayments will be refunded. However, if a payment made with a rollover or pre-tax dollars is returned to the Eligible Member, there may be tax consequences as a result of this refund.

C. Upon receipt of the documentation required by this Article from the Eligible Member and if the Eligible Member’s request to purchase Service Credit meets the requirements of this Article, the ASRS shall provide the following to the Eligible Member:
   1. An SP Invoice stating the cost to purchase the amount of Service Credit the member is eligible to purchase;
   2. Instructions for electing method of payment; and
   3. The date payment election is due.

D. An Eligible Member who requests to purchase Service Credit pursuant to this Section shall elect one or more methods of payment and submit the election to the ASRS by the date payment election is due.

E. An Eligible Member who elects to purchase Service Credit using after-tax payments shall acknowledge the following information:
   1. After-tax payments must be from the Eligible Member and remitted to the ASRS by the Eligible Member;
   2. After-tax payments cannot be used to purchase political subdivision employment with a United States territory, commonwealth, overseas possession, or insular area; and
3. If the Eligible Member joined the ASRS on or after July 1, 1999, §§ 415(b) and 415(c) of the IRC limit the after-tax money the Eligible Member can use to purchase Service Credit.

Historical Note

R2-8-503. Requirements Applicable to All Service Credit Purchases
A. To purchase Service Credit at the amount provided in an SP Invoice, an Eligible Member shall purchase the Service Credit by check or money order, or request an Irrevocable PDA, Direct Rollover, Trustee-to-Trustee Transfer, or Termination Pay as specified in this Article, by the due date specified by the method of payment the Eligible Member elected.

B. An Eligible Member may purchase all of the Service Credit or a portion of the Service Credit. If the Eligible Member wishes to purchase only a portion of the Service Credit, the Eligible Member shall specify:
   1. Either the number of years or partial years of Service Credit the Eligible Member wishes to purchase; or
   2. The cost for the number of years or partial years of Service Credit the Eligible Member wishes to purchase, not exceeding the years or partial years and cost specified on the SP Invoice.

C. The ASRS shall not consider more than one active request at a time from a member to purchase Service Credit in a single category. The categories are:
   1. Leave of Absence Service;
   2. Military Service;
   3. Forfeited Service; and
   4. Other Public Service.

D. An Eligible Member may cancel an active request by notifying the ASRS in writing.

E. If an Eligible Member is entitled to a Window Credit, the Eligible Member may apply the Window Credit to purchase Service Credit. To apply a Window Credit to a purchase of Service Credit, the Eligible Member shall make a request to the ASRS in writing by the date payment election is due as specified on the SP Invoice and include the following information:
   1. The amount the Eligible Member wants to apply, and
   2. The Eligible Member’s dated signature.

F. On or before the due date specified on the SP Invoice, an Eligible Member may request an extension of a due date for purchasing Service Credit.

Historical Note

R2-8-504. Service Credit Calculation for Purchasing Service Credit
A. An Eligible Member who purchases Service Credit shall receive one month of credited service for one or more days of service in a calendar month.

B. Pursuant to A.R.S. 38-739(B), an Eligible Member who purchases Service Credit shall receive a proportionate amount of credited service based on the length of the Eligible Member’s service year.

C. Notwithstanding any other provision, an Eligible Member whose membership date is on or after July 20, 2011, cannot purchase more than five years of Service Credit for each of the following based on the length of the Eligible Member’s service year:
   1. Leave of Absence Service;
   2. Military Service; and
   3. Other Public Service.

Historical Note
New Section made by final rulemaking at 11 A.A.R. 2640, effective June 30, 2005 (Supp. 05-2). Amended by final rulemaking at 25 A.A.R. 303, effective March 18, 2019 (Supp. 19-1).

R2-8-505. Restrictions on Purchasing Overlapping Service Credit
The ASRS shall not permit an Eligible Member to purchase Service Credit that, when added to credited service earned in any plan year, results in more than:
   1. One year of credited service in any plan year, or
   2. One month of credited service in any one calendar month.

Historical Note
New Section made by final rulemaking at 11 A.A.R. 2640, effective June 30, 2005 (Supp. 05-2). Amended by final rulemaking at 25 A.A.R. 303, effective March 18, 2019 (Supp. 19-1).
CHAPTER 8. STATE RETIREMENT SYSTEM BOARD

R2-8-506. Cost Calculation for Purchasing Service Credit
A. For Service Credit for Leave of Absence Service, Military Service, and Other Public Service, the ASRS shall calculate, as of the date of the request to purchase Service Credit:
   1. The Actuarial Present Value of the future retirement benefit for the Eligible Member including the Service Credit that the Eligible Member requests to purchase, and
   2. The Actuarial Present Value of the future retirement benefit for the Eligible Member without the Service Credit that the Eligible Member requests to purchase.
B. The cost for purchasing the Service Credit that the Eligible Member requests to purchase is the difference between the Actuarial Present Value in subsection (A)(1) and the Actuarial Present Value in subsection (A)(2).

Historical Note
New Section made by final rulemaking at 11 A.A.R. 2640, effective June 30, 2005 (Supp. 05-2). Amended by final rulemaking at 25 A.A.R. 303, effective March 18, 2019 (Supp. 19-1).

R2-8-507. Required Documentation and Calculations for Forfeited Service Credit
A. An Eligible Member who requests to purchase Service Credit for Forfeited Service under A.R.S. § 38-742 shall provide the ASRS:
   1. The name of an Employer, if known, for which the Eligible Member is requesting to purchase Service Credit for Forfeited Service; and
   2. The year and month the Eligible Member believes the ASRS returned retirement contributions.
B. Upon receipt of payment as specified in subsection (D), the ASRS shall apply the Service Credit to the Eligible Member’s account based on the most recent Forfeited Service available for purchase.
C. Notwithstanding subsection (B), if an Eligible Member has more than one return of contributions pursuant to A.R.S. § 38-740, the Eligible Member may elect to purchase Forfeited Service for any of the return of contributions and the ASRS shall apply the Service Credit to the Eligible Member’s account based on the most recent Forfeited Service available for purchase.
D. The amount the Eligible Member shall pay to purchase Service Credit for previously Forfeited Service is the amount of retirement contributions that the ASRS issued, plus interest on that amount from the date on the return of retirement contributions check to the date of redeposit at the Assumed Actuarial Investment Earnings Rate specified in R2-8-118(A).

Historical Note

R2-8-508. Required Documentation and Calculations for Leave of Absence Service Credit
A. An Eligible Member who requests to purchase Service Credit for Leave of Absence Service under A.R.S. § 38-744 shall provide to the ASRS an Approved Leave of Absence form that includes:
   1. The following information completed by the Eligible Member:
      a. The start date and end date of the approved leave of absence;
      b. The date the Eligible Member returned to work or a statement of why employment was not resumed;
      c. The name of the Employer;
      d. Whether the Eligible Member participated in another public retirement system during this leave of absence; and
      e. If the Eligible Member participated in another public retirement system during the leave of absence, whether the Eligible Member is receiving a benefit or is eligible to receive a benefit, from the other public retirement system; and
   2. Acknowledgement of the following statements of understanding:
      a. The Eligible Member understands that up to one year of Service Credit may be purchased for each approved leave of absence, if the Eligible Member returns to work for the Employer that approved the leave of absence unless employment could not be resumed because of disability or nonavailability of a position;
      b. The Eligible Member authorizes the Employer to provide any necessary personal information to ASRS in order to process this request; and
      c. The Eligible Member certifies that if the Eligible Member participated in another public retirement system during the approved leave of absence, the Eligible Member is not receiving, and is not eligible to receive, a benefit from the other public retirement system for the time during the approved leave of absence; and
   3. The Eligible Member’s dated signature.
B. Pursuant to A.R.S. § 38-744, a member who participated in another public retirement system during the leave of absence, and is receiving a benefit or is eligible to receive a benefit from the other public retirement system, is not an Eligible Member for purposes of this Section.
C. If the information provided by the Eligible Member pursuant to subsection (A) is correct, the Employer shall validate the information and submit the information to the ASRS through the Employer’s secure ASRS account. If the information provided by the Eligible Member pursuant to subsection (A) is incorrect, the Employer shall correct the information and submit the information to the ASRS through the Employer’s secure ASRS account.
D. Upon submitting the information specified in subsection (B), the Employer shall acknowledge the following statements of understanding:


CHAPTER 8. STATE RETIREMENT SYSTEM BOARD

1. The Employer has verified all the dates for the approved leave of absence period are correct; and
2. The contact individual has the legal power to bind the Employer in transactions with the ASRS.

E. The amount the Eligible Member shall pay to purchase Service Credit for an approved leave of absence is determined as provided in R2-8-506.

Historical Note

R2-8-509. Required Documentation and Calculations for Military Service Credit

A. An Eligible Member who requests to purchase Service Credit for Military Service under A.R.S. § 38-745(A) and (B) shall provide to the ASRS:
   1. A copy of the Eligible Member’s Military Service Record within 30 days of the Eligible Member’s request to purchase Service Credit; and
   2. A Military Service form that contains:
      a. Whether the Eligible Member is receiving a benefit or is eligible to receive a benefit, from the military.
      b. The branch of the Uniformed Services the Eligible Member was in;
      c. Whether the Eligible Member was on Active Duty or Active Reserve Duty;
      d. The start date and end date of the Eligible Member’s Military Service for which the Eligible Member is requesting to purchase Service Credit;
      e. Acknowledgement that the Eligible Member will submit to the ASRS:
         i. Proof of honorable separation for each type of Military Service listed on the form; and
         ii. The Eligible Member’s Military Service Record that supports all of the service listed on the form;
      f. Acknowledgement of the following statements of understanding:
         i. The Eligible Member understands that the service listed on this form does not include time that the Eligible Member either volunteered or was ordered into Active Duty service as part of a military call-up while employed by an Employer. This service is purchased under Military Call-up Service and requires a Military Call-up form to be completed by the Eligible Member’s Employer; and
         ii. The Eligible Member understands that any time the Eligible Member has listed on this form for Reserve or National Guard time reflects the months that the Eligible Member attended at least one drill or assembly for each month listed.

B. The amount the Eligible Member pays to purchase Service Credit for Military Service is determined as provided in R2-8-506.

C. The ASRS determines the amount of Service Credit an Eligible Member receives for Active Duty and Active Reserve Duty time by the time listed on the Military Service form, if the service listed is supported by the information contained in the Eligible Member’s Military Service Record.

D. If the ASRS has not received complete and correct documents pursuant to this Section within 30 days of the request to purchase Service Credit, the ASRS shall cancel the Eligible Member’s request to purchase Service Credit.

Historical Note

R2-8-510. Required Documentation and Calculations for Military Call-up Service Credit

A. An Eligible Member who meets the requirements under A.R.S. § 38-745(D) shall receive up to 60 months of Service Credit, not to exceed 5 years of Service Credit for Military Call-up Service under A.R.S. § 38-745(D) through (K). In order to determine the amount of contributions the Employer owes to purchase Service Credit for Military Call-up Service, the Eligible Member’s Employer shall provide to the ASRS a copy of the Eligible Member’s Military Service Record and a completed Military Call-up form that includes the following:
   1. The Eligible Member’s full name;
   2. The Eligible Member’s Social Security number;
   3. The start date of Military Call-up Service;
   4. The end date of Military Call-up Service;
   5. The date the Eligible Member returned to work for the Employer;
   6. The salary for each pay period in each fiscal year while the Eligible Member was on military call-up, including any salary increases the Eligible Member would have received had the Eligible Member not left work due to military call-up;
   7. The name of a contact individual for the Employer, and that individual’s business telephone number;
   8. The contact individual’s dated signature;
   9. If applicable, the dates that the Eligible Member was hospitalized and released from the hospital as a result of participating in a military call-up;
   10. If applicable, the date the Eligible Member became disabled during or as a result of participating in a military call-up;
   11. If applicable, the date of the Eligible Member’s death during or as a result of participating in a military call-up; and
   12. Acknowledgement of the following statements of understanding:
CHAPTER 8. STATE RETIREMENT SYSTEM BOARD

a. All the dates and payroll information for the Military Call-up Service are correct;

b. The Eligible Member:
   i. Was honorably separated from Active Duty and returned to the same Employer within 90 days of either discharge from Active Duty or release from service-related hospitalization; or
   ii. Was disabled and unable to return to work; or
   iii. Died during or as a result of Active Duty.

c. The Employer must pay both the employee and Employer contributions in a lump sum upon the Eligible Member returning to employment, receipt of a declaration of disability, or receipt of a death certificate. These contributions are based on the salary the Eligible Member would have earned if the Eligible Member had not volunteered or been ordered into Active Duty.

d. The Eligible Member may receive a maximum of 60 months of Service Credit for Military Call-up Service pursuant to A.R.S. § 38-745; and

e. The contact individual has the legal power to bind the Employer in transactions with the ASRS.

B. An Employer shall make the request to purchase Service Credit for Military Call-up Service within 30 days after the earlier of the dates listed in A.R.S. § 38-745(E).

C. The ASRS calculates the amount the Employer pays to purchase Military Call-up Service pursuant to A.R.S. § 38-745(G) by multiplying the Eligible Member’s salary per pay period at the time Active Duty commences, by the contribution rate in effect for the period of Active Duty. Included in the calculation are any salary increases the Eligible Member would have received if the Eligible Member had not left work to participate in a military call-up.

D. The ASRS shall send the Employer a statement of cost for purchase of the Service Credit for Military Call-up Service based on the calculation in subsection (C). Within 90 days from the date on the ASRS statement of cost, the Employer shall pay to the ASRS the amount on the statement. If the Employer fails to make full payment within 90 days, interest shall accrue on the unpaid balance at the Assumed Actuarial Investment Earnings Rate in effect on the date of the statement of cost as specified in R2-8-118(A). The ASRS may collect the unpaid balance plus interest pursuant to A.R.S. § 38-735(C).

E. If an Employer remits retirement or long-term disability contributions on behalf of an Eligible Member while the Eligible Member is on military call-up, the Employer shall reverse the contributions after the ASRS receives the information in subsection (A).

F. If an Employer remits retirement contributions on behalf of an Eligible Member while the Eligible Member is on military call-up, and the Eligible Member does not return to the Employer after separation from active Military Service, the ASRS shall apply the retirement contributions to the Eligible Member’s credited service.

Historical Note

R2-8-511. Required Documentation and Calculations for Other Public Service Credit

A. An Eligible Member who requests to purchase Service Credit for Other Public Service under A.R.S. § 38-743 shall provide to the ASRS a completed Other Public Service form, signed and dated by the Eligible Member, that includes the following:

1. The name and mailing address of the Other Public Service employer;
2. The position the Eligible Member held while working for the Other Public Service employer;
3. The start date and end date of the Eligible Member’s employment with the Other Public Service employer;
4. The actual months and years the Eligible Member was employed with the Other Public Service employer;
5. A statement of whether the Eligible Member participated in the Other Public Service employer’s retirement plan;
6. If the Eligible Member participated in the Other Public Service employer’s retirement plan, the name of the retirement plan, identifying whichever one of the following applies:
   a. The approximate date the Eligible Member took a return of retirement contributions;
   b. The plan is non-contributory and the Eligible Member is not eligible for benefits from the plan; or
   c. That, if not using all of the retirement contributions as a rollover, the Eligible Member will request a return of retirement contributions and forfeit all rights to any benefits from the plan and provide the ASRS with documentation that the Eligible Member has forfeited all rights to benefits from the plan no later than the due date specified on the SP Invoice; and
7. Acknowledgement that if an audit determines that the Eligible Member is eligible for a benefit from the Other Public Service employer’s retirement plan, the Eligible Member is required to take necessary steps to forfeit the benefit, and if the forfeiture is not completed within 90 days of being notified of the audit results, the Service Credit purchase listed on this application will be revoked and any funds paid to purchase the Service Credit will be refunded to the member.

B. The amount the Eligible Member shall pay to purchase Service Credit for Other Public Service is determined as provided in R2-8-506.

C. Notwithstanding R2-8-512, the ASRS shall not accept after-tax monies for the purchase of Service Credit for Other Public Service with a territory, commonwealth, overseas possession or insular area pursuant to A.R.S. § 38-743.

Historical Note
CHAPTER 8. STATE RETIREMENT SYSTEM BOARD

R2-8-512. Purchasing Service Credit by Check, Cashier’s Check, or Money Order
A. An Eligible Member may purchase Service Credit by personal check in the Eligible Member’s name, cashier’s check, or money order remitted by the Eligible Member.
B. By the due date specified by the method of payment the Eligible Member elected, the Eligible Member shall ensure that the ASRS receives a check, cashier’s check, or money order made payable to the ASRS in the amount to purchase the requested Service Credit.

Historical Note

R2-8-513. Purchasing Service Credit by Irrevocable PDA
A. An Eligible Member may purchase Service Credit by Irrevocable PDA.
B. If the Eligible Member elects to pay for Service Credit by Irrevocable PDA, the Eligible Member shall elect the terms of the Irrevocable PDA and submit the Irrevocable PDA to the ASRS and the Employer with the following:
   1. Acknowledgements:
      a. This Irrevocable PDA is binding and irrevocable;
      b. This Irrevocable PDA shall remain in effect until the earlier of:
         i. The authorized payroll deductions are completed; or
         ii. The Eligible Member terminates employment.
      c. The ASRS cannot terminate the Irrevocable PDA due to financial hardship;
      d. The amount of Irrevocable PDA payments the Eligible Member makes is subject to federal laws;
      e. The cost to purchase Service Credit by Irrevocable PDA includes an administrative interest charge at the Assumed Actuarial Investment Earnings Rate in effect at the time of the authorization as specified in R2-8-118(A);
      f. Payments specified in this Irrevocable PDA are in addition to the regular contributions required pursuant to A.R.S. §§ 38-736 and 38-797.05;
      g. The ASRS shall apply credited service to the Eligible Member’s account upon receipt of payments authorized by the Eligible Member under this Irrevocable PDA; and
      h. The ASRS shall not transfer, refund, or disburse the administrative interest that the ASRS charges pursuant to subsection (B)(1)(e); and
   2. Statements of Understanding:
      a. It is the Eligible Member’s responsibility to ensure the Eligible Member’s Employer properly deducts payments and submits contributions as provided by the terms of the Irrevocable PDA;
      b. Payments specified by the terms of this Irrevocable PDA shall be made directly to the ASRS from the Eligible Member’s Employer and the Eligible Member does not have the option of receiving such payments directly from the Employer;
      c. The Eligible Member’s Employer shall make payments pursuant to this Irrevocable PDA after other mandatory deductions are made;
      d. The Eligible Member’s Employer cannot accept an election to change this Irrevocable PDA;
      e. The Eligible Member has up to 14 days to request the ASRS calculate the remaining balance of this Irrevocable PDA after the earlier of:
         i. Terminating employment;
         ii. Terminating LTD without returning to work with an Employer; or
         iii. The effective ASRS retirement date;
      f. The Eligible Member must complete a purchase of the remaining balance on this Irrevocable PDA by the due date specified on the PDA Pay-off Invoice;
      g. It is the Eligible Member’s responsibility to notify the ASRS of any changes in the Eligible Member’s employment that may affect the status of this Irrevocable PDA;
      h. If the Eligible Member terminates employment and returns to work with an Employer within 120 days of terminating employment, this Irrevocable PDA must continue with the new Employer pursuant to R2-8-513.01; and
      i. If the Eligible member terminates employment and does not return to work with an Employer within 120 days of terminating employment, the ASRS shall terminate this Irrevocable PDA pursuant to R2-8-513.01.
C. By submitting the Irrevocable PDA to the ASRS, the Irrevocable PDA is deemed to be signed by the Eligible Member.
D. At the time the Eligible Member elects the Irrevocable PDA, the Eligible Member may elect to use Termination Pay towards the balance of the Irrevocable PDA if the Eligible Member terminates employment. If the Eligible Member elects to use Termination Pay, the Eligible Member shall submit the Irrevocable PDA to the ASRS with the following information:
   1. A statement that the Eligible Member:
      a. Understands and agrees that the Eligible Member must continue working at least Three Full Calendar Months after the date of submission of the form before Termination Pay may be used on a pre-tax basis;
      b. Understands that if the Termination Pay exceeds the balance owed on the Irrevocable PDA, the overage will be returned to the Employer to be distributed to the Eligible Member;
      c. Understands that the election to use Termination Pay is binding and irrevocable;
R2-8-513.01. Irrevocable PDA and Transfer of Employment to a Different Employer

1. The Employer shall implement the payroll deduction on the first pay period after receiving the Irrevocable PDA.

2. The ASRS shall:
   a. Charge interest on the unpaid balance at the Assumed Actuarial Investment Earnings Rate in effect at the time the Eligible Member submitted the request to purchase service as specified in R2-8-118(A);
   b. Limit the payroll deduction time period to a maximum of 520 payments;
   c. Require a minimum payment of $10.00 per payroll period, or payment in an amount to purchase at least .001 years of Service Credit per payroll period, whichever is greater.

3. The Employer shall implement the payroll deduction on the first pay period after receiving the Irrevocable PDA.

4. If an Eligible Member terminates employment without having accepted an offer to work with an Employer, the ASRS shall terminate the Eligible Member’s Termination Pay account.

5. If an Eligible Member Transfers Employment, the Eligible Member’s new Employer shall continue to make deductions pursuant to an Irrevocable PDA.

6. Whether the Eligible Member is electing either all Termination Pay or a specified amount of Termination Pay to be applied to the balance of the Irrevocable PDA.

E. The ASRS shall:
   1. Require a minimum payment of $10.00 per payroll period, or payment in an amount to purchase at least .001 years of Service Credit per payroll period, whichever is greater.
   2. Limit the payroll deduction time period to a maximum of 520 payments;
   3. Require a minimum payment of $10.00 per payroll period, or payment in an amount to purchase at least .001 years of Service Credit per payroll period, whichever is greater.

F. The ASRS shall send the Eligible Member a PDA Pay-off Invoice through the Eligible Member’s secure ASRS account. The ASRS shall calculate the amount owed by the Eligible Member.

G. If a deduction is not made under an Irrevocable PDA within six months after the Eligible Member submits the authorization, the authorization lapses and the Eligible Member may make another request, which is recalculated based on the new request date unless the failure to begin deductions is due to an ASRS error.

H. A period of leave of absence, LTD, or military call-up shall not cancel the Irrevocable PDA. The Employer shall resume deductions immediately upon the Eligible Member’s return to that Employer. The period during which the Eligible Member is on leave of absence, on LTD, or leaves work because of a military call-up is not included in the payment time limitation under subsection (D)(2). If the Eligible Member does not return to active working status, whether due to termination of employment or retirement, the Eligible Member may elect to purchase the balance of unpaid service under the Irrevocable PDA at the time of termination or retirement as specified in this Section.

I. Deductions made pursuant to an Irrevocable PDA continue until the:
   1. Irrevocable PDA is completed;
   2. Eligible Member retires, whether or not the Eligible Member continues employment as allowed in A.R.S. §§ 38-766.01 and 38-764(I);
   3. Eligible Member terminates all ASRS employment without transferring employment; or
   4. Date of the Eligible Member’s death.

J. If an Eligible Member retires or terminates employment from all Employers without transferring employment as stated in R2-8-513.01 before all deductions are made as authorized by the Irrevocable PDA, the ASRS shall cancel the Eligible Member’s Irrevocable PDA unless the Eligible Member notifies the ASRS of the Eligible Member’s intent to purchase the remaining amount within 14 days after the earlier of either termination or retirement.

K. When the Eligible Member notifies the ASRS of retirement or termination from all ASRS employment and requests to pay off the Irrevocable PDA, the ASRS shall send the Eligible Member a PDA Pay-off Invoice through the Eligible Member’s secure ASRS account. The ASRS shall calculate the amount owed by the Eligible Member.

L. By the date payment election is due, the Eligible Member shall ensure that the ASRS receives the information specified in R2-8-502(C).

M. The Eligible Member may purchase the remaining Service Credit by one or more of the following methods by the due date specified on the PDA Pay-off Invoice:
   1. By any method specified in R2-8-512;
   2. By making a request to the ASRS for a rollover or transfer under R2-8-514 and completing the rollover or transfer by the due date specified on the PDA Pay-off Invoice; or
   3. By Termination Pay under R2-8-519, if the Eligible Member authorized this option at the time the Eligible Member signed the Irrevocable PDA.

Historical Note


R2-8-513.01. Irrevocable PDA and Transfer of Employment to a Different Employer

A. If an Eligible Member Transfers Employment, the Eligible Member’s new Employer shall continue to make deductions pursuant to an Irrevocable PDA.

B. If an Eligible Member terminates employment without having accepted an offer to work with an Employer, the ASRS shall terminate an Irrevocable PDA.

C. Notwithstanding subsection (B), if a retirement contribution is due from a new Employer within 120 days from the Eligible Member’s termination date with the previous Employer, the ASRS shall determine that the Eligible Member Transferred Employment, unless the Eligible Member notified the ASRS of the termination of employment.
D. If an Eligible Member who has elected Termination Pay pursuant to R2-8-513(D) Transfers Employment, the ASRS shall not accept any Termination Pay that the ASRS receives from the Eligible Member’s previous Employer.

Historical Note

R2-8-513.02. Termination Date
For the purpose of an Irrevocable PDA, the date an Eligible Member is considered terminated from an Employer is:
1. For an Eligible Member terminating employment, the Eligible Member’s last pay period end date with that Employer;
2. For an Eligible Member on military call-up who does not return to the same Employer:
   a. 90 days from the date of separation from military call-up;
   b. 90 days from the date released from the hospital, if injured while on military call-up; or
   c. The date the Eligible Member has been hospitalized for two years for injuries sustained as a result of participating in a military call-up.
3. For an Eligible Member on leave of absence without pay who does not return to the same Employer, the date the Employer required the Eligible Member to return to work;
4. For an Eligible Member who is unable to work because of a disability, the later of:
   a. The date the Eligible Member’s request for long-term disability benefits are denied;
   b. The date the Eligible Member no longer has leave with pay available; or
   c. For an Eligible Member on long-term disability who does not return to the same Employer or Transfer Employment, the date long-term disability benefits are terminated.

Historical Note

R2-8-514. Purchasing Service Credit by Direct Rollover or Trustee-to-Trustee Transfer
A. An Eligible Member may purchase Service Credit by Direct Rollover or Trustee-to-Trustee Transfer pursuant to this Article.
B. By the due date specified by the method of payment the Eligible Member elected, the Eligible Member shall ensure that the ASRS receives the payment for the service purchase and a completed Direct Rollover/Transfer Certification to Purchase Service Credit form.
C. An Eligible Member who chooses to purchase Service Credit shall provide the following to the ASRS:
   1. The name of the financial institution or plan;
   2. Whether the Eligible Member is choosing to rollover/transfer the entire balance of their account and if not, the amount of the rollover/transfer;
   3. Acknowledgement of the following information:
      a. After-tax funds are only acceptable from 401(a) and 403(b) plans and must be listed separately from the portion that is pre-tax on the payment as after-tax amounts. This information must be provided to the ASRS with the payment.
      b. The only fund types that the ASRS accepts are:
         i. 401(a);
         ii. 401(k) pre-tax only;
         iii. 403(b);
         iv. Governmental 457 pre-tax only;
         v. 403(a) pre-tax only;
         vi. 408 Traditional IRA pre-tax only;
         vii. 408(k) SEP IRA pre-tax only;
         viii. 408(p) Simple IRA pre-tax only and only if the Eligible Member participated for at least 2 years in this plan;
      c. The ASRS shall not accept the following fund types:
         i. Roth funds;
         ii. Funds already distributed to the Eligible Member from a retirement plan listed in subsection (C)(3)(b);
         iii. Inherited IRA;
         iv. Coverdale Education Savings Account funds;
         v. Hardship distributions;
         vi. Funds not includable in gross income;
         vii. Funds required under § 401(a)(9) of the IRC because the Eligible Member have attained age 70 1/2;
         viii. One of a series of substantially equal periodic payments made at least annually for the Eligible Member’s life;
         ix. One of a series of substantially equal periodic payments made for 10 years or more;
         x. After-tax contributions from any plan other than a 401(a) or 403(b) qualified plan;
      d. The funds must be sent as a Direct Rollover from a plan listed in subsection (C)(3)(b) and issued to the ASRS for the benefit of the Eligible Member. If the payment is issued to anyone other than the ASRS, including the Eligible Member, then within 60 days of the plan issuing the payment, the Eligible Member must place the payment into a plan specified in subsection (C)(3)(b) to be reissued directly to the ASRS.
e. It is the Eligible Member’s responsibility to contact the administrator of the plan from which the Direct Rollover will be made and have it initiated. The Eligible Member must also ensure all rollovers are completed by the due date. If the ASRS does not receive payment by the due date, the invoice will expire and the payment will be returned to the Eligible Member.

f. If the ASRS accepts a rollover and later determines that it was not eligible, the ASRS will distribute the invalid payment directly to the Eligible Member. Any taxes, penalties, and interest that the IRS, any taxing authority, or financial institution may assess against the Eligible Member due to an invalid payment are solely the Eligible Member’s responsibility.

g. The plan from which the Eligible Member is rolling over funds must be solely in the Eligible Member’s name. The Eligible Member may be a spousal beneficiary of a deceased person or an alternate payee on the plan from which the Eligible Member is rolling over funds.

D. An Eligible Member who chooses to purchase Service Credit pursuant to this Section shall submit a Direct Rollover/Transfer Certification to Purchase Service Credit form that includes:

1. The Eligible Member’s full name;
2. The last 4 digits of the Eligible Member’s Social Security number;
3. The Eligible Member’s signature certifying that the Eligible Member understands the requirements, limitations, and entitlements for the rollover/transfer that is being used to purchase Service Credit, and has read and understands the Direct Rollover/Transfer Certification to Purchase Service Credit form and any accompanying instructions and information;
4. The Authorized Representative’s name and title;
5. The Authorized Representative’s telephone number; and
6. Certification by the Authorized Representative’s dated signature that:
   a. The plan is either:
      i. A qualified pension, profit sharing, or 401(k) plan described in IRC § 401(a), or a qualified annuity plan described in IRC § 403(a);
      ii. A deferred compensation plan described in IRC § 457(b) maintained by a state of the United States, a political subdivision of a state of the United States, or an agency or instrumentality of a state of the United States;
      iii. An annuity contract described in IRC § 403(b); or
      iv. An IRA described in A.R.S. § 38-747(H)(3);
   b. The rollover/transfer specified on the form from which the pre-tax funds are being rolled over or transferred is intended to satisfy the requirements of the applicable Section of the IRC;
   c. The Authorized Representative is not aware of any plan provision or any other reason that would cause the plan/IRA not to satisfy the applicable Section of the IRC; and
   d. The funds will be sent to the ASRS as a direct plan rollover, IRA rollover, or a Trustee-to-Trustee Transfer.

E. The Eligible Member shall contact the Plan Administrator to have the funds distributed and transferred to the ASRS. Unless the ASRS receives a check for the correct amount from the plan and all documents required by this Article by the due date specified by the method of payment the Eligible Member elected, the ASRS shall cancel the request to purchase Service Credit.

F. The Eligible Member shall ensure that the ASRS receives a check from the plan, made payable to the ASRS, for an amount that does not exceed the amount specified on the SP Invoice.

G. If the payment from the eligible plan exceeds the amount specified on the SP Invoice, the ASRS shall return the entire payment to the Eligible Member.

Historical Note

R2-8-515. Repealed

Historical Note

R2-8-516. Expired

Historical Note
New Section made by final rulemaking at 11 A.A.R. 2640, effective June 30, 2005 (Supp. 05-2). Amended by final rulemaking at 12 A.A.R. 4667, effective December 5, 2006 (Supp. 06-4). Section expired under A.R.S. § 41-1056(J) at 22 A.A.R. 3195, effective October 11, 2016 (Supp. 16-3).

R2-8-517. Expired

Historical Note
New Section made by final rulemaking at 11 A.A.R. 2640, effective June 30, 2005 (Supp. 05-2). Amended by final rulemaking at 12 A.A.R. 4667, effective December 5, 2006 (Supp. 06-4). Section expired under A.R.S. § 41-1056(J) at 22 A.A.R. 3195, effective October 11, 2016 (Supp. 16-3).
CHAPTER 8. STATE RETIREMENT SYSTEM BOARD

R2-8-518. Repealed

Historical Note

R2-8-519. Purchasing Service Credit by Termination Pay
A. To purchase Service Credit using Termination Pay, an Eligible Member shall elect to use Termination Pay by the date payment election is due.
B. An Eligible Member who elects to use Termination Pay pursuant to this Section, shall provide the ASRS with the Eligible Member’s anticipated termination date which cannot be more than six months from the date the ASRS issues the SP Invoice and must be at least Three Full Calendar Months after the date the Eligible Member elects and submits Termination Pay as a method of payment.
C. An Eligible Member who elects to use Termination Pay pursuant to this Section, shall provide the ASRS with a Termination Pay Authorization for the Purchase of Service Credit form with the following information:
1. The name of the Employer that will be submitting the Termination Pay to the ASRS;
2. Whether the Eligible Member elects to use all Termination Pay or a specific amount of Termination Pay;
3. Signature of the Eligible Member, certifying that the Eligible Member understands that:
   a. The Eligible Member is required to continue working at least Three Full Calendar Months after the date the Eligible Member submits the Termination Pay Authorization for the Purchase of Service Credit form before Termination Pay may be used on a pre-tax basis;
   b. If the Eligible Member terminates employment more than six months after the date on the SP Invoice, the Eligible Member may purchase the Service Credit at a newly calculated rate and possibly at a higher cost;
   c. The terms elected in the Termination Pay Authorization for the Purchase of Service Credit form are binding and irrevocable;
   d. The Eligible Member’s Employer is required to make payment directly to the ASRS after mandatory deductions are made, and the Eligible Member does not have the option of receiving the funds directly from the Employer;
   e. The Eligible Member’s Termination Pay must be received and processed before the ASRS will accept any other form of payment;
   f. It is the Eligible Member’s responsibility to ensure that the Eligible Member’s Employer properly deducts Termination Pay, as provided in the Termination Pay Authorization for the Purchase of Service Credit form; and
   g. The amount of Termination Pay the Eligible Member elects is irrevocable pursuant to § 414(h)(2) of the IRC;
   h. If the Termination Pay exceeds the balance due on the SP Invoice, the ASRS will return the difference to the Eligible Member’s Employer to be distributed to the Eligible Member;
   i. If the Eligible Member terminates employment and immediately retires, the Eligible Member’s retirement processing may be delayed; and
   j. The ASRS will send a notification to the Eligible Member’s Employer two weeks prior to the Eligible Member’s termination date, as indicated on the Termination Pay Authorization form, to notify the Employer that the Eligible Member’s Termination Pay must be sent directly to the ASRS.
D. The ASRS shall not apply Termination Pay to an SP Invoice covered by an Irrevocable PDA in effect at the time of termination, unless the Eligible Member elected the Termination Pay pursuant to R2-8-513(D) at the time the member authorized the Irrevocable PDA.
E. If an Eligible Member elects to use Termination Pay to purchase Service Credit, the ASRS shall not apply any other form of payment to the Service Credit purchase until the ASRS receives the Termination Pay.
F. Notwithstanding any other Section, if an Eligible Member dies prior to terminating employment, the ASRS shall not accept Termination Pay.
G. If an Eligible Member Transfers Employment, the ASRS shall not accept Termination Pay from the Eligible Member’s previous Employer.

Historical Note

R2-8-520. Termination of Employment and Request Return of Retirement Contributions or Death of Member While Purchasing Service Credit by an Irrevocable PDA
A. If an Eligible Member terminates employment without transferring employment as specified in R2-8-513.01 while purchasing Service Credit by an Irrevocable PDA and requests return of retirement contributions pursuant to A.R.S. § 38-740, the ASRS shall return any principal payments made for the purchase of Service Credit including interest earned on those principal payments at the interest rate specified in R2-8-118(A), column 3.
B. If an Eligible Member dies while purchasing Service Credit, the ASRS shall credit the Eligible Member’s account with:
   1. The Service Credit for which the ASRS received payment pursuant to a PDA before the Eligible Member’s death;
   2. The principal payments made by the Eligible Member; and
CHAPTER 8. STATE RETIREMENT SYSTEM BOARD

3. Interest earned on payment through the date of distribution at the Assumed Actuarial Investment Earnings Rate specified in R2-8-118(A).

C. If an Eligible Member dies while purchasing Service Credit, the ASRS shall not permit the survivor or an estate to purchase the remaining balance.

D. The ASRS shall not transfer, disburse, or refund the administrative interest the ASRS charged as part of an Irrevocable PDA as specified in R2-8-513.

E. The ASRS shall not credit a member’s account with the administrative interest the ASRS charged as part of an Irrevocable PDA as specified in R2-8-513.

Historical Note

R2-8-521. Adjustment of Errors
A. If the ASRS determines an error has been made in the information provided by the member or in the calculations made by the ASRS, the ASRS shall make an adjustment to the member’s account and return ineligible payments, if any.

B. The ASRS shall notify the member in writing of any adjustments.

Historical Note
New Section made by final rulemaking at 11 A.A.R. 2640, effective June 30, 2005 (Supp. 05-2). Amended by final rulemaking at 25 A.A.R. 303, effective March 18, 2019 (Supp. 19-1).

ARTICLE 6. PUBLIC PARTICIPATION IN RULEMAKING

R2-8-601. Definitions
The following definitions apply to this Article unless otherwise specified:

1. “Rulemaking record” means a file the ASRS maintains as specified in A.R.S. § 41-1029.

2. “Oral proceeding” means a public gathering the ASRS holds for the purpose of receiving comment and answering questions about a proposed rule as specified in A.R.S. § 41-1023.

3. “Presiding officer” means an individual selected by the ASRS Director to oversee oral proceedings.

4. “Substantive policy statement” means the same as in A.R.S. § 41-1001(22).

Historical Note
New Section made by final rulemaking at 12 A.A.R. 964, effective March 7, 2006 (Supp. 06-1). Amended by final rulemaking at 21 A.A.R. 2515, effective December 5, 2015 (Supp. 15-4).

R2-8-602. Reviewing Agency Rulemaking Record and Directory of Substantive Policy Statements
Except on a state holiday, a person may review a rulemaking record or the directory of substantive policy statements at the Phoenix office of the ASRS, Monday through Friday, from 8:00 a.m. until 5:00 p.m.

Historical Note
New Section made by final rulemaking at 12 A.A.R. 964, effective March 7, 2006 (Supp. 06-1). Section amended by final rulemaking at 22 A.A.R. 3323, effective January 1, 2017 (Supp. 16-4).

R2-8-603. Petition for Rulemaking
A. A person submitting a petition to the ASRS to make or amend a rule under A.R.S. § 41-1033 shall include the following in the petition:

1. The name and current address of the person submitting the petition;

2. An identification of the rule to be made or amended;

3. The suggested language of the rule;

4. The reason why a new rule should be made or a current rule should be amended with supporting information, including:
   a. An identification of the persons who would be affected by the rule and how the persons would be affected; and
   b. If applicable, statistical data with references to attached exhibits;

5. The signature of the person submitting the petition; and

6. The date the person signs the petition.

B. The ASRS shall send a written notice of the ASRS’s decision regarding the Petition for Rulemaking to the person within 60 days of receipt of the petition.

Historical Note
New Section made by final rulemaking at 12 A.A.R. 964, effective March 7, 2006 (Supp. 06-1).
Section amended by final rulemaking at 22 A.A.R. 3323, effective January 1, 2017 (Supp. 16-4).
CHAPTER 8. STATE RETIREMENT SYSTEM BOARD

R2-8-604.  Review of a Rule, Agency Practice, or Substantive Policy Statement
A. A person submitting a petition to the ASRS under A.R.S. § 41-1033 requesting that the ASRS review an agency practice or substantive policy statement that the person alleges constitutes a rule shall include the following in the petition:
   1. The name and current address of the person submitting the petition,
   2. The reason the person alleges that the agency practice or substantive policy statement constitutes a rule,
   3. The signature of the person submitting the petition, and
   4. The date the person signs the petition.
B. The person who submits a petition under subsection (A) shall attach a copy of the substantive policy statement or a description of the agency practice to the petition.
C. The ASRS shall send a written notice of the ASRS’s decision regarding the petition to the person within 60 days of receipt of the petition.

Historical Note
New Section made by final rulemaking at 12 A.A.R. 964, effective March 7, 2006 (Supp. 06-1). Section amended by final rulemaking at 22 A.A.R. 3323, effective January 1, 2017 (Supp. 16-4).

R2-8-605.  Objection to Rule Based Upon Economic, Small Business and Consumer Impact
A. A person submitting an objection to a rule based upon the economic, small business and consumer impact under A.R.S. § 41-1056.01 shall include the following in the objection:
   1. The name and current address of the person submitting the objection;
   2. Identification of the rule;
   3. Either evidence that the actual economic, small business and consumer impact:
      a. Significantly exceeded the impact estimated in the economic, small business and consumer impact statement submitted during the making of the rule with supporting information attached as exhibits; or
      b. Was not estimated in the economic, small business and consumer impact statement submitted during the making of the rule and that actual impact imposes a significant burden on persons subject to the rule with supporting information attached as exhibits; or
      c. Reflects that the ASRS did not select the alternative that imposes the least burden and costs to persons regulated by the rule, including paperwork and other compliance costs, necessary to achieve the underlying regulatory objective.
   4. The signature of the person submitting the objection; and
   5. The date the person signs the objection.
B. The ASRS shall respond to the objection as specified in A.R.S. § 41-1056.01(C).

Historical Note
New Section made by final rulemaking at 12 A.A.R. 964, effective March 7, 2006 (Supp. 06-1). Section amended by final rulemaking at 22 A.A.R. 3323, effective January 1, 2017 (Supp. 16-4).

R2-8-606.  Oral Proceedings
A. A person requesting an oral proceeding under A.R.S. § 41-1023(C) shall submit a written request to the ASRS that includes:
   1. The name and current address of the person making the request;
   2. If applicable, the name of the public or private organization, partnership, corporation or association, or the name of the governmental entity the person represents; and
   3. Reference to the proposed rule including, if known, the date and issue of the Arizona Administrative Register in which the Notice of Proposed Rulemaking was published.
B. The ASRS shall record an oral proceeding by either electronic or stenographic means and any CDs, cassette tapes, transcripts, lists, speaker slips, and written comments received shall become part of the official record.
C. A presiding officer shall perform the following acts on behalf of the ASRS when conducting an oral proceeding as prescribed under A.R.S. § 41-1023:
   1. Provide a method for a person who attends the oral proceeding to voluntarily note the person’s attendance;
   2. Provide a Request to Present Oral Comment form that includes space for:
      a. The name of the person submitting the Request to Present Oral Comment form,
      b. The entity the person represents, if applicable, and
      c. The rule on which the person wishes to comment or about which the person has a question;
   3. Open the proceeding by identifying the rules to be considered, the location, date, time, purpose of the proceeding, and the agenda;
   4. Explain the background and general content of the proposed rulemaking;
   5. Provide for public comment as specified in A.R.S. § 41-1023(D); and
   6. Close the oral proceeding by announcing the location where written public comments are to be sent and specifying the close of record date and time.
D. A presiding officer may limit comments to a reasonable time period, as determined by the presiding officer. Oral comments may be limited to prevent undue repetition.
CHAPTER 8. STATE RETIREMENT SYSTEM BOARD

Historical Note
New Section made by final rulemaking at 12 A.A.R. 964, effective March 7, 2006 (Supp. 06-1). Section amended by final rulemaking at 22 A.A.R. 3323, effective January 1, 2017 (Supp. 16-4).

R2-8-607. Petition for Delayed Effective Date
A. A person who wishes to delay the effective date of a rule under A.R.S. § 41-1032 shall file a petition with the ASRS prior to the proposed rule’s close of record date. The petition shall contain the:
1. Name and current address of the person submitting the petition;
2. Identification of the proposed rule;
3. Need for the delay, specifying the undue hardship or other adverse impact that may result if the request for a delayed effective date is not granted;
4. Reason why the public interest will not be harmed by the delayed effective date;
5. Signature of the person submitting the petition; and
6. Date the person signs the petition.

B. The ASRS shall send a written notice of the ASRS’s decision to the person within 30 days of receipt of the Petition for Delayed Effective Date.

Historical Note
New Section made by final rulemaking at 12 A.A.R. 964, effective March 7, 2006 (Supp. 06-1). Section amended by final rulemaking at 22 A.A.R. 3323, effective January 1, 2017 (Supp. 16-4).

ARTICLE 7. CONTRIBUTIONS NOT WITHHELD

R2-8-701. Definitions
The following definitions apply to this Article unless otherwise specified:
1. “218 agreement” means a written agreement between the state, political subdivision, or political subdivision entity and the Social Security Administration, under the provisions of § 218 of the Social Security Act, to provide Social Security and Medicare or Medicare-only coverage to employees of the state, political subdivision, or political subdivision entity.
2. “Documentation” means a pay stub, completed W-2 form, completed Verification of Contributions Not Withheld form, Employer letter or spreadsheet, completed State Personnel Action Request Form, Social Security Earnings Report, employment contract, payroll record, timesheet, or other Employer-provided form that includes:
   a. Whether the employee was covered under the Employer’s 218 Agreement prior to July 24, 2014,
   b. The number of hours the member worked for the Employer per pay period, and
   c. The amount and type of compensation earned by the member within each pay period.
3. “Eligible service” means employment with an Employer:
   a. That is no more than 15 years before the date the ASRS receives written credible evidence that less than the correct amount of contributions were paid into the ASRS or the ASRS otherwise determines that less than the correct amount of contributions were made as specified in A.R.S. § 38-738(C); and
   b. In which the member was Engaged to Work for an Employer.
4. “Engaged to Work” means the same as in R2-8-1001.

Historical Note

R2-8-702. General Information
A. The Employer shall pay the Employer’s portion of the contributions the ASRS determines is owed under R2-8-706 whether or not the member pays the member’s portion of the contributions.
B. The person who initiates the claim that contributions were not withheld for Eligible Service has the burden to prove a contribution error was made.
C. The ASRS shall not waive payment of contributions or interest owed under this Article.
D. If a member is not able to establish eligibility for purchasing service credit pursuant to this Article, the member may be eligible to purchase service pursuant to A.R.S. § 38-743 and Article 5 of this Chapter.

Historical Note

R2-8-703. Employer’s Discovery of Error
If an Employer determines that any amount of contributions have not been withheld for a member for a period of Eligible Service, the Employer shall notify the ASRS by submitting through the Employer’s secure ASRS account a Verification of Contributions Not Withheld form with the following information:
CHAPTER 8. STATE RETIREMENT SYSTEM BOARD

1. The member’s full name;
2. The member’s Social Security number;
3. The range of dates that any contribution was not withheld;
4. The member’s position title during the date range listed in subsection (3);
5. The amount and type of compensation the member was entitled to receive, and the number of hours the member worked for the Employer per pay period for each fiscal year;
6. The member’s hire date;
7. Whether the member was Engaged to Work for the Employer;
8. Whether the position was covered under the Employer’s 218 Agreement for periods prior to July 24, 2014; and
9. The dated signature of the Employer’s authorized agent certifying:
   a. All the dates and salary information is correct;
   b. The person submitting this form has the legal power to enter into binding transactions with the ASRS;
   c. Acknowledgement the Employer will receive an invoice for the contributions owed for Eligible Service only, as well as the accumulated interest on the contributions that were not withheld for both the member and Employer contributions; and
   d. Acknowledgement the member will receive an invoice for their contributions owed.

Historical Note
New Section made by final rulemaking at 12 A.A.R. 4793, effective December 5, 2006 (Supp. 06-4). Amended by final rulemaking at 25 A.A.R. 303, effective March 18, 2019 (Supp. 19-1).

R2-8-704. Member’s Discovery of Error
A. If a member believes that an Employer has not withheld contributions for the member for a period of Eligible Service, the member shall:
   1. Notify the member’s Employer that the Employer has not withheld contributions correctly by contacting the Employer directly; or
   2. Submit to the ASRS a Contributions Not Withheld Request form through the member’s secure ASRS account with the following:
      a. The name of the Employer that should have remitted contributions;
      b. The range of dates that any contribution was not withheld;
      c. The member’s position title during the date range listed in subsection (b);
      d. Whether the member was Engaged to Work for the Employer; and
      e. Dated signature of the member certifying the member understands:
         i. The ASRS will be providing the member’s Social Security number to the Employer for verification; and
         ii. If the member’s Employer cannot verify this request, it is the member’s responsibility to provide Documentation of Eligible Service.
B. If the information provided by the eligible member pursuant to subsection (A) is correct, the Employer shall validate the information and submit the information to the ASRS through the Employer’s secure ASRS account. If the information provided by the eligible member pursuant to subsection (A) is incorrect, the Employer shall correct the information and submit the information to the ASRS through the Employer’s secure ASRS account, along with the information identified in R2-8-703.
C. If the Employer refuses to fill out the Verification of Contributions Not Withheld form, or if the member disputes the information the Employer completes on the form, the member shall provide the ASRS with the Documentation the member believes supports the allegation that contributions should have been withheld.

Historical Note

R2-8-705. ASRS’ Discovery of Error
If the ASRS determines, as specified in A.R.S. § 38-738(B)(7), that all contributions have not been withheld for a member for a period of Eligible Service, the ASRS shall notify the Employer in writing and shall request the Employer submit through the Employer’s secure ASRS account a Verification of Contributions Not Withheld form pursuant to R2-8-703.

Historical Note
New Section made by final rulemaking at 12 A.A.R. 4793, effective December 5, 2006 (Supp. 06-4). Amended by final rulemaking at 25 A.A.R. 303, effective March 18, 2019 (Supp. 19-1).

R2-8-706. Determination of Contributions Not Withheld
A. Upon receipt of the information listed in R2-8-703, R2-8-704, or R2-8-705, the ASRS shall review the information to determine whether or not member contributions should have been withheld by the Employer, the length of time those contributions should have been withheld, and the amount of contributions that should have been withheld.
CHAPTER 8. STATE RETIREMENT SYSTEM BOARD

B. Except for a member who met the requirements to be an active member while simultaneously contributing to another retirement plan listed in subsection (B)(2), for purposes of this Article, the ASRS shall determine that contributions should not have been withheld for the period of service in question if:

1. An Employer remits an accurate ACR amount pursuant to R2-8-116; or
2. The employee participates in:
   a. Another Arizona retirement plan listed in A.R.S. Title 38, Chapter 5, Articles 3, 4, or 6; or
   b. In an optional retirement plan listed in A.R.S. Title 15, Chapter 12, Article 3 or A.R.S. Title 15, Chapter 13, Article 2.

C. Except for returning to work under A.R.S. § 38-766.01, the presence of a contract between a member and the Employer does not alter the contribution requirements of A.R.S. §§ 38-736 and 38-737.

D. If there is any discrepancy between the Documentation provided by the Employer and the Documentation provided by the member, a document used in the usual course of business prepared at the time in question is controlling.

E. The ASRS shall provide to each, the Employer and the member, an invoice with the following:

1. The amount of Eligible Service for which contributions were not withheld,
2. The dollar amount of the contributions to be paid to the ASRS by the Employer,
3. The interest on the Employer contributions and member contributions to be paid to the ASRS by the Employer pursuant to A.R.S. § 38-738,
4. The amount of the delinquent interest late charge to be paid to the ASRS by the Employer pursuant to A.R.S. § 38-735, and
5. The dollar amount of contributions to be paid to the ASRS by the member.

Historical Note

R2-8-707. Submission of Payment
A. Within 90 days from the date on the statement identified in R2-8-706(E), the Employer shall pay to the ASRS the amount due to be paid by the Employer. An Employer who makes payment under A.R.S. § 38-738(B)(3) is not liable for additional interest that may accrue as a result of a member’s failure to remit payment required by A.R.S. § 38-738(B)(1). If the ASRS does not receive full payment of the Employer’s amount due within 90 days after the ASRS notifies the Employer of the amount due, the full amount due will accrue interest as provided in A.R.S. § 38-738. The ASRS may collect the unpaid balance plus interest pursuant to A.R.S. § 38-735(C).

B. The member shall make payment to the ASRS pursuant to A.R.S. § 38-738 by the due date specified on the member’s invoice identified in R2-8-706(E).

C. If the ASRS does not receive full payment of the member’s amount due by the due date specified on the member’s invoice identified in R2-8-706(E), the full amount due will accrue interest, as provided in A.R.S. § 38-738.

D. A member does not receive service credit or credit for salary until both the Employer and member portions of the contributions and all interest has been paid pursuant to A.R.S. § 38-738.

Historical Note
New Section made by final rulemaking at 12 A.A.R. 4793, effective December 5, 2006 (Supp. 06-4). Amended by final rulemaking at 25 A.A.R. 303, effective March 18, 2019 (Supp. 19-1).

R2-8-708. Expired

Historical Note
New Section made by final rulemaking at 12 A.A.R. 4793, effective December 5, 2006 (Supp. 06-4). Section expired under A.R.S. § 41-1056(J) at 22 A.A.R. 2982, effective September 15, 2016 (Supp. 16-3).

R2-8-709. Repealed

Historical Note
New Section made by final rulemaking at 12 A.A.R. 4793, effective December 5, 2006 (Supp. 06-4). Repealed by final rulemaking at 25 A.A.R. 303, effective March 18, 2019 (Supp. 19-1).

ARTICLE 8. RECOVERY OF OVERPAYMENTS

R2-8-801. Definitions
For purposes of this article, the following definitions apply, unless specified otherwise:

1. “DRO” means the same as in R2-8-120.
2. “Estimated Social Security disability income amount” and “Revised Social Security disability income amount” mean the amount of funds the ASRS is entitled to collect pursuant to R2-8-802.
3. “LTD” means long-term disability program as described in A.R.S. § 38-797 et seq.
4. “LTD benefit” means the same as in R2-8-301

5. “Overpayment” means:
   a. Any funds the ASRS distributes in excess of the amount to which the recipient is legally entitled; and
   b. Any estimated social security disability income amount or revised social security disability income amount the ASRS is entitled to collect pursuant to A.R.S. § 38-765.

Historical Note
New Section made by final rulemaking at 23 A.A.R. 2750, effective November 13, 2017 (Supp. 17-3).

R2-8. Estimated Social Security Disability Income Amount and Revised Social Security Disability Income Amount

A. The ASRS contracted LTD claims administrator shall determine a member’s estimated Social Security disability income amount as follows:
   1. Prior to the death, retirement, or forfeiture of a member, the estimated Social Security disability income amount shall be equal to the member’s full monthly LTD benefit reduced by $50 per month pursuant to A.R.S. § 38-797.07(A)(9); and
   2. Upon the member’s death, retirement, or forfeiture, the estimated Social Security disability income amount shall be equal to the total amount of the member’s LTD benefit, reduced by $50 per month pursuant to A.R.S. § 38-797.07(A)(9).

B. A member or survivor who disputes the estimated Social Security disability income amount based on the conclusions of a legal proceeding may request a revised Social Security disability income amount by submitting supporting documentation from the legal proceeding to the ASRS contracted LTD claims administrator within 30 days of the date of conclusion of the legal proceeding.

C. Pursuant to subsection (B), the ASRS or the ASRS contracted LTD claims administrator shall determine whether the estimated Social Security disability income amount needs to be revised based on the conclusions of the legal proceeding.

D. If the ASRS or the ASRS contracted LTD claims administrator determines the estimated Social Security disability income amount was inaccurate, the ASRS or the ASRS contracted LTD claims administrator shall calculate a revised Social Security disability income amount based on the supporting documentation provided by the member or survivor pursuant to subsection (B).

E. Pursuant to subsection (B), if the revised Social Security disability income amount is less than the amount of the estimated Social Security disability benefit, the ASRS or the ASRS contracted LTD claims administrator shall:
   1. Refund a portion of the amount of the estimated Social Security disability benefit that the ASRS retained upon forfeiture of the member in order to offset the difference between the estimated Social Security disability income amount and the revised Social Security disability income amount, or
   2. Adjust the member’s retirement benefits or the survivor’s benefits to offset the difference between the estimated Social Security disability income amount and the revised Social Security disability income amount.

F. If a member or survivor is not satisfied with the determination on the request for a revised Social Security disability income amount, the member or survivor may appeal the determination pursuant to 2 A.A.C. 8, Article 4.

Historical Note
New Section made by final rulemaking at 23 A.A.R. 2750, effective November 13, 2017 (Supp. 17-3).

R2-8. Reimbursement of Overpayments

A. Upon the ASRS discovering that it has made an overpayment to a member, survivor, or alternate payee, the ASRS shall send a letter to notify the necessary person that an overpayment was provided and the person shall reimburse the ASRS in the amount of the overpayment.

B. A person who reimburses the ASRS for an overpayment shall do so by remitting a check, made payable to the ASRS, by the due date specified in the letter providing notice of the overpayment.

C. If the ASRS is unable to collect the amount of an overpayment by reducing future payments to members, survivors, or alternate payees as provided in this Article, the ASRS shall allow the appropriate person to reimburse the ASRS for the amount of the overpayment by making payments over the course of as many months as the number of months in which an overpayment was made by the ASRS, not to exceed 36 months.

D. A person may request to reimburse the amount of the overpayment to the ASRS sooner than provided in this Article.

Historical Note
New Section made by final rulemaking at 23 A.A.R. 2750, effective November 13, 2017 (Supp. 17-3).

R2-8. Collection of Overpayments from Forfeiture

A. Unless a member cancels a forfeiture request by submitting written notice to the ASRS within 30 days of the request to forfeit, the ASRS shall reduce a member’s refund amount in order to offset the member’s overpayment amount pursuant to subsection (B).

B. The ASRS shall reduce the member’s refund amount by the amount of any overpayment and the ASRS shall:
   1. Pursue collection of any remaining overpayment amount pursuant to this Article; and
   2. Distribute the remaining refund amount to the member pursuant to R2-8-115.

Historical Note
New Section made by final rulemaking at 23 A.A.R. 2750, effective November 13, 2017 (Supp. 17-3).
CHAPTER 8. STATE RETIREMENT SYSTEM BOARD

R2-8-805. Collection of Overpayments from Retirement Benefit
A. Notwithstanding A.R.S. § 38-768, the ASRS may reduce a person’s benefit pursuant to this Section.
B. Upon retirement, the ASRS shall reduce the amount of a member’s retirement benefit by the amount of any overpayments that have not been reimbursed to the ASRS, pursuant to R2-8-803 as follows:
   1. If the member elects to receive a lump sum or partial lump sum benefit, the amount of the lump sum or partial lump sum shall be reduced by the amount of the overpayment to no less than $5.00 and the ASRS shall pursue overpayment collections for any remaining overpayment amount pursuant to this Article;
   2. If the member elects to receive retirement benefits as a monthly annuity and the amount of the overpayment is equal to or less than the amount of the member’s first annuity disbursement minus $5.00, the ASRS shall reduce the amount of the first annuity disbursement by the amount of any overpayment to no less than $5.00;
   3. If the member elects to receive retirement benefits as a monthly annuity and the amount of the overpayment exceeds the amount of the member’s first annuity disbursement plus $5.00, the ASRS shall reduce the amount of the first annuity disbursement by the amount of the overpayment to no less than $5.00 and pursue collection pursuant to subsection (C).
C. The ASRS shall reduce a member’s or alternate payee’s monthly annuity as follows in order to offset any overpayments which have not been reimbursed or collected pursuant to this Article:
   1. The ASRS shall reduce the member’s monthly annuity by up to 10% for 36 months, if the amount of the overpayment can be collected by the ASRS within that time.
   2. If the amount of the overpayment cannot be collected pursuant to subsection (C)(1), the ASRS will notify the member that the member must make payment arrangements within 60 days of the date on the notice. If the member does not make payment arrangements within 60 days of the date on the notice, the ASRS shall actuarially reduce the amount of the member’s monthly annuity.
D. Notwithstanding subsection (B), the ASRS shall not reduce a member’s or alternate payee’s monthly annuity by an estimated Social Security disability income amount while the member is pursuing a Social Security disability income determination pursuant to R2-8-305, if the member submits documentation to the ASRS every six months informing the ASRS of the status of the member’s Social Security disability income request until a determination is made regarding the amount of Social Security disability income.

Historical Note
New Section made by final rulemaking at 23 A.A.R. 2750, effective November 13, 2017 (Supp. 17-3).

R2-8-806. Collection of Overpayments from Survivor Benefit
A. Notwithstanding A.R.S. § 38-768, the ASRS may reduce a person’s benefit pursuant to this Section.
B. If a member, survivor, or alternate payee does not repay the amount of an overpayment pursuant to this Article, the ASRS shall reduce the necessary person’s amount of benefits pursuant to subsection (C).
C. The ASRS shall collect the amount of any remaining overpayment by reducing the necessary person’s monthly annuity over the same number of months in which the overpayment was made, up to 3 months for each month an overpayment was made by the ASRS.
D. If the ASRS is unable to collect the amount of any overpayment pursuant to subsection (C), the ASRS shall pursue collection of any remaining overpayment amount pursuant to this Article.
E. Notwithstanding subsection (C), the ASRS shall not reduce a survivor’s monthly annuity by an estimated Social Security disability income amount while the survivor is pursuing a Social Security disability income determination on behalf of the member pursuant to R2-8-305, if the survivor submits documentation to the ASRS every six months informing the ASRS of the status of the member’s Social Security disability income request until a determination is made regarding the amount of Social Security disability income to which the member was entitled.

Historical Note
New Section made by final rulemaking at 23 A.A.R. 2750, effective November 13, 2017 (Supp. 17-3).

R2-8-807. Collection of Overpayments from LTD Benefit
Upon disability of the member, the ASRS shall reduce the amount of the disabled member’s LTD benefit by the amount of any overpayment the member received from the ASRS and has not reimbursed pursuant to this Section.

Historical Note
New Section made by final rulemaking at 23 A.A.R. 2750, effective November 13, 2017 (Supp. 17-3).
Amended by final rulemaking at 25 A.A.R. 2471, effective November 3, 2019 (Supp. 19-3).

R2-8-808. Collection of Overpayments by the Attorney General
If a member does not reimburse the ASRS for an overpayment pursuant to R2-8-802, the ASRS may submit the overpayment amount for collection by the Arizona Attorney General’s Office.

Historical Note
New Section made by final rulemaking at 23 A.A.R. 2750, effective November 13, 2017 (Supp. 17-3).

R2-8-809. Collection of Overpayments by the Arizona Department of Revenue
CHAPTER 8. STATE RETIREMENT SYSTEM BOARD

If a member does not reimburse the ASRS for an overpayment pursuant to R2-8-802, the ASRS may submit the overpayment amount for collection by the Arizona Department of Revenue.

**Historical Note**
New Section made by final rulemaking at 23 A.A.R. 2750, effective November 13, 2017 (Supp. 17-3).

R2-8-810. Collection of Overpayments by Garnishment or Levy

Pursuant to A.R.S. § 38-723, the ASRS may collect the amount of any overpayment that has not been reimbursed or collected pursuant to this article by garnishing wages and/or placing a levy on the appropriate person’s bank account.

**Historical Note**
New Section made by final rulemaking at 23 A.A.R. 2750, effective November 13, 2017 (Supp. 17-3).

ARTICLE 9. COMPENSATION

R2-8-901. Definitions

“Services rendered” means the duties which a member performs for an Employer as required by the member’s employment with the Employer.

**Historical Note**
New Section made by final rulemaking at 23 A.A.R. 2754, effective January 1, 2018 (Supp. 17-3).

Section expired under A.R.S. § 41-1056(J) at 24 A.A.R. 1872, effective June 12, 2018 (Supp. 18-2). New Section made by final rulemaking at 27 A.A.R. 91, effective March 9, 2021 (Supp. 21-1).

R2-8-902. Remitting Contributions

Pursuant to A.R.S. §§ 38-736, 38-737, and 38-797.05, an Employer shall remit contributions to the ASRS through the Employer’s secure ASRS account for any payment the Employer provides to the member that is eligible to be included as compensation under this Section.

**Historical Note**
New Section made by final rulemaking at 23 A.A.R. 2754, effective January 1, 2018 (Supp. 17-3).

Section expired under A.R.S. § 41-1056(J) at 24 A.A.R. 1872, effective June 12, 2018 (Supp. 18-2). New Section made by final rulemaking at 27 A.A.R. 91, effective March 9, 2021 (Supp. 21-1).

R2-8-903. Accrual of Credited Service

A. A member shall accrue service credits pursuant A.R.S. § 38-739 for each month in which the Employer’s pay period ends and for which contributions have been remitted to the ASRS, except for pay the member receives from the Employer for services rendered in a prior pay period for which contributions were remitted pursuant to R2-8-902.

B. Regardless of whether the member meets membership requirements with more than one Employer, a member may not earn more than one month of service credit in a calendar month and not more than one year of service credit during a fiscal year.

**Historical Note**
New Section made by final rulemaking at 23 A.A.R. 2754, effective January 1, 2018 (Supp. 17-3).

Section expired under A.R.S. § 41-1056(J) at 24 A.A.R. 1872, effective June 12, 2018 (Supp. 18-2). New Section made by final rulemaking at 27 A.A.R. 91, effective March 9, 2021 (Supp. 21-1).

R2-8-904. Compensation from An Additional Employer

A. For purposes of remitting contributions pursuant to R2-8-902, compensation includes pay the member receives from an additional Employer if:

1. The member meets membership pursuant to A.R.S. § 38-711 with at least one Employer;
2. The member was employed with the additional Employer and did not meet membership with the additional Employer pursuant to A.R.S. § 38-711 between January 1, 2005 through December 31, 2009;
3. The member resumed or continued employment with the additional Employer and did not meet membership with the additional Employer prior to January 1, 2012; and
4. The member does not leave employment with an Employer or the additional Employer in an unpaid status for more than 30 consecutive days during the member’s service year.

B. For purposes of calculating average monthly compensation according to A.R.S. § 38-711, compensation includes the pay identified in subsection (A).

C. Notwithstanding any other subsection, for a member whose membership began after December 31, 2009, compensation includes pay the member receives from an additional Employer if the member meets membership pursuant to A.R.S. § 38-711 with the additional Employer.

**Historical Note**
New Section made by final rulemaking at 23 A.A.R. 2754, effective January 1, 2018 (Supp. 17-3).
CHAPTER 8. STATE RETIREMENT SYSTEM BOARD

Section expired under A.R.S. § 41-1056(J) at 24 A.A.R. 1872, effective June 12, 2018 (Supp. 18-2). New Section made by final rulemaking at 27 A.A.R. 91, effective March 9, 2021 (Supp. 21-1).

R2-8-905. Expired

Historical Note
New Section made by final rulemaking at 23 A.A.R. 2754, effective January 1, 2018 (Supp. 17-3).

Section expired under A.R.S. § 41-1056(J) at 24 A.A.R. 1872, effective June 12, 2018 (Supp. 18-2).

ARTICLE 10. MEMBERSHIP

R2-8-1001. Definitions
The following definitions apply to this Article unless otherwise specified:

1. “218 Agreement” means the same as in R2-8-701.
2. “218 Resolution” means written authorization for a potential Employer to provide Social Security and Medicare or Medicare-only coverage to employees under the provisions of § 218 of the Social Security Act.
3. “Acceptable Documentation” means the same as in R2-8-115.
4. “Designated Employer Administrator” means an individual designated by the Employer and who has authorized access to the Employer’s secure ASRS account in order to fulfill the Employer’s responsibilities.
5. “Engaged To Work” means the earlier of:
   a. The date the employee begins rendering services for the Employer and the Employer intends the employee to work for at least 20 hours a week for at least 20 weeks in a fiscal year or;
   b. The week an employee renders services to an Employer for at least 20 hours a week for at least 20 weeks in a fiscal year.
7. “State Social Security Administrator” means the ASRS staff designated by the Board to approve 218 Agreements.
8. “Week” means 12:00 a.m. on Sunday through 11:59 p.m. on the following Saturday.

Historical Note
New Section made by final rulemaking at 24 A.A.R. 3407, effective February 4, 2019 (Supp. 18-4).

R2-8-1002. Employee Membership

A. For purposes of active member eligibility, an employee of an Employer becomes a member of the ASRS pursuant to A.R.S. § 38-711(23) when the employee is Engaged To Work for the Employer.

B. If the Employer does not provide an accurate date for which an employee was Engaged To Work pursuant to subsection (A), the ASRS shall determine that an employee’s membership effective date will be the member’s hire date, if provided by the Employer and within 30 days of the first pay period end date after the hire date, for which the Employer was required to submit contributions.

C. If the Employer does not provide a hire date pursuant to subsection (B), the effective date is the first pay period end date of contributions received for that member.

D. Unless a member terminates employment or retires from the ASRS, for purposes of determining active member eligibility, a member will continue to be an active member for the remainder of a fiscal year in which the employee met the requirements to be an active member in the ASRS with that Employer pursuant to A.R.S. § 38-711.

E. Within 30 days of employment, an employee who is eligible for ASRS membership pursuant to A.R.S. § 38-711(23) shall create a secure ASRS account and submit to the ASRS through the employee’s secure ASRS account the following information:
   1. The Employee’s full name;
   2. The Employee’s Social Security number;
   3. The Employee’s date of birth;
   4. The Employee’s gender;
   5. The Employee’s marital status;
   6. The Employee’s primary phone number;
   7. The Employee’s personal email address;
   8. The Employee’s current mailing address; and
   9. The Employee’s designated beneficiary.

F. Within 30 days of a change in the member’s name, the member shall submit to the ASRS through the member’s secure ASRS account a Change of Name form that contains:
   1. The member’s full name that is on file with the ASRS;
   2. The member’s Social Security number;
   3. The member’s current mailing address;
   4. The member’s date of birth;
   5. The member’s personal email address;
   6. The member’s primary phone number;
   7. The member’s gender;
   8. The member’s marital status;
CHAPTER 8. STATE RETIREMENT SYSTEM BOARD

9. The member’s retired, active, inactive, or LTD status with the ASRS;
10. The member’s full name;
11. The type of legal document establishing the member’s new name;
12. A copy of the legal document establishing the member’s new name; and
13. The member’s dated signature.

G. Within 30 days of a change in the member’s contact information, the member shall notify the ASRS of the change.

H. If an employee of an Employer meets the requirements of A.R.S. § 38-727(A)(8), the employee may elect to not participate in the ASRS.

I. Within 30 days after employment, an Employer whose employee is 65 years of age or older as of the date of employment and who has elected not to participate in the ASRS pursuant to subsection (H), shall submit to the ASRS through the Employer’s secure ASRS account a 65+ Membership Waiver form that contains:
   1. The employee’s full name;
   2. The employee’s Social Security number;
   3. The employee’s current mailing address;
   4. The employee’s date of birth;
   5. The employee’s dated signature acknowledging the following statements:
      a. The employee is electing to waive any rights to ASRS membership and the employee will not be eligible for any retirement, disability, or health insurance benefits offered by the ASRS;
      b. The employee is a member of the ASRS as of the date of employment; and
      c. The employee understands that this election is irrevocable for the remainder of the employee’s employment with that Employer and the time the employee works under this election is not eligible for purchase in the ASRS;
   6. The Employer’s name;
   7. The date employee’s employment began; and
   8. The name and dated signature of the Employer’s representative.

J. A corrected and completed 65+ Membership Waiver form must be resubmitted to the ASRS pursuant to subsection (I) within 14 days of the date the ASRS notifies the employee that the 65+ Membership Waiver form is incorrect or incomplete.

Historical Note
New Section made by final rulemaking at 24 A.A.R. 3407, effective February 4, 2019 (Supp. 18-4).

R2-8-1003. Charter School Employer Membership

A. Pursuant to A.R.S. § 15-187(C), a charter school in Arizona is considered a political subdivision that is eligible to participate in the ASRS if the charter school is sponsored by:
   1. A state university;
   2. A community college district;
   3. A group of community college districts;
   4. The state board of education; or
   5. The state board for charter schools.

B. In order to participate as an Employer in the ASRS, a charter school shall notify the ASRS in writing of the charter school’s intent to join the ASRS and provide:
   1. A copy of the current and active Charter Contract, including any amendments, which is approved by the entity sponsoring the charter school pursuant to subsection (A);
   2. Documentation showing the name and location of all schools authorized by the Charter Contract identified in subsection (B)(1); and
   3. Documentation showing the charter school board’s approval to pursue ASRS membership and complete ASRS requirements for membership.

C. Upon receipt of the information contained in subsection (B), the ASRS shall determine if the charter school is eligible to participate in the ASRS. If the charter school is not eligible to participate in the ASRS, the ASRS shall send the charter school a notice of ineligibility. If the charter school is eligible to participate, the ASRS shall provide the charter school a Potential New Employer Letter.

D. In order to participate as an Employer in the ASRS, an eligible charter school shall submit to the ASRS the following original documents by the due date listed on the Potential New Employer Letter:
   1. The current retirement plan or a statement signed by the designated authorized agent for the charter school acknowledging there is no current retirement plan.
   2. Two ASRS Agreements showing:
      a. The legal name and current mailing address of the charter school as sponsored pursuant to subsection (A);
      b. What amount of prior service the charter school shall purchase for employees pursuant to R2-8-1006;
      c. The approximate number of employees that will become members upon the effective date of the ASRS Agreement;
      d. The name, title, email address, and telephone number of the designated authorized agent for the charter school;
      e. The designated authorized agent is authorized and directed to conduct all negotiations, conclude all arrangements, and sign all documents necessary to administer the supplemental ASRS retirement plan pursuant to A.R.S. Title 38, Chapter 5, Articles 2 and 2.1; and
      f. The ASRS Agreement is binding and irrevocable;
C. Any charter school that is established under the charter contract of a participating charter school shall participate in the ASRS.

F. A political subdivision or political subdivision entity, other than a charter school, may be eligible to participate in the ASRS pursuant to A.R.S. § 38-729. If the request to join the ASRS is approved, the state Social Security administrator shall sign the 218 Agreements and the ASRS Director shall sign the ASRS Resolutions before the ASRS shall send one of each of the original documents identified in subsection (D) to the charter school.

G. Any charter school that is established under the charter contract of a participating charter school shall participate in the ASRS.

R2-8-1004. Other Political Subdivision and Political Subdivision Entity Employer Membership

A. A political subdivision or political subdivision entity, other than a charter school, may be eligible to participate in the ASRS pursuant to A.R.S. §§ 38-711 and 38-729 if it notifies the ASRS in writing of the political subdivision’s or political subdivision entity’s intent to join the ASRS and provides to the ASRS:
1. A copy of the current legal authority establishing the political subdivision or political subdivision entity;
2. Documentation showing the name and location of the political subdivision or political subdivision entity; and
3. Documentation showing the political subdivision or political subdivision entity has taken the necessary legal action to be eligible to participate pursuant to A.R.S. § 38-729.

B. Upon receipt of the information contained in subsection (C), the ASRS shall determine if the political subdivision or political subdivision entity is eligible to participate in the ASRS. If the political subdivision or political subdivision entity is not eligible to participate in the ASRS, the ASRS shall send the political subdivision or political subdivision entity a notice of ineligibility. If the political subdivision or political subdivision entity is eligible to participate, the ASRS shall provide the political subdivision or political subdivision entity a Potential New Employer Letter.

C. In order to participate as an Employer in the ASRS, an eligible political subdivision or political subdivision entity shall submit to the ASRS the following original documents by the due date listed on the Potential New Employer Letter:
1. The current retirement plan or a statement signed by the designated authorized agent for the political subdivision or political subdivision entity acknowledging there is no current retirement plan.
2. Two ASRS Agreements showing:
   a. The legal name and current mailing address of the political subdivision or political subdivision entity;
   b. What amount of prior service the political subdivision or political subdivision entity shall purchase for employees pursuant to R2-8-1006;
   c. The approximate number of employees that will become members upon the effective date of the ASRS Agreement;
   d. The name, title, email address, and telephone number of the designated authorized agent for the political subdivision or political subdivision entity;
   e. The designated authorized agent is authorized and directed to conduct all negotiations, conclude all arrangements, and sign all documents necessary to administer the supplemental ASRS retirement plan pursuant to A.R.S. Title 38, Chapter 5, Articles 2 and 2.1; and
   f. The dated and notarized signature of the designated authorized agent.
3. Two ASRS Resolutions showing:
   a. The legal name of the charter school as sponsored pursuant to subsection (A);
   b. The charter school is adopting a supplemental ASRS retirement plan pursuant to A.R.S. § 38-729;
   c. The charter school agrees to be bound by the provisions of A.R.S. Title 38, Chapter 5, Article 2 and Article 2.1 unless otherwise indicated by law;
   d. The designated authorized agent for the charter school;
   e. The designated authorized agent is authorized and directed to conduct all negotiations, conclude all arrangements, and sign all documents necessary to administer the supplemental ASRS retirement plan pursuant to A.R.S. Title 38, Chapter 5, Articles 2 and 2.1; and
   f. The dated signature of the designated authorized agent for the charter school.
4. Two 218 Agreements either electing or declining coverage. If the charter school is electing coverage pursuant to a 218 Agreement, the 218 Agreement must be completed and approved by the Social Security Administration prior to joining the ASRS.
5. Two 218 Resolutions, if the charter school is electing coverage pursuant to subsection (D)(4). The 218 Resolutions must be completed and approved by the Social Security Administration prior to joining the ASRS.

E. Upon receipt of Acceptable Documentation identified in subsection (D), the ASRS may approve the charter school’s request for membership pursuant to A.R.S. § 38-729. If the request to join the ASRS is approved, the state Social Security administrator shall sign the 218 Agreements and the ASRS Director shall sign the ASRS Agreements before the ASRS shall send one of each of the original documents identified in subsection (D) to the charter school.

F. Upon receipt of Acceptable Documentation identified in subsection (D), the ASRS may approve the charter school’s request for membership pursuant to A.R.S. § 38-729. If the request to join the ASRS is approved, the state Social Security administrator shall sign the 218 Agreements and the ASRS Director shall sign the ASRS Resolutions before the ASRS shall send one of each of the original documents identified in subsection (D) to the charter school.
CHAPTER 8. STATE RETIREMENT SYSTEM BOARD

b. The political subdivision or political subdivision entity is adopting a supplemental ASRS retirement plan pursuant to A.R.S. § 38-729;
c. The political subdivision or political subdivision entity agrees to be bound by the provisions of A.R.S. Title 38, Chapter 5, Article 2 and Article 2.1 unless otherwise indicated by law;
d. The designated authorized agent for the political subdivision or political subdivision entity;
e. The designated authorized agent is authorized and directed to conduct all negotiations, conclude all arrangements, and sign all documents necessary to administer the supplemental ASRS retirement plan pursuant to A.R.S. Title 38, Chapter 5, Articles 2 and 2.1; and
f. The dated and notarized signature of the designated authorized agent.

4. Two 218 Agreements either electing or declining coverage. If the political subdivision or political subdivision entity is electing coverage pursuant to a 218 Agreement, the 218 Agreement must be completed and approved by the Social Security Administration prior to joining the ASRS.

5. Two 218 Resolutions, if the political subdivision or political subdivision entity is electing coverage pursuant to subsection (C)(4). The 218 Resolutions must be completed and approved by the Social Security Administration prior to joining the ASRS.

D. Upon receipt of Acceptable Documentation identified in subsection (B), the ASRS may approve the political subdivision’s or political subdivision entity’s request for membership pursuant to A.R.S. § 38-729. If the request to join the ASRS is approved, the state Social Security administrator shall sign the 218 Agreements and the ASRS Director shall sign the ASRS Agreements before the ASRS shall send one of each of the original documents identified in subsection (B) to the political subdivision or political subdivision entity.

Historical Note
New Section made by final rulemaking at 24 A.A.R. 3407, effective February 4, 2019 (Supp. 18-4).

R2-8-1005. Employer Reporting
A. An Employer shall submit contribution information and contribution payments pursuant to A.R.S. § 38-735, through the Employer’s secure ASRS account.
B. Within 14 days of receiving the information contained in subsection R2-8-1002(E)(1) through (E)(3), the Employer shall:
1. Verify the information the employee provided;
2. Confirm the employee meets membership requirements pursuant to A.R.S. § 38-711; and
3. Submit the verified information to the ASRS through the Employer’s secure ASRS account.
C. For an Employer whose employee elects to participate in an Optional Retirement Plan in lieu of the ASRS pursuant to A.R.S. §15-1628, within 30 days of electing to participate in an Optional Retirement Plan, the Employer shall submit to the ASRS through the Employer’s secure ASRS account the:
1. Employee’s full name;
2. Employee’s Social Security number;
3. Date of the employee’s employment; and
4. Date of the employee’s Optional Retirement Plan election.
D. For an Employer who has submitted information pursuant to subsection (C), within 30 days of that employee terminating employment with that Employer, the Employer shall notify the ASRS through the Employer’s secure ASRS account of the employee’s termination date.
E. Within 14 days before the effective date of joining the ASRS, an Employer shall submit an initial online authorization and designation form in writing to the ASRS with the following information:
1. The Employer’s name;
2. The following information for the person authorized by the Employer to approve the Employer’s Designated Employer Administrator:
   a. The person’s full name;
   b. The person’s title;
   c. The person’s phone number;
   d. The person’s email address;
   e. The person’s dated signature affirming that person has the authority to approve the Employer’s Designated Employer Administrator;
3. The full name of the individual the Employer is designating as the Employer’s Designated Employer Administrator;
4. The title of the individual the Employer is designating as the Employer’s Designated Employer Administrator;
5. The phone number of the individual the Employer is designating as the Employer’s Designated Employer Administrator;
6. The email address of the individual the Employer is designating as the Employer’s Designated Employer Administrator;
7. The dated signature of the individual the Employer is designating as the Employer’s Designated Employer Administrator.
F. An Employer’s Designated Employer Administrator shall establish a new Employer’s Designated Employer Administrator as needed through the Employer’s secure ASRS account.
G. Within 30 days of an Employer no longer having an Employer’s Designated Employer Administrator, the Employer shall submit in writing an initial online authorization and designation form pursuant to subsection (E).
H. Within 30 days of change in the Employer’s address, the Employer shall notify the ASRS of the change through the Employer’s secure ASRS account.
CHAPTER 8. STATE RETIREMENT SYSTEM BOARD

I. Within 10 days of any change in the name or ownership of the Employer, the Employer shall provide written notice of the change to the ASRS through the Employer’s secure ASRS account by providing the Employer’s previous account information and the changes to that information.

J. Within 30 days of any change in the character of an Employer’s organizational structure, the Employer shall send to the ASRS through the Employer’s secure ASRS account, written notice of the previous organizational structure and the effective changes to the Employer’s organizational structure.

K. Within 30 days of Leasing An Employee From A Third Party, an Employer shall submit the following information:
   1. The employee’s full name;
   2. The number of hours per week the employee works for the Employer;
   3. The title of the employee’s position;
   4. A copy of the agreement showing the Employer Leasing An Employee From A Third Party; and
   5. Whether the employee is retired from the ASRS.

Historical Note
New Section made by final rulemaking at 24 A.A.R. 3407, effective February 4, 2019 (Supp. 18-4).

R2-8-1006. Prior Service Purchase Cost for New Employers

A. Pursuant to A.R.S. § 38-729, upon the effective date of joining the ASRS, an Employer may elect to purchase service credit for a period of employment prior to the effective date of joining the ASRS for employees Engaged To Work for the Employer on the effective date of joining the ASRS who are members of the ASRS as of the effective date of joining the ASRS.

B. The ASRS may provide to a potential Employer an estimated cost to purchase service credit pursuant to this Section. In order for the ASRS to estimate the cost to purchase service pursuant to this Section, a potential Employer shall provide the following information to the ASRS for each employee of the potential Employer who is Engaged To Work for the potential Employer and for whom the potential Employer intends to purchase service credit pursuant to this Section:
   1. The employee’s full name;
   2. The employee’s date of birth;
   3. The employee’s Social Security number;
   4. The employee’s current salary; and
   5. The date the employee began employment with the potential Employer.

C. An Employer who elects to purchase service credit pursuant to this Section shall submit the following information for each member for which the Employer is purchasing service credit:
   1. Member’s full name;
   2. Member’s date of birth;
   3. Member’s Social Security number;
   4. Member’s date of employment;
   5. Documentation showing the Member is Engaged To Work for the Employer as of the effective date of joining the ASRS;
   6. Member’s current salary as of the effective date of joining the ASRS; and
   7. The number of years the Employer is electing to purchase for the member pursuant to this Section or the dollar amount the Employer is electing to pay to purchase service for the member pursuant to this Section.

D. The cost to purchase service credit pursuant to this Section shall be determined using an actuarial present value calculation.

E. An Employer who elects to purchase service credit pursuant to this Section shall submit payment for the full cost of the service purchase to the ASRS within 90 days of the date of notification by the ASRS.

F. If an Employer who elects to purchase service credit pursuant to this Section does not submit payment for the full cost of the service purchase within 90 days of the date of notification, the Employer is not eligible to purchase service credit pursuant to this Section.

Historical Note
New Section made by final rulemaking at 24 A.A.R. 3407, effective February 4, 2019 (Supp. 18-4).

ARTICLE 11. TRANSFER OF SERVICE CREDIT

R2-8-1101. Definitions

The following definitions apply to this Article unless otherwise specified:

1. “Actuarial present value” means an amount in today’s dollars of a member’s future retirement benefit calculated using appropriate actuarial assumptions and the:
   a. Member’s Current Years of Credited Service;
   b. Member’s age as of the date the Member submits to the ASRS a request to transfer service credit pursuant to this Article; and
   c. Member’s most recent annual compensation.

2. “Current years of credited service” means:
   a. For Transfer In Service, the amount of credited service a member has earned or purchased, and the amount of service credit for which an Irrevocable PDA is in effect for which the member has not yet completed payment, but does not include any current requests to purchase service credit for which the member has not yet paid; and
b. For transferring service credit to the Other Retirement Plan, the amount of credited service a member has earned or pur-
chased, but does not include service credit for which the member has not yet paid.
3. “Irrevocable PDA” means the same as in R2-8-501.
4. “Funded Actuarial Present Value” means the Actuarial Present Value reduced to the extent funded on market value basis as of the most recent actuarial evaluation of the ASRS.
5. “Member’s accumulated contribution account balance” means the sum of all the member’s retirement contributions and any principal payments made for:
   a. The purchase of service credit;
   b. Contributions not withheld; and
   c. Previous transfers of service credit.
6. “Other retirement plan” means the state retirement plans specified in A.R.S. § 38-921, other than the ASRS, or a retirement plan of a charter city as specified in A.R.S. § 38-730.
7. “Other Retirement Plan’s cost” means the amount determined by the ASRS pursuant to R2-8-1102(D).
8. “Other public service” means the same as in R2-8-501.
9. “Transfer in service” means credited service with the Other Retirement Plan that a member is eligible to transfer to the ASRS pursuant to A.R.S. §§ 38-730 and 38-921.

Historical Note
New Section made by final rulemaking at 25 A.A.R. 303, effective March 18, 2019 (Supp. 19-1).

R2-8-1102. Required Documentation and Calculations for Transfer In Service Credit
A. A member who is eligible to Transfer In Service credit, may request to transfer service credit by providing a Transfer In form to the ASRS with the following:
   1. The name of the Other Retirement Plan;
   2. The date the member either terminated employment with an employer of the Other Retirement Plan or ceased to participate in the Other Retirement Plan;
   3. The date the member began employment with the employer through which the member was participating in the Other Retirement Plan;
   4. The number of years the member participated in the Other Retirement Plan;
   5. Acknowledgement the member agrees that:
      a. Knowingly making a false statement or falsifying or permitting falsification of any record of the ASRS with an intent to de-
         fraud ASRS is a Class 6 felony, pursuant to A.R.S. § 38-793; and
      b. The Transfer In Service credit transaction is subject to audit and if any errors are discovered, the ASRS shall adjust a mem-
         ber's account, or if the member is already retired, adjustments to the member’s account may affect the member’s retirement
         benefit.
B. Upon receipt of the information specified in subsection (A), the ASRS shall submit the information to the Other Retirement Plan and request:
   1. The Other Retirement Plan’s Funded Actuarial Present Value pursuant to A.R.S. §§ 38-730 and 38-922;
   2. The Member’s Accumulated Contribution Account Balance in the Other Retirement Plan;
   3. The amount of service credit the member has accumulated in the Other Retirement Plan; and
   4. The start date and end date for the member’s participation in the Other Retirement Plan.
C. Upon receipt of the information specified in subsection (B), the ASRS shall calculate the Actuarial Present Value as specified in R2-8-506 necessary to transfer full service credit to the ASRS.
D. The ASRS shall calculate the Other Retirement Plan’s Cost as follows:
   1. If the ASRS Actuarial Present Value is greater than the Other Retirement Plan’s Funded Actuarial Present Value, then the Other
      Retirement Plan’s Cost is the greater of:
         a. The Other Retirement Plan’s Funded Actuarial Present Value; or
         b. The Member’s Accumulated Contribution Account Balance in the Other Retirement Plan;
   2. If the ASRS Actuarial Present Value is less than or equal to the Other Retirement Plan’s Funded Actuarial Present Value, then
      the Other Retirement Plan’s Cost is the greater of:
         a. The ASRS Actuarial Present Value; or
         b. The Member’s Accumulated Contribution Account Balance in the Other Retirement Plan.
E. The ASRS shall compare the Other Retirement Plan’s Cost to the ASRS Actuarial Present Value calculated pursuant to subsection (C) and:
   1. If the Other Retirement Plan’s Cost is less than the ASRS Actuarial Present Value, then the member may elect to transfer service
      credit to the ASRS and:
         a. Pay the difference between the Other Retirement Plan’s Cost and the ASRS Actuarial Present Value; or
         b. Accept a proportionately reduced amount of service credit;
   2. If the Other Retirement Plan’s Cost is greater than or equal to the ASRS Actuarial Present Value, then the member may elect to
      transfer the service to the ASRS pursuant to subsection (F).
F. Upon completion of the comparison specified in subsections (D) and (E), the ASRS shall send the member a transfer in invoice noti-
   fying the member of the member’s options to complete the transfer of service credit through the member’s secure ASRS account.
CHAPTER 8. STATE RETIREMENT SYSTEM BOARD

G. The member may elect to complete a transfer of service credit pursuant to this Section by submitting the member’s election by the election due date specified on the transfer in invoice.

H. Upon receipt of the member’s election to complete a transfer of service credit, the ASRS shall send the transfer in invoice to the Other Retirement Plan and the Other Retirement Plan shall make payment to the ASRS by submitting a check made payable to the ASRS for the Other Retirement Plan’s Cost specified on the transfer in invoice by the payment due date specified on the transfer in invoice.

I. If a member elects to pay the total difference between the ASRS Actuarial Present Value and the Other Retirement Plan’s Cost pursuant to R2-8-1102(E), the member shall elect the method of payment by the payment due date specified on the transfer in invoice.

J. A member may elect to pay the total difference between the ASRS Actuarial Present Value and the Other Retirement Plan’s Cost pursuant to R2-8-1102(E) by any one or more methods specified in R2-8-512, R2-8-513, R2-8-514, or R2-8-519.

K. For a member who elects to accept a proportionately reduced amount of service pursuant to subsection (E)(1)(b), the ASRS shall calculate the proportionately reduced amount of service credit based on the member’s service credits in the Other Retirement Plan multiplied by the ratio of the Other Retirement Plan’s Cost to the ASRS Actuarial Present Value.

L. The member shall submit payment to transfer service credit pursuant to this Section by the payment due date specified on the transfer in invoice.

M. If the member does not submit payment for the total difference in the calculations pursuant to R2-8-1102(E) by the payment due date specified on the transfer in invoice, the member may be eligible to purchase the remaining service credit as Other Public Service, and the member is not eligible to purchase the remaining service credit based on the cost specified in the transfer in invoice.

Historical Note
New Section made by final rulemaking at 25 A.A.R. 303, effective March 18, 2019 (Supp. 19-1).

R2-8-1103. Transferring Service to Other Retirement Plans

A. Upon receipt of a request to transfer a member’s service credit from the ASRS to the Other Retirement Plan, the ASRS shall calculate:
   1. The ASRS Funded Actuarial Present Value pursuant to A.R.S. §§ 38-730 and 38-922; and
   2. The Member’s Accumulated Contribution Account Balance in the ASRS.

B. Upon completing the calculations specified in subsection (A), the ASRS shall submit the calculations and member information to the Other Retirement Plan with a due date for the Other Retirement Plan to submit a fund request to the ASRS pursuant to subsection (C).

C. If a member elects to transfer service credit to the Other Retirement Plan, the member shall ensure that the Other Retirement Plan submits a fund request on the Other Retirement Plan’s letterhead by the due date specified in subsection (B) to the ASRS with the following information:
   1. The member’s full name;
   2. The last four digits of the member’s Social Security number;
   3. The name of the Other Retirement Plan; and
   4. The Actuarial Present Value necessary to transfer full service credit to the Other Retirement Plan.

D. Upon receipt of the information specified in subsection (C), the ASRS shall compare the calculations specified in subsection (A) to the Other Retirement Plan’s Actuarial Present Value specified in subsection (C) and transfer funds as follows:
   1. If the Other Retirement Plan’s Actuarial Present Value specified in subsection (C) is greater than the ASRS Funded Actuarial Present Value specified in subsection (A), then the ASRS shall transfer the greater of:
      a. The ASRS Funded Actuarial Present Value specified in subsection (A); or
      b. The Member’s Accumulated Contribution Account Balance in the ASRS.
   2. If the Other Retirement Plan’s Actuarial Present Value specified in subsection (C) is less than or equal to the ASRS Funded Actuarial Present Value, then the ASRS shall transfer the greater of:
      a. The Other Retirement Plan’s Actuarial Present Value specified in subsection (C); or
      b. The Member’s Accumulated Contribution Account Balance in the ASRS.

E. Transferring service credit to the Other Retirement Plan pursuant to this Section constitutes a withdrawal from ASRS membership and results in a forfeiture of all other benefits under ASRS.

F. Notwithstanding subsection (E), pursuant to A.R.S. § 38-750, a transferred employee who continues an Irrevocable PDA after transferring service credit to the Other Retirement Plan may be eligible to:
   1. Transfer service credit associated with the remaining balance of the Irrevocable PDA for which the transferred employee paid for the purchase of service credit plus interest at the Assumed Actuarial Investment Earnings Rate pursuant to A.R.S. § 38-922, not including any administrative interest charge the transferred employee paid pursuant to an Irrevocable PDA; or
   2. Receive a return of contributions plus interest as specified in R2-8-118(A), column 3, pursuant to A.R.S. § 38-740.

Historical Note
New Section made by final rulemaking at 25 A.A.R. 303, effective March 18, 2019 (Supp. 19-1).
38-711. Definitions

In this article, unless the context otherwise requires:

1. "Active member" means a member as defined in paragraph 23, subdivision (b) of this section who satisfies the eligibility criteria prescribed in section 38-727 and who is currently making member contributions as prescribed in section 38-736.

2. "Actuarial equivalent" means equality in value of the aggregate amounts expected to be received under two different forms of payment, based on mortality and interest rate assumptions approved from time to time by the board.

3. "ASRS" means the Arizona state retirement system established by this article.

4. "Assets" means the resources of ASRS including all cash, investments or securities.

5. "Average monthly compensation" means:

   (a) For a member whose membership in ASRS commenced before January 1, 1984 and who left the member's contributions on deposit or reinstated forfeited credited service pursuant to section 38-742 for a period of employment that commenced before January 1, 1984, the higher of either:

      (i) The monthly average of compensation that is calculated pursuant to subdivision (b) of this paragraph.

      (ii) The monthly average of compensation on which contributions were remitted during a period of sixty consecutive months during which the member receives the highest compensation within the last one hundred twenty months of credited service. Any month for which no contributions are reported to ASRS or that falls within a period of nonpaid or partially paid leave of absence or sabbatical leave shall be excluded from the computation. The sixty consecutive months may entirely precede, may be both before and after or may be completely after any excluded months. If the member was employed for less than sixty consecutive months, the average monthly compensation is based on the total consecutive months worked. Payments for accumulated vacation or annual leave, sick leave, compensatory time or other forms of termination pay that, before August 12, 2005, constitute compensation for members whose membership in ASRS commenced before January 1, 1984, do not cease to be included as compensation if paid in the form of nonelective employer contributions under a 26 United States Code section 403(b) plan if all payments of employer and employee contributions are made at the time of termination. Contributions shall be made to ASRS on these amounts pursuant to sections 38-735, 38-736 and 38-737.

   (b) For a member whose membership in ASRS commenced on or after January 1, 1984 but before July 1, 2011, the monthly average of compensation on which contributions were remitted during a period of thirty-six consecutive months during which a member receives the highest compensation within the last one hundred twenty months of credited service. Any month for which no contributions are reported to ASRS or that falls within a period of nonpaid or partially paid leave of absence or sabbatical leave shall be excluded from the computation. The thirty-six consecutive months may entirely precede, may be both before and after or may be completely after any excluded months. If the member was employed for less than thirty-six consecutive months, the average monthly compensation shall be based on the total consecutive months worked.
(c) For a member whose membership in ASRS commenced on or after July 1, 2011, the monthly average of compensation on which contributions were remitted during a period of sixty consecutive months during which a member receives the highest compensation within the last one hundred twenty months of credited service. Any month for which no contributions are reported to ASRS or that falls within a period of nonpaid or partially paid leave of absence or sabbatical leave shall be excluded from the computation. The sixty consecutive months may entirely precede, may be both before and after or may be completely after any excluded months. If the member was employed for less than sixty consecutive months, the average monthly compensation shall be based on the total consecutive months worked.

6. "Board" means the ASRS board established in section 38-713.

7. "Compensation" means:

(a) For members whose membership began on or before December 31, 2019, the gross amount paid to a member by an employer as salary or wages, including amounts that are subject to deferred compensation or tax shelter agreements, for services rendered to or for an employer, or that would have been paid to the member except for the member's election or a legal requirement that all or part of the gross amount be used for other purposes, but does not include amounts paid in excess of compensation limits established in section 38-746. Compensation includes amounts paid as salary or wages to a member by a second employer if the member meets the requirements prescribed in paragraph 23, subdivision (b) of this section with that second employer. Compensation, as provided in paragraph 5, subdivision (b) or (c) of this section, does not include:

(i) Lump sum payments, on termination of employment, for accumulated vacation or annual leave, sick leave, compensatory time or any other form of termination pay whether the payments are made in one payment or by installments over a period of time.

(ii) Damages, costs, attorney fees, interest or other penalties paid pursuant to a court order or a compromise settlement or agreement to satisfy a grievance or claim even though the amount of the payment is based in whole or in part on previous salary or wage levels, except that, if the court order or compromise settlement or agreement directs salary or wages to be paid for a specific period of time, the payment is compensation for that specific period of time. If the amount directed to be paid is less than the actual salary or wages that would have been paid for the period if service had been performed, the contributions for the period shall be based on the amount of compensation that would have been paid if the service had been performed.

(iii) Payment, at the member's option, in lieu of fringe benefits that are normally paid for or provided by the employer.

(iv) Merit awards pursuant to section 38-613 and performance bonuses paid to assistant attorneys general pursuant to section 41-192.

(v) Amounts that are paid as salary or wages to a member for which employer contributions have not been paid.

(b) For a member whose membership began on or after January 1, 2020, only gross wages paid to a member by the employer for services rendered to the employer during the period considered as credited service, including amounts reported as wages and tips and other compensation on the member's federal form W-2 wage and tax statement, including pretax deductions, except for the following:
(i) Payments made for accrued leave that is not being used to replace regular work hours, whether paid in a lump sum or in installments.

(ii) Payments made on termination from employment, whether paid in a lump sum or in installments or as a bonus or an incentive for termination or retirement.

(iii) Employer-paid contributions that are made to, and any distributions from, plans, programs or arrangements qualified under section 117, 125, 129, 401, 403, 408 or 457 of the internal revenue code.

(iv) Payments for allowances.

(v) Reimbursements for employee business expenses or employee personal expenses.

(vi) Employer-paid contributions for coverage under, or distributions from, an accident, health or life insurance plan, program or arrangement.

(vii) Payments made in lieu of any employer-paid insurance coverage.

(viii) Workers' compensation, unemployment compensation payments and disability payments.

(ix) Merit awards pursuant to section 38-613.

(x) Payments paid pursuant to a court order or settlement agreement to satisfy a claim even though the amount of the payment is based on previous salary or wage levels, except if the court order or settlement agreement directs salary or wages to be paid for a specific period of time, the payment is compensation for that specific period of time.

(xi) Payments made in the form of goods or services in lieu of gross wages.

(xii) Any other payment that is not reported as wages and tips and other compensation on the member's federal W-2 wage and tax statement for actual services rendered.

(xiii) Payments in excess of the section 415 of the internal revenue code limits established in section 38-746.

(xiv) Payments for any other employment benefit.

(xv) Payments for which employer or employee contributions have not been paid.

8. "Contingent annuitant" means the person named by a member to receive retirement income payable following a member's death after retirement as provided in section 38-760.

9. "Credited service" means, subject to section 38-739, the number of years standing to the member's credit on the books of ASRS during which the member made the required contributions.

10. "Current annual compensation" means the greater of:
(a) Annualized compensation of the typical pay period amount immediately before the date of a request to ASRS to purchase credited service pursuant to section 38-743, 38-744 or 38-745. The typical pay period amount shall be determined by taking the five pay periods immediately before the date of a request, disregarding the highest and lowest compensation amount pay periods and averaging the three remaining pay periods.

(b) Annualized compensation of the partial year, disregarding the first compensation amount pay period, if the member has less than twelve months total compensation on the date of a request to purchase credited service pursuant to section 38-743, 38-744 or 38-745.

(c) The sum of the twelve months of compensation immediately before the date of a request to ASRS to purchase credited service pursuant to section 38-743, 38-744 or 38-745.

(d) The sum of the thirty-six months of compensation immediately before the date of a request to ASRS to purchase credited service pursuant to section 38-743, 38-744 or 38-745 divided by three.

(e) If the member has retired one or more times from ASRS, the average monthly compensation that was used for calculating the member's last pension benefit times twelve.

11. "Early retirement" means retirement before a member's normal retirement date after five years of total credited service and attainment of age fifty.

12. "Effective date" means July 1, 1970, except with respect to employers and members whose contributions to ASRS commence thereafter, the effective date of their membership in ASRS is as specified in the applicable joinder agreement.

13. "Employer" means:

   (a) This state.

   (b) Participating political subdivisions.

   (c) Participating political subdivision entities.

14. "Employer contributions" means all amounts paid into ASRS by an employer on behalf of a member.

15. "Fiscal year" means the period from July 1 of any year to June 30 of the following year.

16. "Inactive member" means a member who previously made contributions to ASRS and who satisfies each of the following:

   (a) Has not retired.

   (b) Is not eligible for active membership in ASRS.

   (c) Is not currently making contributions to ASRS.

   (d) Has not withdrawn contributions from ASRS.
17. "Interest" means the assumed actuarial investment earnings rate approved by the board.

18. "Internal revenue code" means the United States internal revenue code of 1986, as amended.

19. "Investment manager" means the persons, companies, banks, insurance company investment funds, mutual fund companies, management or any combinations of those entities that are appointed by ASRS and that have responsibility and authority for investment of the monies of ASRS.

20. "Late retirement" means retirement after normal retirement.

21. "Leave of absence" means any unpaid leave authorized by the employer, including leaves authorized for sickness or disability or to pursue education or training.

22. "Life annuity" means equal monthly installments payable during the member's lifetime after retirement.

23. "Member":

(a) Means any employee of an employer on the effective date.

(b) Means all employees of an employer who are eligible for membership pursuant to section 38-727 and who are engaged to work at least twenty weeks in each fiscal year and at least twenty hours each week.

(c) Means any person receiving a benefit under ASRS.

(d) Means any person who is a former active member of ASRS and who has not withdrawn contributions from ASRS pursuant to section 38-740.

(e) Does not include any employee of an employer who is otherwise eligible pursuant to this article and who begins service in a limited appointment for not more than eighteen months on or after July 1, 1979. If the employment exceeds eighteen months, the employee shall be covered by ASRS as of the beginning of the nineteenth month of employment. In order to be excluded under this subdivision, classifications of employees designated by employers as limited appointments must be approved by the director.

(f) Does not include any leased employee. For the purposes of section 414(n) of the internal revenue code, "leased employee" means an individual who:

(i) Is not otherwise an employee of an employer.

(ii) Pursuant to a leasing agreement between the employer and another person, performs services for the employer on a substantially full-time basis for at least one year.

(iii) Performs services under the primary direction or control of the employer.

24. "Member contributions" means all amounts paid to ASRS by a member.
25. "Normal costs" means the sum of the individual normal costs for all active members for each fiscal year. The normal cost for an individual active member is the cost that is assigned to the fiscal year, through June 29, 2016, using the projected unit credit method and, beginning June 30, 2016, using the actuarial cost method determined by the board pursuant to section 38-714.

26. "Normal retirement age" means the age at which a member reaches the member's normal retirement date.

27. "Normal retirement date" means the earliest of the following:

(a) For a member whose membership commenced before July 1, 2011:
   (i) A member's sixty-fifth birthday.
   (ii) A member's sixty-second birthday and completion of at least ten years of credited service.
   (iii) The first day that the sum of a member's age and years of total credited service equals eighty.

(b) For a member whose membership commenced on or after July 1, 2011:
   (i) A member's sixty-fifth birthday.
   (ii) A member's sixty-second birthday and completion of at least ten years of credited service.
   (iii) A member's sixtieth birthday and completion of at least twenty-five years of credited service.
   (iv) A member's fifty-fifth birthday and completion of at least thirty years of credited service.

28. "Political subdivision" means any political subdivision of this state and includes a political subdivision entity.

29. "Political subdivision entity" means an entity:

(a) That is located in this state.

(b) That is created in whole or in part by political subdivisions, including instrumentalities of political subdivisions.

(c) Where a majority of the membership of the entity is composed of political subdivisions.

(d) Whose primary purpose is the performance of a government-related service.

30. "Retired member" means a member who is receiving retirement benefits pursuant to this article.

31. "Service year" means fiscal year, except that:

(a) If the normal work year required of a member is less than the full fiscal year but is for a period of at least nine months, the service year is the normal work year.
(b) For a salaried member employed on a contract basis under one contract, or two or more consecutive contracts, for a total period of at least nine months, the service year is the total period of the contract or consecutive contracts.

(c) In determining average monthly compensation pursuant to paragraph 5 of this section, the service year is considered to be twelve months of compensation.

32. "State" means this state, including any department, office, board, commission, agency, institution or other instrumentality of this state.

33. "Vested" means that a member is eligible to receive a future retirement benefit.

38-714. Powers and duties of ASRS and board

A. ASRS shall have the powers and privileges of a corporation, shall have an official seal and shall transact all business in the name "Arizona state retirement system", and in that name may sue and be sued.

B. The board is responsible for supervising the administration of this article by the director of ASRS.

C. The board is responsible for the performance of fiduciary duties and other responsibilities required to preserve and protect the retirement trust fund established by section 38-712.

D. The board shall not advocate for or against legislation providing for benefit modifications, except that the board shall provide technical and administrative information regarding the impact of benefit modification legislation.

E. The board may:

1. Determine the rights, benefits or obligations of any person under this article and any member under articles 2.1 and 7 of this chapter and afford any person dissatisfied with a determination a hearing on the determination. The board may delegate the duty and authority to act on the board's behalf to a committee of the board for the purposes of this paragraph and title 41, chapter 6, article 10 relating to any decision made under this paragraph by that committee of the board.

2. Determine the amount, manner and time of payment of any benefits under this article.

3. Recommend amendments to this article and articles 2.1 and 7 of this chapter that are required for efficient and effective administration.

4. Adopt, amend or repeal rules for the administration of the plan, this article and articles 2.1 and 7 of this chapter.

F. Beginning June 30, 2016, the board shall determine which of the generally accepted actuarial cost methods shall be used in the annual actuarial valuation of the plan.

G. The board and ASRS are not subject to title 41, chapter 6, except title 41, chapter 6, article 10, for actuarial assumptions and calculations, investment strategy and decisions and accounting methodology.
H. The board shall submit to the governor and legislature for each fiscal year no later than eight months after the close of the fiscal year a report of its operations and the operations of ASRS. The report shall follow generally accepted accounting principles and generally accepted financial reporting standards and shall include:

1. A report on an actuarial valuation of ASRS assets and liabilities.

2. Any other statistical and financial data that may be necessary for the proper understanding of the financial condition of ASRS and the results of board operations.

3. On request of the governor or the legislature, a list of investments owned. This list shall be provided in an electronic format.

4. An estimate of the aggregate fees paid for private equity investments, including management fees and performance fees.

I. The board shall:

1. Prepare and publish a synopsis of the annual report for the information of ASRS members.

2. Contract for a study of the mortality, disability, service and other experiences of the members and employers participating in ASRS. The study shall be conducted for fiscal year 1990-1991 and for at least every fifth fiscal year thereafter. A report of the study shall be completed within eight months after the close of the applicable fiscal year and shall be submitted to the governor and the legislature.

3. Conduct an annual actuarial valuation of ASRS assets and liabilities.

J. The auditor general may make an annual audit of ASRS and transmit the results to the governor and the legislature.

38-783. Retired members; dependents; health insurance; premium payment; separate account; definitions

A. Subject to subsections G, H and I of this section, the board shall pay from ASRS assets part of the single coverage premium of any health and accident insurance for each retired member, contingent annuitant or member with a disability of ASRS if the member elects to participate in the coverage provided by ASRS or section 38-651.01 or elects to participate in a health and accident insurance program provided or administered by an employer or paid for, in whole or in part, by an employer to an insurer. A contingent annuitant must be receiving a monthly retirement benefit from ASRS in order to obtain any premium payment provided by this section. The board shall pay:

1. Up to $150 per month for a member of ASRS who is not eligible for medicare if the retired member or member with a disability has ten or more years of credited service.

2. Up to $100 per month for each member of ASRS who is eligible for medicare if the retired member or member with a disability has ten or more years of credited service.

B. Subject to subsections G, H and I of this section, the board shall pay from ASRS assets part of the family coverage premium of any health and accident insurance for a retired member, contingent
annuitant or member with a disability of ASRS who elects family coverage and who otherwise qualifies for payment pursuant to subsection A of this section. If a member of ASRS and the member's spouse are both either retired or have disabilities under ASRS and apply for family coverage, the member who elects family coverage is entitled to receive the payments under this section as if they were both applying under a single coverage premium unless the payment under this section for family coverage is greater. Payment under this subsection is in the following amounts:

1. Up to $260 per month if the member of ASRS and one or more dependents are not eligible for medicare.

2. Up to $170 per month if the member of ASRS and one or more dependents are eligible for medicare.

3. Up to $215 per month if either:

   (a) The member of ASRS is not eligible for medicare and one or more dependents are eligible for medicare.

   (b) The member of ASRS is eligible for medicare and one or more dependents are not eligible for medicare.

C. In addition each retired member, contingent annuitant or member with a disability of ASRS with less than ten years of credited service and a dependent of such a retired member, contingent annuitant or member with a disability who elects to participate in the coverage provided by ASRS or section 38-651.01 or who elects to participate in a health and accident insurance program provided or administered by an employer or paid for, in whole or in part, by an employer to an insurer is entitled to receive a proportion of the full benefit prescribed by subsection A or B of this section according to the following schedule:

1. 9.0 to 9.9 years of credited service, ninety percent.

2. 8.0 to 8.9 years of credited service, eighty percent.

3. 7.0 to 7.9 years of credited service, seventy percent.

4. 6.0 to 6.9 years of credited service, sixty percent.

5. 5.0 to 5.9 years of credited service, fifty percent.

6. Those with less than five years of credited service do not qualify for the benefit.

D. The board shall not pay more than the amount prescribed in this section for a member of ASRS.

E. Notwithstanding subsections A, B and C of this section, for a member who retires on or after August 2, 2012, the board shall not make a payment under this section to a retired member, contingent annuitant or member with a disability who is enrolled in an employer's active employee group health and accident insurance program either as the insured or as a dependent, except that if the retired member, contingent annuitant or member with a disability is enrolled as a dependent and the premium paid to the employer's active employee group health and accident insurance program is
not subsidized by the employer, the retired member, contingent annuitant or member with a disability is entitled to receive the amount provided in subsection A of this section.

F. The board shall establish a separate account that consists of the benefits provided by this section. The board shall not use or divert any part of the corpus or income of the account for any purpose other than the provision of and the cost of administering the benefits under this section or the self-insurance program pursuant to section 38-782 unless the liabilities of ASRS to provide the benefits are satisfied. If the liabilities of ASRS to provide the benefits described in this section and section 38-782 are satisfied, the board shall return any amount remaining in the account to the employer.

G. Payment of the benefits provided by this section is subject to the following conditions:

1. The payment of the benefits is subordinate to the payment of retirement benefits payable by ASRS.

2. The total of contributions for the benefits and actual contributions for life insurance protection, if any, shall not exceed twenty-five percent of the total actual employer and employee contributions to ASRS, less contributions to fund past service credits, after the day the account is established.

3. The board shall deposit the benefits provided by this section in the account.

4. The contributions by the employer to the account shall be reasonable and ascertainable.

H. A member who elects to receive a retirement benefit pursuant to section 38-760, subsection B, paragraph 1 may elect at the time of retirement an optional form of health and accident insurance premium benefit payment pursuant to this subsection as follows:

1. The optional premium benefit payment shall be an amount prescribed by subsection A, B or C of this section that is actuarially reduced to the retiring member for life. The amount of the optional premium benefit payment shall be the actuarial equivalent of the premium benefit payment to which the retired member would otherwise be entitled. The election in a manner prescribed by the board shall name the contingent annuitant and may be revoked at any time before the retiring member's effective date of retirement. At any time after benefits have commenced, the member may name a different contingent annuitant or rescind the election by written notice to the board as follows:

   (a) If the retired member names a different contingent annuitant, the optional premium benefit payment shall be adjusted to the actuarial equivalent of the original premium benefit payment based on the age of the new contingent annuitant. The adjustment shall include all postretirement increases or decreases in amounts prescribed by subsection A, B or C of this section that are authorized by law after the retired member's date of retirement. Payment of this adjusted premium benefit payment shall continue under the provisions of the optional premium benefit payment previously elected by the retired member. A retired member cannot name a different contingent annuitant if the retired member has at any time rescinded the optional form of health and accident insurance premium benefit payment.

   (b) If the retired member rescinds the election, the retired member shall thereafter receive the premium benefit payment that the retired member would otherwise be entitled to receive if the retired member had not elected the optional premium benefit payment, including all postretirement increases or decreases in amounts prescribed by subsection A, B or C of this section that are authorized by law after the member's date of retirement. The increased benefit payment shall
continue during the remainder of the retired member's lifetime. The decision to rescind shall be irrevocable.

2. If, at the time of the retired member's death:

(a) The retired member was receiving a reduced premium benefit payment based on an amount prescribed in subsection B or C of this section and the contingent annuitant is eligible for family health and accident insurance coverage, the contingent annuitant is entitled to receive a premium benefit payment based on an amount prescribed in subsection B or C of this section times the reduction factor applied to the retired member's premium benefit payment times the joint and survivor option reduction factor elected by the retired member at the time of retirement pursuant to section 38-760, subsection B, paragraph 1.

(b) The retired member was receiving a reduced premium benefit payment based on an amount prescribed in subsection A or C of this section and the contingent annuitant is eligible for single health and accident insurance coverage, the contingent annuitant is entitled to receive a premium benefit payment based on an amount prescribed in subsection A or C of this section times the reduction factor applied to the retired member's premium benefit payment times the joint and survivor option reduction factor elected by the retired member at the time of retirement pursuant to section 38-760, subsection B, paragraph 1.

(c) The retired member was receiving a reduced premium benefit payment based on an amount prescribed in subsection B or C of this section and the contingent annuitant is not eligible for family health and accident insurance coverage, the contingent annuitant is entitled to receive a premium benefit payment based on an amount prescribed in subsection A or C of this section times the reduction factor applied to the retired member's premium benefit payment times the joint and survivor option reduction factor elected by the retired member at the time of retirement pursuant to section 38-760, subsection B, paragraph 1.

I. A member who elects to receive a retirement benefit pursuant to section 38-760, subsection B, paragraph 2 may elect at the time of retirement an optional form of health and accident insurance premium benefit payment pursuant to this subsection as follows:

1. The optional premium benefit payment shall be an amount prescribed by subsection A, B or C of this section that is actuarially reduced with payments for five, ten or fifteen years that are not dependent on the continued lifetime of the retired member but whose payments continue for the retired member's lifetime beyond the five, ten or fifteen year period. The election in a manner prescribed by the board shall name the contingent annuitant and may be revoked at any time before the retiring member's effective date of retirement. At any time after benefits have commenced, the member may name a different contingent annuitant or rescind the election by written notice to the board. If the retired member rescinds the election, the retired member shall thereafter receive the premium benefit payment that the retired member would otherwise be entitled to receive if the retired member had not elected the optional premium benefit payment, including all postretirement increases or decreases in amounts prescribed by subsection A, B or C of this section that are authorized by law after the member's date of retirement. The increased benefit payment shall continue during the remainder of the retired member's lifetime. The decision to rescind shall be irrevocable.

2. If, at the time of the retired member's death:
(a) The retired member was receiving a reduced premium benefit payment based on an amount prescribed in subsection B or C of this section and the contingent annuitant is eligible for family health and accident insurance coverage, the contingent annuitant is entitled to receive a premium benefit payment based on an amount prescribed in subsection B or C of this section times the period certain and life option reduction factor elected by the retired member at the time of retirement pursuant to section 38-760, subsection B, paragraph 2.

(b) The retired member was receiving a reduced premium benefit payment based on an amount prescribed in subsection A or C of this section and the contingent annuitant is eligible for single health and accident insurance coverage, the contingent annuitant is entitled to receive a premium benefit payment based on an amount prescribed in subsection A or C of this section times the period certain and life option reduction factor elected by the retired member at the time of retirement pursuant to section 38-760, subsection B, paragraph 2.

(c) The retired member was receiving a reduced premium benefit payment based on an amount prescribed in subsection B or C of this section and the contingent annuitant is not eligible for family health and accident insurance coverage, the contingent annuitant is entitled to receive a premium benefit payment based on an amount prescribed in subsection A or C of this section times the period certain and life option reduction factor elected by the retired member at the time of retirement pursuant to section 38-760, subsection B, paragraph 2.

J. If, at the time of retirement, a retiring member does not elect to receive a reduced premium benefit payment pursuant to subsection H or I of this section, the retired member's contingent annuitant is not eligible at any time for the optional premium benefit payment.

K. If a member who is eligible for benefits pursuant to this section forfeits the member's interest in the account before the termination of ASRS, an amount equal to the amount of the forfeiture shall be applied as soon as possible to reduce employer contributions to fund the benefits provided by this section.

L. A contingent annuitant is not eligible for any premium benefit payment if the contingent annuitant was not enrolled in an eligible health and accident insurance plan at the time of the retired member's death or if the contingent annuitant is not the dependent beneficiary or insured surviving dependent as provided in section 38-782.

M. For the purposes of this section:

1. "Account" means the separate account established pursuant to subsection F of this section.

2. "Credited service" includes prior service.

3. "Prior service" means service for this state or a political subdivision of this state before membership in the defined contribution program administered by ASRS.

4. "Subsidized" means a portion of the total premium is paid by the employer, but does not necessarily mean a plan in which the employer uses blended rates to determine the total premium.

38-711. Definitions

In this article, unless the context otherwise requires:
1. "Active member" means a member as defined in paragraph 23, subdivision (b) of this section who satisfies the eligibility criteria prescribed in section 38-727 and who is currently making member contributions as prescribed in section 38-736.

2. "Actuarial equivalent" means equality in value of the aggregate amounts expected to be received under two different forms of payment, based on mortality and interest rate assumptions approved from time to time by the board.

3. "ASRS" means the Arizona state retirement system established by this article.

4. "Assets" means the resources of ASRS including all cash, investments or securities.

5. "Average monthly compensation" means:

(a) For a member whose membership in ASRS commenced before January 1, 1984 and who left the member's contributions on deposit or reinstated forfeited credited service pursuant to section 38-742 for a period of employment that commenced before January 1, 1984, the higher of either:

(i) The monthly average of compensation that is calculated pursuant to subdivision (b) of this paragraph.

(ii) The monthly average of compensation on which contributions were remitted during a period of sixty consecutive months during which the member receives the highest compensation within the last one hundred twenty months of credited service. Any month for which no contributions are reported to ASRS or that falls within a period of nonpaid or partially paid leave of absence or sabbatical leave shall be excluded from the computation. The sixty consecutive months may entirely precede, may be both before and after or may be completely after any excluded months. If the member was employed for less than sixty consecutive months, the average monthly compensation is based on the total consecutive months worked. Payments for accumulated vacation or annual leave, sick leave, compensatory time or other forms of termination pay that, before August 12, 2005, constitute compensation for members whose membership in ASRS commenced before January 1, 1984, do not cease to be included as compensation if paid in the form of nonelective employer contributions under a 26 United States Code section 403(b) plan if all payments of employer and employee contributions are made at the time of termination. Contributions shall be made to ASRS on these amounts pursuant to sections 38-735, 38-736 and 38-737.

(b) For a member whose membership in ASRS commenced on or after January 1, 1984 but before July 1, 2011, the monthly average of compensation on which contributions were remitted during a period of thirty-six consecutive months during which a member receives the highest compensation within the last one hundred twenty months of credited service. Any month for which no contributions are reported to ASRS or that falls within a period of nonpaid or partially paid leave of absence or sabbatical leave shall be excluded from the computation. The thirty-six consecutive months may entirely precede, may be both before and after or may be completely after any excluded months. If the member was employed for less than thirty-six consecutive months, the average monthly compensation shall be based on the total consecutive months worked.

(c) For a member whose membership in ASRS commenced on or after July 1, 2011, the monthly average of compensation on which contributions were remitted during a period of sixty consecutive months during which a member receives the highest compensation within the last one hundred twenty months of credited service. Any month for which no contributions are reported to ASRS or that falls within a period of nonpaid or partially paid leave of absence or sabbatical leave shall be
excluded from the computation. The sixty consecutive months may entirely precede, may be both before and after or may be completely after any excluded months. If the member was employed for less than sixty consecutive months, the average monthly compensation shall be based on the total consecutive months worked.

6. "Board" means the ASRS board established in section 38-713.

7. "Compensation" means:

(a) For members whose membership began on or before December 31, 2019, the gross amount paid to a member by an employer as salary or wages, including amounts that are subject to deferred compensation or tax shelter agreements, for services rendered to or for an employer, or that would have been paid to the member except for the member's election or a legal requirement that all or part of the gross amount be used for other purposes, but does not include amounts paid in excess of compensation limits established in section 38-746. Compensation includes amounts paid as salary or wages to a member by a second employer if the member meets the requirements prescribed in paragraph 23, subdivision (b) of this section with that second employer. Compensation, as provided in paragraph 5, subdivision (b) or (c) of this section, does not include:

(i) Lump sum payments, on termination of employment, for accumulated vacation or annual leave, sick leave, compensatory time or any other form of termination pay whether the payments are made in one payment or by installments over a period of time.

(ii) Damages, costs, attorney fees, interest or other penalties paid pursuant to a court order or a compromise settlement or agreement to satisfy a grievance or claim even though the amount of the payment is based in whole or in part on previous salary or wage levels, except that, if the court order or compromise settlement or agreement directs salary or wages to be paid for a specific period of time, the payment is compensation for that specific period of time. If the amount directed to be paid is less than the actual salary or wages that would have been paid for the period if service had been performed, the contributions for the period shall be based on the amount of compensation that would have been paid if the service had been performed.

(iii) Payment, at the member's option, in lieu of fringe benefits that are normally paid for or provided by the employer.

(iv) Merit awards pursuant to section 38-613 and performance bonuses paid to assistant attorneys general pursuant to section 41-192.

(v) Amounts that are paid as salary or wages to a member for which employer contributions have not been paid.

(b) For a member whose membership began on or after January 1, 2020, only gross wages paid to a member by the employer for services rendered to the employer during the period considered as credited service, including amounts reported as wages and tips and other compensation on the member's federal form W-2 wage and tax statement, including pretax deductions, except for the following:

(i) Payments made for accrued leave that is not being used to replace regular work hours, whether paid in a lump sum or in installments.
(ii) Payments made on termination from employment, whether paid in a lump sum or in installments or as a bonus or an incentive for termination or retirement.

(iii) Employer-paid contributions that are made to, and any distributions from, plans, programs or arrangements qualified under section 117, 125, 129, 401, 403, 408 or 457 of the internal revenue code.

(iv) Payments for allowances.

(v) Reimbursements for employee business expenses or employee personal expenses.

(vi) Employer-paid contributions for coverage under, or distributions from, an accident, health or life insurance plan, program or arrangement.

(vii) Payments made in lieu of any employer-paid insurance coverage.

(viii) Workers' compensation, unemployment compensation payments and disability payments.

(ix) Merit awards pursuant to section 38-613.

(x) Payments paid pursuant to a court order or settlement agreement to satisfy a claim even though the amount of the payment is based on previous salary or wage levels, except if the court order or settlement agreement directs salary or wages to be paid for a specific period of time, the payment is compensation for that specific period of time.

(xi) Payments made in the form of goods or services in lieu of gross wages.

(xii) Any other payment that is not reported as wages and tips and other compensation on the member's federal W-2 wage and tax statement for actual services rendered.

(xiii) Payments in excess of the section 415 of the internal revenue code limits established in section 38-746.

(xiv) Payments for any other employment benefit.

(xv) Payments for which employer or employee contributions have not been paid.

8. "Contingent annuitant" means the person named by a member to receive retirement income payable following a member's death after retirement as provided in section 38-760.

9. "Credited service" means, subject to section 38-739, the number of years standing to the member's credit on the books of ASRS during which the member made the required contributions.

10. "Current annual compensation" means the greater of:

(a) Annualized compensation of the typical pay period amount immediately before the date of a request to ASRS to purchase credited service pursuant to section 38-743, 38-744 or 38-745. The typical pay period amount shall be determined by taking the five pay periods immediately before the
date of a request, disregarding the highest and lowest compensation amount pay periods and averaging the three remaining pay periods.

(b) Annualized compensation of the partial year, disregarding the first compensation amount pay period, if the member has less than twelve months total compensation on the date of a request to purchase credited service pursuant to section 38-743, 38-744 or 38-745.

(c) The sum of the twelve months of compensation immediately before the date of a request to ASRS to purchase credited service pursuant to section 38-743, 38-744 or 38-745.

(d) The sum of the thirty-six months of compensation immediately before the date of a request to ASRS to purchase credited service pursuant to section 38-743, 38-744 or 38-745 divided by three.

(e) If the member has retired one or more times from ASRS, the average monthly compensation that was used for calculating the member's last pension benefit times twelve.

11. "Early retirement" means retirement before a member's normal retirement date after five years of total credited service and attainment of age fifty.

12. "Effective date" means July 1, 1970, except with respect to employers and members whose contributions to ASRS commence thereafter, the effective date of their membership in ASRS is as specified in the applicable joinder agreement.

13. "Employer" means:

(a) This state.

(b) Participating political subdivisions.

(c) Participating political subdivision entities.

14. "Employer contributions" means all amounts paid into ASRS by an employer on behalf of a member.

15. "Fiscal year" means the period from July 1 of any year to June 30 of the following year.

16. "Inactive member" means a member who previously made contributions to ASRS and who satisfies each of the following:

(a) Has not retired.

(b) Is not eligible for active membership in ASRS.

(c) Is not currently making contributions to ASRS.

(d) Has not withdrawn contributions from ASRS.

17. "Interest" means the assumed actuarial investment earnings rate approved by the board.
18. "Internal revenue code" means the United States internal revenue code of 1986, as amended.

19. "Investment manager" means the persons, companies, banks, insurance company investment funds, mutual fund companies, management or any combinations of those entities that are appointed by ASRS and that have responsibility and authority for investment of the monies of ASRS.

20. "Late retirement" means retirement after normal retirement.

21. "Leave of absence" means any unpaid leave authorized by the employer, including leaves authorized for sickness or disability or to pursue education or training.

22. "Life annuity" means equal monthly installments payable during the member's lifetime after retirement.

23. "Member":
   (a) Means any employee of an employer on the effective date.
   (b) Means all employees of an employer who are eligible for membership pursuant to section 38-727 and who are engaged to work at least twenty weeks in each fiscal year and at least twenty hours each week.
   (c) Means any person receiving a benefit under ASRS.
   (d) Means any person who is a former active member of ASRS and who has not withdrawn contributions from ASRS pursuant to section 38-740.
   (e) Does not include any employee of an employer who is otherwise eligible pursuant to this article and who begins service in a limited appointment for not more than eighteen months on or after July 1, 1979. If the employment exceeds eighteen months, the employee shall be covered by ASRS as of the beginning of the nineteenth month of employment. In order to be excluded under this subdivision, classifications of employees designated by employers as limited appointments must be approved by the director.
   (f) Does not include any leased employee. For the purposes of section 414(n) of the internal revenue code, "leased employee" means an individual who:
      (i) Is not otherwise an employee of an employer.
      (ii) Pursuant to a leasing agreement between the employer and another person, performs services for the employer on a substantially full-time basis for at least one year.
      (iii) Performs services under the primary direction or control of the employer.

24. "Member contributions" means all amounts paid to ASRS by a member.

25. "Normal costs" means the sum of the individual normal costs for all active members for each fiscal year. The normal cost for an individual active member is the cost that is assigned to the fiscal
year, through June 29, 2016, using the projected unit credit method and, beginning June 30, 2016, using the actuarial cost method determined by the board pursuant to section 38-714.

26. "Normal retirement age" means the age at which a member reaches the member's normal retirement date.

27. "Normal retirement date" means the earliest of the following:

(a) For a member whose membership commenced before July 1, 2011:

(i) A member's sixty-fifth birthday.

(ii) A member's sixty-second birthday and completion of at least ten years of credited service.

(iii) The first day that the sum of a member's age and years of total credited service equals eighty.

(b) For a member whose membership commenced on or after July 1, 2011:

(i) A member's sixty-fifth birthday.

(ii) A member's sixty-second birthday and completion of at least ten years of credited service.

(iii) A member's sixtieth birthday and completion of at least twenty-five years of credited service.

(iv) A member's fifty-fifth birthday and completion of at least thirty years of credited service.

28. "Political subdivision" means any political subdivision of this state and includes a political subdivision entity.

29. "Political subdivision entity" means an entity:

(a) That is located in this state.

(b) That is created in whole or in part by political subdivisions, including instrumentalities of political subdivisions.

(c) Where a majority of the membership of the entity is composed of political subdivisions.

(d) Whose primary purpose is the performance of a government-related service.

30. "Retired member" means a member who is receiving retirement benefits pursuant to this article.

31. "Service year" means fiscal year, except that:

(a) If the normal work year required of a member is less than the full fiscal year but is for a period of at least nine months, the service year is the normal work year.
(b) For a salaried member employed on a contract basis under one contract, or two or more consecutive contracts, for a total period of at least nine months, the service year is the total period of the contract or consecutive contracts.

(c) In determining average monthly compensation pursuant to paragraph 5 of this section, the service year is considered to be twelve months of compensation.

32. "State" means this state, including any department, office, board, commission, agency, institution or other instrumentality of this state.

33. "Vested" means that a member is eligible to receive a future retirement benefit.

41-1092.01. Office of administrative hearings; director; powers and duties; fund

A. An office of administrative hearings is established.

B. The governor shall appoint the director pursuant to section 38-211. At a minimum, the director shall have the experience necessary for appointment as an administrative law judge. The director also shall possess supervisory, management and administrative skills, as well as knowledge and experience relating to administrative law.

C. The director shall:

1. Serve as the chief administrative law judge of the office.

2. Make and execute the contracts and other instruments that are necessary to perform the director's duties.

3. Subject to chapter 4, article 4 of this title, hire employees, including full-time administrative law judges, and contract for special services, including temporary administrative law judges, that are necessary to carry out this article. An administrative law judge employed or contracted by the office shall have graduated from an accredited college of law or shall have at least two years of administrative or managerial experience in the subject matter or agency section the administrative law judge is assigned to in the office.

4. Make rules that are necessary to carry out this article, including rules governing ex parte communications in contested cases.

5. Submit a report to the governor, speaker of the house of representatives and president of the senate by November 1 of each year describing the activities and accomplishments of the office. The director's annual report shall include a summary of the extent and effect of agencies' utilization of administrative law judges, court reporters and other personnel in proceedings under this article and recommendations for changes or improvements in the administrative procedure act or any agency's practice or policy with respect to the administrative procedure act. The director shall provide a copy of the report to the secretary of state.

6. Secure, compile and maintain all decisions, opinions or reports of administrative law judges issued pursuant to this article and the reference materials and supporting information that may be appropriate.
7. Develop, implement and maintain a program for the continuing training and education of administrative law judges and agencies in regard to their responsibilities under this article. The program shall require that an administrative law judge receive training in the technical and subject matter areas of the sections to which the administrative law judge is assigned.

8. Develop, implement and maintain a program of evaluation to aid the director in the evaluation of administrative law judges appointed pursuant to this article that includes comments received from the public.

9. Annually report the following to the governor, the president of the senate and the speaker of the house of representatives and provide a copy of this report to the secretary of state by December 1 for the prior fiscal year:

(a) The number of administrative law judge decisions rejected or modified by agency heads.

(b) By category, the number and disposition of motions filed pursuant to section 41-1092.07, subsection A to disqualify office administrative law judges for bias, prejudice, personal interest or lack of expertise.

(c) By agency, the number and type of violations of section 41-1009.

10. Schedule hearings pursuant to section 41-1092.05 on the request of an agency or the filing of a notice of appeal pursuant to section 41-1092.03.

D. The director shall not require legal representation to appear before an administrative law judge.

E. Except as provided in subsection F of this section, all state agencies supported by state general fund sources, unless exempted by this article, and the registrar of contractors shall use the services and personnel of the office to conduct administrative hearings. All other agencies shall contract for services and personnel of the office to conduct administrative hearings.

F. An agency head, board or commission that directly conducts an administrative hearing as an administrative law judge is not required to use the services and personnel of the office for that hearing.

G. Each state agency, and each political subdivision contracting for office services pursuant to subsection I of this section, shall make its facilities available, as necessary, for use by the office in conducting proceedings pursuant to this article.

H. The office shall employ full-time administrative law judges to conduct hearings required by this article or other laws as follows:

1. The director shall assign administrative law judges from the office to an agency, on either a temporary or a permanent basis, at supervisory or other levels, to preside over contested cases and appealable agency actions in accordance with the special expertise of the administrative law judge in the subject matter of the agency.

2. The director shall establish the subject matter and agency sections within the office that are necessary to carry out this article. Each subject matter and agency section shall provide training in
the technical and subject matter areas of the section as prescribed in subsection C, paragraph 7 of this section.

I. If the office cannot furnish an office administrative law judge promptly in response to an agency request, the director may contract with qualified individuals to serve as temporary administrative law judges. These temporary administrative law judges are not employees of this state.

J. The office may provide administrative law judges on a contract basis to any governmental entity to conduct any hearing not covered by this article. The director may enter into contracts with political subdivisions of this state, and these political subdivisions may contract with the director for the purpose of providing administrative law judges and reporters for administrative proceedings or informal dispute resolution. The contract may define the scope of the administrative law judge’s duties. Those duties may include the preparation of findings, conclusions, decisions or recommended decisions or a recommendation for action by the political subdivision. For these services, the director shall request payment for services directly from the political subdivision for which the services are performed, and the director may accept payment on either an advance or reimbursable basis.

K. The office shall apply monies received pursuant to subsections E and J of this section to offset its actual costs for providing personnel and services.

L. The office shall receive complaints against a county, a local government as defined in section 9-1401 or a video service provider as defined in section 9-1401 or 11-1901 and shall comply with the duties imposed on the office pursuant to title 9, chapter 13 for complaints involving local governments and title 11, chapter 14 for complaints involving counties.

41-1092.02. Appealable agency actions; application of procedural rules; exemption from article

A. This article applies to all contested cases as defined in section 41-1001 and all appealable agency actions, except contested cases with or appealable agency actions of:

1. The state department of corrections.

2. The board of executive clemency.

3. The industrial commission of Arizona.

4. The Arizona corporation commission.

5. The Arizona board of regents and institutions under its jurisdiction.

6. The state personnel board.

7. The department of juvenile corrections.

8. The department of transportation, except as provided in title 28, chapter 30, article 2.

9. The department of economic security except as provided in section 46-458.
10. The department of revenue regarding:

(a) Income tax or withholding tax.

(b) Any tax issue related to information associated with the reporting of income tax or withholding tax unless the taxpayer requests in writing that this article apply and waives confidentiality under title 42, chapter 2, article 1.

11. The board of tax appeals.

12. The state board of equalization.

13. The state board of education, but only in connection with contested cases and appealable agency actions related to either:

(a) Applications for issuance or renewal of a certificate and discipline of certificate holders and noncertificated persons pursuant to sections 15-203, 15-505, 15-534, 15-534.01, 15-535, 15-545 and 15-550.

(b) The Arizona empowerment scholarship account program pursuant to title 15, chapter 19.

14. The board of fingerprinting.

15. The department of child safety except as provided in sections 8-506.01 and 8-811.

B. Unless waived by all parties, an administrative law judge shall conduct all hearings under this article, and the procedural rules set forth in this article and rules made by the director apply.

C. Except as provided in subsection A of this section:

1. A contested case heard by the office of administrative hearings regarding taxes administered under title 42 shall be subject to section 42-1251.

2. A final decision of the office of administrative hearings regarding taxes administered under title 42 may be appealed by either party to the director of the department of revenue, or a taxpayer may file and appeal directly to the board of tax appeals pursuant to section 42-1253.

D. Except as provided in subsections A, B, E, F and G of this section and notwithstanding any other administrative proceeding or judicial review process established in statute or administrative rule, this article applies to all appealable agency actions and to all contested cases.

E. Except for a contested case or an appealable agency action regarding unclaimed property, sections 41-1092.03, 41-1092.08 and 41-1092.09 do not apply to the department of revenue.

F. The board of appeals established by section 37-213 is exempt from:

1. The time frames for hearings and decisions provided in section 41-1092.05, subsection A, section 41-1092.08 and section 41-1092.09.
2. The requirement in section 41-1092.06, subsection A to hold an informal settlement conference at
the appellant's request if the sole subject of an appeal pursuant to section 37-215 is the estimate of
value reported in an appraisal of lands or improvements.

G. Auction protest procedures pursuant to title 37, chapter 2, article 4.1 are exempt from this article.

41-1092.03. Notice of appealable agency action or contested case; hearing; informal settlement
conference; applicability

A. Except as provided in subsection D of this section, an agency shall serve notice of an appealable
agency action or contested case pursuant to section 41-1092.04. The notice shall:

1. Identify the statute or rule that is alleged to have been violated or on which the action is based.

2. Identify with reasonable particularity the nature of any alleged violation, including, if applicable, the
conduct or activity constituting the violation.

3. Include a description of the party's right to request a hearing on the appealable agency action or
contested case.

4. Include a description of the party's right to request an informal settlement conference pursuant to
section 41-1092.06.

B. A party may obtain a hearing on an appealable agency action or contested case by filing a notice
of appeal or request for a hearing with the agency within thirty days after receiving the notice
prescribed in subsection A of this section. The notice of appeal or request for a hearing may be filed
by a party whose legal rights, duties or privileges were determined by the appealable agency action
or contested case. A notice of appeal or request for a hearing also may be filed by a party who will
be adversely affected by the appealable agency action or contested case and who exercised any
right provided by law to comment on the action being appealed or contested, provided that the
grounds for the notice of appeal or request for a hearing are limited to issues raised in that party's
comments. The notice of appeal or request for a hearing shall identify the party, the party's address,
the agency and the action being appealed or contested and shall contain a concise statement of the
reasons for the appeal or request for a hearing. The agency shall notify the office of the appeal or
request for a hearing and the office shall schedule an appeal or contested case hearing pursuant to
section 41-1092.05, except as provided in section 41-1092.01, subsection F.

C. If good cause is shown an agency head may accept an appeal or request for a hearing that is not
filed in a timely manner.

D. This section does not apply to a contested case if the agency:

1. Initiates the contested case hearing pursuant to law other than this chapter and not in response to
a request by another party.

2. Is not required by law, other than this chapter, to provide an opportunity for an administrative
hearing before taking action that determines the legal rights, duties or privileges of an applicant for a
license.

41-1092.04. Service of documents
Unless otherwise provided in this article, every notice or decision under this article shall be served by personal delivery or certified mail, return receipt requested, or by any other method reasonably calculated to effect actual notice on the agency and every other party to the action to the party's last address of record with the agency. Each party shall inform the agency and the office of any change of address within five days of the change.

41-1092.05. Scheduling of hearings; prehearing conferences

A. Except as provided in subsections B and C, hearings for:

1. Appealable agency actions shall be held within sixty days after the notice of appeal is filed.

2. Contested cases shall be held within sixty days after the agency's request for a hearing.

B. Hearings for appealable agency actions of or contested cases with self-supporting regulatory boards that meet quarterly or less frequently shall be held at the next meeting of the board after the board receives the written decision of an administrative law judge or the issuance of the notice of hearing, except that:

1. If the decision of the administrative law judge is received or the notice of hearing is issued within thirty days before the board meets, the hearing shall be held at the following meeting of the board.

2. If good cause is shown, the hearing may be held at a later meeting of the board.

C. The date scheduled for the hearing may be advanced or delayed on the agreement of the parties or on a showing of good cause.

D. The agency shall prepare and serve a notice of hearing on all parties to the appeal or contested case at least thirty days before the hearing. The notice shall include:

1. A statement of the time, place and nature of the hearing.

2. A statement of the legal authority and jurisdiction under which the hearing is to be held.

3. A reference to the particular sections of the statutes and rules involved.

4. A short and plain statement of the matters asserted. If the agency or other party is unable to state the matters in detail at the time the notice is served, the initial notice may be limited to a statement of the issues involved. After the initial notice and on application, a more definite and detailed statement shall be furnished.

E. Notwithstanding subsection D, a hearing shall be expedited as provided by law or upon a showing of extraordinary circumstances or the possibility of irreparable harm if the parties to the appeal or contested case have actual notice of the hearing date. Any party to the appeal or contested case may file a motion with the director asserting the party's right to an expedited hearing. The right to an expedited hearing shall be listed on any abatement order. The Arizona health care cost containment system administration may file a motion with every member grievance and eligibility appeal that cites federal law and that requests that a hearing be set within thirty days after the motion is filed.

F. Prehearing conferences may be held to:
1. Clarify or limit procedural, legal or factual issues.

2. Consider amendments to any pleadings.

3. Identify and exchange lists of witnesses and exhibits intended to be introduced at the hearing.

4. Obtain stipulations or rulings regarding testimony, exhibits, facts or law.

5. Schedule deadlines, hearing dates and locations if not previously set.

6. Allow the parties opportunity to discuss settlement.

41-1092.06. Appeals of agency actions and contested cases; informal settlement conferences; applicability

A. If requested by the appellant of an appealable agency action or the respondent in a contested case, the agency shall hold an informal settlement conference within fifteen days after receiving the request. A request for an informal settlement conference shall be in writing and shall be filed with the agency no later than twenty days before the hearing. If an informal settlement conference is requested, the agency shall notify the office of the request and the outcome of the conference, except as provided in section 41-1092.01, subsection F. The request for an informal settlement conference does not toll the sixty day period in which the administrative hearing is to be held pursuant to section 41-1092.05.

B. If an informal settlement conference is held, a person with the authority to act on behalf of the agency must represent the agency at the conference. The agency representative shall notify the appellant in writing that statements, either written or oral, made by the appellant at the conference, including a written document, created or expressed solely for the purpose of settlement negotiations are inadmissible in any subsequent administrative hearing. The parties participating in the settlement conference shall waive their right to object to the participation of the agency representative in the final administrative decision.

41-1092.07. Hearings

A. A party to a contested case or appealable agency action may file a nonperemptory motion with the director to disqualify an office administrative law judge from conducting a hearing for bias, prejudice, personal interest or lack of technical expertise necessary for a hearing.

B. The parties to a contested case or appealable agency action have the right to be represented by counsel or to proceed without counsel, to submit evidence and to cross-examine witnesses.

C. The administrative law judge may issue subpoenas to compel the attendance of witnesses and the production of documents. The subpoenas shall be served and, on application to the superior court, enforced in the manner provided by law for the service and enforcement of subpoenas in civil matters. The administrative law judge may administer oaths and affirmations to witnesses.

D. All parties shall have the opportunity to respond and present evidence and argument on all relevant issues. All relevant evidence is admissible, but the administrative law judge may exclude evidence if its probative value is outweighed by the danger of unfair prejudice, by confusion of the issues or by considerations of undue delay, waste of time or needless presentation of cumulative
evidence. The administrative law judge shall exercise reasonable control over the manner and order of cross-examining witnesses and presenting evidence to make the cross-examination and presentation effective for ascertaining the truth, avoiding needless consumption of time and protecting witnesses from harassment or undue embarrassment.

E. All hearings shall be recorded. The administrative law judge shall secure either a court reporter or an electronic means of producing a clear and accurate record of the proceeding at the agency's expense. Any party that requests a transcript of the proceeding shall pay the costs of the transcript to the court reporter or other transcriber.

F. Unless otherwise provided by law, the following apply:

1. A hearing may be conducted in an informal manner and without adherence to the rules of evidence required in judicial proceedings. Neither the manner of conducting the hearing nor the failure to adhere to the rules of evidence required in judicial proceedings is grounds for reversing any administrative decision or order if the evidence supporting the decision or order is substantial, reliable and probative.

2. Copies of documentary evidence may be received in the discretion of the administrative law judge. On request, parties shall be given an opportunity to compare the copy with the original.

3. Notice may be taken of judicially cognizable facts. In addition, notice may be taken of generally recognized technical or scientific facts within the agency's specialized knowledge. Parties shall be notified either before or during the hearing or by reference in preliminary reports or otherwise of the material noticed including any staff memoranda or data and they shall be afforded an opportunity to contest the material so noticed. The agency's experience, technical competence and specialized knowledge may be used in the evaluation of the evidence.

4. On application of a party or the agency and for use as evidence, the administrative law judge may permit a deposition to be taken, in the manner and on the terms designated by the administrative law judge, of a witness who cannot be subpoenaed or who is unable to attend the hearing. Subpoenas for the production of documents may be ordered by the administrative law judge if the party seeking the discovery demonstrate that the party has reasonable need of the materials being sought. All provisions of law compelling a person under subpoena to testify are applicable. Fees for attendance as a witness shall be the same as for a witness in court, unless otherwise provided by law or agency rule. Notwithstanding section 12-2212, subpoenas, depositions or other discovery shall not be permitted except as provided by this paragraph or subsection C of this section.

5. Informal disposition may be made by stipulation, agreed settlement, consent order or default.

6. Findings of fact shall be based exclusively on the evidence and on matters officially noticed.

7. A final administrative decision shall include findings of fact and conclusions of law, separately stated. Findings of fact, if set forth in statutory language, shall be accompanied by a concise and explicit statement of the underlying facts supporting the findings. Conclusions of law shall specifically address the agency's authority to make the decision consistent with section 41-1030.

G. Except as otherwise provided by law:

1. At a hearing on an agency's denial of a license or permit or a denial of an application or request for modification of a license or permit, the applicant has the burden of persuasion.
2. At a hearing on an agency action to suspend, revoke, terminate or modify on its own initiative material conditions of a license or permit, the agency has the burden of persuasion.

3. At a hearing on an agency's imposition of fees or penalties or any agency compliance order, the agency has the burden of persuasion.

4. At a hearing held pursuant to chapter 23 or 24 of this title, the appellant or claimant has the burden of persuasion.

H. Subsection G of this section does not affect the law governing burden of persuasion in an agency denial of, or refusal to issue, a license renewal.

41-1092.08. Final administrative decisions; review; exception

A. The administrative law judge of the office shall issue a written decision within twenty days after the hearing is concluded. The written decision shall contain a concise explanation of the reasons supporting the decision, including the findings of fact and conclusions of law. The administrative law judge shall serve a copy of the decision on the agency. On request of the agency, the office shall also transmit to the agency the record of the hearing as described in section 12-904, except as provided in section 41-1092.01, subsection F.

B. Within thirty days after the date the office sends a copy of the administrative law judge's decision to the head of the agency, executive director, board or commission, the head of the agency, executive director, board or commission may review the decision and accept, reject or modify it. If the head of the agency, executive director, board or commission declines to review the administrative law judge's decision, the agency shall serve a copy of the decision on all parties. If the head of the agency, executive director, board or commission rejects or modifies the decision, the agency head, executive director, board or commission must file with the office, except as provided in section 41-1092.01, subsection F, and serve on all parties a copy of the administrative law judge's decision with the rejection or modification and a written justification setting forth the reasons for the rejection or modification of each finding of fact or conclusion of law. If there is a rejection or modification of a conclusion of law, the written justification shall be sent to the president of the senate and the speaker of the house of representatives.

C. A board or commission whose members are appointed by the governor may review the decision of the agency head, as provided by law, and make the final administrative decision.

D. Except as otherwise provided in this subsection, if the head of the agency, the executive director or a board or commission does not accept, reject or modify the administrative law judge's decision within thirty days after the date the office sends a copy of the administrative law judge's decision to the head of the agency, executive director, board or commission, as evidenced by receipt of such action by the office by the thirtieth day, the office shall certify the administrative law judge's decision as the final administrative decision. If the board or commission meets monthly or less frequently, if the office sends the administrative law judge's decision at least thirty days before the next meeting of the board or commission and if the board or commission does not accept, reject or modify the administrative law judge's decision at the next meeting of the board or commission, as evidenced by receipt of such action by the office within five days after the meeting, the office shall certify the administrative law judge's decision as the final administrative decision.
E. For the purposes of subsections B and D of this section, a copy of the administrative law judge's decision is sent on personal delivery of the decision or five days after the decision is mailed to the head of the agency, executive director, board or commission.

F. The decision of the agency head is the final administrative decision unless either:

1. The agency head, executive director, board or commission does not review the administrative law judge's decision pursuant to subsection B of this section or does not reject or modify the administrative law judge's decision as provided in subsection D of this section, in which case the administrative law judge's decision is the final administrative decision.

2. The decision of the agency head is subject to review pursuant to subsection C of this section.

G. If a board or commission whose members are appointed by the governor makes the final administrative decision as an administrative law judge or on review of the decision of the agency head, the decision is not subject to review by the head of the agency.

H. A party may appeal a final administrative decision pursuant to title 12, chapter 7, article 6, except as provided in section 41-1092.09, subsection B and except that if a party has not requested a hearing on receipt of a notice of appealable agency action pursuant to section 41-1092.03, the appealable agency action is not subject to judicial review.

I. This section does not apply to the Arizona peace officer standards and training board established by section 41-1821.

41-1092.09. Rehearing or review

A. Except as provided in subsection B of this section:

1. A party may file a motion for rehearing or review within thirty days after service of the final administrative decision.

2. The opposing party may file a response to the motion for rehearing within fifteen days after the date the motion for rehearing is filed.

3. After a hearing has been held and a final administrative decision has been entered pursuant to section 41-1092.08, a party is not required to file a motion for rehearing or review of the decision in order to exhaust the party's administrative remedies.

B. A party to an appealable agency action of or contested case with a self-supporting regulatory board shall exhaust the party's administrative remedies by filing a motion for rehearing or review within thirty days after the service of the administrative decision that is subject to rehearing or review in order to be eligible for judicial review pursuant to title 12, chapter 7, article 6. The board shall notify the parties in the administrative decision that is subject to rehearing or review that a failure to file a motion for rehearing or review within thirty days after service of the decision has the effect of prohibiting the parties from seeking judicial review of the board's decision.

C. Service is complete on personal service or five days after the date that the final administrative decision is mailed to the party's last known address.
D. Except as provided in this subsection, the agency head, executive director, board or commission shall rule on the motion within fifteen days after the response to the motion is filed or, if a response is not filed, within five days of the expiration of the response period. A self-supporting regulatory board shall rule on the motion within fifteen days after the response to the motion is filed or at the board's next meeting after the motion is received, whichever is later.

41-1092.10. Compulsory testimony; privilege against self-incrimination

A. A person may not refuse to attend and testify or produce evidence sought by an agency in an action, proceeding or investigation instituted by or before the agency on the ground that the testimony or evidence, documentary or otherwise, required of the person may tend to incriminate the person or subject the person to a penalty or forfeiture unless it constitutes the compelled testimony or the private papers of the person that would be privileged evidence either pursuant to the fifth amendment of the Constitution of the United States or article II, section 10, Constitution of Arizona, and the person claims the privilege before the production of the testimony or papers.

B. If a person asserts the privilege against self-incrimination and the agency seeks to compel production of the testimony or documents sought, the office or agency as provided in section 41-1092.01, subsection F may issue, with the prior written approval of the attorney general, a written order compelling the testimony or production of documents in proceedings and investigations before the office or agency as provided in section 41-1092.01, subsection F or apply to the appropriate court for such an order in other actions or proceedings.

C. Evidence produced pursuant to subsection B of this section is not admissible in evidence or usable in any manner in a criminal prosecution, except for perjury, false swearing, tampering with physical evidence or any other offense committed in connection with the appearance made pursuant to this section against the person testifying or the person producing the person's private papers.

41-1092.11. Licenses; renewal; revocation; suspension; annulment; withdrawal

A. If a licensee makes timely and sufficient application for the renewal of a license or a new license with reference to any activity of a continuing nature, the existing license does not expire until the application has been finally determined by the agency, and, in case the application is denied or the terms of the new license limited, until the last day for seeking review of the agency order or a later date fixed by order of the reviewing court.

B. Revocation, suspension, annulment or withdrawal of any license is not lawful unless, before the action, the agency provides the licensee with notice and an opportunity for a hearing in accordance with this article. If the agency finds that the public health, safety or welfare imperatively requires emergency action, and incorporates a finding to that effect in its order, the agency may order summary suspension of a license pending proceedings for revocation or other action. These proceedings shall be promptly instituted and determined.

41-1092.12. Private right of action; recovery of costs and fees; definitions

A. If an agency takes an action against a party that is arbitrary, capricious or not in accordance with law, the action is an appealable agency action if all of the following apply:

1. Within ten days after the action that is arbitrary, capricious or not in accordance with law, the party notifies the director of the agency in writing of the party's intent to file a claim pursuant to this section. This notice shall include a description of the action the party claims to be arbitrary,
capricious or not in accordance with law and reasons why the action is arbitrary, capricious or not in accordance with law.

2. The agency continues the action that is arbitrary, capricious or not in accordance with law more than ten days after the agency receives the notice.

3. The action is not excluded from the definition of appealable agency action as defined in section 41-1092.

B. This section only applies if an administrative remedy or an administrative or a judicial appeal of final agency action is not otherwise provided by law.

C. If the party prevails, the agency shall pay reasonable costs and fees to the party from any monies appropriated to the agency and available for that purpose or from other operating monies of the agency. If the agency fails or refuses to pay the award within fifteen days after the demand, and if no further review or appeal of the award is pending, the prevailing party may file a claim with the department of administration. The department of administration shall pay the claim within thirty days in the same manner as an uninsured property loss under title 41, chapter 3.1, article 1, except that the agency is responsible for the total amount awarded and shall pay it from its operating monies. If the agency had appropriated monies available for paying the award at the time it failed or refused to pay, the legislature shall reduce the agency's operating appropriation for the following fiscal year by the amount of the award and shall appropriate that amount to the department of administration as reimbursement for the loss.

D. If the administrative law judge determines that the appealable agency action is frivolous, the administrative law judge may require the party to pay reasonable costs and fees to the agency in responding to the appeal filed before the office of administrative hearings.

E. For the purposes of this section:

1. "Action against the party" means any of the following that results in the expenditure of costs and fees:
   (a) A decision.
   (b) An inspection.
   (c) An investigation.
   (d) The entry of private property.

2. "Agency" means the department of environmental quality established pursuant to title 49, chapter 1, article 1.

3. "Costs and fees" means reasonable attorney and professional fees.

4. "Party" means an individual, partnership, corporation, association and public or private organization at whom the action was directed and who has expended costs and fees as a result of the action against the party.
REGULATORY BOARD OF PHYSICIAN ASSISTANTS
Title 4, Chapter 17

Amend: R4-17-203, R4-17-206

New Section: R4-17-307
MEETING DATE:  July 6, 2022

TO:  Members of the Governor’s Regulatory Review Council (Council)

FROM:  Council Staff

DATE:  June 10, 2022

SUBJECT:  Arizona Regulatory Board of Physicians Assistants

Title 4, Chapter 17, Arizona Regulatory Board of Physicians Assistants

Amend  R4-17-203
Amend  R4-17-206
New Section  R4-17-307

Summary:

This regular rulemaking from the Board of Physicians Assistants relates to rules in Title 4, Chapter 17, Articles 2 and 3. The Board seeks to amend the rules in response to their Five-Year-Review Report (5YRR) proposed course of action approved by the Council on May 5, 2020. More specifically, the Board is adding a new section prescribing procedures for appealing the Board of an action by the Executive Director. Additionally, the Board is also amending two of their rules in response to a U.S. Department of Justice report concluding that questions similar to those asked by the Board single out applicants based on their status of having a mental health disability rather than their conduct and violate the Americans with Disabilities Act.

The Board received an exception to the rule moratorium to initiate this rulemaking on November 29, 2021 and December 9, 2021, and final approval to submit to the Council on April 13, 2022.
1. **Are the rules legal, consistent with legislative intent, and within the agency’s statutory authority?**

Yes, the Board cites to both general and specific statutory authority.

2. **Do the rules establish a new fee or contain a fee increase?**

No, the rules do not establish a new fee or fee increase.

3. **Does the preamble disclose a reference to any study relevant to the rules that the agency reviewed and either did or did not rely upon?**

Yes, the Board indicates they reviewed and were informed by the following report: *Physician, Heal Thy Double Stigma—Doctors with Mental Illness and Structural Barriers to Disclosure*, by Omar S. Haque, M.D., PhD., Michael A. Stein, J.D. Ph.D., and Amelia Marvit, *New England Journal of Medicine*, March 11, 2021

4. **Summary of the agency’s economic impact analysis:**

The Board indicates that the addition of R4-17-307 will benefit individuals aggrieved by a decision made by the executive director. They go on to state that the amendments to R4-17-203 and R4-17-206 will benefit physician assistants who might be reluctant to obtain needed help for medical conditions that potentially impair practice. Stakeholders include the Board, applicants and licensees. The Board indicates there are currently 4,211 licensed physician assistants in Arizona.

5. **Has the agency analyzed the costs and benefits of the rulemaking and determined that the rules impose the least burden and costs to those who are regulated?**

The Board believes that the costs of this rulemaking are minimal and considerably outweighed by the benefits. They know of no other less intrusive or less costly alternative method.

6. **What are the economic impacts on stakeholders?**

The Board incurred the cost of completing and will incur the cost of implementing the rule. The Board is the only state agency directly affected by the rulemaking. They indicated that no political subdivisions are directly affected and that physician’s assistants are the only businesses directly affected by the rulemaking. A licensee who wishes to appeal an action by the executive director is required to submit a written request and to provide evidence of how the executive director erred. Applicants for initial or renewal licensure are required to complete and submit an application form that includes questions regarding the applicant’s current medical condition. The rulemaking does not directly affect private persons or consumers.
7. **Are the final rules a substantial change, considered as a whole, from the proposed rules and any supplemental proposals?**

No, the Board did not make any changes to the rules between the Notice of Proposed Rulemaking and the Notice of Final Rulemaking.

8. **Does the agency adequately address the comments on the proposed rules and any supplemental proposals?**

Yes, the Board indicates they did not receive any comments.

9. **Do the rules require a permit or license and, if so, does the agency comply with A.R.S. § 41-1037?**

No, the rules do not require the issuance of a general permit.

10. **Are the rules more stringent than corresponding federal law and, if so, is there statutory authority to exceed the requirements of federal law?**

No, the Board indicates there are no corresponding federal laws to the rules being amended.

11. **Conclusion**

In this regular rulemaking the Board seeks to amend its rules in response to a proposed course of action in a recent 5YRR. The Board is seeking the standard 60-day delayed effective date for this rulemaking. Council staff recommends approval of this rulemaking.
April 13, 2022

Ms. Nicole Sornsin, Chair
The Governor's Regulatory Review Council
100 North 15th Avenue, Ste. 305
Phoenix, AZ 85007

Re: A.A.C. Title 4. Professions and Occupations
Chapter 17. Arizona Regulatory Board of Physician Assistants

Dear Ms. Sornsin:

The attached final rule package is submitted for review and approval by the Council. The following information is provided for Council’s use in reviewing the rule package:

A. Close of record date: The rulemaking record was closed on April 12, 2022, following a period for public comment and an oral proceeding. This rule package is being submitted within the 120 days provided by A.R.S. § 41-1024(B). Approval to submit the rulemaking to Council for its review and approval was provided by Brian Norman, of the Governor’s Office, in an e-mail dated April 13, 2022.

B. Relation of the rulemaking to a five-year-review report: The rulemaking relates, in part, to a five-year-review report approved by the Council on May 5, 2020.

C. New fee: The rulemaking does not establish a new fee.

D. Fee increase: The rulemaking does not increase an existing fee.

E. Immediate effective date: An immediate effective date is not requested.

F. Certification regarding studies: I certify that the Board reviewed and was informed by the following report on a study: Physician, Heal Thy Double Stigma—Doctors with Mental Illness and Structural Barriers to Disclosure, by Omar S. Haque, M.D., PhD., Michael A. Stein, J.D. Ph.D., and Amelia Marvit, New England Journal of Medicine, March 11, 2021. The article can be accessed at:

G. Certification that the preparer of the EIS notified the JLBC of the number of new full-time employees necessary to implement and enforce the rule: I certify that none of the rules in this rulemaking will require a state agency to employ a new full-time employee. No notification was provided to JLBC.

H. List of documents enclosed:
   1. Cover letter signed by the Executive Director;
   2. Notice of Final Rulemaking including the preamble, table of contents, and rule text;

Sincerely,

Patricia McSorley
Executive Director
NOTICE OF FINAL RULEMAKING

TITLE 4. PROFESSIONS AND OCCUPATIONS
CHAPTER 17. ARIZONA REGULATORY BOARD OF PHYSICIAN ASSISTANTS

PREAMBLE

1. Articles, Parts, and Sections Affected
   Rulemaking Action
   R4-17-203       Amend
   R4-17-206       Amend
   R4-17-307       New Section

2. Citations to the agency's statutory rulemaking authority to include both the authorizing statute (general) and the implementing statute (specific):
   Authorizing statute:  A.R.S. § 32-2504(C)
   Implementing statute:  A.R.S. §§ 32-2521, 32-2522, and 32-2505(E)

3. The effective date for the rules:
   As specified under A.R.S. § 41-1032(A), the rule will be effective 60 days after the rule package is filed with the Office of the Secretary of State.
   a. If the agency selected a date earlier than the 60-day effective date as specified in A.R.S. § 41-1032(A), include the earlier date and state the reason or reasons the agency selected the earlier effective date as provided in A.R.S. § 41-1032(A)(1) through (5):
      Not applicable
   b. If the agency selected a date later than the 60-day effective date as specified in A.R.S. § 41-1032(A), include the later date and state the reason or reasons the agency selected the later effective date as provided in A.R.S. § 41-1032(B):
      Not applicable

4. Citation to all related notices published in the Register to include the Register as specified in R1-1-409(A) that pertain to the record of the final rulemaking package:
   Notice of Rulemaking Docket Opening: 28 A.A.R. 279, January 28, 2022
   Notice of Proposed Rulemaking: 28 A.A.R. 549, March 11, 2022

5. The agency's contact person who can answer questions about the rulemaking:
   Name: Patricia McSorley, Executive Director
   Address: Arizona Medical Board
            1740 W Adams Street, Suite 4000
            Phoenix, AZ 85007
6. **An agency’s justification and reason why a rule should be made, amended, repealed, or renumbered, to include an explanation about the rulemaking:**

The Board is completing the rulemaking plan of work identified in a 5YRR approved by the Council on May 5, 2020. Specifically, the Board is adding a Section prescribing procedures for appealing for Board review of an action by the executive director. An exemption from Executive Order 2021-02 was provided for this rulemaking by Trista Guzman Glover of the Governor’s Office in an e-mail dated November 29, 2021.

In response to a U.S. Department of Justice report concluding that questions similar to those asked by the Board single out applicants based on their status of having a mental health disability rather than their conduct and violate the Americans with Disabilities Act, the Board is amending relevant application questions at R4-17-203 and R4-17-206. An exemption from Executive Order 2021-02 for this provision was provided by Ms Guzman in an email dated December 9, 2021.

Approval to submit the rulemaking to Council for its review and approval was provided by Brian Norman, of the Governor’s Office, in an e-mail dated April 13, 2022.

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


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

Not applicable

9. **A summary of the economic, small business, and consumer impact:**
The addition of R4-17-307 will benefit individuals aggrieved by a decision made by the executive director. The amendments to R4-17-203 and R4-17-206 will benefit physician assistants who might be reluctant to obtain needed help for medical conditions that potentially impair practice.

10. **A description of any changes between the proposed rulemaking, including supplemental notices, and the final rulemaking:**
   No changes were made between the proposed and final rulemakings.

11. **An agency's summary of the public or stakeholder comments made about the rulemaking and the agency response to comments:**
   The Board received no written comments regarding the rulemaking. No one attended the oral proceeding on April 11, 2022.

12. **All agencies shall list any other matters prescribed by statute applicable to the specific agency or to any specific rule or class of rules. Additionally, an agency subject to Council review under A.R.S. §§ 41-1052 and 41-1055 shall respond to the following questions:**
   None
   a. **Whether the rule requires a permit, whether a general permit is used and if not, the reasons why a general permit is not used:**
      The Board does not issue general permits. Rather, the Board issues individual licenses as required by the Board’s statutes to each individual who is qualified by statute (See A.R.S. § 32-2521) and rule.
   b. **Whether a federal law is applicable to the subject of the rule, whether the rule is more stringent than federal law and if so, citation to the statutory authority to exceed the requirements of federal law:**
      No federal law is directly applicable to the subject of any rule in this rulemaking. There are numerous federal laws relating to health care and controlled substances with which a physician assistant must comply.
   c. **Whether a person submitted an analysis to the agency that compares the rule's impact of the competitiveness of business in this state to the impact on business in other states:**
      No analysis was submitted.

13. **A list of any incorporated by reference material as specified in A.R.S. § 41-1028 and its location in the rule:**
   None

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

No rule in the rulemaking was previously made, amended, or repealed as an emergency rule.

15. The full text of the rules follows:
TITLE 4. PROFESSIONS AND OCCUPATIONS
CHAPTER 17. ARIZONA REGULATORY BOARD OF PHYSICIAN ASSISTANTS
ARTICLE 2. PHYSICIAN ASSISTANT LICENSURE

Section
R4-17-203. Regular License Application
R4-17-206. License Renewal

ARTICLE 3. DUTIES OF THE EXECUTIVE DIRECTOR

Section
R4-17-307. Appealing Executive Director Actions
ARTICLE 2. PHYSICIAN ASSISTANT LICENSURE

R4-17-203. Regular License Application

A. An applicant for a regular license shall submit a completed application to the Board that includes:

1. The applicant’s:
   a. First, last, and middle name;
   b. Every other name used by the applicant;
   c. Social Security number;
   d. Office, mailing, e-mail, and home addresses;
   e. Office, mobile, and home telephone numbers; and
   f. Birth date and state or country of birth;

2. The name and address of the approved physician assistant program completed by the applicant and the date of completion;

3. The name of each state or province in which the applicant has ever been certified, registered, or licensed as a physician assistant, including the certificate, registration, or license number, and current status;

4. Whether the applicant has practiced as a physician assistant since graduation from a physician assistant program or for 10 continuous years before the date the application was submitted to the Board or since graduation from a physician assistant program and if not, an explanation;

5. A questionnaire that includes answers to the following:
   a. Whether the applicant has had an application for a certificate, registration, or license refused or denied by any licensing authority, and if so, an explanation;
   b. Whether the applicant has had the privilege of taking an examination for a professional license refused or denied by any entity, and if so, an explanation;
   c. Whether the applicant has ever resigned or been requested to resign, been suspended or expelled from, been placed on probation, or been fined while enrolled in an approved physician assistant program in a medical school or a postsecondary educational program, and if so, an explanation;
   d. Whether, while attending an approved physician assistant program, the applicant has ever had any action taken against the applicant by the approved program, resigned, or been asked to leave the approved program for any amount of time, and if so, an explanation;
   e. Whether the applicant has ever surrendered a health professional license, and if so, an explanation;
f. Whether the applicant has ever had a health professional license suspended or revoked, or whether any other disciplinary action has ever been taken against a health professional license held by the licensee, and if so, an explanation;
g. Whether the applicant is currently under investigation by any health profession regulatory authority, health care association, licensed health care institution, or there are any pending complaints or disciplinary actions against the applicant, and if so, an explanation;
h. Whether the applicant has ever had any action taken against the applicant’s privileges, including termination, resignation, or withdrawal by a health care institution or health profession regulatory authority, and if so, an explanation;
i. Whether the applicant has ever had a federal or state regulatory authority take any action against the applicant’s authority to prescribe, dispense, or administer controlled substances including revocation, suspension, or denial, or whether the applicant ever surrendered the authority in lieu of any of these actions, and if so, an explanation;
j. Whether the applicant has ever been charged with, convicted of, pleaded guilty to, or entered into a plea of no contest to a felony or misdemeanor involving moral turpitude or has been pardoned or had a record expunged or vacated, and if so, an explanation;
k. Whether the applicant has ever been charged with or convicted of a violation of any federal or state drug statute, rule, or regulation, regardless of whether a sentence was or was not imposed, and if so, an explanation;
l. Whether the applicant has been named as a defendant in a malpractice matter currently pending or that resulted in a judgment or settlement entered against the applicant, and if so, an explanation;
m. Whether the applicant has ever been court-martialed or discharged other than honorably from any branch of military service component of the uniformed services of the United States, and if so, an explanation;
n. Whether the applicant has ever been involuntarily terminated from a health professional position, resigned, or been asked to leave the health care position, and if so, an explanation;
o. Whether the applicant has ever been convicted of insurance fraud or received a sanction, including limitation, suspension, or removal from practice, imposed by any state or the federal government, and if so, an explanation; and
p. Whether the applicant, within the three years before the date of the application, has completed 45 hours in pharmacology or clinical management of drug therapy or is certified by a national commission on the certification of physician assistants or its successor;

6. A confidential questionnaire that includes answers to the following:
a. Whether the applicant currently has received treatment within the last five years for use of alcohol or a controlled substance, prescription-only drug, or dangerous drug or narcotic or a physical, mental, emotional, or nervous disorder or a medical condition that currently impairs the applicant’s judgment or ability to exercise the judgment and skills of a medical practice medicine in a competent, ethical, and professional manner;

b. If the answer to subsection (A)(6)(a) is yes:
   i. A detailed description of the use, disorder, or condition. Provide an explanation of the medical condition; and
   ii. An explanation of whether the use, disorder, or condition is reduced or ameliorated because the applicant receives ongoing treatment and if so, the name and contact information for all current treatment providers and for all monitoring or support programs in which the applicant is currently participating. If currently practicing under a monitoring agreement with a licensing board in another state, attach a copy of the monitoring agreement to the application; and

c. A copy of any public or confidential agreement or order relating to the use, disorder, or condition, issued by a licensing agency or health care institution within the last five years, if applicable;

7. Consistent with the Board’s statutory authority, other information the Board may deem necessary to evaluate the applicant fully; and


B. In addition to the requirements in subsection (A), an applicant shall submit the following to the Board:

1. Documentation of citizenship or alien status that conforms to A.R.S. § 41-1080;
2. Documentation of a legal name change if the applicant’s legal name is different from that shown on the document submitted in accordance with subsection (B)(1);
3. A form provided by the Board and completed by the applicant that lists all current or past employment with health professionals, health professions educational institutions, or health care institutions within five years before the date of application or since graduation from a physician assistant program, if less than five years, including each health professional’s, health professions educational institution’s, or health care institution’s name, address, and dates of employment;
4. Verification of any medical malpractice matter currently pending or resulting in a settlement or judgment against the applicant, including a copy of the complaint and either the agreed terms of settlement or the judgment and a narrative statement specifying the nature of the occurrence resulting in the medical malpractice action. An applicant who is unable to obtain a document
required under this subsection may submit a written request for a waiver of the requirement. The applicant shall include the following information in a request for waiver:
   a. The document for which waiver is requested;
   b. Detailed description of efforts made by the applicant to provide the required document; and
   c. Reason the applicant’s inability to provide the required document is due to no fault of the applicant; and

5. The fee required in R4-17-204.

C. In addition to the requirements in subsections (A) and (B), an applicant shall have the following directly submitted to the Board:

   1. A copy of the applicant’s certificate of successful completion of the PANCE or PANRE and the applicant’s examination score provided by the NCCPA;
   2. An approved program form provided by the Board, completed and signed by the director or administrator of the approved program that granted the applicant a physician assistant degree, that includes the:
      a. Applicant’s full name,
      b. Type of degree earned by the applicant,
      c. Name of the physician assistant program completed by the applicant,
      d. Starting and ending dates, and
      e. Date the applicant’s degree was granted.

D. The Board’s issuance of a regular license to an applicant certifies the applicant to issue, dispense, or administer schedule II or schedule III controlled substances, subject to the limits and requirements specified in A.R.S. § 32-2532. Additionally, beginning October 1, 2018, a physician assistant previously certified by the Board for 30-day prescription privileges for schedule II or schedule III controlled substances is certified for 90-day prescription privileges for schedule II or schedule III controlled substances that are not opioids or benzodiazepine.

R4-17-206. License Renewal

A. To renew a license, a licensee shall submit a completed application to the Board that includes:

   1. An application form that contains the licensee’s:
      a. First, last, and middle names;
      b. Arizona license number;
      c. Office, mailing, e-mail, and home addresses;
      d. Office, mobile, and home telephone numbers;
   2. A questionnaire that includes answers to the following since the last renewal date:
a. Whether the licensee has had an application for a certificate, registration, or license refused or denied by any licensing authority, and if so, an explanation;
b. Whether the licensee has had the privilege of taking an examination for a professional license refused or denied by any entity, and if so, an explanation;
c. Whether the licensee has voluntarily surrendered a health care professional license, and if so, an explanation;
d. Whether the licensee has had a health professional license suspended or revoked, or whether any other disciplinary action has been taken against a health professional license held by the licensee, and if so, an explanation;
e. Whether the licensee has had any action taken against the applicant’s privileges, including termination, resignation, or withdrawal by a health care institution or health profession regulatory authority, and if so, an explanation;
f. Whether the licensee has had a federal or state regulatory authority take any action against the license’s authority to prescribe, dispense, or administer controlled substances including revocation, suspension, or denial, or whether the applicant surrendered the authority in lieu of any of these actions, and if so, an explanation;
g. Whether the licensee has been charged with, convicted of, pleaded guilty to, or entered into a plea of no contest to a felony or misdemeanor involving moral turpitude or an alcohol- or drug-related offense in any state, or has been pardoned or had a record expunged or vacated, and if so, an explanation;
h. Whether the licensee has been court-martialed or discharged other than honorably from any branch of military service component of the uniformed services of the United States, and if so, an explanation;
i. Whether the licensee has been involuntarily terminated from a health professional position with any city, county, state, or federal government, and if so, an explanation;
j. Whether the licensee has been convicted of insurance fraud or a state or the federal government has sanctioned or taken any action against the licensee, such as suspension or removal from practice, and if so, an explanation;

3. Consistent with the Board’s statutory authority, other information the Board may deem necessary to evaluate the licensee fully;

4. A dated and sworn statement by the licensee verifying that during the past biennial license period, the licensee completed at least 40 hours of Category I continuing medical education as required by A.R.S. § 32-2523;

5. The fee required in R4-17-204;
6. A confidential questionnaire that includes answers to the following:
   a. Whether the applicant licensee currently has received treatment since the last renewal for use of alcohol or a controlled substance, prescription-only drug, or dangerous drug or narcotic or a physical, mental, emotional, or nervous disorder or a medical condition that currently impairs the applicant’s licensee’s judgment or ability to exercise the judgment and skills of a medical practice medicine in a competent, ethical, and professional manner;
   b. If the answer to subsection (A)(6)(a) is yes:
      i. A detailed description of the use, disorder, or condition Provide an explanation of the medical condition; and
      ii. An explanation of whether the use, disorder, or condition is reduced or ameliorated because the applicant receives ongoing treatment and if so, the name and contact information for all current treatment providers and for all monitoring or support programs in which the applicant is currently participating If currently practicing under a monitoring agreement with a licensing board in another state, attach a copy of the monitoring agreement to the application; and
   c. A copy of any public or confidential agreement or order relating to the use, disorder, or condition, issued by a licensing agency or health care institution since the last renewal, if applicable; and

7. If the document submitted under R4-17-203(B)(1) was a limited form of work authorization issued by the federal government, evidence that the licensee’s presence in the U.S. continues to be authorized under federal law.

B. Under A.R.S. §32-2523(A), the Board shall randomly select at least 10 percent of renewal applications submitted by licensees who are not currently certified by a national certification organization to verify compliance with the continuing medical education requirement specified in R4-17-205(A). If selected, a licensee shall submit to the Board documents that verify compliance with the continuing medical education requirement.

ARTICLE 3. DUTIES OF THE EXECUTIVE DIRECTOR

R4-17-307. Appealing Executive Director Actions

A. Any person aggrieved by an action taken by the executive director under the authority delegated in this Article may appeal that action to the Board. The aggrieved person shall file a written request with the Board no later than:

1. Thirty days after notification of the action, if personally served; or
2. Thirty-five days after the date on the notification, if mailed.

B. The aggrieved person shall provide, in the written request, evidence showing:
   1. An irregularity in the investigative process or the executive director’s review deprived the party of a fair decision;
   2. Misconduct by Board staff, a Board consultant, or the executive director that deprived the party of a fair decision; or
   3. Material evidence newly discovered that could have a bearing on the decision and that, with reasonable diligence, could not have been discovered and produced earlier.

C. The fact that the aggrieved party does not agree with the executive director’s action is not grounds for a review by the Board.

D. If an aggrieved person fails to submit a written request within the time specified in subsection (A), the Board is relieved of the requirement to review actions taken by the executive director. The executive director may, however, evaluate newly provided information that is material or substantial in content to determine whether the Board should review the case.

E. If a written request is submitted that meets the requirements of subsection (B):
   1. The Board shall consider the written request at its next regularly scheduled meeting.
   2. If the written request provides new material or substantial evidence that requires additional investigation, the investigation shall be conducted as expeditiously as possible and the case shall be forwarded to the Board at the first possible regularly scheduled meeting.
1. Identification of the rulemaking:

The Board is completing the rulemaking plan of work identified in a 5YRR approved by the Council on May 5, 2020. Specifically, the Board is adding a Section prescribing procedures to appeal for Board review of an action by the executive director. An exemption from Executive Order 2021-02 was provided for this rulemaking by Trista Guzman Glover of the Governor’s Office in an e-mail dated November 29, 2021.

In response to a U.S. Department of Justice report concluding that questions similar to those asked by the Board single out applicants based on their status of having a mental health disability rather than their conduct and violate the Americans with Disabilities Act, the Board is amending relevant application questions at R4-17-203 and R4-17-206. An exemption from Executive Order 2021-02 for this provision was provided by Ms Guzman in an email dated December 9, 2021.

a. The conduct and its frequency of occurrence that the rule is designed to change:

Until the rulemaking is completed, the rules will continue to lack prescribed procedures for appealing for Board review of an action by the executive director and will continue to violate the Americans with Disabilities Act.

b. The harm resulting from the conduct the rule is designed to change and the likelihood it will continue to occur if the rule is not changed:

Until the rulemaking is completed, the lack of a prescribed procedure for appealing for Board review of an action by the executive director may cause some applicants and licensees to be unaware of the right to appeal. Others may call the Board office for information, consuming staff time and other resources.

Because of application questions regarding a health disability, some applicants may be reluctant to apply for licensure and others may not answer accurately.

c. The estimated change in frequency of the targeted conduct expected from the rule change:

---

1 If adequate data are not reasonably available, the agency shall explain the limitations of the data, the methods used in an attempt to obtain the data, and characterize the probable impacts in qualitative terms.
When the rulemaking is completed, the identified issues will no longer exist.

2. **A brief summary of the information included in the economic, small business, and consumer impact statement:**
   The addition of R4-17-307 will benefit individuals aggrieved by a decision made by the executive director. The amendments to R4-17-203 and R4-17-206 will benefit physician assistants who might be reluctant to obtain needed help for medical conditions that potentially impair practice.

3. **The person to contact to submit or request additional data on the information included in the economic, small business, and consumer impact statement:**
   Name: Patricia McSorley, Executive Director
   Address: Arizona Medical Board
            1740 W Adams Street, Suite 4000
            Phoenix, AZ 85007
   Telephone: (480) 551-2700
   Fax: (480) 551-2704
   E-mail: patricia.mcsorley@azmd.gov
   Web site: www.azmd.gov

4. **Persons who will be directly affected by, bear the costs of, or directly benefit from the rulemaking:**
   Applicants, licensees, and the Board will be directly affected by, bear the costs of, and directly benefit from this rulemaking.

There are currently 4,211 licensed physician assistants in Arizona. During the last year, there were 512 applications for initial licensure and 714 for renewal licensure. Twenty-three of the renewal applicants (3.2 percent) indicated they have a mental health disability. None of the applicants for initial licensure indicated they have a mental health disability. This may indicate that those with a disability choose not to apply for licensure because of the application question.

During the last year, two licensees appealed an action by the executive director to the Board. In both cases, the Board upheld the executive director’s action. The rule change will provide information needed by licensees who wish to appeal an action by the executive director.

(A.R.S. § 41-1055(C)).
The Board incurred the cost of completing this rulemaking and will incur the cost of implementing it. The Board determined these costs are outweighed by the benefits, which are described above.

5. Cost-benefit analysis:
   a. Costs and benefits to state agencies directly affected by the rulemaking including the number of new full-time employees at the implementing agency required to implement and enforce the proposed rule:
      The Board is the only state agency directly affected by the rulemaking. The Board will not need a new full-time employee to implement or enforce the rulemaking.
   b. Costs and benefits to political subdivisions directly affected by the rulemaking:
      No political subdivision is directly affected by the rulemaking.
   c. Costs and benefits to businesses directly affected by the rulemaking:
      Physician assistants are the only businesses directly affected by the rulemaking. Their costs and benefits are described in item 4.

6. Impact on private and public employment:
   The rulemaking will have no impact on private or public employment.

7. Impact on small businesses:
   a. Identification of the small business subject to the rulemaking:
      Physician assistants are small businesses subject to this rulemaking.
   b. Administrative and other costs required for compliance with the rulemaking:
      A licensee who wishes to appeal an action by the executive director is required to submit a written request and to provide evidence of how the executive director erred.
      Applicants for initial or renewal licensure are required to complete and submit an application form that includes questions regarding the applicant’s current medical condition.
   c. Description of methods that may be used to reduce the impact on small businesses:
      The Board determined there are no methods that will reduce the impact of the rulemaking on small businesses because all licensees are small businesses.

8. Cost and benefit to private persons and consumers who are directly affected by the rulemaking:
   The rulemaking will not directly affect private persons or consumers.

9. Probable effects on state revenues:
   There will be no effect on state revenues.
10. Less intrusive or less costly alternative methods considered:

The costs of the rulemaking are minimal and considerably outweighed by the benefits. No less intrusive or less costly alternative method was considered.

2 Small business has the meaning specified in A.R.S. § 41-1001(21).
32-2501. Definitions

In this chapter, unless the context otherwise requires:

1. "Active license" means a regular license issued pursuant to this chapter.

2. "Adequate records" means legible medical records containing, at a minimum, sufficient information to identify the patient, support the diagnosis, justify the treatment, accurately document the results, indicate advice and cautionary warnings provided to the patient and provide sufficient information for another practitioner to assume continuity of the patient's care at any point in the course of treatment.

3. "Advisory letter" means a nondisciplinary letter to notify a physician assistant that either:
   (a) While there is insufficient evidence to support disciplinary action, the board believes that continuation of the activities that led to the investigation may result in further board action against the licensee.
   (b) The violation is a minor or technical violation that is not of sufficient merit to warrant disciplinary action.
   (c) While the licensee has demonstrated substantial compliance through rehabilitation or remediation that has mitigated the need for disciplinary action, the board believes that repetition of the activities that led to the investigation may result in further board action against the licensee.

4. "Approved program" means a physician assistant educational program accredited by the accreditation review commission on education for physician assistants, or one of its predecessor agencies, the committee on allied health education and accreditation or the commission on the accreditation of allied health educational programs.

5. "Board" means the Arizona regulatory board of physician assistants.

6. "Completed application" means an application for which the applicant has supplied all required fees, information and correspondence requested by the board on forms and in a manner acceptable to the board.

7. "Immediate family" means the spouse, natural or adopted children, father, mother, brothers and sisters of the physician assistant and the natural or adopted children, father, mother, brothers and sisters of the physician assistant's spouse.

8. "Letter of reprimand" means a disciplinary letter that is issued by the board and that informs the physician assistant that the physician assistant's conduct violates state or federal law and may require the board to monitor the physician assistant.

9. "Limit" means a nondisciplinary action that is taken by the board and that alters a physician assistant's practice or medical activities if there is evidence that the physician assistant is or may be mentally or physically unable to safely engage in health care tasks.
10. "Medically incompetent" means that a physician assistant lacks sufficient medical knowledge or skills, or both, in performing delegated health care tasks to a degree likely to endanger the health or safety of patients.

11. "Minor surgery" means those invasive procedures that may be delegated to a physician assistant by a supervising physician, that are consistent with the training and experience of the physician assistant, that are normally taught in courses of training approved by the board and that have been approved by the board as falling within a scope of practice of a physician assistant. Minor surgery does not include a surgical abortion.

12. "Physician" means a physician who is licensed pursuant to chapter 13 or 17 of this title.

13. "Physician assistant" means a person who is licensed pursuant to this chapter and who practices medicine with physician supervision.

14. "Regular license" means a valid and existing license that is issued pursuant to section 32-2521 to perform health care tasks.

15. "Restrict" means a disciplinary action that is taken by the board and that alters a physician assistant's practice or medical activities if there is evidence that the physician assistant is or may be medically incompetent or guilty of unprofessional conduct.

16. "Supervising physician" means a physician who holds a current unrestricted license, who supervises a physician assistant and who assumes legal responsibility for health care tasks performed by the physician assistant.

17. "Supervision" means a physician's opportunity or ability to provide or exercise direction and control over the services of a physician assistant. Supervision does not require a physician's constant physical presence if the supervising physician is or can be easily in contact with the physician assistant by telecommunication.

18. "Unprofessional conduct" includes the following acts by a physician assistant that occur in this state or elsewhere:

(a) Violating any federal or state law or rule that applies to the performance of health care tasks as a physician assistant. Conviction in any court of competent jurisdiction is conclusive evidence of a violation.

(b) Claiming to be a physician or knowingly permitting another person to represent that person as a physician.

(c) Performing health care tasks that have not been delegated by the supervising physician.

(d) Exhibiting a pattern of using or being under the influence of alcohol or drugs or a similar substance while performing health care tasks or to the extent that judgment may be impaired and the ability to perform health care tasks detrimentally affected.

(e) Signing a blank, undated or predated prescription form.
(f) Committing gross malpractice, repeated malpractice or any malpractice resulting in the death of a patient.

(g) Representing that a manifestly incurable disease or infirmity can be permanently cured or that a disease, ailment or infirmity can be cured by a secret method, procedure, treatment, medicine or device, if this is not true.

(h) Refusing to divulge to the board on demand the means, method, procedure, modality of treatment or medicine used in the treatment of a disease, injury, ailment or infirmity.

(i) Prescribing or dispensing controlled substances or prescription-only drugs for which the physician assistant is not approved or in excess of the amount authorized pursuant to this chapter.

(j) Committing any conduct or practice that is or might be harmful or dangerous to the health of a patient or the public.

(k) Violating a formal order, probation or stipulation issued by the board.

(l) Failing to clearly disclose the person's identity as a physician assistant in the course of the physician assistant's employment.

(m) Failing to use and affix the initials "P.A." or "P.A.-C." after the physician assistant's name or signature on charts, prescriptions or professional correspondence.

(n) Procuring or attempting to procure a physician assistant license by fraud, misrepresentation or knowingly taking advantage of the mistake of another.

(o) Having professional connection with or lending the physician assistant's name to an illegal practitioner of any of the healing arts.

(p) Failing or refusing to maintain adequate records on a patient.

(q) Using controlled substances that have not been prescribed by a physician, physician assistant, dentist or nurse practitioner for use during a prescribed course of treatment.

(r) Prescribing or dispensing controlled substances to members of the physician assistant's immediate family.

(s) Prescribing, dispensing or administering any controlled substance or prescription-only drug for other than accepted therapeutic purposes.

(t) Dispensing a schedule II controlled substance that is an opioid, except as provided in section 32-2532.

(u) Knowingly making any written or oral false or fraudulent statement in connection with the performance of health care tasks or when applying for privileges or renewing an application for privileges at a health care institution.
(v) Committing a felony, whether or not involving moral turpitude, or a misdemeanor involving moral turpitude. In either case, conviction by a court of competent jurisdiction or a plea of no contest is conclusive evidence of the commission.

(w) Having a certification or license refused, revoked, suspended, limited or restricted by any other licensing jurisdiction for the inability to safely and skillfully perform health care tasks or for unprofessional conduct as defined by that jurisdiction that directly or indirectly corresponds to any act of unprofessional conduct as prescribed by this paragraph.

(x) Having sanctions including restriction, suspension or removal from practice imposed by an agency of the federal government.

(y) Violating or attempting to violate, directly or indirectly, or assisting in or abetting the violation of or conspiring to violate a provision of this chapter.

(z) Using the term "doctor" or the abbreviation "Dr." on a name tag or in a way that leads the public to believe that the physician assistant is licensed to practice as an allopathic or an osteopathic physician in this state.

(aa) Failing to furnish legally requested information to the board or its investigator in a timely manner.

(bb) Failing to allow properly authorized board personnel to examine on demand documents, reports and records of any kind relating to the physician assistant's performance of health care tasks.

(cc) Knowingly making a false or misleading statement on a form required by the board or in written correspondence or attachments furnished to the board.

(dd) Failing to submit to a body fluid examination and other examinations known to detect the presence of alcohol or other drugs pursuant to an agreement with the board or an order of the board.

(ee) Violating a formal order, probation agreement or stipulation issued or entered into by the board or its executive director.

(ff) Except as otherwise required by law, intentionally betraying a professional secret or intentionally violating a privileged communication.

(gg) Allowing the use of the licensee's name in any way to enhance or permit the continuance of the activities of, or maintaining a professional connection with, an illegal practitioner of medicine or the performance of health care tasks by a person who is not licensed pursuant to this chapter.

(hh) Committing false, fraudulent, deceptive or misleading advertising by a physician assistant or the physician assistant's staff or representative.

(ii) Knowingly failing to disclose to a patient on a form that is prescribed by the board and that is dated and signed by the patient or guardian acknowledging that the patient or guardian has read and understands that the licensee has a direct financial interest in a separate diagnostic or treatment agency or in nonroutine goods or services that the patient is being prescribed and if the prescribed treatment, goods or services are available on a competitive basis. This subdivision does not apply to a referral by one
physician assistant to another physician assistant or to a doctor of medicine or a doctor of osteopathic medicine within a group working together.

(jj) With the exception of heavy metal poisoning, using chelation therapy in the treatment of arteriosclerosis or as any other form of therapy without adequate informed patient consent or without conforming to generally accepted experimental criteria including protocols, detailed records, periodic analysis of results and periodic review by a medical peer review committee, or without approval by the United States food and drug administration or its successor agency.

(kk) Prescribing, dispensing or administering anabolic or androgenic steroids for other than therapeutic purposes.

(ll) Prescribing, dispensing or furnishing a prescription medication or a prescription-only device as defined in section 32-1901 to a person unless the licensee first conducts a physical examination of that person or has previously established a professional relationship with the person. This subdivision does not apply to:

(i) A physician assistant who provides temporary patient care on behalf of the patient's regular treating licensed health care professional.

(ii) Emergency medical situations as defined in section 41-1831.

(iii) Prescriptions written to prepare a patient for a medical examination.

(iv) Prescriptions written or antimicrobials dispensed to a contact as defined in section 36-661 who is believed to have had significant exposure risk as defined in section 36-661 with another person who has been diagnosed with a communicable disease as defined in section 36-661 by the prescribing or dispensing physician assistant.

(mm) Engaging in sexual conduct with a current patient or with a former patient within six months after the last medical consultation unless the patient was the licensee's spouse at the time of the contact or, immediately preceding the professional relationship, was in a dating or engagement relationship with the licensee. For the purposes of this subdivision, "sexual conduct" includes:

(i) Engaging in or soliciting sexual relationships, whether consensual or nonconsensual.

(ii) Making sexual advances, requesting sexual favors or engaging in other verbal conduct or physical contact of a sexual nature with a patient.

(iii) Intentionally viewing a completely or partially disrobed patient in the course of treatment if the viewing is not related to patient diagnosis or treatment under current practice standards.

(nn) Performing health care tasks under a false or assumed name in this state.

32-2502. Arizona regulatory board of physician assistants; membership; appointment; terms; immunity

A. The Arizona regulatory board of physician assistants is established consisting of the following members:
1. Five physician assistants who hold a current regular license pursuant to this chapter. The governor may appoint these members from a list of qualified candidates submitted by the Arizona state association of physician assistants. The governor may seek additional input and nominations before the governor makes the physician assistant appointments.

2. Two public members who are appointed by the governor.

3. Two physicians who are actively engaged in the practice of medicine and who are licensed pursuant to chapter 17 of this title, one of whom supervises a physician assistant at the time of appointment, and who are appointed by the governor.

4. Two physicians who are actively engaged in the practice of medicine and who are licensed pursuant to chapter 13 of this title, one of whom supervises a physician assistant at the time of appointment, and who are appointed by the governor.

B. Before appointment by the governor, a prospective member of the board shall submit a full set of fingerprints to the governor for the purpose of obtaining a state and federal criminal records check pursuant to section 41-1750 and Public Law 92-544. The department of public safety may exchange this fingerprint data with the federal bureau of investigation.

C. The term of office of members of the board is four years to begin and end on July 1.

D. Each board member is eligible for appointment to not more than two full terms, except that the term of office for a member appointed to fill a vacancy that is not caused by the expiration of a full term is for the unexpired portion of that term and the governor may reappoint that member to not more than two additional full terms. Each board member may continue to hold office until the appointment and qualification of that member's successor. However, the governor may remove a member after notice and a hearing, on a finding of continued neglect of duty, incompetence or unprofessional or dishonorable conduct. That member's term ends when the finding is made.

E. A board member's term automatically ends:

1. On written resignation submitted to the board chairperson or to the governor.

2. If the member is absent from this state for more than six months during a one-year period.

3. If the member fails to attend three consecutive regular board meetings.

4. Five years after retirement from active practice.

F. Board members are immune from civil liability for all good faith actions they take pursuant to this chapter.

32-2503. Organization; meetings; payment for service

A. The board shall annually elect a chairperson and vice chairperson from among its members.

B. The board shall hold a regular meeting at least quarterly on a date and at a time and place it designates. The board shall hold special meetings, including meetings using communications equipment
that allows all members participating in the meeting to hear each other, as the chairperson determines are necessary to carry out the functions of the board. The board shall hold a special meeting on any day that the chairperson determines is necessary to carry out the functions of the board. The vice chairperson may call regular meetings and special meetings if the chairperson is not available.

C. Members of the board are eligible to receive up to $200 for each day of service in the business of the board and for all expenses necessarily and properly incurred in attending board meetings.

32-2504. Powers and duties; delegation of authority; rules; subcommittees; immunity

A. The board shall:

1. As its primary duty, protect the public from unlawful, incompetent, unqualified, impaired or unprofessional physician assistants.

2. License and regulate physician assistants pursuant to this chapter.

3. Order and evaluate physical, psychological, psychiatric and competency testing of licensees and applicants the board determines is necessary to enforce this chapter.

4. Review the credentials and the abilities of applicants for licensure whose professional records or physical or mental capabilities may not meet the requirements of this chapter.

5. Initiate investigations and determine on its own motion whether a licensee has engaged in unprofessional conduct or is or may be incompetent or mentally or physically unable to safely perform health care tasks.

6. Establish fees and penalties pursuant to section 32-2526.

7. Develop and recommend standards governing the profession.

8. Engage in the full exchange of information with the licensing and disciplinary boards and professional associations of other states and jurisdictions of the United States and foreign countries and a statewide association for physician assistants.

9. Direct the preparation and circulation of educational material the board determines is helpful and proper for its licensees.

10. Discipline and rehabilitate physician assistants pursuant to this chapter.

11. Certify physician assistants for thirty-day prescription privileges for schedule II, schedule III, schedule IV and schedule V controlled substances that are opioids or benzodiazepine and ninety-day prescription privileges for schedule II, schedule III, schedule IV and schedule V controlled substances that are not opioids or benzodiazepine if the physician assistant either:

   (a) Within the preceding three years of application, completed forty-five hours in pharmacology or clinical management of drug therapy or at the time of application is certified by a national commission on the certification of physician assistants or its successor.
Met any other requirement established by board rule.

B. The board may delegate to the executive director the board's authority pursuant to this section or section 32-2551. The board shall adopt a substantive policy statement pursuant to section 41-1091 for each specific licensing and regulatory authority the board delegates to the executive director.

C. The board may make and adopt rules necessary or proper for the administration of this chapter.

D. The chairperson may establish subcommittees consisting of board members and define their duties as the chairperson deems necessary to carry out the functions of the board.

E. Board employees, including the executive director, temporary personnel and professional medical investigators, are immune from civil liability for good faith actions they take to enforce this chapter.

F. In performing its duties pursuant to subsection A of this section, the board may receive and review staff reports on complaints, malpractice cases and all investigations.

G. The chairperson and vice chairperson of the Arizona regulatory board of physician assistants are members of the committee on executive director selection and retention established by section 32-1403, subsection G, which is responsible for the appointment of the executive director pursuant to section 32-1405.

32-2505. Personnel; consultants; compensation

A. The executive director employed by the Arizona medical board is the executive director of the Arizona regulatory board of physician assistants. The staff of the Arizona medical board shall carry out the administrative responsibilities of the Arizona regulatory board of physician assistants.

B. The executive director is eligible to receive compensation set by the board within the range determined under section 38-611.

C. The executive director or the executive director's designee shall:

1. Employ, evaluate, dismiss, discipline and direct professional, clerical, technical, investigative and administrative personnel necessary to carry on the work of the board.

2. Set compensation for board employees within the range determined under section 38-611.

3. As directed by the board, prepare and submit recommendations for amendments to the physician assistant practice act for consideration by the legislature.

4. Appoint and employ medical consultants and agents necessary to conduct investigations, gather information and perform those duties the executive director determines are necessary and appropriate to enforce this chapter.

5. Issue licenses, registrations and permits to applicants who meet the requirements of this chapter.

6. Manage the board's offices.
7. Prepare minutes, records, reports, registries, directories, books and newsletters and record all board transactions and orders.

8. Collect all monies due and payable to the board.


10. Prepare an annual budget.

11. Submit a copy of the budget each year to the governor, the speaker of the house of representatives and the president of the senate.

12. Initiate an investigation if evidence appears to demonstrate that a physician assistant may be engaged in unprofessional conduct or may be medically incompetent or mentally or physically unable to safely practice as a physician assistant.

13. Issue subpoenas if necessary to compel the attendance and testimony of witnesses and the production of books, records, documents and other evidence.

14. Provide assistance to the attorney general in preparing and sign and execute disciplinary orders, rehabilitative orders and notices of hearings as directed by the board.

15. Enter into contracts to procure goods and services pursuant to title 41, chapter 23 that are necessary to carry out board policies and directives.

16. Execute board directives.

17. Represent the board in matters with the federal government, other states or jurisdictions of the United States, this state, political subdivisions of this state, the news media and the public.

18. Enter into stipulated agreements on behalf of the board with persons under the jurisdiction of the board for the treatment, rehabilitation or monitoring of chemical substance abuse or misuse.

19. Review all complaints filed pursuant to section 32-2551. If delegated by the board, the executive director may also dismiss a complaint if the complaint is without merit.

20. If delegated by the board, directly refer cases to a formal hearing.

21. If delegated by the board, close cases resolved through mediation.

22. If delegated by the board, issue advisory letters.

23. If delegated by the board, enter into a consent agreement if there is evidence of danger to the public health and safety.

24. If delegated by the board, grant uncontested requests for inactive status and cancellation of a license pursuant to this chapter.

25. If delegated by the board, refer cases to the board for a formal interview.
26. Perform all other administrative, licensing or regulatory duties required by the board.

D. Medical consultants and agents appointed pursuant to subsection C, paragraph 4 of this section are eligible to receive compensation determined by the executive director in an amount not to exceed two hundred dollars for each day of service.

E. A person who is aggrieved by an action taken by the executive director may request the board to review that action by filing with the board a written request within thirty days after that person is notified of the executive director's action by personal delivery, or if mailed to that person's last known residence or place of business, within thirty-five days after the date on the notification. At the next regular board meeting, the board shall review the executive director's action. On review, the board shall approve, modify or reject the executive director's action.

32-2506. Arizona medical board fund

A. Pursuant to sections 35-146 and 35-147, the board shall deposit ten per cent of all monies collected pursuant to this chapter in the state general fund and deposit the remaining ninety per cent in the Arizona medical board fund.

B. Monies deposited in the fund pursuant to this section are subject to section 35-143.01.

32-2507. Licensee profiles; civil penalty

A. The board shall make available to the public a profile of each licensee. The board shall make this information available through an internet website and, if requested, in writing. The profile shall contain the following information:

1. A description of any conviction of a felony or a misdemeanor involving moral turpitude within the last five years. For the purposes of this paragraph, a licensee is deemed to be convicted of a crime if the licensee pled guilty or was found guilty by a court of competent jurisdiction.

2. A description of any felony charges or misdemeanor charges involving moral turpitude within the last five years to which the licensee pled no contest.

3. The number of pending complaints and final board disciplinary and nondisciplinary actions within the last five years. Information concerning pending complaints shall contain the following statement:

   Pending complaints represent unproven allegations. On investigation, many complaints are found to be without merit and are dismissed.

4. All medical malpractice court judgments and all medical malpractice awards or settlements in which a payment is made to a complaining party within the last five years. Information concerning malpractice actions shall contain the following statement:

   The settlement of a medical malpractice action may occur for a variety of reasons that do not necessarily reflect negatively on the professional competence or conduct of the physician assistant. A payment in settlement of a medical malpractice action does not create a presumption that medical malpractice occurred.
5. The name and location of the licensee's training and the date of graduation.

6. The licensee's primary practice location.

B. Each licensee shall submit the information required pursuant to subsection A of this section as directed by the board. An applicant for licensure shall submit this information at the time of application. The applicant and licensee shall submit the information on a form prescribed by the board. A licensee shall submit immediately any changes in information required pursuant to subsection A, paragraphs 1, 2 and 4 of this section. The board shall update immediately its internet website to reflect changes in information relating to subsection A, paragraphs 1, 2, 3 and 4 of this section. The board shall update the internet website information after receipt of the renewal application pursuant to section 32-2523.

C. The board shall provide each licensee with a copy of the licensee's profile and give the licensee reasonable time to correct the profile before it is available to the public.

D. It is an act of unprofessional conduct for a licensee to provide erroneous information pursuant to this section. In addition to other disciplinary action, the board may impose a civil penalty of not more than one thousand dollars for each erroneous statement.

32-2508. Preceptorship awareness campaign; definitions

A. The board shall develop a preceptorship awareness campaign that educates medical professionals who are licensed pursuant to this chapter on how to become and the benefits of being a medical preceptor for students.

B. For the purposes of this section:

1. "Medical preceptor" means a medical professional who is licensed pursuant to this chapter and who maintains an active practice in this state.

2. "Preceptorship":

(a) Means a mentoring experience in which a medical preceptor provides a program of personalized instruction, training and supervision to a student to enable the student to obtain a medical professional degree to become licensed pursuant to this chapter.

(b) Does not include mentoring for medical services that are prescribed in section 36-2301.01, subsection C, paragraph 1.

3. "Student" means an individual who is matriculating at the graduate level at an accredited institution of higher education in this state and who is seeking a medical professional degree to become licensed pursuant to this chapter.

32-2521. Qualifications

A. An applicant for licensure shall:

1. Have graduated from a physician assistants educational program approved by the board.
2. Pass a certifying examination approved by the board.

3. Be physically and mentally able to safely perform health care tasks as a physician assistant.

4. Have a professional record that indicates that the applicant has not committed any act or engaged in any conduct that constitutes grounds for disciplinary action against a licensee pursuant to this chapter. This paragraph does not prevent the board from considering the application of an applicant who was the subject of disciplinary action in another jurisdiction if the applicant's act or conduct was subsequently corrected, monitored and resolved to the satisfaction of that jurisdiction's regulatory board.

5. Not have had a license to practice revoked by a regulatory board in another jurisdiction in the United States for an act that occurred in that jurisdiction that constitutes unprofessional conduct pursuant to this chapter.

6. Not be currently under investigation, suspension or restriction by a regulatory board in another jurisdiction in the United States for an act that occurred in that jurisdiction that constitutes unprofessional conduct pursuant to this chapter. If the applicant is under investigation by a regulatory board in another jurisdiction, the board shall suspend the application process and may not issue or deny a license to the applicant until the investigation is resolved.

7. Not have surrendered, relinquished or given up a license in lieu of disciplinary action by a regulatory board in another jurisdiction in the United States for an act that occurred in that jurisdiction that constitutes unprofessional conduct pursuant to this chapter. This paragraph does not prevent the board from considering the application of an applicant who surrendered, relinquished or gave up a license in lieu of disciplinary action by a regulatory board in another jurisdiction if that regulatory board subsequently reinstated the applicant's license.

8. Have submitted verification of all hospital affiliations and employment for the five years preceding application. Each hospital must verify the applicant's affiliation or employment on the hospital's official letterhead or the electronic equivalent.

B. The board shall require an applicant to have all credentials submitted from the primary source where the document originated, either electronically or by hard copy, except that the board may accept primary-source verified credentials from a credentials verification service approved by the board.

C. The board may make investigations it deems necessary to advise itself with respect to the qualifications of the applicant, including physical examinations, mental evaluations, written competency examinations or any combination of these examinations and evaluations.

D. If the board finds that the applicant committed an act or engaged in conduct that would constitute grounds for disciplinary action in this state, before issuing a license the board must determine to its satisfaction that the act or conduct has been corrected, monitored and resolved. If the act or conduct has not been resolved, before issuing a license the board must determine to its satisfaction that mitigating circumstances exist that prevent its resolution.

E. If another jurisdiction has taken disciplinary action against an applicant, before issuing a license the board must determine to its satisfaction that the cause for the action was corrected and the matter was resolved. If the other jurisdiction has not resolved the matter, before issuing a license the board must determine to its satisfaction that mitigating circumstances exist that prevent its resolution.
F. The board may delegate to the executive director the authority to deny licenses to applicants who do not meet the requirements of this section.

32-2522. Applications; interview; withdrawal

A. Each applicant shall file a verified completed application in the form required and supplied by the board that is accompanied by the prescribed application fee.

B. The application shall be designed to require the submission of evidence, credentials and other proof necessary to satisfy the board that the applicant qualifies for licensure.

C. The application shall contain the oath of the applicant that:

1. All information contained in the application and evidence submitted with it are true and correct.

2. The credentials submitted were not procured by fraud or misrepresentation or any mistake of which the applicant is aware.

3. The applicant is the lawful holder of the credentials.

D. All applications submitted to the board and any attendant evidence, credentials or other proof submitted with an application are the property of the board and part of the permanent record of the board and shall not be returned to an applicant.

E. After the board has received a completed application the board either shall grant or deny a license to the applicant. If an applicant has submitted an incomplete application, the board shall promptly notify an applicant, in writing, of the deficiencies, if any, in the application that prevent it from being a completed application.

F. The board or its representatives may interview an applicant to determine whether the application is sufficient.

G. Applications are considered withdrawn on any of the following conditions:

1. Written request of the applicant.

2. Failure of the applicant to appear for an interview with the board unless good cause is shown.

3. Failure to submit a completed application within one year from the date of the mailing by the board of a statement to the applicant of the deficiencies in the application pursuant to subsection E of this section.

H. On request of an applicant who disagrees with the statement of deficiency, the board shall grant a hearing before the board at its next regular meeting if there is time at that meeting to hear the matter. The board shall not delay this hearing beyond one regularly scheduled meeting. At any hearing granted pursuant to this subsection, the burden of proof is on the applicant to demonstrate that the alleged deficiencies do not exist.

I. The board may deny a license to an applicant who does not meet the requirements of this article.
J. If an applicant does not meet the requirements of section 32-2521, subsection A, paragraph 3, the board may issue a license subject to any of the following probationary conditions:

1. Restrict the licensee's practice.
2. Require the licensee to continue medical or psychiatric treatment.
3. Require the licensee to participate in a specified rehabilitation program.
4. Require the licensee to abstain from alcohol and other drugs.

K. If the board offers a probationary license to an applicant pursuant to subsection J of this section, it shall notify the applicant in writing of the following:

1. The applicant's specific deficiencies.
2. The probationary period.
3. The applicant's right to reject the terms of probation.
4. If the applicant rejects the terms of probation, the applicant's right to a hearing on the board's denial of the application.

32-2523. Licensure; renewal; continuing education; audit; penalty fee; expiration

A. Except as provided in section 32-4301, each holder of a regular license shall renew the license every other year on or before the licensee's birthday by paying the prescribed renewal fee and supplying the board with information it deems necessary, including proof of having completed, before the renewal date, forty hours of category I continuing medical education approved by the American academy of physician assistants, the American medical association, the American osteopathic association or any other accrediting organization acceptable to the board. The board shall verify continuing medical education compliance and shall randomly audit at least ten percent of physician assistants who are renewing their license within the calendar year and who do not hold a current national certification from a national certification organization for physician assistants that is approved by the board.

B. Except as provided in section 32-4301, a holder of a regular license who fails to renew the license within thirty days after the licensee's birthday shall pay a penalty fee as set forth in rule for late renewal.

C. Except as provided in section 32-4301, if a holder of a regular license fails to renew the license within ninety days after the licensee's birthday, the license automatically expires. It is unlawful for a person to perform health care tasks of a physician assistant after the license expires.

D. A person whose license expires may reapply for licensure pursuant to this chapter.

E. If a licensee does not meet the requirements of subsection A of this section because of that person's illness, religious missionary activity or residence in a foreign country or any other extenuating circumstance, the board may grant an extension of the deadline if it receives a written request to do so from the licensee that details the reasons for this request.
F. The continuing medical education requirement in subsection A of this section is deemed satisfied if, at the time of renewal, the licensee holds a certification in good standing from a certifying body approved by the board.

32-2524. Exemption from licensure

This chapter does not require licensure of:

1. A student who is enrolled in a physician assistant education program approved by the board.

2. A physician assistant who is an employee of the United States government and who works on land or in facilities owned or operated by the United States government.

3. A physician assistant who is a member of the armed forces of the United States and who is on official orders or performing official duties as outlined in the appropriate regulation of that branch of military service.

32-2525. Cancellation of license

A. A person who holds an active regular license as a physician assistant, who is not presently under investigation by the board as the result of a complaint or information received by it, and against whom the board has not commenced any disciplinary proceedings may request and the board shall grant cancellation of the license.

B. The board may accept the request to cancel the active regular license of a physician assistant who has been charged with a violation of this chapter or rules adopted pursuant to this chapter if the physician assistant admits the charges and stipulates this admission for the record.

32-2526. Fees

A. By a vote at its annual fall meeting, the board shall establish nonrefundable fees and penalties that do not exceed the following:

1. Processing an application for an active license, four hundred dollars.

2. Issuing an active license, four hundred dollars.

3. Annual renewal of a regular license, four hundred dollars.

4. Penalty fee for late renewal of a regular license, three hundred fifty dollars.

5. Issuance of a duplicate license, twenty-five dollars.

6. Verification of a license, ten dollars.

7. Copying records, documents, letters, minutes, applications and files, one dollar for the first three pages and twenty-five cents for each additional page.

8. The sale of computerized tapes or diskettes that do not require programming, one hundred dollars.
9. Services not required to be provided by this chapter, but that the board deems appropriate to carry out the intent and purpose of this chapter, a fee of not to exceed the actual cost of providing the services. Notwithstanding section 32-2506, the board shall deposit, pursuant to sections 35-146 and 35-147, all of the monies collected under this paragraph in the Arizona medical board fund established by section 32-1406.

B. Notwithstanding subsection A of this section, on written request the board may return the license renewal fee for good cause shown.

C. The board may collect from a drawer of a dishonored check, draft, order or note an amount allowed pursuant to section 44-6852.

32-2527. Change of address; penalty

A. A person holding an active license as a physician assistant in this state shall inform the board in writing within thirty days of that person's current residence address, office address and telephone number and of each change in residence and office address or telephone number that occurs. A residential address is not available to the public unless it is the only address of record.

B. The board may assess its costs incurred in locating a physician assistant who fails to comply with subsection A of this section within thirty days after the date of change. The board may also assess a penalty of not to exceed one hundred dollars against the physician assistant. Notwithstanding section 32-2506, monies collected pursuant to this subsection shall be deposited, pursuant to sections 35-146 and 35-147, in the Arizona medical board fund established by section 32-1406.

32-2528. Inactive license; application; prohibited activities

A. A person who holds a regular license pursuant to this chapter may request an inactive license from the board if both of the following are true:

1. The licensee is not under investigation by the board.

2. The board has not begun disciplinary proceedings against the licensee.

B. The board may grant an inactive license and shall waive the annual renewal fee and requirements for continuing medical education if the person certifies total retirement from the performance of health care tasks in this state, any jurisdiction of the United States and any foreign country and is current on all fees required by this chapter.

C. An inactive licensee shall not perform health care tasks.

D. The board may convert an inactive license to a regular license on payment of the annual renewal fee and presentation of evidence to the board that the holder possesses the medical knowledge and the physical and mental ability to safely engage in the performance of health care tasks. The board may require any combination of physical examination, psychiatric or psychological evaluation, oral competency examination or a board qualified written examination or interview it believes necessary to assist it in determining the ability of a physician assistant who holds an inactive license to return to regular licensure.
A supervising physician may delegate health care tasks to a physician assistant.

B. A physician assistant shall not perform surgical abortions as defined in section 36-2151.

C. The physician assistant may perform those duties and responsibilities, including the ordering, prescribing, dispensing and administration of drugs and medical devices, that are delegated by the supervising physician.

D. The physician assistant may provide any medical service that is delegated by the supervising physician if the service is within the physician assistant's skills, is within the physician's scope of practice and is supervised by the physician.

E. The physician assistant may pronounce death and, if delegated, may authenticate by the physician assistant's signature any form that may be authenticated by a physician's signature.

F. The physician assistant is the agent of the physician assistant's supervising physician in the performance of all practice related activities, including the ordering of diagnostic, therapeutic and other medical services.

G. The physician assistant may perform health care tasks in any setting authorized by the supervising physician, including physician offices, clinics, hospitals, ambulatory surgical centers, patient homes, nursing homes and other health care institutions. These tasks may include:

1. Obtaining patient histories.
2. Performing physical examinations.
3. Ordering and performing diagnostic and therapeutic procedures.
4. Formulating a diagnostic impression.
5. Developing and implementing a treatment plan.
7. Assisting in surgery.
8. Offering counseling and education to meet patient needs.
9. Making appropriate referrals.
10. Prescribing schedule IV or V controlled substances as defined in the federal controlled substances act of 1970 (P.L. 91-513; 84 Stat. 1242; 21 United States Code section 802) and prescription-only medications.
11. Prescribing schedule II and III controlled substances as defined in the federal controlled substances act of 1970.

12. Performing minor surgery as defined in section 32-2501.

13. Performing other nonsurgical health care tasks that are normally taught in courses of training approved by the board, that are consistent with the training and experience of the physician assistant and that have been properly delegated by the supervising physician.

H. The supervising physician shall:

1. Meet the requirements established by the board for supervising a physician assistant.

2. Accept responsibility for all tasks and duties the physician delegates to a physician assistant.

3. Notify the board and the physician assistant in writing if the physician assistant exceeds the scope of the delegated health care tasks.

4. Maintain a written agreement with the physician assistant. The agreement must state that the physician will exercise supervision over the physician assistant and retains professional and legal responsibility for the care rendered by the physician assistant. The agreement must be signed by the supervising physician and the physician assistant and updated annually. The agreement must be kept on file at the practice site and made available to the board on request. Each year the board shall randomly audit at least five percent of these agreements for compliance.

I. A physician's ability to supervise a physician assistant is not affected by restrictions imposed by the board on a physician assistant pursuant to disciplinary action taken by the board.

J. Supervision must be continuous but does not require the personal presence of the physician at the place where health care tasks are performed if the physician assistant is in contact with the supervising physician by telecommunication. If the physician assistant practices in a location where a supervising physician is not routinely present, the physician assistant must meet in person or by telecommunication with a supervising physician at least once each week to ensure ongoing direction and oversight of the physician assistant's work. The board by order may require the personal presence of a supervising physician when designated health care tasks are performed.

K. At all times while a physician assistant is on duty, the physician assistant shall wear a name tag with the designation "physician assistant" on it.

L. The board by rule may prescribe a civil penalty for a violation of this article. The penalty shall not exceed fifty dollars for each violation. The board shall deposit, pursuant to sections 35-146 and 35-147, all monies it receives from this penalty in the state general fund. A physician assistant and the supervising physician may contest the imposition of this penalty pursuant to board rule. The imposition of a civil penalty is public information, and the board may use this information in any future disciplinary actions.

32-2532. Prescribing, administering and dispensing drugs; limits and requirements; notice

A. Except as provided in subsection F of this section, a physician assistant shall not prescribe, dispense or administer:
1. A schedule II or schedule III controlled substance as defined in the federal controlled substances act of 1970 (P.L. 91-513; 84 Stat. 1242; 21 United States Code section 802) without delegation by the supervising physician, board approval and United States drug enforcement administration registration.

2. A schedule IV or schedule V controlled substance as defined in the federal controlled substances act of 1970 without United States drug enforcement administration registration and delegation by the supervising physician.

3. Prescription-only medication without delegation by the supervising physician.

4. Prescription medication intended to perform or induce an abortion.

B. All prescription orders issued by a physician assistant shall contain the name, address and telephone number of the physician assistant. A physician assistant shall issue prescription orders for controlled substances under the physician assistant's own United States drug enforcement administration registration number.

C. If certified for prescription privileges pursuant to section 32-2504, subsection A, initial prescriptions for schedule II controlled substances that are opioids are subject to the limits prescribed in sections 32-3248 and 32-3248.01 if the physician assistant has been delegated to prescribe schedule II controlled substances by the supervising physician pursuant to this section. For each schedule IV or schedule V controlled substance, the physician assistant may not prescribe the controlled substance more than five times in a six-month period for each patient.

D. A prescription for a schedule III controlled substance that is an opioid or benzodiazepine is not refillable without the written consent of the supervising physician.

E. Prescription-only drugs shall not be dispensed, prescribed or refillable for a period exceeding one year.

F. Except in an emergency, a physician assistant may dispense schedule II or schedule III controlled substances for a period of use of not to exceed seventy-two hours with board approval or any other controlled substance for a period of use of not to exceed ninety days and may administer controlled substances without board approval if it is medically indicated in an emergency dealing with potential loss of life or limb or major acute traumatic pain. Notwithstanding the authority granted in this subsection, a physician assistant may not dispense a schedule II controlled substance that is an opioid, except for an implantable device or an opioid that is for medication-assisted treatment for substance use disorders.

G. Except for samples provided by manufacturers, all drugs dispensed by a physician assistant shall be labeled to show the name of the physician assistant.

H. A physician assistant shall not obtain a drug from any source other than the supervising physician or a pharmacist. A physician assistant may receive manufacturers' samples if delegated to do so by the supervising physician.

I. If a physician assistant is approved by the board to prescribe, administer or dispense schedule II and schedule III controlled substances, the physician assistant shall maintain an up-to-date and complete log of all schedule II and schedule III controlled substances the physician assistant administers or dispenses. The board may not grant a physician assistant the authority to dispense schedule II controlled substances that are opioids, except for implantable devices or opioids that are for medication-assisted treatment for substance use disorders.
J. The board shall advise the Arizona state board of pharmacy and the United States drug enforcement administration of all physician assistants who are authorized to prescribe or dispense drugs and any modification of their authority.

K. The Arizona state board of pharmacy shall notify all pharmacies at least quarterly of physician assistants who are authorized to prescribe or dispense drugs.

32-2533. Supervising physician; responsibilities

A. A supervising physician is responsible for all aspects of the performance of a physician assistant, whether or not the supervising physician actually pays the physician assistant a salary. The supervising physician is responsible for supervising the physician assistant and ensuring that the health care tasks performed by a physician assistant are within the physician assistant's scope of training and experience and have been properly delegated by the supervising physician.

B. Each physician-physician assistant team must ensure that:

1. The physician assistant's scope of practice is identified.

2. The delegation of medical tasks is appropriate to the physician assistant's level of competence.

3. The relationship of, and access to, the supervising physician is defined.

4. A process for evaluating the physician assistant's performance is established.

C. A supervising physician shall not supervise more than six physician assistants who work at the same time.

D. A supervising physician shall develop a system for recording and reviewing all instances in which the physician assistant prescribes schedule II or schedule III controlled substances.

32-2534. Initiation of practice

A physician assistant may not perform health care tasks until the physician assistant has completed and signed a written agreement with a supervising physician pursuant to section 32-2531, subsection H, paragraph 4.

32-2535. Emergency medical care; supervision

A. Notwithstanding the requirements of this article, in response to a natural disaster, accident or other emergency, a physician assistant who is licensed pursuant to this chapter, licensed or certified by another regulatory jurisdiction in the United States or credentialed as a physician assistant by a federal employer may provide medical care at any location and with or without supervision.

B. A physician who supervises a physician assistant who is providing medical care pursuant to this section is not required to comply with the requirements of this article relating to supervising physicians.

32-2551. Grounds for disciplinary action; duty to report; immunity; proceedings; board action; notice; civil penalty
A. The board on its own motion may investigate any evidence that appears to show that a physician assistant is or may be medically incompetent, is or may be guilty of unprofessional conduct or is or may be mentally or physically unable to carry out approved health care tasks. Any physician, physician assistant or health care institution as defined in section 36-401 shall, and any other person may, report to the board any information the physician, physician assistant, health care institution or other person has that appears to show that a physician assistant is or may be medically incompetent, is or may be guilty of unprofessional conduct or is or may be mentally or physically unable to carry out approved health care tasks. If the board begins an investigation pursuant to this section, it may require the physician assistant to promptly provide the name and address of the physician assistant's supervising physician or physicians. The board or the executive director shall notify the physician assistant and the supervising physician of the content of the reported information in writing within one hundred twenty days of its receipt of the information. Any physician, physician assistant, health care institution or other person that reports or provides information to the board in good faith is not subject to an action for civil damages as a result of reporting or providing information, and, if requested, the name of the reporter shall not be disclosed unless the information is essential to proceedings conducted pursuant to this section.

B. The board or, if delegated by the board, the executive director may require a mental, physical or medical competency examination or any combination of those examinations or may make investigations including investigational interviews between representatives of the board and the physician assistant and the supervising physician as it deems necessary to fully inform itself with respect to any information reported pursuant to subsection A of this section. These examinations may include biological fluid testing and other examinations known to detect the presence of alcohol or other drugs. The board or, if delegated by the board, the executive director may require the physician assistant, at the physician assistant's expense, to undergo assessment by a board approved rehabilitative, retraining or assessment program.

C. If the board finds, based on the information it receives under subsections A and B of this section, that the public safety imperatively requires emergency action, and incorporates a finding to that effect in its order, the board may restrict a license or order a summary suspension of a license pending proceedings for revocation or other action. If the board acts pursuant to this subsection, the physician assistant shall also be served with a written notice of complaint and formal hearing, setting forth the charges, and is entitled to a formal hearing before the board or an administrative law judge on the charges within sixty days pursuant to title 41, chapter 6, article 10.

D. If, after completing its investigation, the board finds that the information provided pursuant to subsection A of this section is not of sufficient seriousness to merit disciplinary action against the physician assistant's license, it may take the following actions:

1. Dismiss if, in the opinion of the board, the complaint is without merit.

2. File an advisory letter. The licensee may file a written response with the board within thirty days after receiving the advisory letter.

3. Require the licensee to complete designated continuing medical education courses.

E. If the board finds that it can take rehabilitative or disciplinary action without the presence of the physician assistant at a formal interview it may enter into a consent agreement with the physician assistant to limit or restrict the physician assistant's practice or to rehabilitate the physician assistant, protect the public and ensure the physician assistant's ability to safely practice. The board may also require the
physician assistant to successfully complete a board approved rehabilitative, retraining or assessment program at the physician assistant's own expense.

F. The board shall not disclose the name of the person who provided the information regarding a licensee's drug or alcohol impairment or the name of the person who files a complaint if that person requests anonymity.

G. If, after completing its investigation, the board believes that the information is or may be true and that the information may be of sufficient seriousness to merit direct action against the physician assistant's license, it may request a formal interview with the physician assistant and the supervising physician. If the physician assistant refuses the invitation for a formal interview, the board may issue a formal complaint and order that a hearing be held pursuant to title 41, chapter 6, article 10. The board shall notify the physician assistant in writing of the time, date and place of the formal interview at least twenty days before the interview. The notice shall include the right to be represented by counsel and shall fully set forth the conduct or matters to be discussed.

H. After the formal interview, the board may take the following actions:

1. Dismiss if, in the opinion of the board, the information is without merit.

2. File an advisory letter. The licensee may file a written response with the board within thirty days after receiving the advisory letter.

3. Enter into a stipulation with the physician assistant to restrict or limit the physician assistant's practice or medical activities or to rehabilitate, retrain or assess the physician assistant, in order to protect the public and ensure the physician assistant's ability to safely perform health care tasks. The board may also require the physician assistant to successfully complete a board approved rehabilitative, retraining or assessment program at the physician assistant's own expense as prescribed in subsection E of this section.

4. File a letter of reprimand.

5. Issue a decree of censure. A decree of censure is a disciplinary action against the physician assistant's license and may include a requirement for restitution of fees to a patient resulting from violations of this chapter or rules adopted under this chapter.

6. Fix a period and terms of probation best adapted to protect the public health and safety and rehabilitate or educate the physician assistant. Failure to comply with any terms of probation is cause for initiating formal proceedings pursuant to title 41, chapter 6, article 10. Probation may include:

(a) Restrictions on the health care tasks the physician assistant may perform.

(b) Temporary suspension for not to exceed twelve months.

(c) Restitution of patient fees.

(d) Education or rehabilitation at the licensee's own expense.

7. Require the licensee to complete designated continuing medical education courses.
I. If the board finds that the information provided pursuant to subsection A of this section warrants suspension or revocation of a physician assistant's license, it shall immediately initiate formal proceedings for the suspension or revocation of the license as provided in title 41, chapter 6, article 10. The notice of complaint and hearing is fully effective by mailing a true copy of the notice of complaint and hearing by certified mail addressed to the physician assistant's last known address of record in the board's files. The notice of complaint and hearing is complete at the time of its deposit in the mail.

J. A physician assistant who after a formal hearing pursuant to title 41, chapter 6, article 10 is found to be medically incompetent, guilty of unprofessional conduct or mentally or physically unable to safely carry out the physician assistant's approved health care tasks, or any combination of these, is subject to censure, probation, suspension or revocation, or any combination of these, for a period of time or permanently and under conditions the board deems appropriate for the protection of the public health and safety.

K. In a formal interview pursuant to subsection G of this section or in a hearing pursuant to subsection I of this section, the board in addition to any other action may impose a civil penalty in the amount of not less than three hundred dollars nor more than ten thousand dollars for each violation of this chapter or a rule adopted under this chapter.

L. An advisory letter is a public document and may be used in future disciplinary actions against a physician assistant.

M. The board may charge the costs of a formal hearing to the licensee if it finds the licensee in violation of this chapter.

N. If the board acts to modify a physician assistant's prescription writing privileges, the Arizona regulatory board of physician assistants shall immediately notify the Arizona state board of pharmacy and the United States drug enforcement administration of this modification.

O. If during the course of an investigation the Arizona regulatory board of physician assistants determines that a criminal violation may have occurred involving the performance of health care tasks, it shall provide evidence of the violation to the appropriate criminal justice agency.

P. The board may accept the surrender of an active license from a person who admits in writing to any of the following:

1. Being unable to safely engage in the practice of medicine.

2. Having committed an act of unprofessional conduct.

3. Having violated this chapter or a board rule.

Q. In determining the appropriate disciplinary action under this section, the board shall consider all previous nondisciplinary and disciplinary actions against a licensee.

32-2552. Right to examine and copy evidence; subpoena authority; right to counsel; confidentiality of records

A. In connection with an investigation conducted by the board on its own motion or as the result of information received pursuant to section 32-2551, subsection A, the board or its duly authorized agent or
employee at all reasonable times shall have access to, for the purpose of examination, and the right to copy any documents, reports, records or other physical evidence of any person being investigated or the reports, the records and any other documents maintained by and in the possession of any hospital, clinic, physician's office, physician assistant's office, laboratory, pharmacy, health care institution as defined in section 36-401 or other public or private agency if the documents, reports, records or evidence relate to a physician assistant's medical competence, unprofessional conduct or mental or physical ability to safely engage in the physician assistant's approved health care tasks.

B. For the purpose of all investigations and proceedings conducted by the board:

1. On its own motion or on application of a person involved in an investigation, the board may issue subpoenas compelling the attendance and testimony of witnesses or demanding the production of documents or any other physical evidence for examination or copying if the evidence relates to the medical incompetence, unprofessional conduct or mental or physical ability of a physician assistant to safely perform health care tasks. Within five days after service of a subpoena requiring the production of evidence in the person's possession or under the person's control, the person may petition the board to revoke, limit or modify the subpoena. The board shall do so if it believes that the evidence required does not relate to violations of this chapter, is not relevant to the subject matter of the hearing or investigation or does not describe with sufficient particularity the physical evidence requested.

2. A person appearing before the board may be represented by counsel.

3. A board member or agent designated by the board may administer oaths or affirmations, examine witnesses and receive evidence.

4. On application by the board or by the person subpoenaed, the superior court has jurisdiction to issue an order to do either of the following:

(a) Require a person to appear before the board or its authorized agent to produce evidence relating to the investigation.

(b) Revoke, limit or modify a subpoena if the court determines that the evidence does not relate to a violation of this chapter, is not relevant to the hearing or investigation or does not describe with sufficient particularity the physical evidence requested.

C. The following items are not available to the public:

1. Patient records, including clinical records, medical reports and laboratory statements and reports.

2. Files, films, reports or oral statements relating to diagnostic findings or treatment of patients.

3. Any information from which a patient or the patient's family might be identified.

4. Information received and records kept by the board in its investigations.

D. This section and any other provision of law that makes communications between a physician or a physician assistant and the physician assistant's patient a privileged communication does not apply to investigations or proceedings conducted pursuant to this chapter. The board and its employees, agents and
representatives shall keep in confidence the names of any patients whose records are reviewed during the course of investigations and proceedings pursuant to this chapter.

E. Hospital records, medical staff records, medical staff review committee records, testimony concerning those records and proceedings related to the creation of those records are not available to the public, shall be kept confidential by the board and are subject to the same provisions of law concerning discovery and use in legal actions as are the original records in the possession and control of hospitals, medical staffs and medical staff review committees.

32-2553. Judicial review

Except as provided in section 41-1092.08, subsection H, final decisions of the board are subject to judicial review pursuant to title 12, chapter 7, article 6.

32-2554. Violation; classification

A. A person who does any of the following is guilty of a class 6 felony:

1. Performs a health care task if that person is not licensed pursuant to this chapter or is not exempt from licensure pursuant to this chapter.

2. Secures a license to perform health care tasks by fraud or deceit.

3. Impersonates a member of the board.

B. A person who is not licensed pursuant to this chapter shall not use the designation "P.A.", "P.A.-C." or "Physician assistant" or use any other words, initials or symbols in a way that leads the public to believe that the person is licensed pursuant to this chapter. A person who violates this subsection is guilty of a class 2 misdemeanor.

32-2555. Injunctions

A. The superior court may issue an injunction to enjoin:

1. A person who is not licensed pursuant to this chapter or who is not exempt from licensure pursuant to this chapter from performing health care tasks.

2. A physician assistant from performing health care tasks if the court determines that the licensee will or may cause irreparable damage to the public health and safety before the board has an opportunity to act pursuant to section 32-2551.

3. An act proscribed in section 32-2554, subsection B.

B. In a petition for an injunction pursuant to subsection A, paragraph 1 of this section, it is sufficient for the petitioner to charge that the respondent on a day certain in a named county engaged in the performance of health care tasks without being licensed or exempt from licensure pursuant to this chapter. It is not necessary for the petitioner to show damage or injury.
C. In a petition for an injunction pursuant to subsection A, paragraph 2 of this section, the petitioner shall specify the facts regarding the licensee's threat to the public health and safety.

D. The board shall file the petition in the superior court in Maricopa county or in the county where the respondent resides or is found.

32-2556. Human immunodeficiency virus; disclosure; immunity; definition

A. It is not an act of unprofessional conduct for a licensee to report to the department of health services the name of a patient's spouse, sex partner or person with whom the patient has shared hypodermic needles or syringes if the licensee knows that the patient tests positive for the human immunodeficiency virus and that the patient has not or will not notify these people and refer them to testing. Before reporting this information to the department of health services the licensee shall ask the patient to release this information voluntarily.

B. It is not an act of unprofessional conduct for a licensee who knows or who has reason to believe that a significant exposure has occurred between a patient who tests positive for the human immunodeficiency virus and a health care worker or a public safety employee to inform the worker or employee of the exposure. Before disclosing this information the licensee shall ask the patient to disclose this information voluntarily. If the patient does not agree to do this the licensee may disclose the information in a manner that does not identify the patient.

C. This section does not impose a duty to disclose information. A licensee is not subject to civil or criminal liability for either disclosing or not disclosing information.

D. If a licensee decides to make a disclosure pursuant to this section the licensee may request the department of health services to make the disclosure on the licensee's behalf.

E. For the purposes of this section, "significant exposure" means contact of a person's ruptured or broken skin or mucous membranes with another person's blood or body fluid, other than tears, saliva or perspiration, of a magnitude that the centers for disease control of the United States public health service have epidemiologically demonstrated can result in the transmission of the human immunodeficiency virus.

32-2557. Disciplinary action; reciprocity

A. The board shall initiate an investigation pursuant to section 32-2551 if a professional regulatory board in another jurisdiction in the United States has taken disciplinary action against a licensee for an act that occurred in that jurisdiction that constitutes unprofessional conduct pursuant to this chapter.

B. The board shall order the summary suspension of a license pending proceedings for revocation or other action if a professional regulatory board in another jurisdiction in the United States has taken the same action because of its belief that the public health, safety or welfare imperatively required emergency action.

32-2558. Reinstatement of revoked or surrendered license

A. On written application, the board may issue a new license to a physician assistant whose license was previously revoked by the board or surrendered if the applicant demonstrates to the board's satisfaction
that the applicant is completely rehabilitated with respect to the conduct that was the basis for the revocation or surrender. In making its decision, the board shall determine:

1. That the applicant has not engaged in any conduct during the revocation or surrender period that would have constituted a basis for revocation or surrender pursuant to section 32-2551.

2. If a criminal conviction was a basis of the revocation or surrender, that the applicant's civil rights have been fully restored pursuant to statute or any other applicable recognized judicial or gubernatorial order.

3. That the applicant has made restitution to any aggrieved person as ordered by a court of competent jurisdiction.

4. That the applicant demonstrates any other standard of rehabilitation the board determines is appropriate.

B. Except as provided in subsection C of this section, a person shall not submit an application for reinstatement less than two years after the date of revocation or surrender.

C. The board shall vacate its previous order to revoke or accept the surrender of a license if that revocation or surrender was based on a conviction of a felony or an offense involving moral turpitude and that conviction has been reversed on appeal. The physician assistant may submit an application for reinstatement as soon as the court enters the reversal.

D. An applicant for reinstatement shall comply with all initial licensing requirements prescribed by this chapter.
DEPARTMENT OF INSURANCE AND FINANCIAL INSTITUTIONS
Title 20, Chapter 6

New Article: Article 13

New Section: R20-6-1301, R20-6-1302, R20-6-1303, R20-6-1304, R20-6-1035

New Exhibit: Exhibit A
GOVERNOR’S REGULATORY REVIEW COUNCIL

ATTORNEY MEMORANDUM - REGULAR RULEMAKING

MEETING DATE:  July 6, 2022

TO:  Members of the Governor’s Regulatory Review Council (Council)

FROM:  Council Staff

DATE:  June 13, 2022

SUBJECT:  DEPARTMENT OF INSURANCE AND FINANCIAL INSTITUTIONS
Title 20, Chapter 6

New Article:  Article 13

New Section:  R20-6-1301, R20-6-1302, R20-6-1303, R20-6-1304, R20-6-1035

New Exhibit:  Exhibit A

Summary:

This regular rulemaking from the Department of Insurance and Financial Institutions (Department) seeks to add a new Article containing six (6) new rules to Title 20, Chapter 6, Article 13 related to Mental Health Parity.

In 2020, the Arizona Legislature enacted the Arizona Mental Health Parity Act (also known as “Jake’s Law”) at A.R.S. §§ 20-3501 through 20-3505 to implement the provisions of the federal Mental Health Parity and Addiction Equity Act (“MHPAEA” 42 U.S.C. 300gg-26 and implementing regulations) on the state level. MHPAEA generally establishes that health insurance issuers that provide mental health or substance use disorder (MH/SUD) benefits may not, among other things, impose less favorable benefit limitations on MH/SUD benefits than on medical/surgical benefits. State insurance authorities, the U.S. Department of Health and Human Services, and the U.S. Department of Labor (U.S. DOL) have jurisdiction over applicable
individual and group health insurance policies. MHPAEA regulations establish standards related to health care insurers’ application of financial requirements (e.g., deductibles and co-payments), quantitative treatment limitations (e.g., visit limits), and nonquantitative treatment limitations (e.g., step therapy, prior authorization). Health care insurers cannot apply financial requirements (FRs) or quantitative treatment limitations (QTLs) to MH/SUD policy benefits that are more restrictive than the predominant financial requirements or treatment limitations that apply to substantially all medical/surgical benefits. Nor can health care insurers impose nonquantitative treatment limitations (NQTLs) with respect to MH/SUD benefits in any classification unless the processes, strategies, evidentiary standards, or other factors used in applying the NQTL to MH/SUD benefit classifications are comparable to those used with medical surgical/benefits classifications.

The Arizona Legislature also charged the Department of Insurance and Financial Institutions (“Department”) to: “adopt by rule both of the following: 1. Forms or worksheets that health care insurers must use to prepare the reports required by section 20-3502 . . . and 2. Standards to determine compliance with the mental health parity and addiction equity act.” Laws 2020, Chap. 4, Sec. 8. (SB1523). This rulemaking is intended to fulfill the Legislature’s charge to create forms and worksheets that health care insurers must use to prepare the reports required by A.R.S. § 20-3502 and establish standards to determine compliance with MHPAEA.

1. **Are the rules legal, consistent with legislative intent, and within the agency’s statutory authority?**

   The Department cites both general and specific statutory authority for these rules.

2. **Do the rules establish a new fee or contain a fee increase?**

   This rulemaking does not establish a new fee or contain a fee increase.

3. **Does the preamble disclose a reference to any study relevant to the rules that the agency reviewed and either did or did not rely upon?**

   The Department did not review or rely on any study in conducting this rulemaking.

4. **Summary of the agency’s economic impact analysis:**

   The Department is required by statute to implement the provisions of the MHPAEA on the state level. MHPAEA generally establishes that health insurance issuers that provide MH/SUD benefits may not, among other things, impose less favorable benefit limitations on MH/SUD benefits than on medical/surgical benefits. The Department states that this rulemaking is intended to fulfill the Legislature’s charge to create forms and worksheets that health care insurers must use to prepare the reports required by A.R.S. § 20-3502, to enforce MHPAEA, and to establish standards to determine compliance with MHPAEA. The Article applies to all health care insurers that issue health plans in Arizona.
5. **Has the agency analyzed the costs and benefits of the rulemaking and determined that the rules impose the least burden and costs to those who are regulated?**

The Department states that the enacting statutes require them to adopt rules to create forms and worksheets that health insurers must use to prepare reports required by A.R.S. § 20-3502, to enforce MHPAEA, and establish standards to determine compliance with MHPAEA. The final rulemaking requires no more than the statutes mandate. Therefore, the Department believes that the current rulemaking offers the least intrusive and least costly alternative method to achieve the purpose of the proposed rulemaking.

6. **What are the economic impacts on stakeholders?**

The Department will incur costs associated with implementation of the rules. The Department believes that no political subdivision of the state is directly affected by the implementation and enforcement of the proposed rulemaking. The Department anticipates that health care insurers will incur costs in complying with the requirements but the rulemaking does not impose any compliance costs not already imposed by the Federal and state laws, which require health insurers to perform and report detailed, internal analyses related to their compliance with MHPAEA. The Department indicates that no health insurers provided specific cost information including any anticipated effect on revenue or payroll expenditures to the Department. The Department is not aware of any impact on the private employment of health insurers subject to reporting. In addition, the Department indicates that the proposed rulemaking has no probable impact on small business because it only applies to health insurers.

7. **Are the final rules a substantial change, considered as a whole, from the proposed rules and any supplemental proposals?**

The Department indicates that it made the following changes to the rules between the Notice of Proposed Rulemaking and the Notice of Final Rulemaking now before the Council:

- A correction has been made to the exhibit instructions in Exhibit A. The rule reference has been corrected from Section R20-6-1303(B) to Section R20-6-1302(B).
- Citation references to the Code of Federal Regulations have been changed from “C.F.R.” to “CFR” to conform to rulewriting standards throughout.

Council staff does not believe these changes between the Notice of Proposed Rulemaking and the Notice of Final Rulemaking make the rules “substantially different” as described in A.R.S. § 41-1025.

8. **Does the agency adequately address the comments on the proposed rules and any supplemental proposals?**

The Department received numerous comments related to this rulemaking. Summaries of those comments and the Department’s responses are found in Section 11 of the Notice of Final Rulemaking Preamble. The Department notes it received one comment in opposition to this
rulemaking from insurer Medica and two comments suggesting substantive changes to the rules from the Arizona Psychiatric Society and Mental Health America of Arizona/Arizona Council of Human Service Providers. The Department indicates the remaining commenters made general, non-substantive comments in support of the rulemaking.

Additionally, the Council received one comment from Teri Harnisch, the Executive Director of the Arizona Psychiatric Society, on behalf of the Arizona Coalition for Insurance Parity in support of this rulemaking.

Copies of the comments have been included in the final materials for the Council’s consideration.

9. **Do the rules require a permit or license and, if so, does the agency comply with A.R.S. § 41-1037?**

The Department indicates the rules do not require a permit, license, or agency authorization. Instead, the Department states the rules are designed to provide guidance to health care insurers on the reporting requirements of A.R.S. § 20-3502 and the standards to determine compliance with MHPAEA.

10. **Are the rules more stringent than corresponding federal law and, if so, is there statutory authority to exceed the requirements of federal law?**

The Department indicates the Mental Health Parity and Addiction Equity Act (“MHPAEA”) (42 U.S.C. 300gg-26 and implementing regulations) is applicable to the subject of this rulemaking. The Department states the rules are not more stringent than the federal law and comply with the statutory mandates established by the Legislature. (Laws 2020, Chap. 4, Sec. 8.) Instead, the rules require health care insurers to submit their analyses that demonstrate their compliance with the provisions of MHPAEA (Exhibit A).

11. **Conclusion**

This regular rulemaking from the Department seeks to add a new Article containing six (6) new rules to Title 20, Chapter 6, Article 13 in order to fulfill the Legislature’s charge to create forms and worksheets that health care insurers must use to prepare the reports required by A.R.S. § 20-3502 and establish standards to determine compliance with MHPAEA.

The Department is seeking the standard 60-day delayed effective date for these rules pursuant to A.R.S. § 41-1032(A).

Council staff recommends approval of this rulemaking.
April 8, 2022

VIA EMAIL: grrc@azdoa.gov
Nicole Sornsin, Chairperson
Governor’s Regulatory Review Council
100 North 15th Ave., Suite 305
Phoenix, AZ 85007

RE: Arizona Department of Insurance and Financial Institutions
Mental Health Parity Rulemaking

Dear Chairperson Sornsin:

Please find enclosed the Final Rulemaking for Mental Health Parity being submitted by the Arizona Department of Insurance and Financial Institutions, Insurance Division ("Department").

Pursuant to A.A.C. R1-6-201(A)(1), the Department responds as follows:

a. The Department closed the record on this rulemaking on March 6, 2022.

b. This rulemaking does not relate to a five-year review report. Instead, the Department initiated this rulemaking in response to the Legislature’s enactment of the Arizona Mental Health Parity Act also known as “Jakes Law.” The Legislature charged the Department to “adopt by rule both of the following: 1. Forms or worksheets that health care insurers must use to prepare the reports required by section 20-3502 . . . and 2. Standards to determine compliance with the mental health parity and addiction equity act.” Laws 2020, Chap. 4, Sec. 8. (SB1523)

c. The rulemaking does not establish a new fee.

d. The rulemaking does not contain a fee increase.

e. The rulemaking does not request an immediate effective date under A.R.S. § 41-1032.

f. The Department certifies that the preamble discloses a reference to any study relevant to the rule that it reviewed and either did or did not rely on in its evaluation of or justification for the rulemaking. The Department did not review or rely on any study relevant to the rulemaking.

g. One full-time employee is necessary to implement and enforce Jake’s Law and the accompanying rules. Laws 2020, Chap. 4., Sec. 10. The Department certifies that on April 7, 2022, Mary Kosinski, the preparer of the economic, small business, and consumer impact statement, notified Nate Belcher, the Department’s JLBC Analyst, of the appropriation by the Legislature for one FTE
to administer Jake's Law and the accompanying rules. The Department filled that position in 2021.

h. The following documents are also submitted to the Council with this cover letter:
   i. The Notice of Final Rulemaking;
   ii. An economic, small business, and consumer impact statement that contains the information required by A.R.S. § 41-1055;
   iii. The written comments received by the Department concerning the proposed rule (please note that six of the comments are redacted to protect personal health information);
   iv. The general and specific statutes authorizing the rulemaking; and
   v. The Federal regulation containing the definitions referred to in the rules.

By this submission, the Department is requesting approval of this rulemaking from the Council.

For questions about this rulemaking, please contact Mary Kosinski at (602) 364-3476 or mary.kosinski@difi.az.gov.

Sincerely,

Evan G. Daniels
Director
NOTICE OF FINAL RULEMAKING
TITLE 20. COMMERCE, FINANCIAL INSTITUTIONS AND INSURANCE
CHAPTER 6. DEPARTMENT OF INSURANCE

PREAMBLE

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

| Article 13 | New Article |
| R20-6-1301 | New Section |
| R20-6-1302 | New Section |
| R20-6-1303 | New Section |
| R20-6-1304 | New Section |
| R20-6-1305 | New Section |
| Exhibit A | New Exhibit |

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

Authorizing statute: A.R.S. § 20-143
Implementing statute: Laws 2020, Chap. 4, Sec. 8. (SB1523)

3. The effective date of the rule:

a. If the agency selected a date earlier than the 60 day effective date as specified in A.R.S. § 41-1032(A), include the earlier date and state the reason or reasons the agency selected the earlier effective date as provided in A.R.S. § 41-1032(A)(1) through (5):

Not applicable.

b. If the agency selected a date later than the 60 day effective date as specified in A.R.S. § 41-1032(A), include the later date and state the reason or reasons the agency selected the later effective date as provided in A.R.S. § 41-1032(B):
Not applicable.

4. **Citations to all related notices published in the Register as specified in R1-1-409(A) that pertain to the record of the final rulemaking package:**

Notice of Rulemaking Docket Opening: 28 A.A.R. 347, February 4, 2022

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

Name: Mary E. Kosinski  
Address: Department of Insurance and Financial Institutions  
100 N. 15th Ave., Suite 261  
Phoenix, Arizona 85007-2630  
Telephone: (602)364-3476  
E-mail: mary.kosinski@difi.az.gov  
Web site: [https://difi.az.gov](https://difi.az.gov)

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

In 2020, the Arizona Legislature enacted the Arizona Mental Health Parity Act (also known as “Jake’s Law”) at A.R.S. §§ 20-3501 through 20-3505 to implement the provisions of the federal Mental Health Parity and Addiction Equity Act (“MHPAEA”) 42 U.S.C. 300gg-26 and implementing regulations) on the state level. It also charged the Department of Insurance and Financial Institutions (“Department”) to: “adopt by rule both of the following: 1. Forms or worksheets that health care insurers must use to prepare the reports required by section 20-3502 . . . and 2. Standards to determine compliance with the mental health parity and addiction equity act.” Laws 2020, Chap. 4, Sec. 8. (SB1523).

MHPAEA generally establishes that health insurance issuers that provide mental health or substance use disorder (MH/SUD) benefits may not, among other things, impose less favorable benefit limitations on MH/SUD benefits than on medical/surgical benefits. State insurance authorities, the U.S. Department of Health and Human Services, and the U.S. Department of Labor (U.S. DOL) have jurisdiction over applicable individual and group health insurance policies. MHPAEA regulations establish standards related to health care insurers’ application of financial requirements (e.g., deductibles and co-payments), quantitative treatment limitations (e.g., visit limits), and nonquantitative treatment limitations (e.g., step therapy, prior authorization).
Health care insurers cannot apply financial requirements (FRs) or quantitative treatment limitations (QTLs) to MH/SUD policy benefits that are more restrictive than the predominant financial requirements or treatment limitations that apply to substantially all medical/surgical benefits. Nor can health care insurers impose nonquantitative treatment limitations (NQTLs) with respect to MH/SUD benefits in any classification unless the processes, strategies, evidentiary standards, or other factors used in applying the NQTL to MH/SUD benefit classifications are comparable to those used with medical surgical/benefits classifications.

This rulemaking is intended to fulfill the Legislature’s charge to create forms and worksheets that health care insurers must use to prepare the reports required by A.R.S. § 20-3502 and establish standards to determine compliance with MHPAEA.

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

   The Department did not review and does not propose to rely on any study relevant to this rulemaking.

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

   The rulemaking does not diminish a previous grant of authority granted to the Department.

9. **A summary of the economic, small business, and consumer impact:**

   Pursuant to A.R.S. § 41-1055(A):
   
   - The conduct the rulemaking is designed to change is the practice of health care insurers that provide mental health or substance use disorder (“MH/SUD”) benefits to provide those benefits on parity with the provision of medical and surgical (“Med/Surg”) benefits. This means that limitations health care insurers impose on MH/SUD benefits can be no
more stringent or less favorable than the limitations the health care insurer imposes on Med/Surg benefits.

- The failure of a health care insurer to provide MH/SUD benefits on parity with Med/Surg benefits may result in having an insured unable to obtain MH/SUD medical care because the limitations imposed on those benefits are more stringent or less favorable than imposed on other types of benefits.

- The Department does not presume that the health care insurers in Arizona are non-compliant with the parity requirements of the Arizona Mental Health Parity Act (A.R.S. §§ 20-3501 through 20-3505). However, the reporting requirements of the rulemaking will ensure that health care insurers remain in compliance with the Act.

- The costs incurred by health care insurers are not expected to impact revenues or payroll expenditures. Instead, the costs incurred are compliance costs driven by the reporting requirements imposed by the proposed rulemaking. Many health care insurers are already familiar with MHPAEA and have been complying through federal regulations imposed on portions of their business. These already incurred costs are not expected to change appreciably under the proposed rulemaking. Additional costs, however, may arise in order to comply with the additional statutory reporting requirements. But, these costs are not anticipated to impact revenues or payroll expenditures.

- Groups participating in the listening sessions allowed under the bill generally requested that the Department demonstrate that it has selected an alternative that imposes the least burden and costs to persons regulated by the rule under A.R.S. § 41-1052 although they did not enumerate any anticipated costs.

- The employee listed in Item 5 may be contacted to submit or request additional data on the information included in the economic, small business and consumer impact statement.

10. A description of any changes between the proposed rulemaking, to include supplemental notices, and the final rulemaking:

The following corrections have been made from the Notice of Proposed Rulemaking:

- A correction has been made to the exhibit instructions in Exhibit A. The rule reference has been corrected from Section R20-6-1303(B) to Section R20-6-1302(B).

- Citation references to the Code of Federal Regulations have been changed from “C.F.R.” to “CFR” to conform to rulewriting standards throughout.

11. An agency’s summary of the public or stakeholder comments made about the rulemaking and the agency response to the comments:
The Insurance Division received a number of comments on the Proposed Rulemaking. The Division has posted the comments on its website (https://difi.az.gov/proposed-draft-rule-public-comments). Someone reading these comments should be aware that prior to this rulemaking, the Department opened a Docket (26 A.A.R. 1882, September 11, 2020) and published a Notice of Proposed Rulemaking (27 A.A.R. 195, February 12, 2021) on Jake’s Law which it terminated (27 A.A.R. 1037, July 9, 2021). Some commenters reference this original rulemaking in their comments.

**Opposition Comment:** Only one insurer, Medica, submitted a comment requesting that the Department postpone its rulemaking activity in anticipation of expected changes by the Federal government to MHPAEA regulations in 2022. Medica further requested alignment with other states by asking Arizona to abandon the Arizona-specific data request (Exhibit A) in favor of comparative analyses. Lastly, Medica recommended that the Department recognize the limitations of the CMS MHPAEA tool in assessing compliance.

**Department Response:** The Department declines to delay this rulemaking. As stated above, this is the Department’s second attempt to enact rules implementing Jake’s Law. The Legislature charged the Department with adopting rules on or before April 1, 2021. Laws 2020, Chap. 4, Sec. 8. (SB1523). The Department has been working diligently to comply with the Legislature’s mandate. Nothing prevents the Department from conducting future rulemakings to adopt any changes made by the Federal government in 2022 or later.

The Department recognizes the challenges posed to insurers trying to comply with different states’ regulatory schemes. However, the Legislature has charged the Department with adopting rules that comply with Arizona’s law. The Department is not authorized to adopt rules that comply with regulatory schemes in other states.

Lastly, even if the Department recognizes the limitations of the CMS MHPAEA tool in assessing compliance, it has outlined the reporting requirements the Legislature requires in order for the Department to assess compliance under Arizona law.

**Comments suggesting substantive changes to the Rulemaking:** The Department received two comments suggesting substantive changes to the Proposed Rulemaking.

**Comment #1:** The first comment came from the Arizona Psychiatric Society (“APS”). APS restricted its comment to Exhibit A, Medical Necessity Criteria and Nonquantitative Treatment Limitation (“NQTL”) Reports. APS prefaces its substantive comment with a demonstration of how the Arizona proposed MHPAEA rule is compatible with and does not exceed the comparative analysis requirements of the Federal law. The substantive change request is that the Department pluralize the terms “process,” “strategy,” “evidentiary standard,” and “other factor” at Exhibit A - Part IV to be consistent with 42 U.S.C. 300gg-26(a)(8)(A)(iv) which uses the term “analyses.”

This comment was supported by commenters Dr. Irene Kitzman, Dr. Gary Grove, Dr. Chandan Nayak, Dr. Marc Lieb, Dr. Karen Weihs, and the Arizona Medical Association.

**Department Response:** The Department agrees that its rulemaking is compatible with and does not exceed the authority granted to it by the Legislature under Jake’s Law. On the
pluralization request, the Department declines to make the suggested change. Insurers should be familiar with MHPAEA and its requirements. Jake’s law states:

“Demonstrate through analysis that for any nonquantitative treatment limit applied to mental health and substance use disorder benefits in a classification of benefits, as written and in operation, any process, strategy, evidentiary standard or other factor used in applying the nonquantitative treatment limit to mental health and substance use disorder benefits in the classification are comparable to, and applied not more stringently than, any process, strategy, evidentiary standard or other factor used in applying the treatment limit for medical and surgical benefits in the classification.” A.R.S. § 20-3502(B)(3). (Emphasis added.)

The Department’s position is that insurers should interpret this language to mean “every and all” processes, strategies, evidentiary standards and other factors must be reported. For insurers who fail to make complete reports, the Department is empowered to request information or data that is necessary to verify compliance pursuant to A.R.S. § 20-3502(F).

Comment #2: Mental Health America of Arizona/Arizona Council of Human Service Providers urged the Department to add a definition for “medical necessity/medically necessary.” The Department had added such a definition which adopted language used by CMS for Medicare coverage in a draft circulated among stakeholders during listening sessions. The Department removed it in the Proposed Rule when objected to by insurers.

This comment was supported by commenter AZ Family Peer Coalition.

Department Response: The Department declines to include the definition. Although the Department acknowledges that “medical necessity criteria . . . are where the most profound and consequential barriers to mental health and addiction coverage occur,” neither MHPAEA nor Jake’s Law defines “medical necessity/medically necessary.” The Department’s position is that the better place to adopt the definition is in statute and not in rule.

Comments in support of the Rulemaking: The remaining commenters made general, non-substantive comments in support of the rulemaking which fell into the following subject categories:

- The Kennedy Forum expressed its disappointment that the current rules are a significant step back from the prior proposed rules. It feels that oversight efforts will be more difficult and less likely to be effective in identifying potential compliance issues. This comment was supported by commenters Denise Denslow, Joanna Booher, Stacie J. Whitaker-Harris, and Nadine Smith who all expressed the need for stronger reporting requirements.
- The following commenters noted that most parity violations occur within managed care practices and urged the Department to ensure maximum transparency regarding NQTLs and medical necessity criteria: Amina Donna Kruck, Lutheran Social Services of the Southwest, Jill Friedberg, Jewish Family & Children’s Services, Melinda Hickman, Cheryl L. Martin, Christine Lee Kinchen, and the National Alliance on Mental Illness – White Mountains.
- 6 commenters shared their or their family’s personal struggles with trying to obtain coverage for mental health issues and emphasized the need for equal insurance protection and its importance for Arizona’s children.
12. All agencies shall list other matters prescribed by statute applicable to the specific agency or to any specific rule or class of rules. Additionally, an agency subject to Council review under A.R.S. §§ 41-1052 and 41-1055 shall respond to the following questions:

No other matters prescribed by statute are applicable to the Insurance Division or to any specific rule or class of rules.

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

The rule does not require a permit and does not use a general permit. Instead, the rule is designed to provide guidance to health care insurers on the reporting requirements of A.R.S. § 20-3502 and the standards to determine compliance with MHPAEA.

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

The Mental Health Parity and Addiction Equity Act (“MHPAEA”) (42 U.S.C. 300gg-26 and implementing regulations) is applicable to the subject of the rule. The rule is not more stringent than the federal law and complies with the statutory mandates established by the Legislature. (Laws 2020, Chap. 4, Sec. 8.) Instead, the rule requires health care insurers to submit their analyses that demonstrate their compliance with the provisions of MHPAEA (Exhibit A).

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

No formal analysis has been submitted to the Department that compares the rule’s impact of the competitiveness of business in this state to the impact of business in other states.
13. A list of any incorporated by reference material as specified in A.R.S. § 41-1028 and its location in the rule:

The rule does not incorporate any reference material into the rule as specified at A.R.S. § 41-1028. However, the rule has multiple references to portions of the federal act for consistency and clarity for insurers having to comply with MHPAEA and Jake’s Law.

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

This rule was not previously made, amended, or repealed as an emergency rule.

15. The full text of the rules follows:

TITLE 20. COMMERCE, FINANCIAL INSTITUTIONS AND INSURANCE
CHAPTER 6. DEPARTMENT OF INSURANCE
ARTICLE 13. MENTAL HEALTH PARITY

Section
R20-6-1301. Definitions
R20-6-1302. Medical Necessity Criteria and NQTL Reporting
R20-6-1303. FR and QTL Reporting
R20-6-1304. Additional Information or Data
R20-6-1305. Confidentiality of Information
   Exhibit A. Medical Necessity Criteria and NQTL Reports

ARTICLE 13. MENTAL HEALTH PARITY

R20-6-1301. Definitions
The definitions in A.R.S. § 20-3501 and the following definitions apply to this Article:
   “Arizona Mental Health Parity Act” means the statutes found at A.R.S. §§ 20-3501 through 20-3505.
   “Coverage unit” has the meaning prescribed at 45 CFR § 146.136(a) "Coverage unit."
“Department of Insurance and Financial Institutions (Department)” has the meaning prescribed at A.R.S. § 20-101.

“CMS MHPAEA tool” means the Microsoft Excel Mental Health Parity tool maintained by the Center for Medicare and Medicaid Services.

“Financial requirements (FR)” has the meaning at 45 CFR § 146.136(a) "Financial requirements."

“Health care insurer” has the meaning prescribed at A.R.S. § 20-3501(2).

“Health plan” has the meaning prescribed at A.R.S. § 20-3501(3).

“Inpatient, in-network benefits” are benefits furnished on an inpatient basis and within a network of contracted providers under a health plan.

“Inpatient, out-of-network benefits” are benefits furnished on an inpatient basis by providers without a contract under a health plan or for a health plan that has no network of providers.

“Large group health plan” is a health plan issued to an employer group that is not a small employer as defined at A.R.S. § 20-2301(A)(20).

“Medical/surgical (Med/Surg) benefits” has the meaning prescribed at 45 CFR § 146.136(a) "Medical/surgical benefits."

“Mental (MH) health benefits” has the meaning prescribed at 45 CFR § 146.136(a) "Mental health benefits."

“MHPAEA” means the Mental Health Parity and Addiction Equity Act prescribed in A.R.S. § 20-3501(4).

“Nonquantitative treatment limitation (NQTL)” is a limitation that restricts the scope or duration of benefits for treatment under a health plan or coverage. Illustrations of NQTLs include: medical management standards limiting or excluding benefits based on medical necessity or appropriateness or based on whether the treatment is experimental or investigative as identified under 45 CFR 146.136(c)(4)(ii)(A); formulary design for prescription drugs as identified under 45 CFR 146.136(c)(4)(ii)(B); network tier design (for health plans with multiple network tiers such as preferred providers and participating providers) as identified under 45 CFR 146.136(c)(4)(ii)(C); standards for provider admission to participate in a network, including reimbursement rates as identified under 45 CFR 146.136(c)(4)(ii)(D); methods for determining usual, customary, and reasonable charges as identified under 45 CFR 146.136(c)(4)(ii)(E); refusal to pay for higher-cost therapies until it can be shown that a lower-cost therapy is not effective (also known as “fail-first policies” or “step therapy protocols”) as identified under 45 CFR 146.136(c)(4)(ii)(F); exclusions based on failure to complete a course of
treatment; and restrictions based on geographic location as identified under 45 CFR 146.136(c)(4)(ii)(G), facility type, provider specialty, and other criteria than limit the scope or duration of benefits for services provided under the health plan or coverage as identified under 45 CFR 146.136(c)(4)(ii)(H).

“Outpatient, in-network benefits” are benefits furnished on an outpatient basis and within a network of providers established or recognized under a health plan.

“Outpatient, out-of-network benefits” are benefits furnished on an outpatient basis and outside any network of providers established or recognized under a health plan or under a health plan that has no network of providers.

“Predominant test” means that if a type of FR or QTL applies to substantially all of the Med/Surg benefits in a classification, the predominant level of the FR or QTL is the level that applies to more than 1/2 of the Med/Surg benefits in that classification subject to the FR or QTL. If no single level can be determined, the health plan (or health insurance issuer) may combine levels until the combination of levels applies to more than 1/2 of Med/Surg benefits subject to the FR or QTL in the classification. The least restrictive level within the combination is considered the predominant level of that type of classification. For this purpose, a health plan may combine the most restrictive levels first with each less restrictive level added to the combination until the combination applies to more than 1/2 of the benefits subject to the FR or QTL.

“Quantitative treatment limitation (QTL)” is a limitation on the scope or duration of a benefit that can be expressed numerically that includes day or visit limits such as “50 outpatient visits per year.” QTLs include annual, episode, and lifetime day and visit limits such as number of treatments, number of visits, or days of coverage.

“Substance use disorder (SUD) benefits has the meaning prescribed at 45 CFR § 146.136(a) "Substance use disorder benefits."

“Substantially all test” means that a FR or QTL applies to at least 2/3 of all Med/Surg benefits in a classification of benefits for a coverage unit. (For this purpose, benefits expressed as subject to a zero level of a type of FR are treated as not subject to that type of FR. In addition, benefits expressed as subject to an unlimited QTL are treated as not subject to that type of QTL.) If a type of FR or QTL does not apply to at least 2/3 of all Med/Surg benefits in a classification, then that type of FR or QTL cannot be applied to MH or SUD benefits in that classification.

R20-6-1302. Medical Necessity Criteria and NQTL Reporting
A. Health care insurers subject to the reporting requirement. A health care insurer that issues health plans in Arizona is required to file the reports required by this Section with the Department.
B. Health plans subject to reporting. A health care insurer shall submit a report for all health plans it offers in this state (including grandfathered and non-grandfathered health plans) that meet all of the
criteria listed in subsections (B)(1) through (B)(4) of this Section. If a health care insurer determines that the information to be reported varies by network plan, or varies in the individual, small group, or large group market, the health care insurer must submit a separate report for each variation.

1. The health plan offers MH and/or SUD benefits in addition to Med/Surg benefits.
2. The health plan offers MH and/or SUD benefits in at least one of the following classifications:
   a. Inpatient, in-network;
   b. Inpatient, out-of-network;
   c. Outpatient, in-network;
   d. Outpatient, out-of-network;
   e. Emergency care; or
   f. Prescription drugs.
3. The health plan is offered on a group (large or small) or individual basis.
4. The health plan has not received and notified the Department of an increased cost exemption pursuant to 45 CFR 146.136(g).

C. Health plans exempt from reporting. A health plan that meets the criteria of Subsection (B) above is exempt from reporting under this Article if it is one of the following types of health plans:
1. A small group grandfathered health plan;
2. A small group non-grandfathered health plan subject to the HHS transitional policy; or
3. A health plan that meets the definition of excepted benefit provided in 45 CFR 146.145(b) or 45 CFR 148.220.

D. Required reports. A health care insurer shall file a separate report for each fully insured product network type the health care insurer issues in Arizona. If the information to be reported varies by network or health plan, or varies in the individual, small group or large group market, the health care insurer must file a separate report for each variation.

E. Triennial Reports.
1. Existing health care insurers. Beginning on March 15, 2023 and every third year thereafter, a health care insurer issuing health plans and collecting premium in Arizona as of January 1, 2022 shall file a triennial report with the Department for each health plan subject to reporting.
2. Entering or re-entering health care insurers. On or before March 15 of the second year an entering or re-entering health care insurer issues health plans and collects premiums in Arizona, the health care insurer shall file an original triennial report with the Department for each health plan subject to reporting. Following the filing of the original triennial report, the health care insurer shall submit subsequent triennial reports on the schedule described in subsection (E)(1) of this Section.
3. Due date for triennial reports. Triennial reports are due on or before March 15 of each reporting year.
4. Content of the original triennial report. Health care insurers shall file an original triennial report with the Department under A.R.S. § 20-3502(B) that provides the required information in Exhibit A.
5. Subsequent triennial reports.
   a. A health care insurer must file an updated triennial report, including the information required in Exhibit A, unless the health care insurer can attest that it has made no changes since the previously filed triennial report.
b. As required by A.R.S. § 20-3502(E), a health care insurer shall file the following with the Department for each health plan subject to reporting:
   i. An updated triennial report, including the information required in Exhibit A; or
   ii. The last triennial report filed with the Department and a written attestation that the health care insurer has made no changes since it filed the previous triennial report.

F. Annual Reports. Pursuant to A.R.S. § 20-3502(E), on or before March 15 of each intervening year between the filing of a triennial report, a health care insurer shall file:
1. A report that summarizes any changes made to its medical necessity criteria and NQTLs (Exhibit A, Parts I, II, and III);
2. A written attestation by an officer or director of the health care insurer that the health care insurer is in compliance with MHPAEA; and
3. If requested by the Department, any additional data required by the Department including Exhibit A, Part IV.

G. Additional information. At any time after a health care insurer files a report under this Section, the Department may request additional information, including an updated triennial or annual report, by contacting the health care insurer and making the request in writing. The health care insurer shall provide contact information to the Department when it files any of the reports required by this Section. The Department may set a deadline for a health care insurer to respond to its request and specify the format for the response.

R20-6-1303. FR and QTL Reporting

A. Method of reporting. A health care insurer that issues health plans in Arizona and whose policy forms are not exempt from the form filing requirement shall demonstrate its compliance with the FR and QTL parity requirements of MHPAEA through its form and rate filings with the Department.

B. Department’s authority to require additional data. In addition to the forms filed by a health care insurer, the Department may require a health care insurer to submit additional data relating to its methods for meeting the MHPAEA FR and QTL standards. The Department may utilize the CMS MHPAEA tool and may request samples of a health care insurer’s internal testing to demonstrate compliance with the substantially all and predominant tests within each classification of benefits for a health plan.

C. Separate consolidated report for large group health plans. The Department may require a health care insurer that issues large group health plans to file a consolidated report that demonstrates compliance with the substantially all and predominant tests within each classification of benefits for a sample of large group health plans with similar benefit structures.

D. Special rule for FRs - Prescription Drug Classification. The multi-tiered prescription drug benefits exception of A.R.S. § 20-3502(D)(1) applies to the FRs for the prescription drug classification. For example, a health plan applies 4 tiers as follows: Tier 1: Generic Drugs for which the health plan pays 90%; Tier 2: Preferred Brand-name Drugs for which the health plan pays 80%; Tier 3: Non-preferred Brand-name Drugs for which the health plan pays 60%; and Tier 4: Specialty Drugs for which the health plan pays 50%. These FRs are applied without regard to whether a drug is prescribed for Med/Surg or MH/SUD benefits. In addition, the process for certifying a particular drug
within a tier complies with the rules for NQTLs. Therefore, the FRs applied to prescription drug benefits meet the parity requirements under MHPAEA.

E. Special rules for FRs and QTLs.

1. In-network Classifications. The multiple network tiers exception of A.R.S. § 20-3502(D)(2) applies to the FRs and QTLs for the in-network classifications. For example, a health plan has 2 tiers of in-network providers: Tier 1: Preferred provider; and Tier 2: Participating provider. Placement of a provider into a tier complies with the rules for NQTLs and is determined without regard to whether the provider specializes in the treatment of Med/Surg conditions or MH/SUD disorders. The in-network classifications are divided into 2 subclassifications: 1. In-network preferred; and 2. In-network participating. The health plan does not impose any FR or QTL on MH/SUD benefits in either subclassification that is more restrictive than the predominant FR or QTL that applies to all Med/Surg benefits in each subclassification. Therefore, the FRs or QTLs applied to the in-network subclassifications that reflect the provider tiers meet the parity requirements under MHPAEA.

2. Outpatient Classifications. The sub-classification permitted for the office visits exception of A.R.S. § 20-3502(D)(3) applies to the FRs and QTLs for the outpatient classifications. For example, a health plan divides the outpatient, in-network classification into 2 subclassifications: 1. In-network office visits; and 2. All other outpatient, in-network items and services. The health plan does not impose any FR or QTL on MH/SUD benefits in either subclassification that is more restrictive than the predominant FR or QTL that applies to Med/Surg benefits in each subclassification. Therefore, the FRs or QTLs applied to the outpatient subclassifications for office visits and all other outpatient items and services meet the parity requirements under MHPAEA.

The health plan cannot use a subclassification for generalists and specialists. The only subclassifications permitted for the in-network classifications are: 1. Office visits (such as physician visits); and 2. All other outpatient items and services (such as outpatient surgery, facility charges for day treatment centers, laboratory charges, or other medical items).

R20-6-1304. Additional Information or Data

Pursuant to A.R.S. § 20-3502(F), the Department is not prohibited from otherwise requesting information or data that is necessary to verify compliance with MHPAEA and the Arizona Mental Health Parity Act.

R20-6-1305. Confidentiality of Information

Pursuant to A.R.S. § 20-3502(G), all documents, reports, or other materials provided to the Department pursuant this Article are confidential and are not subject to disclosure and are subject to the restrictions of A.R.S. § 20-157.01(B).

Exhibit A
Medical Necessity Criteria and NQTL Reports
Instructions for Exhibit A:
Submit an Exhibit A for each fully insured, major medical health plan subject to reporting under Section R20-6-1302(B). Please submit the information in a word-searchable PDF file which is organized and identified by the numbered sections that appear below.

Part I: Identify Plan and Reporting Year.
Instructions for Part I:
The reporting year is the year, from January 1 through December 31, immediately preceding the submission of this Exhibit A.

<table>
<thead>
<tr>
<th>Reporting Year:</th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>Health Care Insurer Name:</td>
<td></td>
</tr>
<tr>
<td>Health Care Insurer NAIC Company Code:</td>
<td></td>
</tr>
<tr>
<td>Network Name(s):</td>
<td></td>
</tr>
<tr>
<td>Service Area:</td>
<td>(List all counties in the service area for these networks)</td>
</tr>
<tr>
<td>Covered Lives:</td>
<td>(List the number of covered lives enrolled in plans in these networks in the reporting year)</td>
</tr>
<tr>
<td>Plan Types:</td>
<td>(Check all that apply)</td>
</tr>
<tr>
<td>☐ Individual ACA-Compliant</td>
<td>☐ Small Group ACA-Compliant</td>
</tr>
<tr>
<td>☐ Individual Transitional, plans include MH/SUD benefits</td>
<td>☐ Small Group Transitional, plans include MH/SUD benefits</td>
</tr>
<tr>
<td>☐ Individual Grandfathered, plans include MH/SUD benefits</td>
<td>☐ Large Group Fully Insured, plans include MH/SUD benefits</td>
</tr>
<tr>
<td>Product Types:</td>
<td>(Check all that apply)</td>
</tr>
<tr>
<td>☐ PPO</td>
<td>☐ HMO (HCSO)</td>
</tr>
<tr>
<td>☐ POS</td>
<td>☐ Indemnity</td>
</tr>
</tbody>
</table>

Part II: Medical necessity criteria.
Instructions for Part II:
To comply with A.R.S. § 20-3502(B)(1), describe the process that is used to develop or select medical necessity criteria for the plan and reporting year identified in Part I. When the plan describes the process used to develop or select criteria for MH/SUD benefits, then it must also describe the process used to develop or select criteria for Med/Surg benefits.

To comply with ARS § 20-3502(B)(1), report:

A. Describe the process used to develop or select medical necessity criteria for MH/SUD benefits.
B. Describe the process used to develop or select medical necessity criteria for Med/Surg benefits.

Part III: Identify all NQTLs.
Instructions for Part III:
To comply with A.R.S. § 20-3502(B)(2), identify all NQTLs that are applied to MH/SUD benefits and all NQTLs that are applied to Med/Surg benefits for the plan and reporting year identified in Part I. NQTLs shall be identified within each classification of benefits.

A. Identify and report all NQTLs applied to MH/SUD benefits:

1. All NQTLs applied to In-Patient, In-Network Classification.
2. All NQTLs applied to In-Patient, Out-of-Network Classification.
3. All NQTLs applied to Out-Patient, In-Network Classification.
4. All NQTLs applied to Out-Patient, Out-of-Network Classification.
5. All NQTLs applied to Emergency Care.
6. All NOTSs applied to Prescription Benefits.

B. Identify and report all NQTLs applied to Med/Surg benefits:

1. All NQTLs applied to In-Patient, In-Network Classification.
2. All NQTLs applied to In-Patient, Out-of-Network Classification.
3. All NQTLs applied to Out-Patient, In-Network Classification.
4. All NQTLs applied to Out-Patient, Out-of-Network Classification.
5. All NQTLs applied to Emergency Care.
6. All NOTSs applied to Prescription Benefits.

**Part IV: Demonstrate parity through analysis.**

**Instructions for Part IV:**

To comply with A.R.S. § 20-3502(B)(3), for each NQTL listed in Part III, demonstrate through analysis that the process, strategy, evidentiary standard, and other factor of applying the NQTL to MH/SUD benefits in a classification of benefits, as written and in operation, is comparable to, and applied not more stringently than, any process, strategy, evidentiary standard or other factor used in applying the NQTL to Med/Surg benefits in the same classification. The report should define each “Other Factor” and include qualitative and quantitative statistical data to support and explain the analysis.

Identify and report on the NQTLs reported in Part III as follows:

A. Classification - Inpatient, in-network

1. Process
   c. Analysis showing that the process of applying the NQTL to MH/SUD benefits, as written, is comparable to and not applied more stringently than to Med/Surg benefits.
   d. Analysis showing that the process of applying the NQTL to MH/SUD benefits, in operation, is comparable to and not applied more stringently than to Med/Surg benefits.

2. Strategy
   a. Strategy applying NQTL to MH/SUD benefit.
   c. Analysis showing that the strategy of applying the NQTL to MH/SUD benefits, as written, is comparable to and not applied more stringently than to Med/Surg benefits.
   d. Analysis showing that the strategy of applying the NQTL to MH/SUD benefits, in operation, is comparable to and not applied more stringently than to Med/Surg benefits.

3. Evidentiary Standard
   a. Evidentiary standard applying NQTL to MH/SUD benefit.
   c. Analysis showing that the evidentiary standard of applying the NQTL to MH/SUD benefits, as written, is comparable to and not applied more stringently than to Med/Surg benefits.
   d. Analysis showing that the evidentiary standard of applying the NQTL to MH/SUD benefits, in operation, is comparable to and not applied more stringently than to Med/Surg benefits.

4. Other Factor
   a. Other factor applying NQTL to MH/SUD benefit.
   b. Other factor applying NQTL to Med/Surg benefit.
   c. Analysis showing that other factors used to apply the NQTL to MH/SUD benefits, as written, are comparable to and not applied more stringently than to Med/Surg benefits.
   d. Analysis showing that other factors used to apply the NQTL to MH/SUD benefits, in operation, are comparable to and not applied more stringently than to Med/Surg benefits.
B. Classification - Inpatient, out-of-network

1. Process
   c. Analysis showing that the process of applying the NOTL to MH/SUD benefits, as written, is comparable to and not applied more stringently than to Med/Surg benefits.
   d. Analysis showing that the process of applying the NOTL to MH/SUD benefits, in operation, is comparable to and not applied more stringently than to Med/Surg benefits.

2. Strategy
   a. Strategy applying NQTL to MH/SUD benefit.
   c. Analysis showing that the strategy of applying the NOTL to MH/SUD benefits, as written, is comparable to and not applied more stringently than to Med/Surg benefits.
   d. Analysis showing that the strategy of applying the NOTL to MH/SUD benefits, in operation, is comparable to and not applied more stringently than to Med/Surg benefits.

3. Evidentiary Standard
   a. Evidentiary standard applying NQTL to MH/SUD benefit.
   c. Analysis showing that the evidentiary standard of applying the NOTL to MH/SUD benefits, as written, is comparable to and not applied more stringently than to Med/Surg benefits.
   d. Analysis showing that the evidentiary standard of applying the NOTL to MH/SUD benefits, in operation, is comparable to and not applied more stringently than to Med/Surg benefits.

4. Other Factor
   a. Other factor applying NQTL to MH/SUD benefit.
   b. Other factor applying NOTL to Med/Surg benefit.
   c. Analysis showing that other factors used to apply the NOTL to MH/SUD benefits, as written, are comparable to and not applied more stringently than to Med/Surg benefits.
   d. Analysis showing that other factors used to apply the NOTL to MH/SUD benefits, in operation, are comparable to and not applied more stringently than to Med/Surg benefits.

C. Classification - Outpatient, in-network

1. Process
   c. Analysis showing that the process of applying the NOTL to MH/SUD benefits, as written, is comparable to and not applied more stringently than to Med/Surg benefits.
   d. Analysis showing that the process of applying the NOTL to MH/SUD benefits, in operation, is comparable to and not applied more stringently than to Med/Surg benefits.

2. Strategy
   a. Strategy applying NQTL to MH/SUD benefit.
   c. Analysis showing that the strategy of applying the NOTL to MH/SUD benefits, as written, is comparable to and not applied more stringently than to Med/Surg benefits.
   d. Analysis showing that the strategy of applying the NOTL to MH/SUD benefits, in operation, is comparable to and not applied more stringently than to Med/Surg benefits.

3. Evidentiary Standard
   a. Evidentiary standard applying NQTL to MH/SUD benefit.
   c. Analysis showing that the evidentiary standard of applying the NOTL to MH/SUD benefits, as written, is comparable to and not applied more stringently than to Med/Surg benefits.
   d. Analysis showing that the evidentiary standard of applying the NOTL to MH/SUD benefits, in operation, is comparable to and not applied more stringently than to Med/Surg benefits.

4. Other Factor
   a. Other factor applying NQTL to MH/SUD benefit.
b. Other factor applying NQTL to Med/Surg benefit.

c. Analysis showing that other factors used to apply the NQTL to MH/SUD benefits, as written, are comparable to and not applied more stringently than to Med/Surg benefits.

d. Analysis showing that other factors used to apply the NQTL to MH/SUD benefits, in operation, are comparable to and not applied more stringently than to Med/Surg benefits.

D. Classification – Outpatient, out-of-network

1. Process
   c. Analysis showing that the process of applying the NQTL to MH/SUD benefits, as written, is comparable to and not applied more stringently than to Med/Surg benefits.
   d. Analysis showing that the process of applying the NQTL to MH/SUD benefits, in operation, is comparable to and not applied more stringently than to Med/Surg benefits.

2. Strategy
   a. Strategy applying NQTL to MH/SUD benefit.
   c. Analysis showing that the strategy of applying the NQTL to MH/SUD benefits, as written, is comparable to and not applied more stringently than to Med/Surg benefits.
   d. Analysis showing that the strategy of applying the NQTL to MH/SUD benefits, in operation, is comparable to and not applied more stringently than to Med/Surg benefits.

3. Evidentiary Standard
   a. Evidentiary standard applying NQTL to MH/SUD benefit.
   c. Analysis showing that the evidentiary standard of applying the NQTL to MH/SUD benefits, as written, is comparable to and not applied more stringently than to Med/Surg benefits.
   d. Analysis showing that the evidentiary standard of applying the NQTL to MH/SUD benefits, in operation, is comparable to and not applied more stringently than to Med/Surg benefits.

4. Other Factor
   a. Other factor applying NQTL to MH/SUD benefit.
   b. Other factor applying NQTL to Med/Surg benefit.
   c. Analysis showing that other factors used to apply the NQTL to MH/SUD benefits, as written, are comparable to and not applied more stringently than to Med/Surg benefits.
   d. Analysis showing that other factors used to apply the NQTL to MH/SUD benefits, in operation, are comparable to and not applied more stringently than to Med/Surg benefits.

E. Classification – Emergency care

1. Process
   c. Analysis showing that the process of applying the NQTL to MH/SUD benefits, as written, is comparable to and not applied more stringently than to Med/Surg benefits.
   d. Analysis showing that the process of applying the NQTL to MH/SUD benefits, in operation, is comparable to and not applied more stringently than to Med/Surg benefits.

2. Strategy
   a. Strategy applying NQTL to MH/SUD benefit.
   c. Analysis showing that the strategy of applying the NQTL to MH/SUD benefits, as written, is comparable to and not applied more stringently than to Med/Surg benefits.
   d. Analysis showing that the strategy of applying the NQTL to MH/SUD benefits, in operation, is comparable to and not applied more stringently than to Med/Surg benefits.

3. Evidentiary Standard
   a. Evidentiary standard applying NQTL to MH/SUD benefit.
c. Analysis showing that the evidentiary standard of applying the NOTL to MH/SUD benefits, as written, is comparable to and not applied more stringently than to Med/Surg benefits.
d. Analysis showing that the evidentiary standard of applying the NOTL to MH/SUD benefits, in operation, is comparable to and not applied more stringently than to Med/Surg benefits.

4. Other Factor
   a. Other factor applying NOTL to MH/SUD benefit.
   b. Other factor applying NOTL to Med/Surg benefit.
   c. Analysis showing that other factors used to apply the NOTL to MH/SUD benefits, as written, are comparable to and not applied more stringently than to Med/Surg benefits.
   d. Analysis showing that other factors used to apply the NOTL to MH/SUD benefits, in operation, are comparable to and not applied more stringently than to Med/Surg benefits.

F. Classification – Prescription benefits

1. Process
   a. Process applying NOTL to MH/SUD benefit.
   c. Analysis showing that the process of applying the NOTL to MH/SUD benefits, as written, is comparable to and not applied more stringently than to Med/Surg benefits.
   d. Analysis showing that the process of applying the NOTL to MH/SUD benefits, in operation, is comparable to and not applied more stringently than to Med/Surg benefits.

2. Strategy
   a. Strategy applying NOTL to MH/SUD benefit.
   c. Analysis showing that the strategy of applying the NOTL to MH/SUD benefits, as written, is comparable to and not applied more stringently than to Med/Surg benefits.
   d. Analysis showing that the strategy of applying the NOTL to MH/SUD benefits, in operation, is comparable to and not applied more stringently than to Med/Surg benefits.

3. Evidentiary Standard
   a. Evidentiary standard applying NOTL to MH/SUD benefit.
   c. Analysis showing that the evidentiary standard of applying the NOTL to MH/SUD benefits, as written, is comparable to and not applied more stringently than to Med/Surg benefits.
   d. Analysis showing that the evidentiary standard of applying the NOTL to MH/SUD benefits, in operation, is comparable to and not applied more stringently than to Med/Surg benefits.

4. Other Factor
   a. Other factor applying NOTL to MH/SUD benefit.
   b. Other factor applying NOTL to Med/Surg benefit.
   c. Analysis showing that other factors used to apply the NOTL to MH/SUD benefits, as written, are comparable to and not applied more stringently than to Med/Surg benefits.
   d. Analysis showing that other factors used to apply the NOTL to MH/SUD benefits, in operation, are comparable to and not applied more stringently than to Med/Surg benefits.
A.R.S. § 41-1055(B) Economic, Small Business, And Consumer Impact Statement
Title 20. Commerce, Financial Institutions and Insurance
Chapter 6. Department of Insurance
Article 13. Mental Health Parity

In 2020, the Arizona Legislature enacted the Arizona Mental Health Parity Act (also known as “Jake’s Law”) at A.R.S. §§ 20-3501 through 20-3505 to implement the provisions of the federal Mental Health Parity and Addiction Equity Act (“MHPAEA” 42 U.S.C. 300gg-26 and implementing regulations) on the state level. It also charged the Department of Insurance and Financial Institutions (“Department”) to: “adopt by rule both of the following: 1. Forms or worksheets that health care insurers must use to prepare the reports required by section 20-3502 . . . and 2. Standards to determine compliance with the mental health parity and addiction equity act.” Laws 2020, Chap. 4, Sec. 8. (SB1523).

MHPAEA generally establishes that health insurance issuers that provide mental health or substance use disorder (MH/SUD) benefits may not, among other things, impose less favorable benefit limitations on MH/SUD benefits than on medical/surgical benefits. State insurance authorities, the U.S. Department of Health and Human Services, and the U.S. Department of Labor (U.S. DOL) have jurisdiction over applicable individual and group health insurance policies. MHPAEA regulations establish standards related to health care insurers’ application of financial requirements (e.g., deductibles and copayments), quantitative treatment limitations (e.g., visit limits), and nonquantitative treatment limitations (e.g., step therapy, prior authorization). Health care insurers cannot apply financial requirements (FRs) or quantitative treatment limitations (QTLs) to MH/SUD policy benefits that are more restrictive than the predominant financial requirements or treatment limitations that apply to substantially all medical/surgical benefits. Nor can health care insurers impose nonquantitative treatment limitations (NQTLs) with respect to MH/SUD benefits in any classification unless the processes, strategies, evidentiary standards, or other factors used in applying the NQTL to MH/SUD
benefit classifications are comparable to those used with medical surgical/benefits classifications.

This rulemaking is intended to fulfill the Legislature’s charge to create forms and worksheets that health care insurers must use to prepare the reports required by A.R.S. § 20-3502, to enforce MHPAEA, and to establish standards to determine compliance with MHPAEA.

This rulemaking creates a new Article 13 in A.A.C. Title 20, Chapter 6 entitled “Mental Health Parity” which consists of five new rules and one exhibit. Questions about this Economic Impact Statement can be directed to: Mary E. Kosinski (mary.kosinski@ difi.az.gov).

A.R.S. § 41-1055(B)(2): An identification of the persons who will be directly affected by, bear the costs of or directly benefit from the proposed rulemaking.

This Article applies to all health care insurers that issue health plans in Arizona. Exceptions are made for certain types of health plans.

A.R.S. § 41-1055(B)(3): A cost benefit analysis of the following:

(a) The probable costs and benefits to the implementing agency and other agencies directly affected by the implementation and enforcement of the proposed rulemaking. The probable costs to the implementing agency shall include the number of new full-time employees necessary to implement and enforce the proposed rule. The preparer of the economic, small business and consumer impact statement shall notify the joint legislative budget committee of the number of new full-time employees necessary to implement and enforce the rule before the rule is approved by the council.

The Department’s initial assessment was that three FTEs would be needed to implement, educate, and enforce Jake’s law and the accompanying rules. Ultimately, the Legislature authorized funding for one FTE. Laws 2020, Chap. 4, Sec. 10 (SB1523). The Department hired one full-time employee in 2021. Additional costs will be incurred by the Department by adding additional duties to existing Department employees and hiring contractors in order to perform the
duties associated with the implementation, education, and enforcement of Jake’s Law and the accompanying rules. The Department also anticipates additional computer hardware and software costs.

(b) The probable costs and benefits to a political subdivision of this state directly affected by the implementation and enforcement of the proposed rulemaking.

No political subdivision of this state is directly affected by the implementation and enforcement of the proposed rulemaking.

(c) The probable costs and benefits to businesses directly affected by the proposed rulemaking, including any anticipated effect on the revenues or payroll expenditures of employers who are subject to the proposed rulemaking.

The Department anticipates that health care insurers will incur costs in complying with requirements imposed by MHPAEA (42 U.S.C. 300gg-26 and implementing regulations) and Jake’s Law. The rulemaking does not impose any compliance costs not already imposed by the Federal and state laws, which require health insurers to perform and report detailed, internal analyses related to their compliance with MHPAEA. No health insurers provided specific cost information including any anticipated effect on revenues or payroll expenditures to the Department.

A.R.S. § 41-1055(B)(4): A general description of the probable impact on private and public employment in businesses, agencies and political subdivisions of this state directly affected by the proposed rulemaking.

The Department is not aware of any impact on the private employment of health insurers subject to reporting. Likewise, the Department does not anticipate any impact on public employment in the Department other than the single FTE authorized in the legislation. Laws 2020, Chap. 4, Sec. 10 (SB1523).
A.R.S. § 41-1055(B)(5): A statement of the probable impact of the proposed rulemaking on small businesses. The statement shall include:

(a) An identification of the small businesses subject to the proposed rulemaking.

(b) The administrative and other costs required for compliance with the proposed rulemaking.

(c) A description of the methods prescribed in section 41-1035 that the agency may use to reduce the impact on small businesses, with reasons for the agency's decision to use or not to use each method.

(d) The probable cost and benefit to private persons and consumers who are directly affected by the proposed rulemaking.

The proposed rulemaking has no probable impact on small business because it only applies health insurers. However, behavioral health providers, many of which are small businesses, may experience a “trickle-down” impact as health insurers are brought into compliance with MHPAEA and Jake’s Law.

A.R.S. § 41-1055(B)(6): A statement of the probable effect on state revenues.

No impact on state revenues is anticipated.

A.R.S. § 41-1055(B)(7): A description of any less intrusive or less costly alternative methods of achieving the purpose of the proposed rulemaking, including the monetizing of the costs and benefits for each option and providing the rationale for not using nonselected alternatives.

The enacting statutes require that the Department adopt rules to create forms and worksheets that health insurers must use to prepare the reports required by A.R.S. § 20-3502, to enforce MHPAEA, and establish standards to determine compliance with MHPAEA. The Final Rulemaking requires no more than the statutes mandate. The Department believes that the current rulemaking offers the least intrusive and least costly alternative method to achieve the purpose of the proposed rulemaking.
A.R.S. § 41-1055(B)(8): A description of any data on which a rule is based with a detailed explanation of how the data was obtained and why the data is acceptable data. An agency advocating that any data is acceptable data has the burden of proving that the data is acceptable. For the purposes of this paragraph, "acceptable data" means empirical, replicable and testable data as evidenced in supporting documentation, statistics, reports, studies or research.

The rule is not based on any data.
March 4, 2022

Arizona Department of Insurance and Financial Institutions

Submitted electronically via email to public_comments@dif.az.gov

Re: Mental Health Parity II

To Whom It May Concern:

Thank you for the opportunity to provide comments in response to the Arizona Department of Insurance and Financial Institutions’ (“DIFI”) draft regulations (“draft rule”) implementing Arizona SB 1523 (Chapter 4, Laws 2020) published February 4, 2022. Medica (also referred to as “we,” “our,” or “us,”) is an independent and nonprofit health care organization with approximately 900,000 members, and is proud to be a new entrant to the Arizona individual health insurance market in 2022. Medica’s mission is to be the trusted health plan of choice for customers, members, partners, and our employees. Medica offers health insurance coverage in Minnesota, Wisconsin, North Dakota, South Dakota, Iowa, Nebraska, Kansas, Oklahoma, and Missouri.

Medica appreciates DIFI’s engagement with health care insurers on this subject. We understand the importance of ensuring compliance with MHPAEA, and we are familiar with a number of different approaches adopted by states to evaluate MHPAEA compliance. We submitted comments on a previous version of the draft rule; Medica’s comment letter was dated November 29, 2021, and those comments are generally still applicable to the version of the draft rules published in February 2022. We thank DIFI for using the term “health care insurer” consistently in the draft rule to provide clarity. We also thank DIFI for removing the extraneous definition of “medical necessity / medically necessary.”

We reiterate, however, our concerns about DIFI’s approach regarding MHPAEA compliance. There is significant federal legislative and regulatory activity expected in 2022 on MHPAEA, and it is imprudent for DIFI to develop its own reporting mechanisms when the underlying federal requirements are transforming.

The U.S. Departments of Health and Human Services and Labor are required to release revised MHPAEA regulations in 2022 under the Consolidated Appropriations Act of 2021 (Pub. L. 116-260). The U.S. Department of Labor also recently released its MHPAEA Compliance Report to Congress and provided indications to health plans on how they should conduct the comparative analyses of nonquantitative treatment limits under the Consolidated Appropriations Act of 2021 (Pub. L. 116-260). Finally, the U.S. Senate is working on a bipartisan legislative packaged to strengthen behavioral health care in the United States, including by strengthening MHPAEA. The federal activities will drive the future of MHPAEA.
compliance, and DIFI should defer to existing federal tools for overseeing MHPAEA compliance until additional federal guidance is released.

Specifically, rather than developing its own reporting tool for MHPAEA NTQL reporting, we recommend DIFI leverage the Consolidated Appropriations Act of 2021’s comparative analyses for NTQLs. Health insurers have been required to make these comparative analyses available to state regulators upon request since February of 2021. We recommend DIFI ask health insurers to provide the comparative analyses rather than completing an Arizona-specific data request. As a health insurer offering fully-insured products across 10 different states, we recommend alignment so that we do not have to create unique reporting processes for each state.

Additionally, we recommend DIFI clarify its approach to requiring the use of the CMS MHPAEA Tool for QTL reporting in the draft rule. The CMS MHPAEA Tool is not automatically available to health insurers; it is a tool developed for state regulators to use, and health insurers do not have access to the tool during the filing season to run it on their plan designs. We also note that the CMS MHPAEA Tool does not incorporate the subclassification safe harbor for outpatient office visits and outpatient other visits. As such, the tool acknowledges that it may give “false positives” of parity violations. We recommend the DIFI recognize the limitations of the tool in assessing MHPAEA Compliance.

Thank you once again for the opportunity to provide these comments. Please do not hesitate to contact me if you have any questions or would like to discuss Medica’s comments in more detail.

Sincerely,

Jay McLaren
Vice President, Public Policy and Government Relations
March 4, 2022

Arizona Department of Insurance and Financial Institutions (DIFI)
100 North 15th Avenue, Suite 261
Phoenix, AZ 85007-2630

Attention: Mary Boatright, JD, CHC, Manager, Life & Health Oversight
public_comments@difi.az.gov

Re: Comments to Proposed MHPAEA Rulemaking

Dear Department of Insurance and Financial Institutions,

On behalf of the Arizona Healthcare Advocacy Coalition, which collectively represents the majority of Arizona physicians, I write in support of the written comments offered in this cycle by the Arizona Psychiatric Society (APS) in response to proposed rules promulgated by the Department of Insurance and Financial Institutions (DIFI), as required by Arizona Senate Bill SB1523 (“Jake’s Law”) and ARS § 20-3502 to ensure compliance with the Mental Health Parity and Addiction Equity Act (MHPAEA).

In the 2020 legislative session, Jake’s Law was adopted by unanimous vote of both chambers of the Arizona legislature and signed into law by Governor Ducey. This mental health omnibus had such widespread support because of the imperative need to address mental health care access in our community and suicide awareness and prevention. A crucial piece of ensuring that care can be accessed is compliance with MHPAEA. The important work to be done under Jake’s Law is left unfinished until this final piece of rulemaking is completed.

We support the scope of comments offered by the Arizona Psychiatric Society, with particular emphasis on the assertion that the draft rules are compatible with and did not exceed the comparative analysis requirements of MHPAEA. As such, we request that these rules move forward, with benefit of the clarifying term comments submitted by APS. Implementation of these rules will open the door so the important work of DIFI to provide support to Arizona insurers and consumers and appropriate oversight to compliance with the MHPAEA can begin.

Multiple lines of evidence indicate that the coronavirus disease 2019 (COVID-19) pandemic has profound psychological and social effects. Mental health consequences of the COVID-19 crisis
including suicidal behavior are likely to be present for a long time and peak later than the actual pandemic. Jake’s Law has the potential to save lives with even more urgency than when it was signed into law in March of 2020. We applaud the work of DIFI to bring forward rulemaking that enforces the MHPAEA with equivalency and stand in support of the comments submitted by the Arizona Psychiatric Society.

Respectfully submitted,

Marc Leib
Marc Leib, M.D., J.D.
Chairman, Arizona Healthcare Advocacy Coalition
I believe that mental health and substance abuse therapy should be treated the same as physical health by insurance companies. Mental health and addiction treatment saves lives. Our opioid crisis would not be as severe if these services were easier to access.

The purpose of Jake’s Law is to require state enforcement of federal laws and regulations that end insurance discrimination of mental health and substance use conditions. To do this, the Department of Insurance and Financial Institutions needs strong rules that ensure insurance companies are transparent about their plan designs, especially more complicated areas of a plan’s design like nonquantitative treatment limitations and medical necessity criteria. These are managed care practices like prior authorization and fail first requirements, prescription formulary design, medical management standards like medical necessity criteria, provider admission standards, exclusions for failing to complete a course of treatment, and other limitations on the scope or duration of benefits. Most parity violations occur within managed care practices. Parity compliance cannot be determined simply by looking at a plan’s covered benefits. The most profound and consequential barriers to mental health and addiction coverage occur in plans’ NQTLs. Understanding whether those barriers exist requires a robust comparative analysis as required by Jake’s Law. An analysis that the average non-professional patient is unable to carry out themselves.

Please do not let the insurance industry weaken the rules implementing Jake's Law. Please ensure there is maximum transparency regarding NQTLs and medical necessity criteria. Mental health and addiction treatment saves lives. Thank you!

Sincerely,
Amina Donna Kruck
915 W. 19th st.
Tempe, AZ 85281
602-980-1155
March 4, 2022

Arizona Department of Insurance and Financial Institutions (DIFI)
100 North 15th Avenue, Suite 261
Phoenix, AZ 85007-2630

Attention: Mary Boatright, JD, CHC, Manager, Life & Health Oversight
public_comments@difi.az.gov

Re: Comments to Proposed MHPAEA Rulemaking

Dear Department of Insurance and Financial Institutions,

On behalf of our nearly 4,000 member physicians, the Arizona Medical Association writes in support of the written comments offered in this cycle by the Arizona Psychiatric Society (APS) in response to proposed rules promulgated by the Department of Insurance and Financial Institutions (DIFI), as required by Arizona Senate Bill SB1523 (“Jake’s Law”) and ARS § 20-3502 to ensure compliance with the Mental Health Parity and Addiction Equity Act (MHPAEA).

In the 2020 legislative session, Jake’s Law was adopted by unanimous vote of both chambers of the Arizona legislature and signed into law by Governor Ducey. This mental health omnibus had such widespread support because of the imperative need to address mental health care access in our community and suicide awareness and prevention. A crucial piece of ensuring that care can be accessed is compliance with MHPAEA. The important work to be done under Jake’s Law is left unfinished until this final piece of rulemaking is completed.

We support the scope of comments offered by the Arizona Psychiatric Society, with particular emphasis on the assertion that the draft rules are compatible with and did not exceed the comparative analysis requirements of MHPAEA. As such, we request that these rules move forward, with benefit of the clarifying term comments submitted by APS. Implementation of these rules will open the door so the important work of DIFI to provide support to Arizona insurers and consumers and appropriate oversight to compliance with the MHPAEA can begin.

Multiple lines of evidence indicate that the coronavirus disease 2019 (COVID-19) pandemic has profound psychological and social effects. Mental health consequences of the COVID-19 crisis including suicidal behavior are likely to be present for a long time and peak later than the actual pandemic. Jake’s Law has the potential to save lives with even more urgency than when it was signed into law in March of 2020. We applaud the work of DIFI to bring forward rulemaking that enforces the MHPAEA with equivalency and stand in support of the comments submitted by the Arizona Psychiatric Society.

Respectfully submitted,

Dr. Miriam Anand, M.D., FACP, FAAAAI, FACAII
President, Arizona Medical Association

Dr. Bill Thompson, M.D. FASA
Legislative Chair, Arizona Medical Association
March 3rd, 2022

Evans G. Daniels, Director
Arizona Department of Insurance and Financial Institutions
100 North 15th Avenue, Suite 261
Phoenix, AZ 85007

Dear Director Daniels,

The Arizona Peer and Family Coalition (APFC) was established in 2009 with a mission of advocating for, connecting, promoting, and developing leadership by peers and family members throughout our state. Today, the APFC has 180 members located throughout the state and represents the perspectives of individuals and family members who have first-hand lived experience navigating the integrated private and public health systems for themselves or on behalf of a loved one with mental illness.

On behalf of the Board of Directors for the Arizona Peer and Family Coalition, we want to echo the comments submitted by Mental Health America of Arizona (MHA Arizona) and the Arizona Council of Human Service Providers (the Council), which were submitted on March 2, 2022. We would like to thank you for considering these comments regarding the proposed rule operationalizing Laws 2020, Chapter 4 (SB 1523), also known as “Jake’s Law.”

As mental health peers (aka patients) and their family members, we are disappointed with the industry’s attempts to undermine the intent of Jake’s Law. This law has always been to enforce federal law and ensure transparency and accountability, especially where the most profound and consequential barriers to mental health and addiction coverage occur – medical necessity criteria and other non-quantitative treatment limitations (NQTLs).

We need you to ensure you are requiring strict reporting guidelines for NQTLs. There must be transparency. Without strong oversight by regulators as your office, the promise of parity cannot be achieved, and we will continue to see vulnerable people that require mental health services denied care. As more of our loved ones are denied care, the more likely they may be to resort to suicide. This is unacceptable.

Please do what you can for all of Arizona by requiring strict guidelines and transparency.

Sincerely,

Kathy Bashor, Board President, APFC
APFC Board of Directors
Laurie Verdier, Northern APFC Chair
Kristina Sabetta and Eddie Sissons, APFC Advocacy Committee Co-Chairs

Please feel free to contact us at azpeerandfamily@gmail.com or 602-935-6079.
I believe that mental health should be treated no differently than physical health by insurance companies. The purpose of Jake’s Law is to require state enforcement of federal laws and regulations that end insurance discrimination of mental health and substance use conditions. To do this, the Department of Insurance and Financial Institutions needs strong rules that ensure insurance companies are transparent about their plan designs, especially more complicated areas of a plan’s design like non quantitative treatment limitations and medical necessity criteria.

These are managed care practices like prior authorization and fail first requirements, prescription formulary design, medical management standards like medical necessity criteria, provider admission standards, exclusions for failing to complete a course of treatment, and other limitations on the scope or duration of benefits.

Most parity violations occur within managed care practices. Parity compliance cannot be determined simply by looking at a plan’s covered benefits. The most profound and consequential barriers to mental health and addiction coverage occur in plans’ NQTLs. Understanding whether those barriers exist requires a robust comparative analysis as required by Jake’s Law.

Please do not let the insurance industry weaken the rules implementing Jake’s Law. Please ensure there is maximum transparency regarding NQTLs and medical necessity criteria.

Sincerely,
Cheryl L Martin
--
The three grand essentials of happiness are: something to do, someone to love, and something to hope for.
-- Alexander Chalmers
Hello and happy Thursday,

I believe that mental health should be treated no differently than physical health by insurance companies.

The purpose of Jake’s Law is to require state enforcement of federal laws and regulations that end insurance discrimination of mental health and substance use conditions. To do this, the Department of Insurance and Financial Institutions needs strong rules that ensure insurance companies are transparent about their plan designs, especially more complicated areas of a plan’s design like nonquantitative treatment limitations and medical necessity criteria. These are managed care practices like prior authorization and fail first requirements, prescription formulary design, medical management standards like medical necessity criteria, provider admission standards, exclusions for failing to complete a course of treatment, and other limitations on the scope or duration of benefits.

Most parity violations occur within managed care practices. Parity compliance cannot be determined simply by looking at a plan’s covered benefits. The most profound and consequential barriers to mental health and addiction coverage occur in plans’ NQTLs. Understanding whether those barriers exist requires a robust comparative analysis as required by Jake’s Law.

Please do not let the insurance industry weaken the rules implementing Jake’s Law. Please ensure there is maximum transparency regarding NQTLs and medical necessity criteria.

As a suicide survivor who also lost my Dad to suicide, I’m begging for your help with this matter.

Thank you, Christie

* I type too fast, so please excuse silly errors!

Christine (Christie) Lee Kinchen, PC
REALTOR, ABR, CDPE, CRS, Eco-Broker, GRI, SFR
Twins & Co. Realty
Associate Broker/Owner
INNOVATING + ELEVATING THE REAL ESTATE EXPERIENCE FOR 22 YEARS
Arizona Regional MLS top 1% by volume for 2020, 2021
Cell 602-908-TWIN (8946)
Christie@TwinsAndCompany.com
Hi, my name is Denise and Jake’s Law was named after my son Jacob Machovsky who was lost to suicide on January 11, 2016, due to our insurance company denying him care. Unfortunately, my story is not the only one. I work with families on a regular basis that are dealing with the same issues I struggled with. I have remained engaged with what’s transpired since Jake’s Law was enacted. I’ve gone through the new rules and noticed the significant paring back of information DIFI will request of the insurance industry, specifically surrounding NQTL’s. As you know NQTL’s can be difficult to identify for those not in the industry. It was the issues with NQTL’s that caused the problems for our son, and that still cause so many problems for other families. It can be easy to identify a QTL like a copay, it is far more complex to identify a NQTL violation, which I am sure you know. I’m disappointed, but understand the complexities DIFI is facing.

I really think more information, especially concerning NQTL’s would provide important insight into what is happening within the Arizona insurance market, and give DIFI more insight into where red flags might exist. Given that the current draft looks at the absolute bare minimum already required by the federal government since the end of 2020, it concerns me that we will not get an accurate picture of possible violations that affect many families seeking care. It would be helpful to know more about claims denial trends, prior authorization and step therapy trends, how much more likely Arizonans are to go out-of-network for mental health/SUDs treatment, approval of only lower level of care (this is exactly what happened with Jake), and provider networks. I can’t tell you how many times people tell me they struggle to find an in-network therapist or psychiatrist, especially without extraordinarily long waits, and while I know this is in part due to a provider shortage, insurers should be making the same effort to beef up their mental health/SUDs network as they do for their med/surg network.

As I mentioned in my previous comments, The Texas Department of Insurance (TDI)
adopted regulations that require insurers to provide their non-quantitative treatment limitation (NQTL) parity compliance analyses, which is now part of MHPAEA, with the enactment of the Consolidated Appropriations Act, 2021. TDI is also requiring reporting of comparative quantitative data relating to claims, utilization review, and reimbursement rates for both behavioral and physical health.

I appreciate the ability to comment and I hope you will take this into consideration. This is about saving lives and I hope we can come to some middle ground or compromise.

With gratitude,
Denise

Denise Denslow
Executive Director

http://th ejemfoundation.com/

You can support JEM with donations through our website and
Dear Department of Insurance and Financial Institutions,

I want to ensure you understand the critical importance of enforcing Jake's Law for our family and other Arizona families. Please take the needed time to create regulations that will let mental illness receive the same level of care as physical illness. The criteria for medical necessity for mental health services in Arizona managed care plans needs to have transparency. Please take the time to do the deep comparative analysis that is need, even though it takes time and effort.

Mental health needs shouldn't require jumping through more hoops. Federal law already makes this clear, and now Jake's Law reinforces this in Arizona. It is up to you to please pave the pathway that these laws will be followed and enforced in Arizona. Our kids need you. My kids need you.

Please put the regulations, policies, and requirements in place to ensure that Jake's Law is enforced for Arizona's children.

As one of our state license plate choices say, "It shouldn't hurt to be a child."

Thank you,
Diana Hernandez, parent
Phoenix, AZ 85053
At a time when individuals and families are unexpectedly faced with educating themselves about the idea, they are discovering the treatments needed to help either themselves or their loved ones are not covered by insurance and out of reach. The lack of insurance coverage to treat mental illness compounds an already difficult and scary situation.

The purpose of Jake’s Law is to require state enforcement of federal law and regulation that end inurance discrimination of mental health and substance use conditions. To do this, the Department of Insurance and Financial Institutions needs strong rules that ensure insurance companies are transparent about their plan designs, especially more complicated areas of a plan’s design like nonquantitative treatment limitations and medical necessity criteria. These are managed care practices like prior authorization and fail for treatment requirements, pre prescription formulary design, medical management standards like medical necessity criteria, provider admission standards, exclusions for failing to complete a course of treatment, and other limitations on the scope or duration of benefits.

Most parity violations occur within managed care practices. Parity compliance cannot be determined simply by looking at a plan’s covered benefits. The most profound and consequential barriers to mental health and addiction coverage occur in plan NQTL. Understanding whether the barrier is a robust comparative analysis required by Jake’s Law.

Please do not let the insurance industry weaken the rules implementing Jake’s Law. Please ensure there is maximum transparency regarding NQTLs and medical necessity criteria.

Best –

Doreen Myles
www.digi-law.com
P: 602.743.3700
Hello,

I have been a mental health provider in the state of Arizona since 2002, and I have struggled every year to help my patients understand their coverage for mental health and substance abuse treatment. I continue to work with Arizonans who are denied care to adequate mental health and substance use care even though their insurance company is federally required to ensure coverage.

As a healthcare consumer myself, I have found my own insurance network to be shamefully inadequate in inclusivity of providers who are trained at the advanced level in delivering mental health and substance use disorder care. I have had to pay out of pocket for quality care that is effective and efficient for myself and my family and that is just not acceptable.

I believe that mental health should be treated no differently than physical health by insurance companies. The purpose of Jake’s Law is to require state enforcement of federal laws and regulations that end insurance discrimination of mental health and substance use condition. To do this, the Department of Insurance and Financial Institutions need strong rules that ensure insurance companies are transparent about their plan designs, especially more complicated areas of a plan’s design like nonquantitative treatment limitations and medical necessity criteria. These are managed care practices like prior authorization and fail first requirements, prescription formulary design, medical management standard like medical necessity criteria, provider admission standard, e clue ion for failing to complete a course of treatment, and other limitations on the scope or duration of benefits.

Most parity violations occur within managed care practices. Parity compliance cannot be determined simply by looking at a plan’s covered benefit. The most profound and consequent barrier to mental health and addiction coverage occur in plans’ NQTLs. Understanding whether those barriers exist requires a robust comparative analysis as required by Jake’s Law.

Please do not let the insurance industry weaken the rules implementing Jake’s Law. Please ensure there is maximum transparency regarding NQTLs and medical necessity criteria.

Resources for understanding parity and the rulemaking:

Comments previously submitted: https://diff.az.gov/pre-published-proposed-draft-rule-public-comments

Relevant state statutes:

https://www.azleg.gov/viewdocument/?docName=https://www.azleg.gov/ars/20/03502.htm
https://www.azleg.gov/viewdocument/?docName=https://www.azleg.gov/ars/20/03503.htm

Thank you for your support and work to enforce Jake’s Law and to end parity noncompliance in our state. We have to do better!

Best,

Dr. Cara English, DBH, LAC (she/her)
Doctor of Behavioral Health
caracoxenglish@gmail.com
(480) 788-5820
Postpartum Support International HelpLine: 1-800-944-4773
#1 En Español or #2 in English
Text in English: 800-944-4773
Text en Español: 971-203-7773
Find Local Postpartum Resources: https://www.postpartum.net/get-help/locations/

Schedule a meeting with me: https://calendly.com/caraenglish

CONFIDENTIALITY NOTICE:
The contents of this email message and any attachments are intended solely for the addressee(s) and may contain confidential and/or privileged information and may be legally protected from disclosure. If you are not the intended recipient of this message or their agent, or if this message has been addressed to you in error, please immediately alert the sender by reply email and then delete this message and any attachments. If you are not the intended recipient, you are hereby notified that any use, dissemination, copying, or storage of this message or its attachments is strictly prohibited.
Dear Department of Insurance and Financial Institutions,

We write this letter to join in support of the written comments offered in this cycle by the Arizona Psychiatric Society (APS) in response to proposed rules promulgated by the Department of Insurance and Financial Institutions (DIFI), as required by Arizona Senate Bill SB1523 (“Jake’s Law”) and ARS § 20-3502 to ensure compliance with the Mental Health Parity and Addiction Equity Act (MHPAEA).

In the 2020 legislative session, Jake’s Law was adopted by unanimous vote of both chambers of the Arizona legislature and signed into law by Governor Ducey. This mental health omnibus had such widespread support because of the imperative need to address mental health care access in our community and suicide awareness and prevention. A crucial piece of ensuring that care can be accessed is compliance with MHPAEA. The important work to be done under Jake’s Law is left unfinished until this final piece of rulemaking is completed.

We support the scope of comments offered by the Arizona Psychiatric Society, with particular emphasis on the assertion that the draft rules are compatible with and did not exceed the comparative analysis requirements of MHPAEA. As such, we request that these rules move forward, with benefit of the clarifying term comments submitted by APS. Implementation of these rules will open the door so the important work of DIFI to provide support to Arizona insurers and consumers and appropriate oversight to compliance with the MHPAEA can begin.

Multiple lines of evidence indicate that the coronavirus disease 2019
(COVID-19) pandemic has profound psychological and social effects. Mental health consequences of the COVID-19 crisis including suicidal behavior are likely to be present for a long time and peak later than the actual pandemic. Jake’s Law has the potential to save lives with even more urgency than when it was signed into law in March of 2020. We applaud the work of DIFI to bring forward rulemaking that enforces the MHPAEA with equivalency and stand in support of the comments submitted by the Arizona Psychiatric Society.

Respectfully submitted,
Chandan

**********
Chandan Nayak, MD
https://www.abcdupage.com
630.629.6550 (W)
630.629.6558 (F)
abcdupage.nayak@gmail.com
Twitter @NayakMD
https://www.doximity.com/pub/chandan-nayak-md
Dear Department of Insurance and Financial Institutions,

We write this letter to join in support of the written comments offered in this cycle by the Arizona Psychiatric Society (APS) in response to proposed rules promulgated by the Department of Insurance and Financial Institutions (DIFI), as required by Arizona Senate Bill SB1523 ("Jake’s Law") and ARS § 20-3502 to ensure compliance with the Mental Health Parity and Addiction Equity Act (MHPAEA).

In the 2020 legislative session, Jake’s Law was adopted by unanimous vote of both chambers of the Arizona legislature and signed into law by Governor Ducey. This mental health omnibus had such widespread support because of the imperative need to address mental health care access in our community and suicide awareness and prevention. A crucial piece of ensuring that care can be accessed is compliance with MHPAEA. The important work to be done under Jake’s Law is left unfinished until this final piece of rulemaking is completed.

I support the scope of comments offered by the Arizona Psychiatric Society, with particular emphasis on the assertion that the draft rules are compatible with and did not exceed the comparative analysis requirements of MHPAEA. As such, we request that these rules move forward, with benefit of the clarifying term comments submitted by APS. Implementation of these rules will open the door so the important work of DIFI to provide support to Arizona insurers and consumers and appropriate oversight to compliance with the MHPAEA can begin.

Multiple lines of evidence indicate that the coronavirus disease 2019 (COVID-19) pandemic has profound psychological and social effects. Mental health consequences of the COVID-19 crisis including suicidal behavior are likely to be present for a long time and peak later than the actual pandemic. Jake’s Law has the potential to save lives with even more urgency than when it was signed into law in March of 2020. We applaud the work of DIFI to bring forward rulemaking that enforces the MHPAEA with equivalency and stand in support of the comments submitted by the Arizona Psychiatric Society.

Respectfully submitted,

Gary Grove, M.D.
review, use, copy or disclosure is prohibited and may violate applicable laws including the Electronic Communications Privacy Act. If the reader of this message is not the intended recipient, or if it appears you may have received this email in error, please advise me by reply email and immediately delete the message and any attachments from your system.
From: Dr. Irene Kitzman <DrIreneKitzman@Tucson-Psychiatrist.com>
Sent: Thursday, March 3, 2022 7:45 PM
To: public_comments@difi.az.gov
Subject: MHPAEA

Arizona Department of Insurance and Financial Institutions (DIFI)
100 North 15th Avenue, Suite 261
Phoenix, AZ 85007-2630

Attention: Mary Boatright, JD, CHC, Manager, Life & Health Oversight
public_comments@difi.az.gov

Re: Comments to Proposed MHPAEA Rulemaking

Dear Department of Insurance and Financial Institutions,

We write this letter to join in support of the written comments offered in this cycle by the Arizona Psychiatric Society (APS) in response to proposed rules promulgated by the Department of Insurance and Financial Institutions (DIFI), as required by Arizona Senate Bill SB1523 (“Jake’s Law”) and ARS § 20-3502 to ensure compliance with the Mental Health Parity and Addiction Equity Act (MHPAEA).

In the 2020 legislative session, Jake’s Law was adopted by unanimous vote of both chambers of the Arizona legislature and signed into law by Governor Ducey. This mental health omnibus had such widespread support because of the imperative need to address mental health care access in our community and suicide awareness and prevention. A crucial piece of ensuring that care can be accessed is compliance with MHPAEA. The important work to be done under Jake’s Law is left unfinished until this final piece of rulemaking is completed.

We support the scope of comments offered by the Arizona Psychiatric Society, with particular emphasis on the assertion that the draft rules are compatible with and did not exceed the comparative analysis requirements of MHPAEA. As such, we request that these rules move forward, with benefit of the clarifying term comments submitted by APS. Implementation of these rules will open the door so the important work of DIFI to provide support to Arizona insurers and consumers and appropriate oversight to compliance with the MHPAEA can begin.

Multiple lines of evidence indicate that the coronavirus disease 2019 (COVID-19) pandemic has profound psychological and social effects. Mental health consequences of the COVID-19 crisis including suicidal behavior are
likely to be present for a long time and peak later than the actual pandemic. Jake’s Law has the potential to save lives with even more urgency than when it was signed into law in March of 2020. We applaud the work of DIFI to bring forward rulemaking that enforces the MHPAEA with equivalency and stand in support of the comments submitted by the Arizona Psychiatric Society.

Respectfully submitted,

Irene R. Kitzman, M.D.
801 E. Camino de Fray Marcos
Tucson, AZ 85718-1913
520.203.8500 Fax: 631.628.1116

Internet communications cannot be guaranteed to be secure or error-free as information can be intercepted, corrupted, lost, destroyed, arrive late or incomplete, or contain viruses. I therefore am not responsible for any errors or omissions that are present in this message, or any attachment, that have arisen as a result of e-mail transmission. Please request a hard-copy if verification is required.

If you are not currently my patient, information contained in this email should not be construed as establishing a physician-patient relationship, nor as providing medical advice, diagnosis or treatment

Never rely solely on email for important or urgent communications - timely delivery of email is not guaranteed!
This email message is intended only for the use of the individual or entity to which it is addressed and may contain information that is confidential. If you are not the intended recipient you are hereby notified that any dissemination, copying or distribution of this message, including any files associated with this message, is strictly prohibited. Please notify me if you have received this message in error and immediately delete it from your computer.
March 3, 2022

Attention: DIFI
Re: MHPAEA

We believe that mental health should be treated no differently than physical health by insurance companies. The purpose of Jake’s Law is to require state enforcement of federal laws and regulations that end insurance discrimination of mental health and substance use conditions. To do this, the Department of Insurance and Financial Institutions needs strong rules that ensure insurance companies are transparent about their plan designs, especially more complicated areas of a plan’s design like non-quantitative treatment limitations and medical necessity criteria. These are managed care practices like prior authorization and fail first requirements, prescription formulary design, medical management standards like medical necessity criteria, provider admission standards, exclusions for failing to complete a course of treatment, and other limitations on the scope or duration of benefits.

Most parity violations occur within managed care practices. Parity compliance cannot be determined simply by looking at a plan’s covered benefits. The most profound and consequential barriers to mental health and addiction coverage occur in plans’ NQTLs. Understanding whether those barriers exist requires a robust comparative analysis as required by Jake’s Law.

Please do not let the insurance industry weaken the rules implementing Jake’s Law. Please ensure there is maximum transparency regarding NQTLs and medical necessity criteria.

Sincerely,

Lorrie Henderson, Ph.D., MBA, LCSW
President & CEO
I believe that mental health should be treated no differently than physical health by insurance companies. The purpose of Jake’s Law is to require state enforcement of federal laws and regulations that end insurance discrimination of mental health and substance use conditions. To do this, the Department of Insurance and Financial Institutions needs strong rules that ensure insurance companies are transparent about their plan designs, especially more complicated areas of a plan’s design like nonquantitative treatment limitations and medical necessity criteria. These are managed care practices like prior authorization and fail first requirements, prescription formulary design, medical management standards like medical necessity criteria, provider admission standards, exclusions for failing to complete a course of treatment, and other limitations on the scope or duration of benefits.

Most parity violations occur within managed care practices. Parity compliance cannot be determined simply by looking at a plan’s covered benefits. The most profound and consequential barriers to mental health and addiction coverage occur in plans’ NQTLs. Understanding whether those barriers exist requires a robust comparative analysis as required by Jake’s Law. Please do not let the insurance industry weaken the rules implementing Jake’s Law. Please ensure there is maximum transparency regarding NQTLs and medical necessity criteria.

Jill Friedberg
wrensongs@cox.net
Hello, I'm appealing you on behalf of my friend Denise Denslow to provide strong reporting requirements for claims denial trends, prior authorization and step therapy trends, how much more likely Arizonans are to go out-of-network for mental health/substance abuse disorder (SUDs) treatment, approval of only lower level of care, and provider networks. We must kindly and professionally demand transparency and strong reporting requirements.

--
Joanna
~Dream big, inspire, serve
March 6, 2021

The Honorable Evans G. Daniels
Director
Arizona Department of Insurance and Financial Institutions
100 North 15th Avenue, Suite 261
Phoenix, AZ 85007

Dear Director Daniels,

Thank you for the opportunity to provide comments on the proposed rule on Mental Health Parity dated February 4, 2022 as required by Senate Bill 1523 (“Jake’s Law”) to ensure compliance with the Mental Health Parity and Addiction Equity Act of 2008 (MHPAEA). Jake’s Law is a critical step forward toward increasing access to mental health and addiction care in Arizona. Realizing its promise, however, requires strong implementation, including data collection that can guide the Department of Insurance and Financial Institution’s oversight efforts and help determine insurer’s “in-operation” compliance with MHPAEA.

Unfortunately, the proposed rules dated February 4, 2022 were a significant step backwards from the draft rules the Department previously put forward. While the revised rules to implement Jake’s Law would still collect useful information, the large reduction in data available to the Department will likely mean that oversight efforts will be more difficult and likely less effective at identifying potential issues relating to plans’ compliance with state and federal parity rules. Indeed, without important data to steer the Department’s oversight efforts, the revised rules will likely result in less cost-effective use of valuable taxpayer dollars than under the original draft rules.

Prioritizing limited oversight resources should be a priority for any department to ensure that these resources increase access to the mental health and addiction services that residents are entitled to under the law. The original draft rules – including Exhibits B through N – would have given the Department such information. The removal of these exhibits from the new draft proposed rules leaves the Department with significantly less ability to target its oversight efforts in a cost-effective manner and determine compliance.

The removals are particularly ill-timed, because increased treatment and access to services are essential to addressing the mental health and addiction crises Arizona and other states are experiencing. In just 12 months – from April 2020 to April 2021 – fatal overdose deaths in
Arizona surged 28.5 percent. Additionally, mental health needs have surged among youth. While multiple policy responses are needed, Arizona has the opportunity to put in place meaningful rules to implement Jake’s Law and ensure compliance with MHPAEA, which is a foundational component of increasing access to treatment.

Other states are now collecting similar data as was contained in the proposed rules from earlier this year. Notably, the Texas Department of Insurance (TDI) recently adopted regulations that not only require insurers to provide their non-quantitative treatment limitation (NQTL) parity compliance analyses – which MHPAEA now explicitly requires insurers to conduct with the enactment of the Consolidated Appropriations Act, 2021 – but also to report comparative quantitative data relating to claims, utilization review, and reimbursement rates for both behavioral and physical health. In adopting these requirements, TDI knew that such comparative quantitative data was essential to guide its parity oversight efforts, even if disparities do not, of course, by themselves prove that any violations have occurred. Similarly, the Department recognized in its original draft proposed rules that submitted data “does not establish a per se MHPAEA violation.”

Unfortunately, it appears that some insurers have suggested that collecting data to help the Department identify potential red flags is somehow inconsistent with MHPAEA. This is not the case. Additionally, the federal NQTL rule applies to the terms of the plan “as written and in operation.” Thus, without any quantitative data, it becomes nearly impossible to evaluate full compliance. Again, such data is not alone determinative of whether an imposition of an NQTL violates MHPAEA, but without such data, it would be extraordinarily difficult to determine whether a plan’s imposition of an NQTL on mental health or substance use disorder benefits in a given classification of care meets the in-operation component of the federal NQTL rule. As mentioned, such data is also critical to identify NQTLS deserving special attention for an “as-written” analysis. Not surprisingly, TDI’s title for its data collection tool – “MH/SUD Parity Rule Division 2 Data Collection Reporting Form” – indicated that data collection and parity are intimately linked.

Collecting the data contained in the original proposed regulations is also clearly allowed by Arizona law. Subsection F of Section 20-3502, which was added by Jake’s Law, stipulates:

   Except as otherwise provided in this section, if a health care insurer provided the information required by this section in an existing filing or report, the department may not require the health care insurer to submit any additional filing or report. The department is not prohibited from otherwise requesting information or data that is necessary to verify compliance with the mental health parity and addiction equity act or this chapter. The department shall analyze the

---

The Department clearly has the power to request additional “information or data” that is necessary to verify compliance with MHPAEA. It is unfortunate that, in its revised rules, the Department is no longer set to collect such important data within the revised draft proposed rules. While we encourage the Department to restore the information requested in the original draft proposed rules, if the Department declines to do so, it should nonetheless request this information pursuant to R20-6-1302(G) of the revised rules.

Thank you for the opportunity to provide comments on this important issue. Please do not hesitate to contact me at david@thekennedyforum.org if you have any questions.

Sincerely,

David Lloyd
Senior Policy Advisor
The Kennedy Forum
Dear Dept. of Insurance and Financial Institutions:

I’m writing to ask that DIFI require strict reporting guidelines for Non-Quantitative Treatment Limitations (NQTLs). There must be transparency. Mental healthcare is as important as physical healthcare. And now, more than ever, we need to make sure people have access to the professional care they’ve paid for through their purchase of health insurance. If we fail to do this, suicide rates, and deaths by overdose, will increase.

We need to have strong reporting requirements for claims denial trends, prior authorization, and step therapy trends. Many patients have had to go out-of-network for mental health/ substance abuse disorder (SUDs) treatment, or have been forced to accept approval of lower level of care, and provider networks.

I served on the committee that brought Jake’s Law to the AZ Legislature in 2020. I devoted 2 years to that important cause because this is personal for me and my family. Navigating an almost non-existent mental healthcare “system” has been arduous, to say the least. Insurance companies are MASSIVE and they hold ALL the power, unless and until government institutions hold them accountable to their stakeholders.

I thank you for reading my letter and for the opportunity to share my concerns about loosening the reporting guidelines.

Lisa Olson
Mesa, AZ
480-620-2346
To whom it may concern,
I am writing today because I believe that mental health should be treated no differently than physical health by insurance companies.
The purpose of Jake’s Law is to require state enforcement of federal laws and regulations that end insurance discrimination of mental health and substance use conditions. To do this, the Department of Insurance and Financial Institutions needs strong rules that ensure insurance companies are transparent about their plan designs, especially more complicated areas of a plan’s design like nonquantitative treatment limitations and medical necessity criteria. These are managed care practices like prior authorization and fail first requirements, prescription formulary design, medical management standards like medical necessity criteria, provider admission standards, exclusions for failing to complete a course of treatment, and other limitations on the scope or duration of benefits.
Most parity violations occur within managed care practices. Parity compliance cannot be determined simply by looking at a plan’s covered benefits. The most profound and consequential barriers to mental health and addiction coverage occur in plans’ NQTLs. Understanding whether those barriers exist requires a robust comparative analysis as required by Jake’s Law.
Please do not let the insurance industry weaken the rules implementing Jake’s Law. Please ensure there is maximum transparency regarding NQTLs and medical necessity criteria.
Now more than ever, we need access to mental health care.

Connie Phillips| President and CEO
Lutheran Social Services of the Southwest
2502 E. University Drive, Suite 125, Phoenix, AZ 85034
cell: 602-570-8217 | office: 480-396-3795 ext. 1116
cphillips@lss-sw.org| http://www.lss-sw.org

This message is confidential. It may also be privileged or otherwise protected by work product immunity or other legal rules. If you have received it by mistake, please let us know by e-mail reply and delete it from your system; you may not copy this message or disclose its contents to anyone. Please send us by fax any message containing deadlines as incoming e-mails are not screened for response deadlines.
The integrity and security of
this message cannot be guaranteed on the Internet.
I believe that mental health should be treated no differently than physical health by insurance companies. The purpose of Jake’s Law is to require state enforcement of federal laws and regulations that end insurance discrimination of mental health and substance use conditions. To do this, the Department of Insurance and Financial Institutions needs strong rules that ensure insurance companies are transparent about their plan designs, especially more complicated areas of a plan’s design like nonquantitative treatment limitations and medical necessity criteria. These are managed care practices like prior authorization and fail first requirements, prescription formulary design, medical management standards like medical necessity criteria, provider admission standards, exclusions for failing to complete a course of treatment, and other limitations on the scope or duration of benefits.

Most parity violations occur within managed care practices. Parity compliance cannot be determined simply by looking at a plan’s covered benefits. The most profound and consequential barriers to mental health and addiction coverage occur in plans’ NQTLs. Understanding whether those barriers exist requires a robust comparative analysis as required by Jake’s Law.

Please do not let the insurance industry weaken the rules implementing Jake’s Law. Please ensure there is maximum transparency regarding NQTLs and medical necessity criteria.

Thank you,
Marie Raymond
9326 S 9th St
Phoenix, AZ 85042
480-734-0298
I believe that mental health should be treated no differently than physical health by insurance companies. The purpose of Jake’s Law is to require state enforcement of federal laws and regulations that end insurance discrimination of mental health and substance use conditions. To do this, the Department of Insurance and Financial Institutions needs strong rules that ensure insurance companies are transparent about their plan designs, especially more complicated areas of a plan’s design like nonquantitative treatment limitations and medical necessity criteria. These are managed care practices like prior authorization and fail first requirements, prescription formulary design, medical management standards like medical necessity criteria, provider admission standards, exclusions for failing to complete a course of treatment, and other limitations on the scope or duration of benefits.

Most parity violations occur within managed care practices. Parity compliance cannot be determined simply by looking at a plan’s covered benefits. The most profound and consequential barriers to mental health and addiction coverage occur in plans’ NQTLs. Understanding whether those barriers exist requires a robust comparative analysis as required by Jake’s Law.

Please do not let the insurance industry weaken the rules implementing Jake’s Law. Please ensure there is maximum transparency regarding NQTLs and medical necessity criteria.
March 2, 2022

Evans G. Daniels, Director
Arizona Department of Insurance and Financial Institutions
100 North 15th Avenue, Suite 261
Phoenix, AZ 85007

Dear Director Daniels,

On behalf of the Board of Directors for Mental Health America of Arizona (MHA Arizona) and the Arizona Council of Human Service Providers (the Council), we want to thank you for your consideration of our comments regarding the proposed rule operationalizing Laws 2020, Chapter 4 (SB 1523), also known as “Jake’s Law.” As mental health advocates and providers, we are disappointed and deeply frustrated with the industry’s repeated attempts to undermine the intent of Jake’s Law which is, and has always been, to enforce federal law and ensure transparency and accountability, especially where the most profound and consequential barriers to mental health and addiction coverage occur—medical necessity criteria and other nonquantitative treatment limitations (NQTLs).

MHA Arizona and the Council supported the rulemaking package the Department of Insurance and Financial Institutions (DIFI or the Department) first developed in March 2021. We were disappointed with the enormous backwards pivot in the current proposal because it eliminates important oversight of NQTLs. We disagree with the industry’s assertions that the March 2021 proposal exceeded DIFI’s statutory authority and is overly burdensome. However, we believe the current proposal will still go a long way to achieving our goal of transparency and accountability and vociferously oppose any proposed changes requested by the industry in their response to the current proposal.

As evidenced by the disparity between the likelihood of going out-of-network for mental healthcare versus medical/surgical care, Arizonans continue to experience barriers to access for mental health treatment even when they have private insurance. We believe one reason for this disparity is due to how health plans operationally apply NQTLs. Unfortunately, the health plans have attempted to undermine the examination of NQTLs from the outset and continue to do so. In their response to the original draft proposed rules from March 2021, the health plans inaccurately claim that the Department exceeded its authority under federal parity regulations and state statute. Those claims seem to have resulted in the Department’s massive departure from the original draft.

We know that access to mental healthcare remains an enormous issue for Arizonans. According to Mental Health America’s 2021 State of Mental Health in America report, Arizona ranks 40th in the country for access to care and 49th for youth mental health.1 People with insurance experience

1 https://mhanational.org/issues/2021/mental-health-america-youth-data
significant difficulty locating in-network providers and facilities for mental health care compared to general or specialty medical care (inpatient and outpatient). Indeed, the disparity uncovered by Milliman Research, is shocking. Arizonans are 10x more likely to go out-of-network for inpatient behavioral health facilities than med/surg facilities. Additionally, Arizonans are 6.69x more likely to go out-of-network for outpatient behavioral health facilities. These statistics are indicative of the desperate need Arizona has to look under the proverbial hood of health plans purporting to provide mental health coverage at parity and hold accountable those who are failing.

Our organizations advocated fiercely for the passage of Jake’s Law during the 2020 Legislative Session. We participated in stakeholder meetings on our own behalf and as part of a coalition with other advocacy organizations like the JEM Foundation. Our recollection of the stakeholder process was strong opposition by the insurance industry to the inclusion of data collection regarding NQTLs. In fact, in one of their proposed amendments, they suggested eliminating the NQTL provisions entirely. We, and many other advocates, successfully fought for the inclusion of the NQTL provision knowing that many patients experience disparity in how NQTLs, like medical management standards, are applied for mental health and substance use treatment. In fact, during their testimony before four separate legislative committees, Jake’s parents described how their son needed additional in-patient treatment for his mental health condition but despite his doctor’s insistence about the medical necessity of such treatment, the insurance company denied coverage as not medically necessary. His young life ended at the age of 15 and, sadly, his is NOT an uncommon story. The industry’s strong opposition against the original proposed rules, as articulated in their 28-page public comment dated March 12, 2021, and the resulting elimination of a wealth of data collection on NQTLs in the new draft rule is a major blow to that hard fought and won battle.

In their comment to the Department regarding the original draft rules from March 2021, the health plans argued that the Department far exceeded federal regulations and its statutory authority. MHA Arizona strongly disagrees with this assertion. ARS 20-3502(F) clearly states, “the department is not prohibited from otherwise requesting information or data that is necessary to verify compliance with the mental health parity and addiction equity act or this chapter.” Further, the health plans additionally claim that statute and federal regulation merely require that health plans report “a list of plan benefits and an identification of which NQTLs apply.” They additionally assert that federal regulation and state statute require only an analysis of the “process, not outcomes.” Jake’s Law and federal guidance suggests that both are required. ARS 20-3502(B)(3) requires demonstration through analysis the application of NQTL’s “as written and in operation.” The term “in operation” is so important to federal regulators that it was emphasized in bold and underline throughout the self-compliance tool developed by the United States Department of Labor. The tool explicitly states in several places that “while outcomes are NOT determinative of compliance” they “may be reviewed as a warning sign, or indicator of potential operational MHPAEA parity noncompliance.” DOL additionally states, “While results alone are not determinative of noncompliance, measuring and evaluating results and quantitative outcomes can be helpful to identify potential areas of noncompliance.”

---

3 [https://assets.milliman.com/ektron/Addiction_and_mental_health_vs_physical_health_Widening_disparities_in_network_use_and_provider_reimbursement.pdf](https://assets.milliman.com/ektron/Addiction_and_mental_health_vs_physical_health_Widening_disparities_in_network_use_and_provider_reimbursement.pdf)
In their comments regarding the current proposed rules, which were released in draft form and dated November 1, 2021, the industry pushed back on definitions of medical necessity and medically necessary. This is deeply concerning to mental health advocates and providers as we know that medical necessity criteria, among other nonquantitative treatment limitations, are where the most profound and consequential barriers to mental health and addiction coverage occur. In fact, Jacob Edward Machovsky’s case is a precise illustration of how medical necessity criteria was used to justify the insurance company’s denial for in-patient treatment. Jake unnecessarily died at the age of 15 despite his doctors and parents fighting for his life and this law and its rules are meant to help prevent such discriminatory claims denials from occurring. While plan policies may look superficially compliant, inequities often exist in how benefits are being applied “in operation.” The industry boldly claims in their comments that only their medical professionals are capable of developing definitions of medical necessity and medically necessary.

“The plans are concerned that a clinical standard is being defined in a rule by an agency with limited clinical resources to create such a definition. Such definitions are better suited to be created by the medical professionals within each health plan, under the direction of the plan’s chief medical officer.” (Marc Osborn’s letter dated November 30, 2021, on behalf of the industry)

This is a paternalistic, outrageous, and circuitous claim and belies the agency’s purpose to regulate the activities of the industry. This claim suggests that the agency established to regulate its activities is not only ill-equipped to do so but should not even try. As advocates seeking transparency, especially regarding medical necessity criteria and NQTLs, we reject this notion and ask that you do so as well. Further, the definition of medical necessity within the definition of “nonquantitative treatment limitation” provided in the proposed rule comes directly from the United States Department of Health and Human Services code of federal regulations of mental health parity:

“(ii) Illustrative list of nonquantitative treatment limitations. Nonquantitative treatment limitations include— (A) Medical management standards limiting or excluding benefits based on medical necessity or medical appropriateness, or based on whether the treatment is experimental or investigative; (B) Formulary design for prescription drugs; (C) Standards for provider admission to participate in a network, including reimbursement rates; (D) Plan methods for determining usual, customary, and reasonable charges; (E) Refusal to pay for higher-cost therapies until it can be shown that a lower-cost therapy is not effective (also known as fail-first policies or step therapy protocols)” (45 C.F.R.146.136)

This same standard is additionally used in the Department of Labor’s self-compliance tool. Further, insurers cannot claim in good faith claim, as they have tried, that the definition of medical necessity in the proposed rule is not “consistent with the intent of the authorizing legislation, nor is it the least burdensome approach” because the purpose of Title 20, Chapter 28, is compliance with the federal law as stated in 20-3502(A), “Each health care insurer that issues a health plan in this state shall comply with the mental health parity and addiction equity act.” It would be disingenuous to suggest that the implementing federal regulation is somehow not within the scope of the law, especially since the definition of the mental health parity and addiction equity act in 20-3501 includes “implementing regulations.” Additionally, the importance of these provisions and the intent of the legislature to allow
DIFI to have robust purview over medical necessity criteria is clear. Not only is each report under 20-3502 required to include the process used to develop or select medical necessity criteria but subsection E requires insurers to file a summary of any changes to medical necessity criteria in years in which the report is not required to be filed. Advocates fought to ensure transparency over medical necessity criteria, and we ask that you do not yield authority over this to the insurance industry regardless of the false claims they made in their letter regarding the proposed rules.

The industry’s suggestion regarding Medical Necessity Criteria Instructions for Part II is inconsistent with the underlying state law and we ask DIFI to ignore it (20-3502(B)(1)).

The industry’s response with regard to Part IV suggests that “qualitative and quantitative statistical data” demonstrating each NQTL exceeds statutory authority and is overly burdensome. The industry is once again attempting to undermine the intent advocates fought so hard to protect with regard to transparency within NQTLs. It is also demonstrably false. 20-3501 defines treatment limitations as “both quantitative treatment limits that are expressed numerically and nonquantitative treatment limits that otherwise limit the scope or duration of benefits for treatment under a health plan.” As any public policy professional can attest, nonquantitative information is inherently qualitative but can sometimes additionally be expressed through statistical data. Further, 20-3502 requires that health plans “demonstrate through analysis” nonquantitative treatment limitations “as written and in operation any process, strategy, evidentiary standard or other factors.” It is clear that the proposed rules do not exceed statutory authority and that it is not overly burdensome. It is, in fact, necessary for the full implementation of Jake’s Law. We reject the industry’s assertion that the more appropriate approach is to request this data after initial filing, and we request that you do the same. This is yet another attempt by the industry to limit transparency into NQTLs with nonsensical legal arguments.

Insurers have requested further clarity and definitions surrounding terms like “strategy” used in the proposed rulemaking package but over the last year, each attempt by DIFI to operationalize Jake’s Law, which was structured using terminology from federal law and regulation, with such clarity is met with opposition by the industry as “overly burdensome” or “exceeding” the agency’s “statutory authority.” The terms strategy and strategies are used throughout the federal parity law and its implementing regulations, guidance, and self-reporting tools. As such, we believe there is a common meaning and understanding.

MHA Arizona and the Council are deeply concerned about the industry’s repeated assault on transparency and accountability, particularly around NQTLs and medical necessity criteria. They are not working in good faith and are only seeking to undermine the efforts of mental health advocates. They fought advocates during the legislative stakeholder process, attempting to remove nonquantitative treatment limitations from the scope of the law. They disingenuously argued during these same meetings that the bulk of the provisions should be left up to DIFI to determine in the rulemaking process only to then argue repeatedly that DIFI has exceeded its statutory authority with overly burdensome rules. The industry further fought DIFI over the more robust examination of NQTLs in DIFI’s March 2021 proposed rules. Now they are fighting to water down the NQTLs and medical necessity criteria in this current draft. Meanwhile, the insurance industry is relentless in creating backstops to meaningful enforcement of state law by using the legislature to unwittingly neuter DIFI’s ability to enforce laws like Jake’s Law. HB 2599, among many other problematic provisions, will impede DIFI’s ability to efficiently hold insurers accountable for patterns of non-compliance (changes
in 41-1009). Many of the arguments the industry used to kill the March 2021 proposed rules are also being codified in this bill (changes in 41-1030, 41-1033). They even go so far as to try to codify that GRRC cannot make a decision based on whether any person commented on the rulemaking (41-1033(L)) which could mean that comments made by advocates like MHA Arizona or the Council could not be weighed in the rulemaking process. These actions, especially in combination, cause us great concern over the future of Jake’s Law and its ability to be meaningfully enforced.

Advocates are weary of fighting for meaningful reform only to be met at every possible juncture with bureaucratic obstacles erected through the orchestration of the insurance industry for their own benefit. Organizations like ours are no match for their power and influence. These tactics, as they’ve continuously played out through the entire process of enacting Jake’s Law and its rules, demonstrate that insurers are afraid of what regulators will find beneath the proverbial hood of their plans. Please hold them accountable and do not relent to their continued aggressive lobbying against meaningful transparency and accountability.

Respectfully,

Ericka Irvin
Executive Director, MHA AZ

Candy Espino
President and CEO, Arizona Council of Human Service Providers

Enc: 2021-2022 Arizona Council Members
2021-2022 ARIZONA COUNCIL MEMBERS

Full Voting Members
A New Leaf
Alliance Behavioral Care
Amity Foundation
Arizona Behavioral Health Corporation
Arizona Complete Health
Arizona Health Care
Arizona Women’s Recovery Center
Arizona Youth and Family Services, Inc
Arizona’s Children Association
Banner University Health Plans
Beia’s Families
Calvary Healing Centers
Caring Connections for Special Needs
Casa de los Niños
ChangePoint Integrated Health
CHEEERS
Chicanos Por La Causa
Child and Family Resources, Inc
Child and Family Services of Yuma
Child and Family Support Services, Inc
Chiricahua Community Health Centers, Inc
CODAC Health, Recovery, and Wellness, Inc
Community Bridges
Community Health Associates
Community Medical Services
Copa (formerly Marc Center)
Cope Community Services
Crisis Preparation and Recovery
Desert Star Addiction Recovery Center
Easter Seals Blake Foundation
Empowerment Systems, Inc
Equality Health
Family Involvement Center
Family Service Agency
Family Service Aides
Health Choice Arizona
Helping Associates
Helping Ourselves Pursue Enrichment (HOPE), Inc
Horizon Health and Wellness
Human Resource Training
Hushabye Nursery
InterMountain Centers for Human Development
Jewish Family and Children’s Service of Southern AZ
Jewish Family and Children’s Services
La Frontera Arizona, Inc
Lifeline Professional Counseling Services
Lifewell
Little Colorado Behavioral Health Centers
Lutheran Social Services of the Southwest
Mentally Ill Kids In Distress (MIKID)
Mercy Care
Mingus Mountain Academy
Mohave Mental Health Clinic, Inc
Molina Complete Care of Arizona
Onward Hope
Pathways of Arizona, Inc
Pinnacle Peak Recovery
Polara Health
Pynn and Associates
Recovery Empowerment Network (REN)
Resilient Health (formerly PSA)
RI International
Rio Salado Behavioral Health Services
Rise Services
SEEK Arizona
Solari Crisis & Human Services
Sonoran Prevention Works
Southwest Behavioral and Health Services
Southwest Human Development
Southwest Network
Spectrum Healthcare
STAR—Stand Together and Recover Centers
Sunset Community Health Centers
Terros Health
The Devereux Foundation
The Guidance Center
The Haven
Touchstone Behavioral Health
United Health Care Community Plan
Valle Del Sol
Valleywise Health (formerly MIHS)
Youth Advocate Program, Inc
Youth Development Institute
Zarephath

Associate Members
Arizona Health Reciprocal Insurance Company
Arizona Public Health Association
Center for Applied Behavioral Health Policy, ASU
Credible Behavioral Health Software
Health Current
Health Information Management System
innovaTel Telepsychiatry
iTether, LLC
Mutual Of America
Netsmart
Paxis
Qualifacts
Southwestern Provider Services, Inc
Streamline Healthcare Solutions
The Mahoney Group
Vantage Point Behavioral Resources, PLLC
From: Nadine Smith <nadinesmith1@msn.com>
Sent: Thursday, March 3, 2022 9:10 PM
To: public_comments@difi.az.gov
Subject: MHPAEA” (Mental Health Parity and Addiction Equity Act)

Please provide strong reporting requirements and transparency for claims denial trends, prior authorization and step therapy trends. Arizonans have to go out-of-network for mental health/ substance abuse disorder (SUDs) treatment and they don’t do that because it is so costly. With this COVID 19, our community (especially the children) need this help.

Sincerely
Nadine Smith

Sent from Mail for Windows
From: Ralph Engler <bpiralph@gmail.com>
Sent: Friday, March 4, 2022 8:49 AM
To: public_comments@difi.az.gov
Subject: Insurance Company Malfeasance

I believe that mental health should be treated no differently than physical health by insurance companies. The purpose of Jake’s Law is to require state enforcement of federal laws and regulations that end insurance discrimination of mental health and substance use conditions. To do this, the Department of Insurance and Financial Institutions needs strong rules that ensure insurance companies are transparent about their plan designs, especially more complicated areas of a plan's design like nonquantitative treatment limitations and medical necessity criteria. These are managed care practices like prior authorization and fail first requirements, prescription formulary design, medical management standards like medical necessity criteria, provider admission standards, exclusions for failing to complete a course of treatment, and other limitations on the scope or duration of benefits.

Most parity violations occur within managed care practices. Parity compliance cannot be determined simply by looking at a plan’s covered benefits. The most profound and consequential barriers to mental health and addiction coverage occur in plans’ NQTLs. Understanding whether those barriers exist requires a robust comparative analysis as required by Jake’s Law.

Please do not let the insurance industry weaken the rules implementing Jake’s Law. Please ensure there is maximum transparency regarding NQTLs and medical necessity criteria.

Ralph Engler
President
NAMI White Mountains, AZ
March 3, 2022

Arizona Department of Insurance and Financial Institutions (DIFI)
100 North 15th Avenue, Suite 261
Phoenix, AZ 85007-2630

Attention: Mary Boatright, JD, CHC, Manager, Life & Health Oversight
public_comments@difi.az.gov

Re: Comments to Proposed MHPAEA Rulemaking

Dear Department of Insurance and Financial Institutions,

On behalf of the Arizona Psychiatric Society (APS), which represents over 500 psychiatrist members in the state that serve as advocates for the mentally ill, we thank you for considering our comments in response to proposed rules promulgated by the Department of Insurance and Financial Institutions (DIFI), as required by Arizona Senate Bill SB1523 and ARS § 20-3502 to ensure compliance with the Mental Health Parity and Addiction Equity Act (MHPAEA). We have restricted the scope of our comments to commentary on Exhibit A, Medical Necessity Criteria and Nonquantitative Treatment Limitation (NQTL) Reports, as we found the text regarding definitions, quantitative treatment limitations (QTLs), and financial requirements (FRs) to be completely appropriate and in need of no revision.

In submitting these comments to the proposed rules, we are resubmitting significant portions of our commentary to the draft rules. The focus of those previous comments were threefold:

1. Explain in careful detail how the draft rules were compatible with and did not exceed the comparative analysis requirements of MHPAEA.

2. Request that the terms process, strategy, evidentiary standard, and other factor be pluralized as they are in the MHPAEA statute and final rules.

3. Request that the draft rules explicitly require that the comparative analyses must define every factor, as is required by the MHPAEA statute comparative analysis requirements.

We feel it is important to restate the first item in full for the sake of putting it on the record. While some stakeholders may think that the proposed rules go beyond what is required by MHPAEA, they do not, and we feel it is necessary to point this out and explain how.
We also feel it is important to restate the second item and expound on it to demonstrate why it is important that the terms be pluralized as they are in the MHPAEA statute and final rules. We have no need to restate the third item as the Department adopted our suggestion that Exhibit A explicitly require that every factor be defined. We thank the Department for adopting this suggestion and also appreciate how it is currently worded in the proposed rules.

Exhibit A

Before we provide any commentary on Exhibit A of the proposed draft rules, we think it is necessary to highlight the amendments made to MHPAEA in 2020 within Section 203 of Division BB of the Consolidated Appropriations Act (CAA), which President Trump signed into law on December 27, 2020. We know that DIFI and other stakeholders are well aware of these amendments, but we think it is appropriate to bring attention to them again because our commentary on Exhibit A flows from the new MHPAEA obligations for health insurance issuers (issuers).

The most relevant of the amendments made was the addition of a new subsection (a)(8)(A) to 42 U.S.C. 300gg-26, which is the MHPAEA statute that DIFI (and other state insurance departments) can enforce. This new subsection established NQTL compliance requirements for state-regulated health insurance issuers. The text is as follows (emphasis added):

(8) Compliance requirements

(A) Nonquantitative treatment limitation (NQTL) requirements

In the case of a group health plan or a health insurance issuer offering group or individual health insurance coverage that provides both medical and surgical benefits and mental health or substance use disorder benefits and that imposes nonquantitative treatment limitations (referred to in this section as "NQTLs") on mental health or substance use disorder benefits, such plan or issuer shall perform and document comparative analyses of the design and application of NQTLs and, beginning 45 days after December 27, 2020, make available to the applicable State authority (or, as applicable, to the Secretary of Labor or the Secretary of Health and Human Services), upon request, the comparative analyses and the following information:

(i) The specific plan or coverage terms or other relevant terms regarding the NQTLs and a description of all mental health or substance use disorder and medical or surgical benefits to which each such term applies in each respective benefits classification.

(ii) The factors used to determine that the NQTLs will apply to mental health or substance use disorder benefits and medical or surgical benefits.

(iii) The evidentiary standards used for the factors identified in clause (ii), when applicable, provided that every factor shall be defined, and any other source or evidence relied upon to design and apply the NQTLs to mental health or substance use disorder benefits and medical or surgical benefits.
The most obvious matter the text reveals is that issuers in Arizona have been obligated under federal law to perform NQTL analyses since February 10 of 2021 (45 days after December 27, 2020). And, they must make these analyses available to the applicable state authority upon request, which in Arizona is DIFI. Therefore, the main question at hand is whether the stipulated reporting format in Exhibit A is inconsistent with or exceeds the requirements of 42 U.S.C. 300gg-26(a)(8)(A). The answer is no. First, it is necessary to explain how the format of Exhibit A does not exceed the requirements of 42 U.S.C. 300gg-26(a)(8)(A). And, this is necessary because some commenters may note that within each classification of benefits there appear to be more comparative analysis steps involved than what is in 42 U.S.C. 300gg-26(a)(8)(A). Exhibit A requires a distinct as written comparative analysis requirement for each process, each strategy, each evidentiary standard, and each factor along with a distinct in operation comparative analysis requirement for each process, each strategy, each evidentiary standard, and each factor. However, this is exactly what is required under clause (iv) of 42 U.S.C. 300gg-26(a)(8)(A), even if it may not appear to be salient. Again, here is clause (iv) (emphasis added): (iv) The comparative analyses demonstrating that the processes, strategies, evidentiary standards, and other factors used to apply the NQTLs to mental health or substance use disorder benefits, as written and in operation, are comparable to, and are applied no more stringently than, the processes, strategies, evidentiary standards, and other factors used to apply the NQTLs to medical or surgical benefits in the benefits classification.

Note that the term analyses is plural. That means that the comparative analysis requirement fundamentally requires multiple analyses. In other words, a single comparative analysis addressing all of the terms processes, strategies, evidentiary standards, and factors does not meet the requirements of clause (iv). Further, the text clearly separates the concepts of as written and in operation. And, even further, each term—processes, strategies, evidentiary standards, and factors—is listed in terms of applying to mental health or substance use disorder (MH/SUD) benefits and again in terms of applying to medical or surgical (M/S) benefits. That means that each as written process that applies to MH/SUD benefits must be compared and analyzed to its corresponding as written process that applies to M/S benefits. Each in operation process that applies to MH/SUD benefits must be compared and analyzed to its corresponding in operation process that applies to M/S benefits. This reality repeats itself for each of strategies, evidentiary standards, and factors, both as written and in operation. This is exactly the same as what is required under Exhibit A. Congress simply chose to be more parsimonious in its phrasing. Please note that we conferred with our colleagues at the American Psychiatric Association.
(APA) and they confirmed that this interpretation is correct. The APA is a good authority on this matter as they supplied Congress with the legislative text that became codified in section 203 of Division BB of the CAA (including what is now 42 U.S.C. 300gg-26(a)(8)(A)).

However, we do believe that slight modification is necessary in order to fully match the requirements of 42 U.S.C. 300gg-26(a)(8)(A). First, for each classification of benefits the comparative analysis steps of Exhibit A list the terms as process, strategy, evidentiary standard, and factor. By framing the terms in the singular, instead of the plural as 42 U.S.C. 300gg-26(a)(8)(A) does, it creates the possibility that issuers will interpret the language as only requiring them to report on one process as written, one process in operation, one strategy as written, one strategy in operation and so on. For most NQTLs there are multiple as written processes and in operation processes, and multiples of all of the other terms as well.

To illustrate why this is important, we will examine the NQTL of concurrent review in the inpatient classification of benefits. When concurrent review is performed by an issuer, there will always be multiple processes, in operation, that are in play. The first in operation process is often called “first level review”, which is the initial review of clinical information provided by the facility to the issuer. This process happens 100 percent of the time during concurrent review. This first-level reviewer is not a physician and may be a social worker or a nurse practitioner, or other non-MD provider type. The first-level reviewer can approve a concurrent review request for a continued stay but cannot deny a request.

When the first-level reviewer comes across a request that he or she can’t approve as being medically necessary given the clinical information provided, the request for a continued stay—and all of the clinical information—is then sent to what is called a “second level review” or “physician review”. As the title implies, this reviewer is a physician and does have the authority to deny the request for a continued inpatient stay on the grounds of medical necessity. Sometimes the second-level reviewer approves the request, sometimes the second-level reviewer denies the request.

However, sometimes the second-level reviewer will initiate a third in-operation process before officially approving or denying the request: peer-to-peer review. During this in-operation process a physician working for the issuer will conduct a phone or other type of virtual meeting with the attending physician at the facility to discuss further before making a conclusion as to the medical necessity of the request for a continued stay. Usually, although not always, this physician is the same physician that acts as the second-level reviewer. The frequency with which peer-to-peer reviews take place and the way they transpire is significant in terms of determining MHPAEA compliance. It has been our members’ experience that these peer-to-peer reviews often occur more frequently for MH/SUD concurrent review requests and their clinical judgment is questioned in ways that their medical/surgical colleagues do not experience. This is also true for second-level review.

In fact, if an issuer’s reporting on the NQTL of concurrent review inpatient, in-network neglects to provide significant detail and comparative analysis regarding second-level review and peer-to-peer review between MH/SUD and medical/surgical, then it will have not supplied the Department with an
adequate comparative analysis. Every issuer conducts second-level and peer-to-peer review during concurrent review, broadly speaking (not for every single request), for both MH/SUD and medical/surgical. Failing to provide analyses of these two in-operation processes would be a willful withholding of very relevant information.

That is why it is so important that the Department pluralize the terms processes, strategies, evidentiary standards, and factors. If an issuer is presented with a format that seems to encourage merely reporting on one process as written, one process in operation, one strategy as written, etc., that is likely all they will report on.

We could provide real-world examples for as written processes, or as written and in operation examples for any of the other terms but we do not want to belabor the point. What is described above crystalizes our thoughts on this. With that in mind, we respectfully request that DIFI modify the language to pluralize each of the four terms.

Thank you for allowing APS to provide comment. We have been very encouraged by the good work DIFI has done so far in implementing MHPAEA and are impressed by the team at the Department. We look forward to working with you to further implement MHPAEA and Jake’s Law and we are available to respond to any questions that you may have regarding these comments or related matters.

Respectfully yours,

Jasleen Chhatwal, MBBS, MD
Don J. Fowls, MD
President, Arizona Psychiatric Society
Government Affairs Committee Chair,
Past President, Arizona Psychiatric Society
Great Afternoon,
Please provide strong reporting requirements for claims denial trends, prior authorization and step therapy trends, how much more likely Arizonans are to go out-of-network for mental health/substance abuse disorder (SUDs) treatment, approval of only lower level of care, and provider networks. We must kindly and professionally demand transparency and strong reporting requirements.

Thank you,
Stacie

--
Be well,

Stacie J. Whitaker-Harris MA, Law
Mental Health & Wellness Advocate | Justice Advocate | Advocate for My Unhoused Neighbors
| Advocate & Steward of Children | Author | Speaker |

"The question is not 'What will happen to you?' The question is 'What will happen to them?"
Dr. Martin Luther King Jr.

A hero is an ordinary individual who finds the strength to persevere and endure in spite of overwhelming obstacles."
Christopher Reeve

Be bold! Speak up, advocate for yourself, and use your voice to advocate for others!

WWW.STACIEJWHITAKERHARRIS.COM

WWW.2EMBRACEME.COM


DISCLAIMER:
This email and any files transmitted with it are confidential and intended solely for the use of the individual or entity to whom they are addressed. If you have received this email in error, please notify the sender. This message may contain confidential information and is intended only for the
individual named. If you are not the named addressee, you should not disseminate, distribute or copy this email. Please email the sender immediately if you have received this email by mistake and delete this email from your system. If you are not the intended recipient, you are notified that disclosing, copying, distributing or taking any action in reliance on the contents of this information is strictly prohibited.
I fully support parity for all in AZ with mental illness.

Mental illness can wreck havoc with a person's life. It is as challenging as other major diseases, physical disabilities and other forms of social maladjustment.

Thus, mental illness requires equal insurance protection.

Walter Gray
AZ resident 50 years
Phoenix resident
March 3, 2022

Arizona Department of Insurance and Financial Institutions (DIFI)
100 North 15th Avenue, Suite 261
Phoenix, AZ 85007-2630

Attention: Mary Boatright, JD, CHC, Manager, Life & Health Oversight
public_comments@difi.az.gov

Re: Comments to Proposed MHPAEA Rulemaking

Dear Department of Insurance and Financial Institutions,

I write this letter to join in support of the written comments offered in this cycle by the Arizona Psychiatric Society (APS) in response to proposed rules promulgated by the Department of Insurance and Financial Institutions (DIFI), as required by Arizona Senate Bill SB1523 (“Jake’s Law”) and ARS § 20-3502 to ensure compliance with the Mental Health Parity and Addiction Equity Act (MHPAEA).

In the 2020 legislative session, Jake’s Law was adopted by unanimous vote of both chambers of the Arizona legislature and signed into law by Governor Ducey. This mental health omnibus had such widespread support because of the imperative need to address mental health care access in our community and suicide awareness and prevention. A crucial piece of ensuring that care can be accessed is compliance with MHPAEA. The important work to be done under Jake’s Law is left unfinished until this final piece of rulemaking is completed.

We support the scope of comments offered by the Arizona Psychiatric Society, with particular emphasis on the assertion that the draft rules are compatible with and did not exceed the comparative analysis requirements of MHPAEA. As such, we request that these rules move forward, with benefit of the clarifying term comments submitted by APS. Implementation of these rules will open the door so the important work of DIFI to provide support to Arizona insurers and consumers and appropriate oversight to compliance with the MHPAEA can begin.

Multiple lines of evidence indicate that the coronavirus disease 2019 (COVID-19) pandemic has profound psychological and social effects. Mental health consequences of the COVID-19 crisis including suicidal behavior are likely to be present for a long time and peak later than the actual pandemic. Jake’s Law has the potential to save lives with even more urgency than when it was signed into law in March of 2020. We applaud the work of DIFI to bring forward rulemaking that enforces the MHPAEA with equivalency and stand in support of the comments submitted by the Arizona Psychiatric Society.

Respectfully submitted,

Karen Weihs, M.D. Professor Psychiatry and of Family & Community Medicine, University of Arizona
Fwd: Comments of Arizona Coalition for Insurance Parity in Support of Notice of Rulemaking pursuant to Laws 2020, Chapter 4 (SB1523) (“Jake’s Law”) for June 28, 2022 Study Session

SIMON LARSCHEIDT <simon.larscheidt@azdoa.gov>
To: GRRC - ADOA <grrc@azdoa.gov>

--------- Forwarded message ---------

From: Teri Harnisch <teri@azmed.org>
Date: Monday, June 13, 2022 at 4:53:45 PM UTC-7
Subject: Comments of Arizona Coalition for Insurance Parity in Support of Notice of Rulemaking pursuant to Laws 2020, Chapter 4 (SB1523) (“Jake’s Law”) for June 28, 2022 Study Session

To: grrccomments@azdoa.gov <grrccomments@azdoa.gov>
Cc: Alexis Glascock Esq. (AGLASCOCK@fclaw.com) <aglascock@fclaw.com>, Don Fowls M.D. (djfowls@aol.com) <djfowls@aol.com>, Jasleen Chhatwal MBBS MD (jchhatwal@arizona.edu) <jchhatwal@arizona.edu>, Tim Clement (tclement@psych.org) <tclement@psych.org>, Marsi Thrash (mthrash@psych.org) <mthrash@psych.org>

Governor’s Regulatory Review Council

100 North 15th Avenue #305
Phoenix, AZ  85007

grrccomments@azdoa.gov

Dear Honorable Members of the Governor’s Regulatory Review Council and Legal Staff,

On behalf of the Arizona Coalition for Insurance Parity, attached is a comment letter in support of the Department of Insurance and Financial Institution’s (“DIFI”) proposed Notice of Rulemaking pursuant to Laws 2020, Chapter 4 (SB1523), also known as “Jake’s Law.” The bill was unanimously passed by both the Senate and the House and signed into law by Governor Doug Ducey in 2020. We believe the DIFI Notice of Rulemaking regarding Jake’s Law has been placed on the Agenda for the June 28, 2022 Study Session of the Governor’s Regulatory Review Council (“GRRC”). If the Rulemaking is placed on the Agenda for a different meeting, we would sincerely appreciate a courtesy notice of that hearing date and presentation of this letter to GRRC as support for the DIFI Notice of Rulemaking under Jake’s Law.

As stated in the attached Coalition letter, DIFI’s proposed rules do not exceed statutory authority, are not overly burdensome, and are an appropriate and necessary approach to implement Jake’s Law and satisfy its purpose of state oversight and enforcement of federal mental health parity requirements. The Coalition is pleased to support the proposed implementing rules for Jake’s Law for which the Governor and the Legislature strongly advocated. The rules will provide critical care so those suffering from mental health and substance use will receive proper medical treatment.

With gratitude for your service to our state, the Coalition respectfully requests that you vote to approve the proposed rules to implement Jake’s Law. Please reach out if you require any additional information in this matter.

Warm regards,

https://mail.google.com/mail/b/AHuVXTTrMv5YbSUDj7xg6sE566Bq4qk_xJ4h-W6T0tH2glI6DepGd3Jj/u/0/\?ik=697452c4e&view=pl&search=all&permmsgid... 1/2
Teri Harnisch

(She/Her/Hers)

Executive Director, Arizona Psychiatric Society

Phone: 602-347-6903
Mobile: 602-316-3241
Email: teri@AZmed.org

2401 W Peoria Ave Ste 130
Phoenix, AZ 85029

www.azpsych.org

Join us at the Arizona Psychiatric Society 2022 Annual Meeting
“Whole Body Medicine: At the Intersection of Psychiatry and Primary Care”
June 18, 2022 (Poster and Annual Business Meeting Pre-Session on June 16, 2022)
Register Today!

---

GRRC Coalition Letter June 13 FINAL.pdf
277K
June 13, 2022

Governor’s Regulatory Review Council
100 North 15th Avenue #305
Phoenix, AZ 85007
grrccomments@azdoa.gov

Dear Honorable Members of the Governor’s Regulatory Review Council and Legal Staff,

On behalf of the Arizona Coalition for Insurance Parity, we are writing in support of the Department of Insurance and Financial Institution’s (“DIFI”) proposed implementing rules pursuant to Laws 2020, Chapter 4 (SB 1523), also known as “Jake’s Law.” The bill was unanimously passed by both the Senate and the House and signed into law by Governor Doug Ducey in 2020.

DIFI’s proposed rules do not exceed statutory authority, are not overly burdensome, and are an appropriate and necessary approach to implement Jake’s Law and satisfy its purpose of state oversight and enforcement of federal mental health parity requirements. DIFI’s implementing rules are substantially identical to the federal parity analysis requirements and do not exceed them in any way. They provide state level enforcement and oversight of the federal mental health parity law for health plans under state purview. State oversight ensures that plans are consistent with the requirements of federal law, especially where the most consequential barriers to mental health and addiction coverage occur – medical necessity criteria and other nonquantitative treatment limitations (NQTLs).

Access to mental healthcare remains a critical problem for Arizonans. According to Mental Health America’s 2022 report, Arizona ranks 49th in the country for overall mental health and 49th for youth mental health. This ranking represents a high prevalence of mental illness and low access to care. People with insurance experience significant difficulty locating in-network providers and facilities for mental health care compared to general or specialty medical care (inpatient and outpatient). Arizonans are 10 times more likely to go out-of-network for inpatient behavioral health facilities than med/surg facilities. Additionally, Arizonans are 6.69 times more likely to go out-of-network for outpatient behavioral health facilities. We believe these statistics illustrate the necessity of the proposed rulemaking requiring a comparative analysis demonstrating that limitations health care insurers impose on mental health and substance use disorder (“MH” and “SUD”) benefits are no more

1 https://mhanational.org/issues/2022/ranking-states#overall-ranking
3 https://assets.milliman.com/ektron/Addiction_and_mental_health_vs_physical_health_Widening_disparities_in_network_use_and_provider_reimbursement.pdf
stringent or less favorable than the limitations imposed on Medical and Surgical ("MD" and "SUG") benefits.

No comments to DIFI’s 2022 proposed rules were provided by the health care insurance industry, except for Medica. In anticipation that individual insurers or the industry association, Arizona Health Care Insurance Plans ("AHIP"), may testify at GRRC’s Study Session, the following is a response to the industry comments regarding DIFI’s 2022 proposed rules and DIFI’s November, 2021 draft rules.

**Instructions for Part II Medical Necessity Criteria**

The industry asked that this section be modified to “allow health plans to utilize the NQTL analysis of their medical management techniques to satisfy the reporting requirement of this section.” They suggest this will streamline the filing process and DIFI can request supplemental information if the provided information is not adequate. This request is not supported by the underlying state law (20-3502(B)(1)), which explicitly requires each report to “Describe the process that is used to develop or select the medical necessity criteria for mental health and substance use disorder benefits and the process used to develop or select the medical necessity criteria for medical and surgical benefits.” Given that the statute specifically requires the industry to provide this information, this requested change contravenes the statute.

**Instructions for Part IV Demonstrate Parity Through Analysis**

The industry’s response regarding Part IV suggests that “qualitative and quantitative statistical data” demonstrating each NQTL exceeds statutory authority and is overly burdensome. This assertion is false. A.R.S. 20-3501 defines treatment limitations as “both quantitative treatment limits that are expressed numerically and nonquantitative treatment limits that otherwise limit the scope or duration of benefits for treatment under a health plan.” The industry comment is incorrect as nonquantitative treatment limitation information is primarily qualitative in nature but can sometimes additionally be expressed through statistical data. Further, 20-3502 requires that health plans “demonstrate through analysis” nonquantitative treatment limitations “as written and in operation any process, strategy, evidentiary standard or other factors.” It is clear from the plain reading of the statute that the proposed rules do not exceed statutory authority and are not overly burdensome. It is, in fact, necessary for the full implementation of Jake’s Law.

Additionally, federal statute and regulation do not explicitly mention quantitative or qualitative information. However, federal guidance does state, "To the extent the plan or issuer defines any of the factors, evidentiary standards, strategies, or processes in a quantitative manner, it must include the precise definitions used and any supporting sources." Federal guidance is clear that if quantitative information is in play, they must account for it.
Industry also brought up concerns over the confidentiality of the data collected. Jake’s Law explicitly requires that “All documents, reports or other materials provided to the director pursuant to this section are confidential and are not subject to disclosure” (20-3502(G)). It is not necessary for DIFI to augment the rule, as suggested, to describe those protections. The industry can request the list of standard confidentiality precautions directly from DIFI. Moreover, these are likely the same privacy protections DIFI utilizes to protect the data provided pursuant to the federal health insurance parity law.

The industry additionally requested that the term “strategy” be defined for further clarity. The terms strategy and strategies are used throughout the federal parity law and its implementing regulations, guidance, and self-compliance tool. Although there is no definition of strategy in federal law or regulation, we believe there is a common meaning and understanding and are concerned that an attempt to further define it may be met with opposition by the industry for being “overly burdensome” or “exceeding authority.” Furthermore, it is not the role of the state regulator to define a term found in federal regulations.

Finally, in a letter from Arizona Complete Health, insurers described concern over the requirement to report on “all” NQTLs triennially. They claim that the universe of NQTLs is “unbounded” and that these concepts evolve over time and often overlap. They suggest limiting the scope to 4-6 discrete types of NQTLs to be determined by DIFI and further request six months advance notice of the selected NQTLs. This recommendation is problematic because NQTLs may vary from insurer to insurer. Only insurers know which NQTLs they apply within their plan designs. Moreover, this recommendation is not supported by the authorizing state law or federal statute. State law requires insurers to “identify all nonquantitative treatment limitations” and to further demonstrate that “any nonquantitative treatment limit applied to mental health and substance use disorder benefits...are comparable to and applied no more stringently than...the treatment limit for medical and surgical benefits” (ARS 20-3502(B)(2-3)). Further, federal statute does not limit NQTL analysis to a specified and limited list. Finally, under federal statute, a full and complete comparative analysis must be made available to regulators at any time, this includes all NQTLs essentially on demand.

The federal statute already requires the insurers to have comparative analyses available for inspection for ALL NQTLs at any time under federal law. As of February 10, 2021, all insurers in America must have analyses available for every NTQL and must make them available to state and federal regulators upon request. The industry’s claim that it is overly burdensome to request this information is invalid.

Insurers, including Medica, additionally expressed concern about aligning the form and manner of DIFI’s reporting requirement with federal statute. Unfortunately, federal statute does not prescribe a specific form or manner of reporting. DIFI’s direction in the proposed rules will satisfy federal statute and, therefore, is not duplicative or burdensome. If insurers are faithfully performing their analyses under federal law, they should be able to merely copy and paste that into DIFI’s form. In fact, insurers would be best served by using DIFI’s format when preparing their analyses for federal regulators. DIFI’s format ensures that no analysis steps will be skipped.
Medica also expressed concern about the March 15th reporting deadline. They believe May would be more appropriate as claims processing often occurs through the end of March. However, the comparative analysis required by the proposed rules does not mandate providing claims data. Further, federal statute requires that insurers make their analyses available at any time, on demand. Therefore, the March requirement is not overly burdensome as by federal law the information is continuously required to be available when requested. It is not more burdensome than the federal regulations. However, should GRRC determine that the date is problematic and a rule change is necessary, it would require a third year before Jake’s Law passed in 2020 is implemented. Alternatively, if it can be changed by Bulletin or administrative activities, that is fine.

Two years have passed since the Legislature unanimously enacted Jake’s Law in 2020. The sharp rise in suicidal ideation and substance use following the pandemic have gravely worsened the crisis. There is an urgent need for adequate mental health services to save the lives of youth and adults in our state. After years of advocacy, the Coalition is pleased to support the proposed implementing rules for Jake’s Law for which the Governor and the Legislature strongly advocated. The rules will provide critical care so those suffering from mental health and substance use will receive proper medical treatment.

With gratitude for your service to our state, the Coalition respectfully requests that you vote to approve the proposed rules to implement Jake’s Law.

Sincerely,

Cori Reese, Arizona & New Mexico Executive Director

Candy Espino, Executive Director

Jasleen Chhatwal, MD, MBBS, President

Denise Denslow, Executive Director

Ericka Irvin, Executive Director

Jeffrey Kazmierczak RN, MSN, MBA, Chief Executive Officer
20-143. Rule-making power

A. The director may make reasonable rules necessary for effectuating any provision of this title.

B. The director shall make rules concerning proxies, consents or authorizations in respect of securities issued by domestic stock insurance companies having a class of equity securities held of record by one hundred or more persons to conform with the requirements of section 12(g)(2)(G)(ii) of the securities exchange act of 1934, as amended, and as may be amended. Such rule shall not apply to any such company having a class of equity securities which are registered or are required to be registered pursuant to section 12 of the securities exchange act of 1934, as amended, or as may be amended. Whenever such equity securities of any such company are registered or are required to be registered pursuant to section 12 of the securities exchange act of 1934, as amended, or as may be amended, then, no person shall solicit or permit the use of his name to solicit, in any manner whatsoever, any proxy, consent or authorization in respect of any equity security of such company without having first complied with the rules prescribed by the securities and exchange commission pursuant to section 14 of the securities exchange act of 1934, as amended, or as may be amended.

C. All rules made pursuant to this section shall be subject to title 41, chapter 6.

D. In addition to any other penalty provided, wilful violation of any rule made by the director is a violation of this title.
CHAPTER 4
SENATE BILL 1523

AN ACT
AMENDING SECTION 20-157.01, ARIZONA REVISED STATUTES; AMENDING TITLE 20, CHAPTER 5, ARTICLE 1, ARIZONA REVISED STATUTES, BY ADDING SECTION 20-1138; AMENDING TITLE 20, ARIZONA REVISED STATUTES, BY ADDING CHAPTER 28; AMENDING TITLE 36, CHAPTER 1, ARIZONA REVISED STATUTES, BY ADDING ARTICLE 7; AMENDING TITLE 36, CHAPTER 34, ARTICLE 3, ARIZONA REVISED STATUTES, BY ADDING SECTIONS 36-3436 AND 36-3436.01; AMENDING SECTION 36-3504, ARIZONA REVISED STATUTES; APPROPRIATING MONIES; RELATING TO MENTAL HEALTH.

(TEXT OF BILL BEGINS ON NEXT PAGE)
Be it enacted by the Legislature of the State of Arizona:

Section 1. Section 20-157.01, Arizona Revised Statutes, is amended to read:

20-157.01. Confidentiality of insurer files and records; access by director; definition

A. Pursuant to the director's authority under sections 20-156, 20-157, 20-160, and 20-466 and 20-3502, an insurer shall comply with a request to produce any documents, reports or other materials, whether maintained in written or electronic format, from an insurer's claim file or an insurer's record that is required to comply with chapter 28, article 1 of this title.

B. Any documents, reports or other materials that are provided to the director pursuant to this section are confidential and are not subject to disclosure, including discovery or subpoena, unless the subpoena is issued by the attorney general or a county attorney or by a court at the request of the attorney general, a county attorney or any other law enforcement agency. The director may only disclose the information only to a state or federal agency or officer pursuant to a lawful request, subpoena or formal discovery procedure. If the requesting party cannot warrant confidentiality pursuant to section 20-158, subsection I, the information that is provided pursuant to discovery, subpoena or lawful request as provided for in this subsection remains confidential. The director shall make reasonable efforts to notify an insurer of any request for a subpoena for documents, reports or other materials in an insurer's claim file or other record that are produced by the insurer pursuant to this section so that the insurer may assert, in a court of competent jurisdiction, any applicable privileges.

C. The director may use the documents, reports or other materials in the furtherance of any regulatory action brought by the director or in actions brought against the director.

D. For the purposes of this section, "insurer claim file" includes medical records, repair estimates, adjuster notes, insurance policy provisions, recordings or transcripts of witness interviews and any other records regarding coverage, settlement, payment or denial or adjustment of a claim asserted under an insurance policy.

Sec. 2. Title 20, chapter 5, article 1, Arizona Revised Statutes, is amended by adding section 20-1138, to read:

20-1138. Health insurance policies; member identification cards; applicability

A. An identification card that includes information facilitating a subscriber's, enrollee's or insured's access to services or coverage under an individual or group health insurance contract, evidence of coverage or policy issued or renewed in this state by a hospital and medical service corporation, health care services organization or disability insurer must prominently display the letters "AZDOI" in capital letters on the bottom
S.B. 1523

FRONT OF THE IDENTIFICATION CARD AND A TELEPHONE NUMBER THAT A SUBSCRIBER, ENROLLEE OR INSURED MAY CALL FOR CUSTOMER ASSISTANCE.

B. THIS SECTION APPLIES TO IDENTIFICATION CARDS FOR ANY INDIVIDUAL OR GROUP CONTRACT, EVIDENCE OF COVERAGE OR POLICY ISSUED OR RENEWED FROM AND AFTER DECEMBER 31, 2021.

Sec. 3. Title 20, Arizona Revised Statutes, is amended by adding chapter 28, to read:

CHAPTER 28
MENTAL HEALTH PARITY
ARTICLE 1. GENERAL PROVISIONS

20-3501. Definitions
IN THIS CHAPTER, UNLESS THE CONTEXT OTHERWISE REQUIRES:
1. "CLASSIFICATION OF BENEFITS" MEANS THE FOLLOWING CLASSIFICATIONS OF BENEFITS PROVIDED BY A HEALTH PLAN:
(a) INPATIENT, IN-NETWORK.
(b) INPATIENT, OUT-OF-NETWORK.
(c) OUTPATIENT, IN-NETWORK.
(d) OUTPATIENT, OUT-OF-NETWORK.
(e) EMERGENCY CARE.
(f) PRESCRIPTION BENEFITS.
2. "HEALTH CARE INSURER" MEANS A DISABILITY INSURER, GROUP DISABILITY INSURER, BLANKET DISABILITY INSURER, HEALTH CARE SERVICES ORGANIZATION, HOSPITAL SERVICE CORPORATION, MEDICAL SERVICE CORPORATION OR HOSPITAL, MEDICAL, DENTAL AND OPTOMETRIC SERVICE CORPORATION THAT ISSUES A HEALTH PLAN IN THIS STATE.
3. "HEALTH PLAN" MEANS AN INDIVIDUAL HEALTH PLAN OR ACCOUNTABLE HEALTH PLAN THAT PROVIDES MENTAL HEALTH SERVICES OR MENTAL HEALTH BENEFITS, THAT FINANCES OR PROVIDES COVERED HEALTH CARE SERVICES, THAT IS ISSUED BY A HEALTH CARE INSURER IN THIS STATE AND THAT IS SUBJECT TO THE MENTAL HEALTH PARITY AND ADDICTION EQUITY ACT.
4. "MENTAL HEALTH PARITY AND ADDICTION EQUITY ACT" MEANS THE MENTAL HEALTH PARITY AND ADDICTION EQUITY ACT OF 2008 (42 UNITED STATES CODE SECTION 300gg-26) AND IMPLEMENTING REGULATIONS.
5. "PRODUCT NETWORK TYPE" MEANS THE NETWORK MODEL ASSOCIATED WITH THE TYPE OF HEALTH PLAN UNDER WHICH COVERED HEALTH CARE IS DELIVERED, SUCH AS A HEALTH CARE SERVICES ORGANIZATION, PREFERRED PROVIDER NETWORK ORGANIZATION, POINT OF SERVICE PLAN OR INDEMNITY PLAN.
6. "TREATMENT LIMITS":
(a) MEANS LIMITS ON BENEFITS BASED ON THE FREQUENCY OF TREATMENT, NUMBER OF VISITS, DAYS OF COVERAGE, DAYS IN A WAITING PERIOD OR OTHER SIMILAR LIMITS ON THE SCOPE OR DURATION OF TREATMENT.
(b) INCLUDES BOTH QUANTITATIVE TREATMENT LIMITS THAT ARE EXPRESSED NUMERICALLY AND NONQUANTITATIVE TREATMENT LIMITS THAT OTHERWISE LIMIT THE SCOPE OR DURATION OF BENEFITS FOR TREATMENT UNDER A HEALTH PLAN.
(c) DOES NOT INCLUDE A PERMANENT EXCLUSION OF ALL BENEFITS FOR A PARTICULAR CONDITION OR DISORDER.

20-3502. Compliance with federal law; report

A. EACH HEALTH CARE INSURER THAT ISSUES A HEALTH PLAN IN THIS STATE SHALL COMPLY WITH THE MENTAL HEALTH PARITY AND ADDICTION EQUITY ACT.

B. AFTER JANUARY 1, 2022, ON A DATE SPECIFIED BY THE DIRECTOR, EACH HEALTH CARE INSURER THAT ISSUES A HEALTH PLAN IN THIS STATE SHALL SUBMIT A REPORT TO THE DEPARTMENT FOR EACH FULLY INSURED PRODUCT NETWORK TYPE THE HEALTH CARE INSURER ISSUES. IF THE HEALTH CARE INSURER DETERMINES THAT THE INFORMATION TO BE REPORTED VARIES BY NETWORK OR PLAN, OR VARIES IN THE INDIVIDUAL, SMALL GROUP OR LARGE GROUP MARKET, THE HEALTH CARE INSURER MUST SUBMIT A REPORT FOR EACH VARIATION. EACH REPORT MUST DO THE FOLLOWING:

1. DESCRIBE THE PROCESS THAT IS USED TO DEVELOP OR SELECT THE MEDICAL NECESSITY CRITERIA FOR MENTAL HEALTH AND SUBSTANCE USE DISORDER BENEFITS AND THE PROCESS USED TO DEVELOP OR SELECT THE MEDICAL NECESSITY CRITERIA FOR MEDICAL AND SURGICAL BENEFITS.

2. IDENTIFY ALL NONQUANTITATIVE TREATMENT LIMITS THAT ARE APPLIED TO MENTAL HEALTH AND SUBSTANCE USE DISORDER BENEFITS AND ALL NONQUANTITATIVE TREATMENT LIMITS THAT ARE APPLIED TO MEDICAL AND SURGICAL BENEFITS WITHIN EACH CLASSIFICATION OF BENEFITS.

3. DEMONSTRATE THROUGH ANALYSIS THAT FOR ANY NONQUANTITATIVE TREATMENT LIMIT APPLIED TO MENTAL HEALTH AND SUBSTANCE USE DISORDER BENEFITS IN A CLASSIFICATION OF BENEFITS, AS WRITTEN AND IN OPERATION, ANY PROCESS, STRATEGY, EVIDENTIARY STANDARD OR OTHER FACTOR USED IN APPLYING THE NONQUANTITATIVE TREATMENT LIMIT TO MENTAL HEALTH AND SUBSTANCE USE DISORDER BENEFITS IN THE CLASSIFICATION ARE COMPARABLE TO, AND APPLIED NOT MORE STRINGENTLY THAN, ANY PROCESS, STRATEGY, EVIDENTIARY STANDARD OR OTHER FACTOR USED IN APPLYING THE TREATMENT LIMIT FOR MEDICAL AND SURGICAL BENEFITS IN THE CLASSIFICATION.

C. IN ADDITION TO ANALYZING THE REPORTS PRESCRIBED IN SUBSECTION B OF THIS SECTION, THE DEPARTMENT SHALL ALSO EVALUATE HEALTH PLAN COMPLIANCE WITH THE STANDARDS RELATED TO FINANCIAL REQUIREMENTS AND QUANTITATIVE TREATMENT LIMITS DESCRIBED IN THIS SECTION. THE DEPARTMENT SHALL PERFORM THIS ANALYSIS DURING ITS REVIEW OF REQUIRED HEALTH CARE INSURER FORM FILINGS, BUT MAY ALSO REQUIRE A HEALTH CARE INSURER TO SUBMIT ADDITIONAL DATA RELATING TO ITS METHODS FOR COMPLYING WITH FINANCIAL REQUIREMENTS AND QUANTITATIVE TREATMENT LIMIT STANDARDS. THE DEPARTMENT MAY COLLECT AND ANALYZE DATA FOR EACH HEALTH CARE INSURER’S LARGE GROUP PLANS THROUGH A SEPARATE, CONSOLIDATED REPORT.

D. THE HEALTH PLAN MAY NOT APPLY ANY FINANCIAL REQUIREMENT OR QUANTITATIVE TREATMENT LIMIT TO MENTAL HEALTH AND SUBSTANCE USE DISORDER BENEFITS IN ANY CLASSIFICATION THAT IS MORE RESTRICTIVE THAN THE PREDOMINANT FINANCIAL REQUIREMENT OR QUANTITATIVE TREATMENT LIMIT OF THAT TYPE APPLIED TO SUBSTANTIALLY ALL MEDICAL AND SURGICAL BENEFITS IN THE
SAME CLASSIFICATION, UNLESS THE REQUIREMENT OR TREATMENT LIMIT IS MODIFIED
BY ONE OF THE FOLLOWING EXCEPTIONS:

1. MULTITIERED PRESCRIPTION DRUG BENEFITS. IF A HEALTH PLAN
APPLIES DIFFERENT LEVELS OF FINANCIAL REQUIREMENTS TO DIFFERENT TIERS OF
PRESCRIPTION DRUG BENEFITS THAT ARE BASED ON REASONABLE FACTORS DETERMINED
IN ACCORDANCE WITH THE REQUIREMENTS FOR NONQUANTITATIVE TREATMENT LIMITS
AND WITHOUT REGARD TO WHETHER A DRUG IS GENERALLY PRESCRIBED WITH RESPECT
TO MEDICAL AND SURGICAL BENEFITS OR WITH RESPECT TO MENTAL HEALTH OR
SUBSTANCE USE DISORDER BENEFITS, THE HEALTH PLAN SATISFIES THE PARITY
REQUIREMENTS OF THIS SECTION WITH RESPECT TO PRESCRIPTION DRUG BENEFITS.
FOR THE PURPOSES OF THIS PARAGRAPH, "REASONABLE FACTORS" INCLUDE COST,
EFFICACY, GENERIC VERSUS BRAND NAME AND MAIL ORDER VERSUS PHARMACY PICK
UP.

2. MULTIPLE NETWORK TIERS. IF A HEALTH PLAN PROVIDES BENEFITS
THROUGH MULTIPLE TIERS OF IN-NETWORK PROVIDERS, INCLUDING AN IN-NETWORK
TIER OF PREFERRED PROVIDERS WITH MORE GENEROUS COST SHARING TO
PARTICIPANTS THAN A SEPARATE IN-NETWORK TIER OF PARTICIPATING PROVIDERS,
THE HEALTH PLAN MAY DIVIDE ITS BENEFITS PROVIDED ON AN IN-NETWORK BASIS
INTO SUBCLASSIFICATIONS THAT REFLECT NETWORK TIERS, IF THE TIERING IS
BASED ON REASONABLE FACTORS DETERMINED IN ACCORDANCE WITH THE REQUIREMENTS
FOR NONQUANTITATIVE TREATMENT LIMITS AND WITHOUT REGARD TO WHETHER A
PROVIDER PROVIDES SERVICES WITH RESPECT TO MEDICAL AND SURGICAL BENEFITS
OR MENTAL HEALTH OR SUBSTANCE USE DISORDER BENEFITS IN ANY
SUBCLASSIFICATION THAT IS MORE RESTRICTIVE THAN THE PREDOMINANT FINANCIAL
REQUIREMENT OR TREATMENT LIMIT THAT APPLIES TO SUBSTANTIALLY ALL MEDICAL
AND SURGICAL BENEFITS IN THE SUBCLASSIFICATION.

3. SUBCLASSIFICATIONS ALLOWED FOR OFFICE VISITS THAT ARE SEPARATE
FROM OTHER OUTPATIENT SERVICES. FOR THE PURPOSES OF APPLYING THE
FINANCIAL REQUIREMENTS AND TREATMENT LIMITS PRESCRIBED BY THIS SECTION, A
HEALTH PLAN MAY DIVIDE ITS BENEFITS PROVIDED ON AN OUTPATIENT BASIS INTO
THE TWO SUBCLASSIFICATIONS DESCRIBED IN THIS PARAGRAPH. AFTER THE
SUBCLASSIFICATIONS ARE ESTABLISHED, THE HEALTH PLAN OR HEALTH CARE INSURER
MAY NOT IMPOSE ANY FINANCIAL REQUIREMENT OR QUANTITATIVE TREATMENT LIMIT
ON MENTAL HEALTH OR SUBSTANCE USE DISORDER BENEFITS IN ANY
SUBCLASSIFICATION THAT IS MORE RESTRICTIVE THAN THE PREDOMINANT FINANCIAL
REQUIREMENT OR TREATMENT LIMIT THAT APPLIES TO SUBSTANTIALLY ALL MEDICAL
AND SURGICAL BENEFITS IN THE SUBCLASSIFICATION.
SUBCLASSIFICATIONS FOR GENERALISTS AND SPECIALISTS ARE PROHIBITED. ONLY
THE FOLLOWING TWO SUBCLASSIFICATIONS ARE ALLOWED UNDER THIS PARAGRAPH:

(a) OFFICE AND PHYSICIAN VISITS.

(b) ALL OTHER OUTPATIENT ITEMS AND SERVICES, INCLUDING OUTPATIENT
SURGERY, FACILITY CHARGES FOR DAY TREATMENT CENTERS, LABORATORY CHARGES OR
OTHER SIMILAR MEDICAL ITEMS.
E. A HEALTH INSURER SHALL FILE THE REPORT REQUIRED BY SUBSECTION B OF THIS SECTION ONCE EVERY THREE YEARS. IN YEARS IN WHICH THE REPORT REQUIRED BY SUBSECTION B OF THIS SECTION IS NOT REQUIRED TO BE FILED, THE HEALTH CARE INSURER SHALL FILE A SUMMARY OF CHANGES MADE TO THE MEDICAL NECESSITY CRITERIA AND NONQUANTITATIVE TREATMENT LIMITS AND A WRITTEN ATTESTATION THAT SPECIFIES THAT THE HEALTH CARE INSURER IS IN COMPLIANCE WITH THE MENTAL HEALTH PARITY AND ADDICTION EQUITY ACT. THE DEPARTMENT MAY REQUIRE THE HEALTH CARE INSURER TO RESPOND TO ADDITIONAL QUESTIONS THAT ARE RELATED TO THE SUMMARY OF CHANGES OR TO SUPPLY ADDITIONAL DATA TO VERIFY COMPLIANCE. THREE YEARS AFTER THE HEALTH CARE INSURER SUBMITS AN ORIGINAL REPORT REQUIRED BY SUBSECTION B OF THIS SECTION OR AN UPDATED OR REFILED REPORT DESCRIBED IN THIS SUBSECTION, THE HEALTH CARE INSURER MAY EITHER:

1. FILE AN UPDATED REPORT.
2. RESUBMIT THE HEALTH CARE INSURER'S CURRENTLY FILED REPORT IF THE HEALTH CARE INSURER FILES A WRITTEN ATTESTATION TO THE DEPARTMENT THAT SPECIFIES THAT THERE HAVE BEEN NO CHANGES.

F. EXCEPT AS OTHERWISE PROVIDED IN THIS SECTION, IF A HEALTH CARE INSURER PROVIDED THE INFORMATION REQUIRED BY THIS SECTION IN AN EXISTING FILING OR REPORT, THE DEPARTMENT MAY NOT REQUIRE THE HEALTH CARE INSURER TO SUBMIT ANY ADDITIONAL FILING OR REPORT. THE DEPARTMENT IS NOT PROHIBITED FROM OTHERWISE REQUESTING INFORMATION OR DATA THAT IS NECESSARY TO VERIFY COMPLIANCE WITH THE MENTAL HEALTH PARITY AND ADDICTION EQUITY ACT OR THIS CHAPTER. THE DEPARTMENT SHALL ANALYZE THE INFORMATION REQUIRED BY THIS SECTION THAT THE HEALTH CARE INSURER PREVIOUSLY SUBMITTED IN AN EXISTING FILING OR REPORT TO DETERMINE COMPLIANCE WITH THE REPORT REQUIRED BY THIS SECTION. THE DEPARTMENT MAY ESTABLISH BY RULE THE TERMS REGARDING ANY REQUIRED RESUBMITTAL OF INFORMATION.

G. ALL DOCUMENTS, REPORTS OR OTHER MATERIALS PROVIDED TO THE DIRECTOR PURSUANT TO THIS SECTION ARE CONFIDENTIAL AND ARE NOT SUBJECT TO DISCLOSURE. SECTION 20-157.01, SUBSECTION B APPLIES TO THIS SECTION.
COMPLAINTS BY CONSUMERS WHO ARE COVERED BY SELF-INSURED PLANS THAT ARE
REGULATED BY THE EMPLOYEE RETIREMENT INCOME SECURITY ACT OF 1974
(P.L. 93-406; 88 STAT. 829).

C. ON OR BEFORE JANUARY 1, 2023, THE DEPARTMENT SHALL POST TO THE
WEB PAGE PRESCRIBED IN SUBSECTION B OF THIS SECTION AN AGGREGATED SUMMARY
OF ITS ANALYSIS OF THE REPORTS FILED BY HEALTH CARE INSURERS PURSUANT TO
SECTION 20-3502, SUBSECTION B, INCLUDING ANY CONCLUSIONS REGARDING
INDUSTRY COMPLIANCE WITH THE MENTAL HEALTH PARITY AND ADDICTION EQUITY
ACT. THE DEPARTMENT MAY NOT POST ANY INFORMATION THAT:

1. CONTAINS ANY PROPRIETARY OR CONFIDENTIAL INFORMATION OF A HEALTH
CARE INSURER.

2. ENABLES A PERSON TO DETERMINE THE IDENTITY OF A HEALTH CARE
INSURER.

D. BEGINNING IN 2022, THE DEPARTMENT SHALL INCLUDE IN ITS ANNUAL
REPORT A SUMMARY OF ALL STAKEHOLDER OUTREACH AND REGULATORY ACTIVITY
RELATED TO THE IMPLEMENTATION, OVERSIGHT AND ENFORCEMENT OF THE MENTAL
HEALTH PARITY AND ADDICTION EQUITY ACT AND THE REQUIREMENTS OF THIS
CHAPTER.

20-3504. Access to behavioral health services for minors

A. NOTWITHSTANDING ANY OTHER PROVISION OF THIS TITLE, ANY HEALTH
CARE INSURER THAT ISSUES A HEALTH PLAN IN THIS STATE THAT INCLUDES MENTAL
HEALTH OR SUBSTANCE USE DISORDER BENEFITS MAY NOT DENY ANY CLAIM FOR
MENTAL HEALTH OR SUBSTANCE USE DISORDER BENEFITS FOR A MINOR SOLELY ON
GROUNDS THAT THE MENTAL HEALTH OR SUBSTANCE USE DISORDER SERVICE WAS
PROVIDED IN A SCHOOL OR OTHER EDUCATIONAL SETTING OR ORDERED BY A COURT IF
THE SERVICE WAS PROVIDED BY AN IN-NETWORK PROVIDER OR BY AN OUT-OF-NETWORK
PROVIDER ONLY AS ALLOWED BY THE HEALTH PLAN THAT COVERS THE SUBSCRIBER,
ENROLLEE OR INSURED.

B. THIS SECTION DOES NOT REQUIRE A HEALTH CARE INSURER TO APPROVE A
CLAIM OR PROVIDE REIMBURSEMENT FOR A MENTAL HEALTH OR SUBSTANCE USE
DISORDER SERVICE PROVIDED BY AN OUT-OF-NETWORK PROVIDER EXCEPT AS ALLOWED
BY THE HEALTH PLAN THAT COVERS THE SUBSCRIBER, ENROLLEE OR INSURED.

C. A HEALTH CARE INSURER MAY REQUIRE THAT ANY MENTAL HEALTH OR
SUBSTANCE USE DISORDER SERVICE OFFERED BY A MENTAL HEALTH PROVIDER IN AN
EDUCATIONAL SETTING BE PROVIDED IN A FACILITY OR LOCATION THAT IS
APPROPRIATE FOR THE TYPE OF SERVICE PROVIDED AND IN A MANNER THAT COMPLIES
WITH APPLICABLE LAWS GOVERNING THE PROVISION OF HEALTH CARE SERVICES,
INCLUDING PRIVACY AND PARENTAL CONSENT LAWS.

D. CLAIMS FOR COVERED MENTAL HEALTH OR SUBSTANCE USE DISORDER
SERVICES THAT ARE PROVIDED BY AN OUT-OF-NETWORK PROVIDER AND THAT ARE NOT
COVERED BY THE SUBSCRIBER'S, ENROLLEE'S OR INSURED'S HEALTH PLAN SOLELY
BECAUSE THE PROVIDER IS AN OUT-OF-NETWORK PROVIDER SHALL BE PAID FROM THE
CHILDREN'S BEHAVIORAL HEALTH SERVICES FUND ESTABLISHED BY SECTION 36-3436.
20-3505. Mental health parity advisory committee; members; committee termination

A. THE MENTAL HEALTH PARITY ADVISORY COMMITTEE IS ESTABLISHED TO ADVISE THE DIRECTORS OF THE DEPARTMENT OF INSURANCE AND FINANCIAL INSTITUTIONS AND DEPARTMENT OF HEALTH SERVICES RELATING TO MATTERS PERTINENT TO MENTAL HEALTH PARITY, INCLUDING RECOMMENDATIONS RELATED TO CASE MANAGEMENT, DISCHARGE PLANNING AND EXPEDITED REVIEW AND APPEALS PROCESSES FOR CASES INVOLVING SUICIDAL IDEATION. THE DIRECTOR OF THE DEPARTMENT OF INSURANCE AND FINANCIAL INSTITUTIONS SHALL APPOINT THE FOLLOWING MEMBERS TO THE COMMITTEE:

1. FOUR MEMBERS WHO REPRESENT HEALTH CARE INSURERS.
2. ONE MEMBER WHO IS A LICENSED BEHAVIORAL HEALTH SERVICES PROVIDER.
3. ONE MEMBER WHO REPRESENTS A BEHAVIORAL HEALTH ADVOCACY ORGANIZATION.
4. AT LEAST THREE MEMBERS OR FAMILY MEMBERS WHO ARE NOT EMPLOYED BY OR CONTRACTED WITH THE STATE AND WHO HAVE BEEN AFFECTED BY SUICIDE, SUBSTANCE USE OR A MENTAL HEALTH DISORDER.
5. AT LEAST ONE MEMBER WHO REPRESENTS A HOSPITAL THAT PROVIDES INPATIENT BEHAVIORAL HEALTH SERVICES.


C. THE COMMITTEE ESTABLISHED BY THIS SECTION ENDS ON JULY 1, 2028 PURSUANT TO SECTION 41-3103.

Sec. 4. Title 36, chapter 1, Arizona Revised Statutes, is amended by adding article 7, to read:

ARTICLE 7. SUICIDE MORTALITY

36-199. Suicide mortality review team; members; duties; review team termination

A. THE SUICIDE MORTALITY REVIEW TEAM IS ESTABLISHED IN THE DEPARTMENT OF HEALTH SERVICES. THE HEAD OF EACH OF THE FOLLOWING ENTITIES OR THAT PERSON'S DESIGNEE SHALL SERVE ON THE REVIEW TEAM:

1. THE DEPARTMENT OF HEALTH SERVICES.
2. THE ARIZONA HEALTH CARE COST CONTAINMENT SYSTEM.
3. THE DEPARTMENT OF ECONOMIC SECURITY.
4. THE GOVERNOR'S OFFICE OF YOUTH, FAITH AND FAMILY.
5. THE DEPARTMENT OF EDUCATION.
6. THE ARIZONA COUNCIL OF HUMAN SERVICES PROVIDERS.
7. THE DEPARTMENT OF PUBLIC SAFETY.

B. THE DIRECTOR OF THE DEPARTMENT OF HEALTH SERVICES SHALL APPOINT THE FOLLOWING MEMBERS TO SERVE ON THE REVIEW TEAM:

1. A MEDICAL EXAMINER WHO IS A RURAL FORENSIC PATHOLOGIST.
2. A MEDICAL EXAMINER WHO IS A METROPOLITAN FORENSIC PATHOLOGIST.
3. A REPRESENTATIVE OF A TRIBAL GOVERNMENT.
4. A REPRESENTATIVE OF A HEALTH CARE INSURER.
5. A PUBLIC MEMBER.
6. A REPRESENTATIVE OF AN EMERGENCY MANAGEMENT SYSTEM PROVIDER.
7. A HEALTH CARE PROFESSIONAL FROM A STATEWIDE ASSOCIATION REPRESENTING PEDIATRICIANS.
8. A HEALTH CARE PROFESSIONAL FROM A STATEWIDE ASSOCIATION REPRESENTING PHYSICIANS.
9. A HEALTH CARE PROFESSIONAL FROM A STATEWIDE ASSOCIATION REPRESENTING NURSES.
10. A REPRESENTATIVE OF AN ASSOCIATION OF COUNTY HEALTH OFFICERS.
11. A REPRESENTATIVE OF AN ASSOCIATION REPRESENTING HOSPITALS.
12. A PROFESSIONAL WHO SPECIALIZES IN THE PREVENTION, DIAGNOSIS AND TREATMENT OF BEHAVIORAL HEALTH PROBLEMS.
13. A COUNTY SHERIFF, OR THE SHERIFF’S DESIGNEE, WHO REPRESENTS A COUNTY WITH A POPULATION OF LESS THAN FIVE HUNDRED THOUSAND PERSONS AND A COUNTY SHERIFF, OR THE SHERIFF’S DESIGNEE, WHO REPRESENTS A COUNTY WITH A POPULATION OF AT LEAST FIVE HUNDRED THOUSAND PERSONS.
14. A REPRESENTATIVE OF A VETERANS ORGANIZATION OR MILITARY FAMILY ADVOCACY PROGRAM.
15. A REPRESENTATIVE OF A STATEWIDE ASSOCIATION REPRESENTING AREA AGENCIES ON AGING.
16. A REPRESENTATIVE OF A NONPROFIT COMMUNITY-BASED ORGANIZATION PROVIDING SUICIDE PREVENTION SERVICES.
17. A REPRESENTATIVE OF A RURAL HEALTH ORGANIZATION.
C. THE REVIEW TEAM SHALL:
1. DEVELOP A SUICIDE MORTALITIES DATA COLLECTION SYSTEM.
2. CONDUCT AN ANNUAL ANALYSIS ON THE INCIDENCES AND CAUSES OF SUICIDES IN THIS STATE DURING THE PRECEDING FISCAL YEAR.
3. ENCOURAGE AND ASSIST IN THE DEVELOPMENT OF LOCAL SUICIDE MORTALITY REVIEW TEAMS.
4. DEVELOP STANDARDS AND PROTOCOLS FOR LOCAL SUICIDE MORTALITY REVIEW TEAMS AND PROVIDE TRAINING AND TECHNICAL ASSISTANCE TO THESE TEAMS.
5. DEVELOP PROTOCOLS FOR SUICIDE INVESTIGATIONS, INCLUDING PROTOCOLS FOR LAW ENFORCEMENT AGENCIES, PROSECUTORS, MEDICAL EXAMINERS, HEALTH CARE FACILITIES AND SOCIAL SERVICE AGENCIES.
6. STUDY THE ADEQUACY OF STATUTES, ORDINANCES, RULES, TRAINING AND SERVICES TO DETERMINE WHAT CHANGES ARE NEEDED TO DECREASE THE INCIDENCE OF PREVENTABLE SUICIDES AND, AS APPROPRIATE, TAKE STEPS TO IMPLEMENT THESE CHANGES.
7. EDUCATE THE PUBLIC REGARDING THE INCIDENCES AND CAUSES OF SUICIDE AS WELL AS THE PUBLIC’S ROLE IN PREVENTING THESE DEATHS.
8. DESIGNATE A MEMBER OF THE REVIEW TEAM TO SERVE AS CHAIRPERSON.
D. REVIEW TEAM MEMBERS ARE NOT ELIGIBLE TO RECEIVE COMPENSATION, BUT MEMBERS APPOINTED PURSUANT TO SUBSECTION B OF THIS SECTION ARE
ELIGIBLE FOR REIMBURSEMENT OF EXPENSES PURSUANT TO TITLE 38, CHAPTER 4, ARTICLE 2.

E. THE DEPARTMENT OF HEALTH SERVICES SHALL PROVIDE PROFESSIONAL AND ADMINISTRATIVE SUPPORT TO THE TEAM.

F. THE REVIEW TEAM ESTABLISHED BY THIS SECTION ENDS ON JULY 1, 2028 PURSUANT TO SECTION 41-3103.

36-199.01. Access to information; confidentiality; violation; classification

A. ON REQUEST OF THE CHAIRPERSON OF THE SUICIDE MORTALITY REVIEW TEAM OR A LOCAL TEAM AND AS NECESSARY TO CARRY OUT THE TEAM’S DUTIES, THE CHAIRPERSON SHALL BE PROVIDED, WITHIN FIVE DAYS EXCLUDING WEEKENDS AND HOLIDAYS, WITH ACCESS TO INFORMATION AND RECORDS REGARDING A SUICIDE THAT IS BEING REVIEWED BY THE TEAM. THE TEAM MAY REQUEST THE INFORMATION AND RECORDS FROM ANY OF THE FOLLOWING:

1. A PROVIDER OF MEDICAL, DENTAL, NURSING OR MENTAL HEALTH CARE.
2. A HEALTH CARE INSURER.
3. THIS STATE OR A POLITICAL SUBDIVISION OF THIS STATE THAT MIGHT ASSIST THE TEAM IN REVIEWING THE FATALITY.

B. A LAW ENFORCEMENT AGENCY, WITH THE APPROVAL OF THE PROSECUTING ATTORNEY, MAY WITHHOLD FROM A REVIEW TEAM INVESTIGATIVE RECORDS THAT MIGHT INTERFERE WITH A PENDING CRIMINAL INVESTIGATION OR PROSECUTION.

C. THE DIRECTOR OF THE DEPARTMENT OF HEALTH SERVICES OR THE DIRECTOR’S DESIGNEE MAY APPLY TO THE SUPERIOR COURT FOR A SUBPOENA AS NECESSARY TO COMPEL THE PRODUCTION OF BOOKS, RECORDS, DOCUMENTS AND OTHER EVIDENCE RELATED TO THE PERSON WHO DIED BY SUICIDE. SUBPOENAS ISSUED UNDER THIS SUBSECTION SHALL BE SERVED AND, ON APPLICATION TO THE COURT BY THE DIRECTOR OR THE DIRECTOR’S DESIGNEE, ENFORCED IN THE MANNER PROVIDED BY LAW FOR THE SERVICE AND ENFORCEMENT OF SUBPOENAS. A LAW ENFORCEMENT AGENCY IS NOT REQUIRED TO PRODUCE THE INFORMATION REQUESTED UNDER THE SUBPOENA IF THE SUBPOENNAED EVIDENCE RELATES TO A PENDING CRIMINAL INVESTIGATION OR PROSECUTION. ALL RECORDS SHALL BE RETURNED TO THE AGENCY OR ORGANIZATION ON COMPLETING THE REVIEW. THE REVIEW TEAM MAY NOT KEEP WRITTEN REPORTS OR RECORDS CONTAINING IDENTIFYING INFORMATION.

D. ALL INFORMATION AND RECORDS ACQUIRED BY THE SUICIDE MORTALITY REVIEW TEAM OR ANY LOCAL TEAM ARE CONFIDENTIAL AND ARE NOT SUBJECT TO SUBPOENA, DISCOVERY OR INTRODUCTION INTO EVIDENCE IN ANY CIVIL OR CRIMINAL PROCEEDING, EXCEPT THAT INFORMATION, DOCUMENTS AND RECORDS THAT ARE OTHERWISE AVAILABLE FROM OTHER SOURCES ARE NOT IMMUNE FROM SUBPOENA, DISCOVERY OR INTRODUCTION INTO EVIDENCE THROUGH THOSE SOURCES SOLELY BECAUSE THEY WERE PRESENTED TO OR REVIEWED BY A TEAM PURSUANT TO THIS ARTICLE.

E. MEMBERS OF A TEAM, PERSONS ATTENDING A TEAM MEETING AND PERSONS WHO PRESENT INFORMATION TO A TEAM MAY NOT BE QUESTIONED IN ANY CIVIL OR CRIMINAL PROCEEDING REGARDING INFORMATION PRESENTED IN OR OPINIONS FORMED AS A RESULT OF A MEETING. THIS SUBSECTION DOES NOT PREVENT A PERSON FROM
TESTIFYING TO INFORMATION THAT IS OBTAINED INDEPENDENTLY OF THE TEAM OR THAT IS PUBLIC INFORMATION.

F. PURSUANT TO POLICIES ADOPTED BY THE SUICIDE MORTALITY REVIEW TEAM, A MEMBER OF THE SUICIDE MORTALITY REVIEW TEAM OR A LOCAL TEAM MAY CONTACT, INTERVIEW OR OBTAIN INFORMATION BY REQUEST OR SUBPOENA FROM A FAMILY MEMBER OF A DECEASED PERSON WHO DIED BY SUICIDE. THE SUICIDE MORTALITY REVIEW TEAM OR A LOCAL TEAM MUST APPROVE ANY CONTACT, INTERVIEW, REQUEST OR SUBPOENA BEFORE THE TEAM MEMBER CONTACTS, INTERVIEWS OR OBTAINS INFORMATION FROM THE FAMILY MEMBER OF A DECEASED PERSON WHO DIED BY SUICIDE.

G. MEETINGS OF THE SUICIDE MORTALITY REVIEW TEAM OR A LOCAL TEAM ARE CLOSED TO THE PUBLIC AND ARE NOT SUBJECT TO TITLE 38, CHAPTER 3, ARTICLE 3.1 IF THE TEAM IS REVIEWING INFORMATION ON AN INDIVIDUAL WHO DIED BY SUICIDE. ALL OTHER TEAM MEETINGS ARE OPEN TO THE PUBLIC.

H. A PERSON WHO VIOLATES THE CONFIDENTIALITY REQUIREMENTS OF THIS SECTION IS GUILTY OF A CLASS 2 MISDEMEANOR.

Sec. 5. Title 36, chapter 34, article 3, Arizona Revised Statutes, is amended by adding sections 36-3436 and 36-3436.01, to read:

36-3436. Children's behavioral health services fund; exemption; use of monies

A. THE CHILDREN'S BEHAVIORAL HEALTH SERVICES FUND IS ESTABLISHED CONSISTING OF MONIES APPROPRIATED TO THE FUND, ANY GIFTS OR DONATIONS TO THE FUND AND INTEREST EARNED ON THOSE MONIES. THE DIRECTOR SHALL ADMINISTER THE FUND.

B. MONIES IN THE FUND:
1. ARE EXEMPT FROM THE PROVISIONS OF SECTION 35-190 RELATING TO LAPSE APPROPRIATIONS.
2. ARE CONTINUOUSLY APPROPRIATED.

C. THE ADMINISTRATION SHALL ENTER INTO AN AGREEMENT WITH ONE OR MORE CONTRACTORS FOR CHILDREN'S BEHAVIORAL HEALTH SERVICES USING MONIES FROM THE CHILDREN'S BEHAVIORAL HEALTH SERVICES FUND TO PAY FOR BEHAVIORAL HEALTH SERVICES FOR CHILDREN. TO BE ELIGIBLE TO RECEIVE BEHAVIORAL HEALTH SERVICES PAID BY THE FUND, AN INDIVIDUAL MUST MEET ALL OF THE FOLLOWING CONDITIONS:
1. MEET THE LEGAL AGE REQUIREMENTS FOR SCHOOL ADMISSION UNDER TITLE 15 AT THE TIME THE INDIVIDUAL WAS ADMITTED AND BE ENROLLED IN SCHOOL.
2. BE UNINSURED OR UNDERINSURED.
3. BE REFERRED FOR BEHAVIORAL HEALTH SERVICES BY AN EDUCATIONAL INSTITUTION.
4. HAVE WRITTEN PARENTAL CONSENT TO OBTAIN THE BEHAVIORAL HEALTH SERVICES.
5. RECEIVE THE BEHAVIORAL HEALTH SERVICES BY A CONTRACTED LICENSED BEHAVIORAL HEALTH PROVIDER.
6. RECEIVE THE BEHAVIORAL HEALTH SERVICES ON OR OFF SCHOOL GROUNDS.
D. In addition to terms and conditions the director deems appropriate, the agreement between the administration and each contractor shall require that:

1. The monies allocated in the agreement not be used for persons who are eligible under Title XIX or Title XXI of the Social Security Act. Preference shall be given to persons with lower household incomes.

2. The contractor coordinate benefits provided under this section with any third parties that are legally responsible for the cost of services.

3. The contractor make payments to providers based on contracts with providers or, in the absence of a contract, at the capped fee schedule established by the administration.

4. The contractor submit expenditure reports monthly in a format determined by the director for reimbursement of services provided under the agreement. The agreement may also provide for additional reimbursement for administering the agreement in an amount not to exceed eight percent of the expenditures for services.

5. The administration not be held financially responsible to the contractor for any costs incurred by the contractor in excess of the monies allocated in the agreement.

E. The administration may impose cost sharing requirements on a sliding fee scale for behavioral health services provided by contractors.

F. The administration shall act as payor of last resort for persons who are eligible pursuant to this section. On receipt of services under this section, a person is deemed to have assigned to the administration all rights to any type of medical benefit to which the person is entitled.

G. This section does not establish:

1. An entitlement for any person to receive any particular service.

2. A duty on the administration to provide services or spend monies in excess of the monies allocated in the fund.

36-3436.01. School-based behavioral health services; referrals; requirements; annual report

A. Before a school provides school-based referrals for behavioral health services to a contracted behavioral health services provider either pursuant to the children's behavioral health services fund established by section 36-3436 or for services provided through the Arizona health care cost containment system, the school district governing board or charter school governing body shall adopt policies relating to school-based referrals. These policies shall be vetted at a public meeting in which the school district governing board or charter school governing body considers any comments submitted by the public before the governing board or governing body adopts the policies. The school district governing board or charter school governing body shall post the policies adopted pursuant to this section on each applicable school website. The policies shall include the following:
1. A PROCESS TO ALLOW A PARENT TO ANNUALLY OPT INTO THE
SCHOOL-BASED REFERRALS.

2. A PROCESS TO CONDUCT A SURVEY OF PARENTS WHOSE CHILDREN WERE
REFERRED TO AND RECEIVED BEHAVIORAL HEALTH SERVICES PURSUANT TO THIS
SECTION. THE SURVEY MAY BE COMPLETED ONLINE. THE SURVEY SHALL INCLUDE AT
LEAST THE FOLLOWING:
   (a) WHETHER THE PARENT OPTED INTO THE PROGRAM.
   (b) WHETHER THE PARENT WAS NOTIFIED BEFORE THE REFERRAL TOOK PLACE.
   (c) WHETHER THE BEHAVIORAL HEALTH SERVICES REFERRED WERE
      APPROPRIATE TO MEET THE STUDENT'S NEED.
   (d) WHETHER THE PARENT IS SATISFIED WITH THE CHOICE OF BEHAVIORAL
      HEALTH SERVICES PROVIDERS.
   (e) WHETHER THE PARENT INTENDS TO OPT INTO A PROGRAM AGAIN IN THE
      FOLLOWING SCHOOL YEAR.

3. A REQUIREMENT THAT EACH SCHOOL'S WEBSITE CONTAIN A LIST OF
BEHAVIORAL HEALTH SERVICES PROVIDERS WITH WHOM THE SCHOOL CONTRACTS.

B. AT THE END OF EACH SCHOOL YEAR, EACH PARTICIPATING SCHOOL
DISTRICT AND CHARTER SCHOOL SHALL REPORT TO THE ADMINISTRATION THE SCHOOL
SURVEY RESULTS.

C. THE ADMINISTRATION SHALL COMPILE A REPORT BASED ON THE SURVEYS
RECEIVED FROM PARTICIPATING SCHOOL DISTRICTS AND CHARTER SCHOOLS AS WELL
AS UTILIZATION DATA FOR BEHAVIORAL HEALTH SERVICES RECEIVED PURSUANT TO
THE CHILDREN'S BEHAVIORAL HEALTH SERVICES FUND ESTABLISHED BY SECTION
36-3436. ON OR BEFORE DECEMBER 31 EACH YEAR, THE ADMINISTRATION SHALL
PROVIDE THE REPORT TO THE GOVERNOR, THE PRESIDENT OF THE SENATE AND THE
SPEAKER OF THE HOUSE OF REPRESENTATIVES AND PROVIDE A COPY OF THE REPORT
TO THE SECRETARY OF STATE. THE REPORT SHALL INCLUDE AT LEAST ALL OF THE
FOLLOWING INFORMATION:
   1. THE NUMBER OF STUDENTS SERVED.
   2. THE TYPES OF BEHAVIORAL HEALTH SERVICES PROVIDED.
   3. THE COSTS OF THE BEHAVIORAL HEALTH SERVICES PROVIDED.

Sec. 6. Section 36-3504, Arizona Revised Statutes, is amended to
read:

36-3504. Child fatality review fund
A. The child fatality review fund is established consisting of
appropriations, monies received pursuant to section 36-342 36-341,
subsection E and gifts, grants and donations made to the department of
health services to implement subsection B of this section. The department
of health services shall administer the fund. The department shall
deposit, pursuant to sections 35-146 and 35-147, all monies it receives in
the fund.

B. The department of health services shall use fund monies to staff
the state child fatality review team AND THE SUICIDE MORTALITY REVIEW TEAM
and to train and support local child fatality review teams AND SUICIDE
MORTALITY REVIEW TEAMS.
C. Monies spent for the purposes specified in subsection B of this section are subject to legislative appropriation. Any fee revenue collected in excess of one hundred thousand dollars ($200,000) in any fiscal year is appropriated from the child fatality review fund to the child abuse prevention fund established pursuant to section 8-550.01, subsection A, to be used for healthy start programs.

Sec. 7. Arizona health care cost containment system; behavioral health survey of schools; report; delayed repeal
A. The Arizona health care cost containment system shall conduct a survey of public schools to obtain information regarding the referral of behavioral health services to students by contracted licensed behavioral health providers. The survey shall include all of the following:
1. The types of behavioral health providers providing the services.
2. The types of settings where behavioral health services were delivered to students.
3. The number of students who received services.
4. The most common diagnoses that resulted in the need for services.
B. On or before December 31, 2022, the Arizona health care cost containment system shall provide a copy of the result of the survey to the governor, the president of the senate and the speaker of the house of representatives and provide a copy of the report to the secretary of state.
C. This section is repealed from and after June 30, 2023.

Sec. 8. Rulemaking; department of insurance and financial institutions
A. On or before April 1, 2021, the department of insurance and financial institutions shall adopt by rule both of the following:
1. Forms or worksheets that health care insurers must use to prepare the reports required by section 20-3502, Arizona Revised Statutes, as added by this act.
2. Standards to determine compliance with the mental health parity and addiction equity act.
B. The department of insurance and financial institutions may also allow health care insurers to demonstrate compliance with subsection A of this section and section 20-3502, Arizona Revised Statutes, as added by this act, by other means that are at least as comprehensive as the forms or worksheets required by subsection A, paragraph 1 of this section.
C. In developing the forms, worksheets or other means that health care insurers must use to prepare the reports required by section 20-3502, Arizona Revised Statutes, as added by this act, the department of insurance and financial institutions shall:
1. Conduct workshops and listening sessions to seek and obtain input from stakeholders, including health care insurers, behavioral health providers, advocacy organizations and individuals who have been impacted by mental health or substance use disorders.

2. Review the United States department of labor's self-compliance tool for the mental health parity and addiction equity act and other reasonable and applicable resources.

Sec. 9. **Rulemaking; department of health services**

A. The department of health services shall adopt rules relating to admitting and discharging patients who have attempted suicide or exhibit suicidal ideation from inpatient care at a health care institution. The rules shall include protocols based on best practices for requiring health care institutions to implement discharge protocols and provide information to patients and caregivers on a continuum during the stay, including at admission and before and at discharge.

B. The rules shall address the following topics:

1. The availability and contact information of age appropriate crisis services.

2. Information and referrals to the next appropriate level of treatment and care after discharge, including scheduling treatment when practicable.

3. Information on the department of insurance and financial institution's website relating to how to challenge an adverse decision by a health care insurer or health plan.

4. Conducting a suicide assessment before discharging a patient and informing the patient and caregivers of the results.

C. Notwithstanding any other law, for the purposes of this section, the department of health services is exempt from the rulemaking requirements of title 41, chapter 6, Arizona Revised Statutes, for eighteen months after the effective date of this section, except that the department shall provide public notice and an opportunity for public comment on proposed rules at least sixty days before the rules are amended or adopted.

Sec. 10. **Appropriation; department of insurance and financial institutions; exemption**

A. The sum of $250,000 and one FTE position are appropriated from the state general fund in fiscal year 2020-2021 to the department of insurance and financial institutions to administer title 20, chapter 28, Arizona Revised Statutes, as added by this act.

B. The appropriation made in subsection A of this section is exempt from the provisions of section 35-190, Arizona Revised Statutes, relating to lapsing of appropriations.
Sec. 11. Appropriation; children's behavioral health services fund; exemption
A. The sum of $8,000,000 is appropriated from the state general fund in fiscal year 2020-2021 to the children's behavioral health services fund established by section 36-3436, Arizona Revised Statutes, as added by this act, to pay contractors for services as prescribed in section 36-3436, Arizona Revised Statutes, as added by this act.
B. The appropriation made in subsection A of this section is exempt from the provisions of section 35-190, Arizona Revised Statutes, relating to lapsing of appropriations until June 30, 2022.

Sec. 12. Short title
This act may be cited as "Jake's Law".


BOARD OF DENTAL EXAMINERS
Title 4, Chapter 11

Amend: R4-11-1202, R4-11-1203, R4-11-1204, R4-11-1205, R4-11-1206,
        R4-11-1207, R4-11-1208, R4-11-1209
GOVERNOR’S REGULATORY REVIEW COUNCIL

ATTORNEY MEMORANDUM - REGULAR RULEMAKING

MEETING DATE:    July 6, 2022

TO:            Members of the Governor’s Regulatory Review Council (Council)

FROM:    Council Staff

DATE:    June 13, 2022

SUBJECT:    BOARD OF DENTAL EXAMINERS
Title 4, Chapter 11

Amend:    R4-11-1202, R4-11-1203, R4-11-1204, R4-11-1205, R4-11-1206,
R4-11-1207, R4-11-1208, R4-11-1209

Summary:

This regular rulemaking from the Board of Dental Examiners (Board) seeks to amend eight (8) rules in Title 4, Chapter 11, Article 12 related to Continuing Dental Education and Renewal Requirements. Specifically, the Board states, having gone through the Five-Year Review Report process, it recognizes that Arizona has one of the highest continuing education requirements for dental professionals in the country. The Board also states that, while they are not in a “race to the bottom,” the Board intends to require continuing education that is more in line with those requirements throughout the United States. As such, the proposed amendments lower the continuing education requirements for all dental professionals by nine (9) credit hours per renewal cycle. The Board is also amending the rules to allow licensees to obtain those hours through online means.

1. **Are the rules legal, consistent with legislative intent, and within the agency’s statutory authority?**

   The Board cites both general and specific statutory authority for these rules.
2. **Do the rules establish a new fee or contain a fee increase?**

   This rulemaking does not establish a new fee or contain a fee increase.

3. **Does the preamble disclose a reference to any study relevant to the rules that the agency reviewed and either did or did not rely upon?**

   The Board did not review or rely on any study in conducting this rulemaking.

4. **Summary of the agency’s economic impact analysis:**

   According to the Board, there is little to no economic, small business, or consumer impact, other than the cost to the Board to prepare the rule package, because the rulemaking simply clarifies statutory requirements that already exist. There may be some reduced economic impact to licensees with regard to a reduction in the number of hours that are required for continuing education and how a licensee may obtain those hours. Reducing the number of required continuing education hours and allowing licensees to obtain those hours through “online” means reduces the economic impact of these rules.

5. **Has the agency analyzed the costs and benefits of the rulemaking and determined that the rules impose the least burden and costs to those who are regulated?**

   The Board believes that amending its rules to lower the continuing education requirements for dental professionals is the less intrusive and less costly alternative.

6. **What are the economic impacts on stakeholders?**

   The Board is the only state agency affected by the rulemaking amendment and there will not be any costs, including the hiring of more personnel, to manage the effects of the amendment. The benefits, as stated above, lower the amount of continuing education for dental professionals when submitting their triennial renewals.

   The rulemaking amendment has minimal impact on the Board’s licensees. There is no financial impact to small businesses other than dental businesses, but there are no new costs. No new costs will be incurred to individuals. In fact, the dental licensees will benefit from a lower continuing education requirement to renew their respective license.

7. **Are the final rules a substantial change, considered as a whole, from the proposed rules and any supplemental proposals?**

   The Board indicates there were no changes to the rules between the Notice of Proposed Rulemaking published in the Administrative Register and the Notice of Final Rulemaking now before the Council.
8. **Does the agency adequately address the comments on the proposed rules and any supplemental proposals?**

The Board indicates it received two written comments from the Arizona Oral Health Coalition and A.T. Still University recommending that the Board include courses that address cultural competency and health disparities to R4-11-1203, R4-11-1204, and R4-11-1205. The Board discussed these comments in open session and determined that adding those courses to those rules was not necessary because those rules already allow dental professionals to complete courses that include “current research, new concepts in dentistry, chemical dependency, tobacco cessation, and behavioral and biological sciences that are oriented to dentistry.” The Board believes that this would include courses related to cultural competency and health disparities.

Council staff believes the Board has adequately addressed the comments on the proposed rules.

9. **Do the rules require a permit or license and, if so, does the agency comply with A.R.S. § 41-1037?**

Pursuant to A.R.S. § 41-1037(A), if an agency proposes an amendment to an existing rule that requires the issuance of a regulatory permit, license, or agency authorization, the agency shall use a general permit, as defined by A.R.S. § 41-1001(11), if the facilities, activities or practices in the class are substantially similar in nature unless certain exceptions apply.

The Board indicates it issues general permits to licensees who meet the criteria established in statute and rule. As such, the Board is in compliance with A.R.S. § 41-1037.

10. **Are the rules more stringent than corresponding federal law and, if so, is there statutory authority to exceed the requirements of federal law?**

Not applicable. The Board indicates there is no corresponding federal law directly applicable to the subject of the proposed rulemaking.

11. **Conclusion**

This regular rulemaking from the Board seeks to amend eight (8) rules in Title 4, Chapter 11, Article 12 related to Continuing Dental Education and Renewal Requirements. Specifically, the proposed amendments lower the continuing education requirements for all dental professionals by nine (9) credit hours per renewal cycle and allow licensees to obtain those hours through online means.

The Board is seeking the standard 60-day delayed effective date for these rules pursuant to A.R.S. § 41-1032(A).

Council staff recommends approval of this rulemaking.
May 11, 2022

Ms. Nicole Sornsins, Chair
The Governor's Regulatory Review Council
100 North 15th Avenue, Ste. 402
Phoenix, AZ 85007

Re: A.A.C. Title 4. Professions and Occupations
Chapter 11. State Board of Dental Examiners
Continuing Education

Dear Ms. Sornsins:

The attached final rule package is submitted for review and approval by the Council. The following information is provided for Council's use in reviewing the rule package:

1. Close of record date: The rulemaking record was closed on February 15, 2022 following a period for public comment and an oral proceeding.

2. Relation of the rulemaking to a five-year-review report: This rulemaking does not relate to a Five-year Review Report.

3. New fee or fee increase: This rulemaking does not establish a new fee or increase an existing fee.

4. Immediate effective date: An immediate effective date is not requested.

5. Certification regarding studies: I certify that the Board did not rely on any studies for this rulemaking.

6. Certification that the preparer of the EIS notified the JLBC of the number of new full-time employees necessary to implement and enforce the rule: I certify that the rules in this rulemaking will not require a state agency to employ a new full-time employee. No notification was provided to JLBC.

7. List of documents enclosed:
   a. Cover letter signed by the Board's Executive Director;
   b. Notice of Final Rulemaking including the preamble, table of contents for the rulemaking, and rule text; and

Sincerely,

Ryan P. Edmonson
Executive Director
NOTICE OF FINAL RULEMAKING
TITLE 4. PROFESSIONS AND OCCUPATIONS
CHAPTER 11. STATE BOARD OF DENTAL EXAMINERS

PREAMBLE

1. Articles, Parts, and Sections Affected
   Rulemaking Action
   R4-11-1202     Amend
   R4-11-1203     Amend
   R4-11-1204     Amend
   R4-11-1205     Amend
   R4-11-1206     Amend
   R4-11-1207     Amend
   R4-11-1208     Amend
   R4-11-1209     Amend

2. Citations to the agency’s statutory rulemaking authority to include both the authorizing statute (general) and the implementing statute (specific):
   Authorizing statute: A.R.S. § 32-1207
   Implementing statutes: A.R.S. §§ 32-1201 et seq.

3. The effective date for the rules:
   a. If the agency selected a date earlier than the 60 day effective date as specified in A.R.S. § 41-1032(A), include the earlier date and state the reason or reasons the agency selected the earlier effective date as provided in A.R.S. § 41-1032(A)(1) through (5):
      None
   b. If the agency selected a date later than the 60 day effective date as specified in A.R.S. § 41-1032(A), include the later date and state the reason or reasons the agency selected the later effective date as provided in A.R.S. § 41-1032(B):
      None
4. Citations to all related notices published in the Register as specified in R1-1-409(A) that pertain to the record of the final rulemaking package:
Notice of Rulemaking Docket Opening: 28 A.A.R. 202, January 14, 2022

5. The agency's contact person who can answer questions about the rulemaking:
Name: Ryan Edmonson, Executive Director
Address: Arizona State Board of Dental Examiners
         1740 W. Adams St., Ste. 2470
         Phoenix, AZ 85007
Telephone: (602) 542-4493
E-Mail: ryan.edmonson@dentalboard.az.gov

6. An agency's justification and reason why a rule should be made, amended, repealed, or renumbered, to include an explanation about the rulemaking:
The Board needs to amend its rules to update the continuing education requirements. The Board previously amended R4-11-1202, R4-11-1206, and R4-11-1207 to update the licensing renewal time frames to be consistent with statutory changes. As such, this rulemaking is making additional changes to those rules and other rules in Article 12 in order amend the continuing education requirements.

7. A reference to any study relevant to the rule that the agency reviewed and either relied on or did not rely on in its evaluation of or justification for the rule, where the public may obtain or review each study, all data underlying each study, and any analysis of each study and other supporting material:
No study was reviewed.

8. A showing of good cause why the rulemaking is necessary to promote a statewide interest if the rulemaking will diminish a previous grant of authority of a political subdivision of this state:
Not applicable.

9. A summary of the economic, small business, and consumer impact:
There is little to no economic, small business, or consumer impact, other than the cost to the Board to prepare the rule package, because the rulemaking simply clarifies statutory
requirements that already exist. There may be some reduced economic impact to licensees with regard to a reduction in the number of hours that are required for continuing education and how a licensee may obtain those hours. Reducing the number of required continuing education hours and allowing licensees to obtain those hours through “online” means reduces the economic impact of these rules.

10. A description of any changes between the proposed rulemaking, including supplemental notices, and the final rulemaking:

None

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

The Board received two written comments from the Arizona Oral Health Coalition and A.T. Still University respectively recommending that the Board include courses that address cultural competency and health disparities courses to R4-11-1203, R4-11-1204, and R4-11-1205.

The Board discussed these comments in open session and determined that adding those courses to those rules was not necessary because those rules already allow dental professionals to complete courses that include “current research, new concepts in dentistry, chemical dependency, tobacco cessation, and behavioral and biological sciences that are oriented to dentistry.” The Board believes that this would include courses related to cultural competency and health disparities.

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

None.

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

The Board issues general permits to licensees who meet the criteria established in statute and rule.
b. Whether a federal law is applicable to the subject of the rule, whether the rule is more stringent than federal law and if so, citation to the statutory authority to exceed the requirements of federal law:
There are no federal laws applicable to these rules.

c. Whether a person submitted an analysis to the agency that compares the rule's impact of the competitiveness of business in this state to the impact on business in other states:
No analysis was submitted.

13. A list of any incorporated by reference material as specified in A.R.S. § 41-1028 and its location in the rule:
No materials are incorporated by reference.

14. Whether the rule was previously made, amended, or repealed as an emergency rule. If so, cite the notice published in the Register as specified in R1-1-409(A). Also, the agency shall state where the text was changed between the emergency and the final rulemaking packages:
Not applicable.

15. The full text of the rules follows:
R4-11-1202. Continuing Dental Education Compliance and Renewal Requirements

A. When applying for a renewal license, certificate, or restricted permit, a licensee, certificate holder, or restricted permit holder shall complete a renewal application provided by the Board.

B. Before receiving a renewal license or certificate, each licensee or certificate holder shall possess a current form of one of the following:

1. A current cardiopulmonary resuscitation (CPR) healthcare provider level certificate from the American Red Cross, the American Heart Association, or another certifying agency;

2. Advanced cardiac life support (ACLS) course completion confirmation from the American Heart Association or another agency. The confirmation must indicate that the course was completed within two years immediately before submitting a renewal application; or

3. Pediatric advanced life support (PALS) course completion confirmation from the American Heart Association or another agency. The confirmation must indicate that the course was completed within two years immediately before submitting a renewal application.

C. A licensee or certificate holder shall include an affidavit affirming the completion of the prescribed credit hours of recognized continuing dental education with a renewal application. A licensee or certificate holder shall...
include on the affidavit the licensee’s or certificate holder’s denturist’s name, license or certificate number, the number of hours completed in each category, and the total number of hours completed for activities defined in R4-11-1209(A)(4).

D. A licensee or certificate holder denturist shall submit a written request for an extension before the renewal deadline prescribed in A.R.S. §§ 32-1236, 32-1276.02, 32-1287, and 32-1297.06. If a licensee or certificate holder denturist fails to meet the credit hours requirement because of military service, dental or religious missionary activity, residence in a foreign country, or other extenuating circumstances as determined by the Board, the Board, upon written request, may grant an extension of time to complete the recognized continuing dental education credit hour requirement.

E. The Board shall:

1. Only accept recognized continuing dental education credits accrued during the prescribed period immediately before license or certificate renewal, and

2. Not allow recognized continuing dental education credit accrued in a renewal period in excess of the amount required in this Article to be carried forward to the next renewal period.

F. A licensee or certificate holder denturist shall maintain documentation of attendance for each program for which credit is claimed that verifies the recognized continuing dental education credit hours the licensee or certificate holder denturist participated in during the most recently completed renewal period.
G. Each year, the Board shall audit continuing dental education requirement compliance on a random basis or when information is obtained which indicates a licensee or certificate holder may not be in compliance with this Article. A licensee or certificate holder selected for audit shall provide the Board with documentation of attendance that shows compliance with the continuing dental education requirements within 60 calendar days from the date the Board issues notice of the audit by certified mail.

H. If a licensee or certificate holder is found to not be in compliance with the continuing dental education requirements, the Board may take any disciplinary or non-disciplinary action authorized by A.R.S. Title 32, Chapter 11.

R4-11-1203. Dentists and Dental Consultants

Dentists and dental consultants shall complete 72 hours of recognized continuing dental education in each renewal period as follows:

1. At least 42 credit hours in any one or more of the following areas:
   - Dental and medical health, preventive services, dental diagnosis and treatment planning,
   - Dental and medical health, preventive services, dental diagnosis and treatment planning,
   - Dental recordkeeping, dental clinical procedures, managing medical emergencies,
   - Dental recordkeeping, dental clinical procedures, managing medical emergencies,
   - Pain management, dental public health, and courses in corrective and restorative oral health
   - Pain management, dental public health, and courses in corrective and restorative oral health
   - And basic dental sciences, which may include current research, new concepts in dentistry,
   - And basic dental sciences, which may include current research, new concepts in dentistry,
   - Chemical dependency, tobacco cessation, and behavioral and biological sciences that are
   - Chemical dependency, tobacco cessation, and behavioral and biological sciences that are
   - Oriented to dentistry. A licensee who holds a permit to administer general anesthesia, deep sedation, parenteral sedation, or oral sedation who is required to obtain continuing
education pursuant to Article 13 may apply those credit hours Credit Hours to the
requirements of this Section;

2. No more than 18–15 credit hours Credit Hours in one or more of the following areas:
Dental practice organization and management, patient management skills, and methods of
health care delivery;

3. At least three credit hours Credit Hours in chemical dependency opioid education, which
may include tobacco cessation;

4. At least three credit hours Credit Hours in infectious diseases or infectious disease
control;

5. At least three credit hours Credit Hours in CPR cardiopulmonary resuscitation-healthcare
provider level, ACLS advanced cardiac life support and or PALS pediatric advanced life
support. Coursework may be completed online if the course requires a physical
demonstration of skills; and

6. At least three credit hours Credit Hours in ethics or Arizona dental jurisprudence.

R4-11-1204. Dental Hygienists

A. A dental hygienist shall complete 54–45 credit hours Credit Hours of recognized
continuing dental education Recognized Continuing Dental Education in each renewal
period as follows:

1. At least 34–25 credit hours Credit Hours in any one or more of the following areas:
Dental and medical health, and dental hygiene services, periodontal disease, care
of implants, maintenance of cosmetic restorations and sealants, radiology safety
and techniques, managing medical emergencies, pain management, dental
recordkeeping, dental public health, and new concepts in dental hygiene;

2. No more than 1411 credit hours Credit Hours in one or more of the following areas: Dental hygiene practice organization and management, patient management skills, and methods of health care delivery;

3. At least three credit hours Credit Hours in one or more of the following areas: chemical dependency, tobacco cessation, ethics, risk management, or Arizona dental jurisprudence;

4. At least three credit hours Credit Hours in infectious diseases or infectious disease control; and

5. At least three credit hours Credit Hours in CPR cardiopulmonary resuscitation healthcare provider level, ACLS advanced cardiac life support and PALS pediatric advanced life support. Coursework may be completed online if the course requires a physical demonstration of skills.

B. A licensee who performs dental hygiene services under an affiliated practice relationship who is required to obtain continuing education under R4-11-609 may apply those credit hours Credit Hours to the requirements of this Section.

R4-11-1205. Denturists

Denturists shall complete 3627 credit hours Credit Hours of recognized continuing dental education Recognized Continuing Dental Education in each renewal period as follows:

1. At least 2115 credit hours Credit Hours in any one or more of the following areas: Medical and dental health, laboratory procedures, clinical procedures, dental
recordkeeping, removable prosthetics, pain management, dental public health, and new technology in dentistry;

2. No more than **six** three credit hours **Credit Hours** in one or more of the following areas: Denturist practice organization and management, patient management skills, and methods of health care delivery;

3. **At least one** credit hour **Credit Hour** in chemical dependency, which may include tobacco cessation;

4. **At least two** credit hours **Credit Hours** in infectious diseases or infectious disease control;

5. **At least three** credit hours **Credit Hours** in **CPR-cardiopulmonary resuscitation**-healthcare provider level, **ACLS advanced cardiac life support** and **PALS pediatric advanced life support**. Coursework may be completed online if the course requires a physical demonstration of skills; and

6. **At least three** credit hours **Credit Hours** in ethics or Arizona dental jurisprudence.

**R4-11-1206. Restricted Permit Holders - Dental**

In addition to the requirements in R4-11-1202, a dental restricted permit holder **Restricted Permit Holder** shall comply with the following requirements:

1. When applying for renewal under A.R.S. § 32-1238, the restricted permit holder **Restricted Permit Holder** shall provide information to the Board that the restricted permit holder **Restricted Permit Holder** has completed **2415** credit hours **Credit Hours** of recognized continuing dental education **Recognized Continuing Dental Education** yearly.
2. To determine whether to grant the renewal, the Board shall only consider recognized continuing dental education Recognized Continuing Dental Education credits accrued during the 36 months immediately before the renewal deadline prescribed in A.R.S. § 32-1236.

3. A dental restricted permit holder Restricted Permit Holder shall complete the 2415 hours of recognized continuing dental education Recognized Continuing Dental Education before renewal as follows:
   a. At least 12 six credit hours Credit Hours in one or more of the subjects enumerated in R4-11-1203(1);
   b. No more than six three credit hours Credit Hours in one or more of the subjects enumerated in R4-11-1203(2);
   c. At least one credit hour Credit Hour in the subjects enumerated in R4-11-1203(3);
   d. At least one credit hour Credit Hour in the subjects enumerated in R4-11-1203(4).
   e. At least three credit hours Credit Hours in the subjects enumerated in R4-11-1203(5); and
   f. At least one credit hour Credit Hour in the subjects enumerated in R4-11-1203(6).

R4-11-1207. Restricted Permit Holders - Dental Hygiene

In addition to the requirements in R4-11-1202, a dental hygiene restricted permit holder Restricted Permit Holder shall comply with the following:

1. When applying for renewal under A.R.S. § 32-1292, the restricted permit holder Restricted Permit Holder shall provide information to the Board that the restricted permit
holder Restricted Permit Holder has completed 18 nine credit hours Credit Hours of recognized continuing dental education Recognized Continuing Dental Education yearly.

2. To determine whether to grant renewal, the Board shall only consider recognized continuing dental education Recognized Continuing Dental Education credits accrued during the 36 months immediately before the renewal deadline prescribed in A.R.S. § 32-1287.

3. A dental hygiene restricted permit holder Restricted Permit Holder shall complete the 18 nine hours of recognized continuing dental education Recognized Continuing Dental Education before renewal as follows:
   a. At least 93 credit hours Credit Hours in one or more of the subjects enumerated in R4-11-1204(1);
   b. No more than three credit hours Credit Hours in one or more of the subjects enumerated in R4-11-1204(2);
   c. At least one credit hour Credit Hour in the subjects enumerated in R4-11-1204(3);
   d. At least two credit hours Credit Hours in the subjects enumerated in R4-11-1204(4) and
   e. At least three credit hours Credit Hours in the subjects enumerated in R4-11-1204(5).

R4-11-1208. Retired Licensees or Retired Certificate Holders Denturists

A retired Retired licensee Licensee or certificate holder Retired denturist shall:

1. Except for the number of credit hours Credit Hours required, comply with the requirements in R4-11-1202; and
2. When applying for renewal under A.R.S. § 32-1236 for a dentist, A.R.S. § 32-1276.02 for a dental therapist, A.R.S. § 32-1287 for a dental hygienist, and A.R.S. § 32-1297.06 for a denturist, provide information to the Board that the retired licensee or certificate holder has completed the following credit hours of recognized continuing dental education per renewal period:

   a. Dentist - 2724 credit hours of which no less than three credit hours shall be for CPR—cardiopulmonary resuscitation healthcare provider level;
   b. Dental therapist – 21 Credit Hours of which no less than three Credit Hours shall be for cardiopulmonary resuscitation healthcare provider level;
   c. Dental hygienist - 21 Credit Hours of which no less than three Credit Hours shall be for CPR—cardiopulmonary resuscitation healthcare provider level; and
   e-d. Denturist – 9 Credit Hours of which no less than three Credit Hours shall be for CPR—cardiopulmonary resuscitation healthcare provider level.

R4-11-1209. Types of Courses

A. A licensee or certificate holder shall obtain recognized continuing dental education from one or more of the following activities:

   1. Seminars, symposiums, lectures, or programs designed to provide an understanding of current developments, skills, procedures, or treatment related to the practice of dentistry;
2. Seminars, symposiums, lectures, or programs designed to provide an understanding of current developments, skills, procedures, or treatment related to the practice of dentistry by means of audio-video technology in which the licensee is provided all seminar, symposium, lecture or program materials and the technology permits attendees to fully participate; or

3. Curricula designed to prepare for specialty board certification as a specialist or recertification examinations or advanced training at an accredited institution as defined in A.R.S. Title 32, Chapter 11; and

4. Subject to the limitations in subsection (B), any of the following activities that provide an understanding of current developments, skills, procedures, or treatment related to the practice of dentistry:
   a. A correspondence course, video, internet or similar self-study course, if the course includes an examination and the licensee or certificate holder passes the examination;
   b. Participation on the Board, in Board complaint investigations including clinical evaluations or anesthesia and sedation permit evaluations;
   c. Participation in peer review of a national or state dental, dental therapy, dental hygiene, or denturist association or participation in quality of care or utilization review in a hospital, institution, or governmental agency;
   d. Providing dental-related instruction to dental, dental therapy, dental hygiene, or denturist students, or allied health professionals in a recognized dental school, recognized dental therapy school, recognized dental hygiene school, or recognized
denturist school or providing dental-related instruction sponsored by a national, state, or local dental, dental therapy, dental hygiene, or denturist association;

e. Publication or presentation of a dental paper, report, or book authored by the licensee or certificate holder: 
   that provides information on current developments, skills, procedures, or treatment related to the practice of dentistry. A licensee or certificate holder may claim credit hours:
   i. Only once for materials presented;
   ii. Only if the date of publication or original presentation was during the applicable renewal period; and
   iii. One credit hour for each hour of preparation, writing, and presentation; or

f. Providing dental, dental therapy, dental hygiene, or denturist services in a Board-recognized charitable dental clinical or organization.

B. The following limitations apply to the total number of credit hours earned per renewal period in any combination of the activities listed in subsection (A)(4):

1. Dentists and Dental Hygienists, no more than 2421 hours;
2. Dental therapists, no more than 18 hours;
3. Dental hygienists, no more than 15 hours;
4. Denturists, no more than 12 hours;
3.5. Retired or Restricted Permit Holder Dentists, dental therapists, or Dental Hygienists, no more than 92 hours; and
4.6. Retired Denturists, no more than 3 hours.
1. Identification of the rulemaking:

The Board needs to amend its rules related to continuing education ("CE") requirements.

   a. The conduct and its frequency of occurrence that the rule is designed to change:

   Licensees are required to renew their licenses every three years on or before their birthdays. Along with completing a renewal application, licensees are required to report completed hours of CE per renewal cycle.

   b. The harm resulting from the conduct the rule is designed to change and the likelihood it will continue to occur if the rule is not changed:

   There is no harm if the rule is not changed. However, the Arizona CE requirements for dentists rank as the 5th highest state behind only Arkansas, California, Delaware and Kansas. The Arizona CE requirements for hygienists rank as the 2nd highest state behind only Arkansas and in a tie with California.

   c. The estimated change in frequency of the targeted conduct expected from the rule change:

   There will be no change in the frequency of reporting CE.

2. A brief summary of the information included in the economic, small business, and consumer impact statement:

Having gone through a previous 5YRR, the Board recognized that Arizona has one of the highest CE requirements for dental professionals in the country. The Board also

---

1 If adequate data are not reasonably available, the agency shall explain the limitations of the data, the methods used in an attempt to obtain the data, and characterize the probable impacts in qualitative terms. (A.R.S. § 41-1055(C)).
understood that they are not in a “race to the bottom”. Meaning the Board is not competing to see which state would be first to require no CE reporting for dental professionals, but rather to require CE that is more acceptable throughout the United States. The amendment lowers the CE requirements for all dental professionals by 9 credits per renewal cycle.

3. The person to contact to submit or request additional data on the information included in the economic, small business, and consumer impact statement:

Name: Ryan Edmonson, Executive Director
Address: Arizona State Board of Dental Examiners
1740 W. Adams St., Ste. 2470
Phoenix, AZ 85007
Telephone: (602) 542-4493
E-Mail: ryan.edmonson@dentalboard.az.gov

4. Persons who will be directly affected by, bear the costs of, or directly benefit from the rulemaking:

The costs for CE are the Board’s licensees’ responsibilities. However, dental professionals can complete numerous CE courses that are free and many dental professionals work for employers who pay all, or a portion, the CE taken to meet the Board’s renewal requirements.

5. Cost-benefit analysis:

a. Costs and benefits to state agencies directly affected by the rulemaking including the number of new full-time employees at the implementing agency required to implement and enforce the proposed rule:
The Arizona State Board of Dental Examiners is the only state agency affected by the rulemaking amendment and there will not be any costs, including the hiring of more personnel to manage the effects of the
amendment. The benefits, as stated above, lowers the amount of CE for dental professionals when submitting their triennial renewals.

b. **Costs and benefits to political subdivisions directly affected by the rulemaking:**
   N/A

c. **Costs and benefits to businesses directly affected by the rulemaking:**
   No new costs will be incurred to businesses; they are relatively the same whether the licensees complete CE at higher or lower levels.

6. **Impact on private and public employment:**
   N/A

7. **Impact on small businesses**
   a. **Identification of the small business subject to the rulemaking:**
      The Arizona State Board of Dental Examiners’ licensees, but this is no different than currently. There is no financial impact to small businesses other than dental businesses, but there are *no* new costs.

   b. **Administrative and other costs required for compliance with the rulemaking:**
      Negligible

   c. **Description of methods that may be used to reduce the impact on small businesses:**
      Minimal, if any, and only based on the cost to employers who pay for CE course fees for its hired dental professionals.

---

2 Small business has the meaning specified in A.R.S. § 41-1001(20).
8. **Cost and benefit to private persons and consumers who are directly affected by the rulemaking:**

   No new costs will be incurred to individuals. In fact, the dental licensees will benefit from a lower CE requirement to renew their respective license.

9. **Probable effects on state revenues:**

   No new revenues or expenses will be incurred.

10. **Less intrusive or less costly alternative methods considered:**

    The Arizona State Board of Dental Examiners believes that by amending its rules to lower the CE requirements for dental professionals is the less intrusive and less costly alternative.
February 8, 2022

Ryan Edmonson, Executive Director
Arizona State Board of Dental Examiners
Ryan.edmonson@azdentalboard.az.gov

Dear Mr. Edmonson,

The Arizona Oral Health Coalition and other oral health stakeholders and community members are
grateful for the opportunity to submit public comment on NPR [R21-255] concerning articles R4-11-1202
through R4-11-1209: continuing dental education and renewal requirements.

As stakeholders and community members concerned with fair access to oral health for all Arizonans, we
ask that you consider adding language specifically including Cultural Competence and Health Disparities
courses as acceptable for CE credit for the licensing of oral health providers by specifically inserting the
words cultural competence, health disparities, after “skills” and before “and methods” in each applicable
section within R4-11-1203, R4-11-1204, and R4-11-1205.

CE courses that address Cultural Competency and Health Disparities improve outcomes for not just
vulnerable Arizonans but all Arizonans. These courses highlight:

- The importance of preventive oral health care and the positive impact on Arizonans.
- How they improve overall health outcomes for all Arizonans.
- The need to understand how homelessness, history or job loss, loss of portions of one’s income,
  loss of a spouse or wage earner, lack of childcare causing the inability to work, no insurance, can
  lead to failure to access oral healthcare, later to dental cavities, dental infections, and eventual
  pain and suffering, loss of wages and hours from work and in rare cases, death.
- The rate of morbidity and mortality associated with maternal and infant health care and why,
  and the need to provide care and ensure good oral health before pregnancy occurs.
- The overwhelming cost to our economy to address health disparities and how a little more
  knowledge in cultural competency and health disparities could provide the savings that can be
  employed to address other issues that affect Arizonans.

See examples of some of the courses available.

COVID 19 has demonstrated how everyday working Arizonans can be thrust into varying levels of family
economic challenges and, for some, severe poverty. Understanding the challenges that others face by
having some meaningful level of knowledge around cultural competency and health disparities can
prepare our healthcare providers for the next pandemic or new and existing challenges that impact
health outcomes in our communities.

Thank you for your time and consideration.

3030 N 3rd St. #760
Phoenix, AZ 85012
azohc.org
azohcoalition@gmail.com
Sincerely,

Arizona Oral Health Coalition
Arizona Advisory Council on Indian Health Care
Asian Pacific Community in Action
AT Still University/Arizona School of Dentistry & Oral Health
Children's Action Alliance
Dental Care for Arizona
Jennifer Dangremond; individual
NAPAWF - Arizona Chapter
Pew Charitable Trusts
Pima Community College
SandRose, LLC
Scott Howell; individual
STCHealth
Jackie Sutter, individual
Tara Walstad; individual
February 14, 2022
Ryan Edmonson, Executive Director
Arizona State Board of Dental Examiners
Ryan.edmonson@azdentalboard.az.gov

Dear Mr. Edmonson,

A. T. Still University (ATSU) appreciates the opportunity to submit public comments on NPR [R21-255] concerning articles R4-11-1202 through R4-11-1209: continuing dental education and renewal requirements.

As stakeholders concerned with equitable access to oral health, we ask that you consider including Cultural Competence education (e.g., cultural proficiency, cultural humility, or cultural responsiveness), and Health Disparities courses for CE credit for the licensure of oral health providers in each applicable section within R4-11-1203, R4-11-1204, and R4-11-1205.

Cultural proficiency is a way of being that allows one to respond appropriately in different cultural settings. It isn’t enough for dentists to know cultural differences exist; they should also learn about the differences these differences make. By understanding the potential for misinterpretation and their own biases, dentists will mitigate these differences more effectively. Improving patient confidence and adherence to treatment plans results in culturally proficient behavior. Cultural proficiency is inherent in every ATSU graduate. ATSU-MOSDOH (Missouri School of Dentistry & Oral Health) and ATSU-ASDOH (Arizona School of Dentistry & Oral Health) have core courses required of every student. Elements of cultural proficiency are spread throughout the curricula more explicitly embedded in the Professionalism, Ethical Practice, and Behavioral Science curriculum for ATSU-MOSDOH. ATSU-ASDOH also has course elements strewn throughout its curricula. However, it has a 5300 Practice Management & Professional Development curriculum that includes a course for cultural proficiency (attached).

Cultural proficiency education improves health outcomes for those who do not have a dental benefit for preventative dental services. These courses highlight:

- How culturally proficient behavior improves overall health outcomes.
- The rate of morbidity and mortality associated with maternal and infant health care and why, and the need to provide care and ensure good oral health before pregnancy occurs.
- The overwhelming costs addressing health disparities and how culturally proficient behavior improves efficiencies for a better ROI.
- Improving multi-generational communication.

Culturally proficient education will better prepare healthcare providers for external threats like COVID-19 and reimbursements. CE courses that refresh or improve one’s ability to mitigate conflict in interpersonal, intrapersonal, and group dynamics, impact the bottom line by increasing patient compliance while promoting healthy lifestyles.

Sincerely,

Clinton J. Normore, Vice President
Diversity & Inclusion


ARTICLE 1. DEFINITIONS

The following definitions, and definitions in A.R.S. § 32-1201, apply to this Chapter:

“Analgesia” means a state of decreased sensibility to pain produced by using nitrous oxide (N2O) and oxygen (O2) with or without local anesthesia.

“Application” means, for purposes of Article 3 only, forms designated as applications and all documents and additional information the Board requires to be submitted with an application.

“Business Entity” means a business organization that offers to the public professional services regulated by the Board and is established under the laws of any state or foreign country, including a sole practitioner, partnership, limited liability partnership, corporation, and limited liability company, unless specifically exempted by A.R.S. § 32-1213(J).

“Calculus” means a hard mineralized deposit attached to the teeth.

“Certificate holder” means a denturist who practices denture technology under A.R.S. Title 32, Chapter 11, Article 5.

“Charitable Dental Clinic or Organization” means a non-profit organization meeting the requirements of 26 U.S.C. 501(c)(3) and providing dental or dental hygiene services.

“Clinical evaluation” means a dental examination of a patient named in a complaint regarding the patient's dental condition as it exists at the time the examination is performed.

“Closed subgingival curettage” means the removal of the inner surface of the soft tissue wall of a periodontal pocket in a situation where a flap of tissue has not been intentionally or surgically opened.

“Controlled substance” has the meaning prescribed in A.R.S. § 36-2501(A)(3).

“Credit hour” means one clock hour of participation in a recognized continuing dental education program.

“Deep sedation” is a drug-induced depression of consciousness during which a patient cannot be easily aroused but responds purposefully following repeated or painful stimulation. The ability to independently maintain ventilatory function may be impaired. The patient may require assistance in maintaining a patent airway, and spontaneous ventilation may be inadequate. Cardiovascular function is maintained.

“Dental laboratory technician” or “dental technician” has the meaning prescribed in A.R.S. § 32-1201(7).

“Dentist of record” means a dentist who examines, diagnoses, and formulates treatment plans for a patient and may provide treatment to the patient.

“Designee” means a person to whom the Board delegates authority to act on the Board’s behalf regarding a particular task specified by this Chapter.

“Direct supervision” means, for purposes of Article 7 only, that a licensed dentist is present in the office and available to provide immediate treatment or care to a patient and observe a dental assistant’s work.

“Disabled” means a dentist, dental hygienist, or denturist has totally withdrawn from the active practice of dentistry, dental hygiene, or denturism due to a permanent medical disability and based on a physician’s order.

“Dispense for profit” means selling a drug or device for any amount above the administrative overhead costs to inventory.

“Documentation of attendance” means documents that contain the following information:

  Name of sponsoring entity;
  Course title;
  Number of credit hours;
  Name of speaker; and
Date, time, and location of the course.

“Drug” means:
Articles recognized, or for which standards or specifications are prescribed, in the official compendium;
Articles intended for use in the diagnosis, cure, mitigation, treatment, or prevention of disease in the human body;
Articles other than food intended to affect the structure of any function of the human body; or
Articles intended for use as a component of any articles specified in this definition but does not include devices or components, parts, or accessories of devices.

“Emerging scientific technology” means any technology used in the treatment of oral disease that is not currently generally accepted or taught in a recognized dental or dental hygiene school and use of the technology poses material risks.

“Epithelial attachment” means the layer of cells that extends apically from the depth of the gingival (gum) sulcus (crevice) along the tooth, forming an organic attachment.

“Ex-parte communication” means a written or oral communication between a decision maker, fact finder, or Board member and one party to the proceeding, in the absence of other parties.

“General anesthesia” is a drug-induced loss of consciousness during which the patient is not arousable, even by painful stimulation. The ability to independently maintain ventilatory function is often impaired. The patient often requires assistance in maintaining a patent airway, and positive-pressure ventilation may be required because of depressed spontaneous ventilation or drug-induced depression of neuromuscular function. Cardiovascular function may be impaired.

“General supervision” means, for purposes of Article 7 only, a licensed dentist is available for consultation, whether or not the dentist is in the office, regarding procedures or treatment that the dentist authorizes and for which the dentist remains responsible.

“Homebound patient” means a person who is unable to receive dental care in a dental office as a result of a medically diagnosed disabling physical or mental condition.

“Irreversible procedure” means a single treatment, or a step in a series of treatments, that causes change in the affected hard or soft tissues and is permanent or may require reconstructive or corrective procedures to correct the changes.

“Jurisdiction” means the Board’s power to investigate and rule on complaints that allege grounds for disciplinary action under A.R.S. Title 32, Chapter 11 or this Chapter.

“Licensee” means a dentist, dental hygienist, dental consultant, retired licensee, or person who holds a restricted permit under A.R.S. §§ 32-1237 or 32-1292.

“Local anesthesia” is the elimination of sensations, such as pain, in one part of the body by the injection of an anesthetic drug.

“Minimal sedation” is a minimally depressed level of consciousness that retains a patient’s ability to independently and continuously maintain an airway and respond appropriately to light tactile stimulation, not limited to reflex withdrawal from a painful stimulus, or verbal command and that is produced by a pharmacological or non-pharmacological method or a combination thereof. Although cognitive function and coordination may be modestly impaired, ventilatory and cardiovascular functions are unaffected. In accord with this particular definition, the drugs or techniques used should carry a margin of safety wide enough to render unintended loss of consciousness unlikely.

“Moderate sedation” is a drug-induced depression of consciousness during which a patient responds purposefully to verbal commands either alone or accompanied by light tactile stimulation, not limited to reflex withdrawal from a painful stimulus. No interventions are required to maintain a patent airway, and spontaneous ventilation is adequate. Cardiovascular function is maintained. The drugs or techniques used should carry a margin of safety wide enough to render unintended loss of consciousness unlikely. Repeated dosing of a drug before the effects of previous dosing can be fully recognized may result in a greater alteration of the state of consciousness than intended by the permit holder.

“Nitrous oxide analgesia” means nitrous oxide (N2O/O2) used as an inhalation analgesic.
“Nonsurgical periodontal treatment” means plaque removal, plaque control, supragingival and subgingival scaling, root planing, and the adjunctive use of chemical agents.

“Official compendium” means the latest revision of the United States Pharmacopeia and the National Formulary and any current supplement.

“Oral sedation” is the enteral administration of a drug or nondrug substance or combination inhalation and enterally administered drug or non-drug substance in a dental office or dental clinic to achieve minimal or moderate sedation.

“Parenteral sedation” is a minimally depressed level of consciousness that allows the patient to retain the ability to independently and continuously maintain an airway and respond appropriately to physical stimulation or verbal command and is induced by a pharmacological or non-pharmacological method or a combination of both methods of administration in which the drug bypasses the gastrointestinal tract.

“Patient of record” means a patient who has undergone a complete dental evaluation performed by a licensed dentist.

“Periodontal examination and assessment” means to collect and correlate clinical signs and patient symptoms that point to either the presence of or the potential for periodontal disease.

“Periodontal pocket” means a pathologic fissure bordered on one side by the tooth and on the opposite side by crevicular epithelium and limited in its depth by the epithelial attachment.

“Plaque” means a film-like sticky substance composed of mucoidal secretions containing bacteria and toxic products, dead tissue cells, and debris.

“Polish” means, for the purposes of A.R.S. § 32-1291(B) only, a procedure limited to the removal of plaque and extrinsic stain from exposed natural and restored tooth surfaces that utilizes an appropriate rotary instrument with rubber cup or brush and polishing agent. A licensee or dental assistant shall not represent that this procedure alone constitutes an oral prophylaxis.

“Prescription-only device” means:
Any device that is restricted by the federal act, as defined in A.R.S. § 32-1901, to use only under the supervision of a medical practitioner; or
Any device required by the federal act, as defined in A.R.S. § 32-1901, to bear on its label the legend “Rx Only.”

“Prescription-only drug” does not include a controlled substance but does include:
Any drug that, because of its toxicity or other potentiality for harmful effect, the method of its use, or the collateral measures necessary to its use, is not generally recognized among experts, qualified by scientific training and experience to evaluate its safety and efficacy, as safe for use except by or under the supervision of a medical practitioner;
Any drug that is limited by an approved new drug application under the federal act or A.R.S. § 32-1962 to use under the supervision of a medical practitioner; Every potentially harmful drug, the labeling of which does not bear or contain full and adequate directions for use by the consumer; or
Any drug required by the federal act to bear on its label the legend “RX Only.”

“President’s designee” means the Board’s executive director, an investigator, or a Board member acting on behalf of the Board president.

“Preventative and therapeutic agents” means substances used in relation to dental hygiene procedures that affect the hard or soft oral tissues to aid in preventing or treating oral disease.

“Prophylaxis” means a scaling and polishing procedure performed on patients with healthy tissues to remove coronal plaque, calculus, and stains.

“Public member” means a person who is not a dentist, dental hygienist, dental assistant, denturist, or dental technician.

“Recognized continuing dental education” means a program whose content directly relates to the art and science of oral health and treatment, provided by a recognized dental school as defined in A.R.S. § 32-1201(18), recognized dental hygiene school as defined in A.R.S. § 32-1201(17), or recognized denturist school as defined in A.R.S. § 32-1201(19), or sponsored by a national or state dental, dental hygiene, or denturist association, American Dental Association, Continuing Education Recognition Program (ADA CERP) or Academy of General Dentistry, Program
Approval for Continuing Education (AGD PACE) approved provider, dental, dental hygiene, or denturist study club, governmental agency, commercial dental supplier, non-profit organization, accredited hospital, or programs or courses approved by other state, district, or territorial dental licensing boards.

“Restricted permit holder” means a dentist who meets the requirements of A.R.S. § 32-1237 or a dental hygienist who meets the requirements of A.R.S. § 32-1292 and is issued a restricted permit by the Board.

“Retired” means a dentist, dental hygienist, or denturist is at least 65 years old and has totally withdrawn from the active practice of dentistry, dental hygiene, or denturism.

“Root planing” means a definitive treatment procedure designed to remove cementum or surface dentin that is rough, impregnated with calculus, or contaminated with toxins or microorganisms.

“Scaling” means use of instruments on the crown and root surfaces of the teeth to remove plaque, calculus, and stains from these surfaces.

“Section 1301 permit” means a permit to administer general anesthesia and deep sedation, employ or work with a physician anesthesiologist, or employ or work with a Certified Registered Nurse Anesthetist (CRNA) under Article 13.

“Section 1302 permit” means a permit to administer parenteral sedation, employ or work with a physician anesthesiologist, or employ or work with a Certified Registered Nurse Anesthetist (CRNA) under Article 13.

“Section 1303 permit” means a permit to administer oral sedation, employ or work with a physician anesthesiologist, or employ or work with a Certified Registered Nurse Anesthetist (CRNA) under Article 13.

“Section 1304 permit” means a permit to employ or work with a physician anesthesiologist, or employ or work with a Certified Registered Nurse Anesthetist (CRNA) under Article 13.

“Study club” means a group of at least five Arizona licensed dentists, dental hygienists, or denturists who provide written course materials or a written outline for a continuing education presentation that meets the requirements of Article 12.

“Treatment records” means all documentation related directly or indirectly to the dental treatment of a patient.

Historical Note


R4-11-102. Renumbered

Historical Note

Adopted effective May 12, 1977 (Supp. 77-3). Former Section R4-11-02 renumbered as Section R4-11-102 without change effective July 29, 1981 (Supp. 81-4). Former Section R4-11-101 renumbered to R4-11-201, new Section R4-11-101 adopted by final rulemaking at 5 A.A.R. 580, effective February 4, 1999 (Supp. 99-1).

R4-11-103. Renumbered

Historical Note
Adopted effective May 12, 1977 (Supp. 77-3). Former Section R4-11-03 renumbered as Section R4-11-103 without change effective July 29, 1981 (Supp. 81-4). Former Section R4-11-103 renumbered to R4-11-203 by final rulemaking at 5 A.A.R. 580, effective February 4, 1999 (Supp. 99-1).

R4-11-104. Repealed

Historical Note
Adopted effective May 12, 1977 (Supp. 77-3). Former Section R4-11-04 renumbered as Section R4-11-104 without change effective July 29, 1981 (Supp. 81-4). Former Section R4-11-104 repealed by final rulemaking at 5 A.A.R. 580, effective February 4, 1999 (Supp. 99-1).

R4-11-105. Repealed

Historical Note
Adopted effective May 12, 1977 (Supp. 77-3). Former Section R4-11-05 renumbered as Section R4-11-105 without change effective July 29, 1981 (Supp. 81-4). Former Section R4-11-105 repealed by final rulemaking at 5 A.A.R. 580, effective February 4, 1999 (Supp. 99-1).

ARTICLE 2. LICENSURE BY CREDENTIAL

R4-11-201. Clinical Examination; Requirements
A. If an applicant is applying under A.R.S. §§ 32-1240(A) or 32-1292.01(A), the Board shall ensure that the applicant has passed the clinical examination of another state, United States territory, District of Columbia or a regional testing agency. Satisfactory completion of the clinical examination may be demonstrated by one of the following:
   1. Certified documentation, sent directly from another state, United States territory, District of Columbia or a regional testing agency, that confirms successful completion of the clinical examination or multiple examinations administered by the state, United States territory, District of Columbia or regional testing agency. The certified documentation shall contain the name of the applicant, date of examination or examinations and proof of a passing score; or
   2. Certified documentation sent directly from another state, United States territory or District of Columbia dental board that shows the applicant passed that state's, United States territory's or District of Columbia's clinical examination before that state's, United States territory's or District of Columbia's participation in a regional examination. The certified documentation shall contain the name of applicant, date of examination or examinations and proof of a passing score.
B. An applicant shall meet the licensure requirements in R4-11-301 and R4-11-303.

Historical Note

R4-11-202. Dental Licensure by Credential; Application
A. A dentist applying under A.R.S. § 32-1240(A) shall comply with all other applicable requirements in A.R.S. Title 32, Chapter 11 and this Article.
B. A dentist applying under A.R.S. § 32-1240(A)(1) shall:
1. Have a current dental license in another state, territory or district of the United States; 2. Submit a written affidavit affirming that the dentist has practiced dentistry for a minimum of 5000 hours during the five years immediately before applying for licensure by credential. For purposes of this subsection, dental practice includes experience as a dental educator at a dental program accredited by the American Dental Association Commission on Dental Accreditation or employment as a dentist in a public health setting; 3. Submit a written affidavit affirming that the applicant has complied with the continuing dental education requirement of the state in which the applicant is currently licensed; and 4. Provide evidence regarding the clinical examination by complying with one of the subsections in R4-11-201(A)(1).

C. A dentist applying under A.R.S. § 32-1240(A)(2) shall submit certified documentation sent directly from the applicable state, United States territory, District of Columbia or regional testing agency to the Board that contains the name of applicant, date of examination or examinations and proof of a passing score.

D. For any application submitted under A.R.S. § 32-1240(A), the Board may request additional clarifying evidence required under the applicable subsection in R4-11-201(A)(1).

E. An applicant for dental licensure by credential shall pay the fee prescribed in A.R.S. § 32-1240, except the fee is reduced by 50% for applicants who will be employed or working under contract in:
   1. Underserved areas, such as declared or eligible Health Professional Shortage Areas (HPSAs); or
   2. Other facilities caring for underserved populations as recognized by the Arizona Department of Health Services and approved by the Board.

F. An applicant for dental licensure by credential who works in areas or facilities described in subsection (E) shall:
   1. Commit to a three-year, exclusive service period,
   2. File a copy of a contract or employment verification statement with the Board, and
   3. As a licensee, submit an annual contract or employment verification statement to the Board by December 31 of each year.

G. A licensee’s failure to comply with the requirements in subsection (F) is considered unprofessional conduct and may result in disciplinary action based on the circumstances of the case.

Historical Note
Former Rule 2b; Former Section R4-11-12 renumbered as Section R4-11-202 and amended effective July 29, 1981 (Supp. 81-4). Former Section R4-11-202 repealed, new Section R4-11-202 renumbered from R4-11-102 and the heading amended by final rulemaking at 5 A.A.R. 580, effective February 4, 1999 (Supp. 99-1). Labeling changes made to reflect current style requirements (Supp. 99-1). Section expired under A.R.S. § 41-1056(E), effective April 30, 2001 (Supp. 01-2). New Section made by final rulemaking at 9 A.A.R. 4126, effective November 8, 2003 (Supp. 03-3). Amended by final rulemaking at 22 A.A.R. 371, effective April 3, 2016 (Supp. 16-1).

R4-11-203. Dental Hygienist Licensure by Credential; Application
A. A dental hygienist applying under A.R.S. § 32-1292.01(A) shall comply with all other applicable requirements in A.R.S. Title 32, Chapter 11 and this Article.
B. A dental hygienist applying under A.R.S. § 32-1292.01(A)(1) shall:
   1. Have a current dental hygienist license in another state, territory, or district of the United States;
   2. Submit a written affidavit affirming that the applicant has practiced as a dental hygienist for a minimum of 1000 hours during the two years immediately before applying for licensure by credential. For purposes of this subsection, dental hygienist practice includes experience as a dental hygienist educator at a dental program accredited by the American Dental Association Commission on Dental Accreditation or employment as a dental hygienist in a public health setting;
3. Submit a written affidavit affirming that the applicant has complied with the continuing dental hygienist education requirement of the state in which the applicant is currently licensed; and
4. Provide evidence regarding the clinical examination by complying with one of the subsections in R4-11-201(A)(1).

C. A dental hygienist applying under A.R.S. § 32-1292.01(A)(2) shall submit certified documentation sent directly from the applicable state, United States territory, District of Columbia or regional testing agency to the Board that contains the name of applicant, date of examination or examinations and proof of a passing score.

D. For any application submitted under A.R.S. § 32-1292.01(A), the Board may request additional clarifying evidence as required under the applicable subsection in R4-11-201(A).

E. An applicant for dental hygienist licensure by credential shall pay the fee prescribed in A.R.S. § 32-1292.01, except the fee is reduced by 50% for applicants who will be employed or working under contract in:
   1. Underserved areas such as declared or eligible Health Professional Shortage Areas (HPSAs); or
   2. Other facilities caring for underserved populations, as recognized by the Arizona Department of Health Services and approved by the Board.

F. An applicant for dental hygienist licensure by credential who works in areas or facilities described in subsection (E) shall:
   1. Commit to a three-year exclusive service period,
   2. File a copy of a contract or employment verification statement with the Board, and
   3. As a licensee, submit an annual contract or employment verification statement to the Board by December 31 of each year.

G. A licensee’s failure to comply with the requirements in R4-11-203(F) is considered unprofessional conduct and may result in disciplinary action based on the circumstances of the case.

Historical Note
Former Rule 2c; Former Section R4-11-13 repealed, new Section R4-11-13 adopted effective November 20, 1979 (Supp. 79-6). Amended effective October 30, 1980 (Supp. 80-5). Former Section R4-11-13 renumbered as Section R4-11-203 without change effective July 29, 1981 (Supp. 81-4). Former Section R4-11-203 renumbered to R4-11-302, new Section R4-11-203 renumbered from R4-11-103 and amended by final rulemaking at 5 A.A.R. 580, effective February 4, 1999 (Supp. 99-1). Section expired under A.R.S. § 41-1056(E), effective April 30, 2001 (Supp. 01-2). New Section made by final rulemaking at 9 A.A.R. 4126, effective November 8, 2003 (Supp. 03-3). Amended by final rulemaking at 22 A.A.R. 371, effective April 3, 2016 (Supp. 16-1).

R4-11-204. Dental Assistant Radiography Certification by Credential
Eligibility. To be eligible for dental assistant radiography certification by credential, an applicant shall have a current certificate or other form of approval for taking dental radiographs, issued by a professional licensing agency in another state, United States territory or the District of Columbia that required successful completion of a written dental radiography examination.

Historical Note
Former Rule 2d; Former Section R4-11-14 repealed, new Section R4-11-14 adopted effective April 27, 1977 (Supp. 77-2). Former Section R4-11-14 renumbered as Section R4-11-204, repealed, and new Section R4-11-204 adopted effective July 29, 1981 (Supp. 81-4). Former Section R4-11-204 repealed by final rulemaking at 5 A.A.R. 580, effective February 4, 1999 (Supp. 99-1). New Section made by final rulemaking at 9 A.A.R. 4126, effective November 8, 2003 (Supp. 03-3). Amended by final rulemaking at 22 A.A.R. 371, effective April 3, 2016 (Supp. 16-1).
R4-11-205. Application for Dental Assistant Radiography Certification by Credential
A. An applicant for dental assistant radiography certification by credential shall provide to the Board a completed application, on a form furnished by the Board that contains the following information:
   1. A sworn statement of the applicant’s eligibility, and
   2. A letter of endorsement that verifies compliance with R4-11-204.
B. Based upon review of information provided under subsection (A), the Board or its designee shall request that an applicant for dental assistant radiography certification by credential provide a copy of a certified document that indicates the reason for a name change if the applicant’s documentation contains different names.

Historical Note
Former Rule 2e; Former Section R4-11-15 renumbered as Section R4-11-205 without change effective July 29, 1981 (Supp. 81-4). Former Section R4-11-205 repealed by final rulemaking at 5 A.A.R. 580, effective February 4, 1999 (Supp. 99-1). New Section made by final rulemaking at 9 A.A.R. 4126, effective November 8, 2003 (Supp. 03-3).

R4-11-206. Repealed

Historical Note
Former Rule 2f; Amended as an emergency effective July 7, 1978, pursuant to A.R.S. § 41-1003, valid for only 90 days (Supp. 78-4). Former emergency adoption now adopted and amended effective September 7, 1979 (Supp. 79-5). Former Section R4-11-16 renumbered as Section R4-11-206 and amended effective July 29, 1981 (Supp. 81-4). Former Section R4-11-206 repealed by final rulemaking at 5 A.A.R. 580, effective February 4, 1999 (Supp. 99-1).

R4-11-207. Repealed

Historical Note
Former Rule 2g; Former Section R4-11-17 renumbered as Section R4-11-207, repealed, and new Section R4-11-207 adopted effective July 29, 1981 (Supp. 81-4). Former Section R4-11-207 repealed by final rulemaking at 5 A.A.R. 580, effective February 4, 1999 (Supp. 99-1).

R4-11-208. Repealed

Historical Note
Former Section R4-11-20 repealed, new Section R4-11-20 adopted effective May 12, 1977 (Supp. 77-3). Amended effective October 30, 1980 (Supp. 80-5). Former Section R4-11-20 renumbered as Section R4-11-208 without change effective July 29, 1981 (Supp. 81-4). Former Section R4-11-208 repealed by final rulemaking at 5 A.A.R. 580, effective February 4, 1999 (Supp. 99-1).

R4-11-209. Repealed

Historical Note
Adopted effective March 23, 1976 (Supp. 76-2). Former Section R4-11-19 renumbered as R4-11-209 and repealed. Former Section R4-11-21 renumbered as Section R4-11-209 and amended effective July 29, 1981 (Supp. 81-4). Former Section R4-11-209 repealed by final rulemaking at 5 A.A.R. 580, effective February 4, 1999 (Supp. 99-1).

R4-11-210. Repealed

Historical Note
Adopted effective March 23, 1976 (Supp. 76-2). Amended effective June 7, 1978 (Supp. 78-3). Former Section R4-11-22 renumbered as Section R4-11-210 and amended effective July
R4-11-211. Repealed

Historical Note
Adopted effective August 26, 1977 (Supp. 77-4). Former Section R4-11-23 renumbered as Section R4-11-211 without change effective July 29, 1981 (Supp. 81-4). Former Section R4-11-211 repealed by final rulemaking at 5 A.A.R. 580, effective February 4, 1999 (Supp. 99-1).

R4-11-212. Repealed

Historical Note

R4-11-213. Repealed

Historical Note
Adopted as an emergency effective July 7, 1978, pursuant to A.R.S. § 41-1003, valid for only 90 days (Supp. 78-4). Former emergency adoption now adopted effective September 7, 1979 (Supp. 79-5). Former Section R4-11-25 renumbered as Section R4-11-213, repealed, and new Section R4-11-213 adopted effective July 29, 1981 (Supp. 81-4). Former Section R4-11-213 repealed by final rulemaking at 5 A.A.R. 580, effective February 4, 1999 (Supp. 99-1).

R4-11-214. Repealed

Historical Note
Former Rule 2h; Amended effective March 23, 1976 (Supp. 76-2). Former Section R4-11-18 renumbered as Section R4-11-214 without change effective July 29, 1981 (Supp. 81-4). Former Section R4-11-214 repealed by final rulemaking at 5 A.A.R. 580, effective February 4, 1999 (Supp. 99-1).

R4-11-215. Repealed

Historical Note
Adopted effective June 16, 1982 (Supp. 82-3). Former Section R4-11-215 repealed by final rulemaking at 5 A.A.R. 580, effective February 4, 1999 (Supp. 99-1).

R4-11-216. Repealed

Historical Note
Adopted effective June 16, 1982 (Supp. 82-3). Former Section R4-11-216 repealed by final rulemaking at 5 A.A.R. 580, effective February 4, 1999 (Supp. 99-1).

ARTICLE 3. EXAMINATION, LICENSING QUALIFICATIONS, APPLICATION AND RENEWAL, TIME-FRAMES

R4-11-301. Application
A. An applicant for licensure or certification shall provide the following information and documentation:
   1. A sworn statement of the applicant’s qualifications for the license or certificate on a form provided by the Board;
   2. A photograph of the applicant that is no more than 6 months old;
3. An official, sealed transcript sent directly to the Board from either:
   a. The applicant's dental, dental hygiene, or denturist school, or
   b. A verified third-party transcript provider.
4. Except for a dental consultant license applicant, dental and dental hygiene license applicants provide proof of successfully completing a clinical examination by submitting:
   a. If applying for dental licensure by examination, a copy of the certificate or score card from the Western Regional Examining Board, indicating that the applicant passed the Western Regional Examining Board examination within the five years immediately before the date the application is filed with the Board;
   b. If applying for dental hygiene licensure by examination, a copy of the certificate or scorecard from the Western Regional Examining Board or an Arizona Board-approved clinical examination administered by a state, United States territory, District of Columbia or regional testing agency. The certificate or scorecard must indicate that the applicant passed the examination within the five years immediately before the date the application is filed with the Board; or
   c. If applying for licensure by credential, certified documentation sent directly from the applicable state, United States territory, District of Columbia or regional testing agency to the Board containing the name of the applicant, date of examination or examinations and proof of a passing score;
5. Except for a dental consultant license applicant as provided in A.R.S. § 32-1234(A)(7), dental and dental hygiene license applicants must have an official score card sent directly from the National Board examination to the Board;
6. A copy showing the expiration date of the applicant's current cardiopulmonary resuscitation healthcare provider level certificate from the American Red Cross, the American Heart Association, or another certifying agency that follows the same procedures, standards, and techniques for CPR training and certification as the American Red Cross or American Heart Association;
7. A license or certification verification from any other jurisdiction in which an applicant is licensed or certified, sent directly from that jurisdiction to the Board. If the license verification cannot be sent directly to the Board from the other jurisdiction, the applicant must submit a written affidavit affirming that the license verification submitted was issued by the other jurisdiction;
8. If a dental or dental hygiene applicant has been licensed in another jurisdiction for more than six months, a copy of the self-inquiry from the National Practitioner Data Bank that is no more than 30 days old;
9. If a denturist applicant has been certified in another jurisdiction for more than six months, a copy of the self-inquiry from the Health Integrity and Protection Data Bank that is no more than 30 days old;
10. If the applicant is in the military or employed by the United States government, a letter of endorsement from the applicant’s commanding officer or supervisor that confirms the applicant's military service or United States government employment record; and
11. The jurisprudence examination fee.
B. The Board may request that an applicant provide:
   1. An official copy of the applicant’s dental, dental hygiene, or denturist school diploma,
   2. A copy of a certified document that indicates the reason for a name change if the applicant’s application contains different names,
   3. Written verification of the applicant’s work history, and
   4. A copy of a high school diploma or equivalent certificate.
C. An applicant shall pass the Arizona jurisprudence examination with a minimum score of 75%.

Historical Note
Former Rule 3A; Former Section R4-11-29 repealed, new Section R4-11-29 adopted effective April 27, 1977 (Supp. 77-2). Former Section R4-11-29 renumbered as Section R4-
R4-11-302. Repealed

Historical Note
Former Rule 3B; Former Section R4-11-30 repealed, new Section R4-11-30 adopted effective April 27, 1977 (Supp. 77-2). Former Section R4-11-30 renumbered as Section R4-11-302 without change effective July 29, 1981 (Supp. 81-4). Former Section R4-11-302 repealed, new Section R4-11-302 renumbered from R4-11-203 and amended by final rulemaking at 5 A.A.R. 580, effective February 4, 1999 (Supp. 99-1). Section repealed by final rulemaking at 22 A.A.R. 371, effective April 3, 2016 (Supp. 16-1).

R4-11-303. Application Processing Procedures: Issuance, Denial, and Renewal of Dental Licenses, Restricted Permits, Dental Hygiene Licenses, Dental Consultant Licenses, Denturist Certificates, Drug or Device Dispensing Registrations, Business Entity Registration and Mobile Dental Facility and Portable Dental Unit Permits
A. The Board office shall complete an administrative completeness review within 24 days of the date of receipt of an application for a license, certificate, permit, or registration.
   1. Within 14 calendar days of receiving an initial or renewal application for a dental license, restricted permit, dental hygiene license, dental consultant license, denturist certificate, drug dispensing registration, business entity registration, mobile dental facility or portable dental unit permit, the Board office shall notify the applicant, in writing, whether the application package is complete or incomplete.
   2. If the application package is incomplete, the Board office shall provide the applicant with a written notice that includes a comprehensive list of the missing information. The 24-day timeframe for the Board office to finish the administrative completeness review is suspended from the date the notice of incompleteness is served until the applicant provides the Board office with all missing information.
   3. If the Board office does not provide the applicant with notice regarding administrative completeness, the application package shall be deemed complete 24 days after receipt by the Board office.
B. An applicant with an incomplete application package shall submit all missing information within 60 calendar days of service of the notice of incompleteness.
C. Upon receipt of all missing information, the Board office shall notify the applicant, in writing, within 10 calendar days, that the application package is complete. If an applicant fails to submit a complete application package within the time allowed in subsection (B), the Board office shall close the applicant's file. An applicant whose file is closed and who later wishes to obtain a license, certificate, permit, or registration shall apply again as required in R4-11-301.
D. The Board shall not approve or deny an application until the applicant has fully complied with the requirements of A.A.C. Title 4, Chapter 11, Article 3.
E. The Board shall complete a substantive review of the applicant's qualifications in no more than 90 calendar days from the date on which the administrative completeness review of an application package is complete.
   1. If the Board finds an applicant to be eligible for a license, certificate, permit, or registration and grants the license, certificate, permit, or registration, the Board office shall notify the applicant in writing.
   2. If the Board finds an applicant to be ineligible for a license, certificate, permit, or registration, the Board office shall issue a written notice of denial to the applicant that includes:
a. Each reason for the denial, with citations to the statutes or rules on which the denial is based;
b. The applicant's right to request a hearing on the denial, including the number of days the applicant has to file the request;
c. The applicant's right to request an informal settlement conference under A.R.S. § 41-1092.06; and
d. The name and telephone number of an agency contact person who can answer questions regarding the application process.

3. If the Board finds deficiencies during the substantive review of an application package, the Board office may issue a comprehensive written request to the applicant for additional documentation. An additional supplemental written request for information may be issued upon mutual agreement between the Board or Board office and the applicant.

4. The 90-day time-frame for a substantive review of an applicant's qualifications is suspended from the date of a written request for additional documentation until the date that all documentation is received. The applicant shall submit the additional documentation before the next regularly scheduled Board meeting.

5. If the applicant and the Board office mutually agree in writing, the 90-day substantive review time-frame may be extended once for no more than 28 days.

F. The following time-frames apply for an initial or renewal application governed by this Section:
   1. Administrative completeness review time-frame: 24 calendar days.
   2. Substantive review time-frame: 90 calendar days.
   3. Overall time-frame: 114 calendar days.

G. An applicant whose license is denied has a right to a hearing, an opportunity for rehearing, and, if the denial is upheld, may seek judicial review pursuant to A.R.S. Title 41, Chapter 6, Article 10, and A.R.S. Title 12, Chapter 7, Article 6.

Historical Note
Former Rule 3C; Former Section R4-11-31 renumbered as Section R4-11-303 without change effective July 29, 1981 (Supp. 81-4). Former Section R4-11-303 repealed, new Section R4-11-303 adopted by final rulemaking at 5 A.A.R. 580, effective February 4, 1999 (Supp. 99-1). Section amended by final rulemaking at 11 A.A.R. 793, effective April 2, 2005 (Supp. 05-1). Amended by final rulemaking at 22 A.A.R. 371, effective April 3, 2016 (Supp. 16-1).

R4-11-304. Application Processing Procedures: Issuance and Denial of Dental Assistant Certificates Radiography Certification by Credential
A. Within 14 calendar days of receiving an application from an applicant for a dental assistant radiography certification by credential, the Board or its designee shall notify the applicant, in writing, that the application package is complete or incomplete. If the package is incomplete, the notice shall specify what information is missing.
B. An applicant with an incomplete application package shall supply the missing information within 60 calendar days from the date of the notice. If the applicant fails to do so, an applicant shall begin the application process anew.
C. Upon receipt of all missing information, within 10 calendar days, the Board or its designee shall notify the applicant, in writing, that the application is complete.
D. The Board or its designee shall not process an application until the applicant has fully complied with the requirements of this Article.
E. The Board or its designee shall notify an applicant, in writing, whether the certificate is granted or denied, no later than 90 calendar days after the date of the notice advising the applicant that the package is complete.
F. The notice of denial shall inform the applicant of the following:
   1. The reason for the denial, with a citation to the statute or rule which requires the applicant to pass the examination;
2. The applicant’s right to request a hearing on the denial, including the number of days the applicant has to file the request;
3. The applicant’s right to request an informal settlement conference under A.R.S. § 41-1092.06; and
4. The name and telephone number of an agency contact person or a designee who can answer questions regarding the application process.

G. The following time-frames apply for certificate applications governed by this Section:
1. Administrative completeness review time-frame: 24 calendar days.
2. Substantive review time-frame: 90 calendar days.
3. Overall time-frame: 114 calendar days.

H. An applicant whose certificate is denied has a right to a hearing, an opportunity for rehearing, and, if the denial is upheld, may seek judicial review pursuant to A.R.S. Title 41, Chapter 6, Article 10, and A.R.S. Title 12, Chapter 7, Article 6.

Historical Note
Former Rule 3D; Former Section R4-11-32 renumbered as Section R4-11-304 without change effective July 29, 1981 (Supp. 81-4). Former Section R4-11-304 repealed, new Section R4-11-304 adopted by final rulemaking at 5 A.A.R. 580, effective February 4, 1999 (Supp. 99-1). Amended by final rulemaking at 22 A.A.R. 371, effective April 3, 2016 (Supp. 16-1).

R4-11-305. Application Processing Procedures: Issuance, Denial, and Renewal of General Anesthesia and Deep Sedation Permits, Parenteral Sedation Permits, Oral Sedation Permits, and Permit to Employ a Physician Anesthesiologist or CRNA

A. The Board office shall complete an administrative completeness review within 24 days from the date of the receipt of an application for a permit.
   1. Within 14 calendar days of receiving an initial or renewal application for a general anesthesia and deep sedation permit, parenteral sedation permit, oral sedation permit or permit to employ a physician anesthesiologist or CRNA the Board office shall notify the applicant, in writing, whether the application package is complete or incomplete.
   2. If the application package is incomplete, the Board office shall provide the applicant with a written notice that includes a comprehensive list of the missing information. The 24-day time-frame for the Board office to finish the administrative completeness review is suspended from the date the notice of incompleteness is served until the applicant provides the Board office with all missing information.
   3. If the Board office does not provide the applicant with notice regarding administrative completeness, the application package shall be deemed complete 24 days after receipt by the Board office.

B. An applicant with an incomplete application package shall submit all missing information within 60 calendar days of service of the notice of incompleteness.

C. Upon receipt of all missing information, the Board office shall notify the applicant, in writing, within 10 calendar days, that the application package is complete. If an applicant fails to submit a complete application package within the time allowed in subsection (B), the Board office shall close the applicant's file. An applicant whose file is closed and who later wishes to obtain a permit shall apply again as required in A.A.C. Title 4, Chapter 11, Article 13.

D. The Board shall not approve or deny an application until the applicant has fully complied with the requirements of this Section and A.A.C. Title 4, Chapter 11, Article 13.

E. The Board shall complete a substantive review of the applicant's qualifications in no more than 120 calendar days from the date on which the administrative completeness review of an application package is complete.
   1. If the Board finds an applicant to be eligible for a permit and grants the permit, the Board office shall notify the applicant in writing.
2. If the Board finds an applicant to be ineligible for a permit, the Board office shall issue a written notice of denial to the applicant that includes:
   a. Each reason for the denial, with citations to the statutes or rules on which the denial is based;
   b. The applicant's right to request a hearing on the denial, including the number of days the applicant has to file the request;
   c. The applicant's right to request an informal settlement conference under A.R.S. § 41-1092.06; and
   d. The name and telephone number of an agency contact person who can answer questions regarding the application process.

3. If the Board finds deficiencies during the substantive review of an application package, the Board office shall issue a comprehensive written request to the applicant for additional documentation.

4. The 120-day time-frame for a substantive review of an applicant's qualifications is suspended from the date of a written request for additional documentation until the date that all documentation is received.

5. If the applicant and the Board office mutually agree in writing, the 120-day substantive review time-frame may be extended once for no more than 36 days.

F. The following time-frames apply for an initial or renewal application governed by this Section:
   1. Administrative completeness review time-frame: 24 calendar days.
   2. Substantive review time-frame: 120 calendar days.
   3. Overall time-frame: 144 calendar days.

**Historical Note**

**ARTICLE 4. FEES**

**R4-11-401. Retired or Disabled Licensure Renewal Fee**
As expressly authorized under A.R.S. § 32-1207(B)(3)(c), the licensure renewal fee for a retired or disabled dentist or dental hygienist is $15.

**Historical Note**
Adopted effective December 6, 1974 (Supp. 75-1). Amended effective March 23, 1976 (Supp. 76-2). Former Section R4-11-42 renumbered as Section R4-11-401 and repealed effective July 29, 1981 (Supp. 81-4). Adopted effective February 16, 1995 (Supp. 95-1). Former Section R4-11-401 repealed, new Section R4-11-401 renumbered from R4-11-901 and amended by final rulemaking at 5 A.A.R. 580, effective February 4, 1999 (Supp. 99-1). Section repealed; new Section adopted by final rulemaking at 6 A.A.R. 748, effective February 2, 2000 (Supp. 00-1). Section amended by final rulemaking at 11 A.A.R. 793, effective April 2, 2005 (Supp. 05-1). Amended by final rulemaking at 22 A.A.R. 3697, effective February 6, 2017 (Supp. 16-4).

**R4-11-402. Business Entity Fees**
As expressly authorized under A.R.S. § 32-1213, the Board establishes and shall collect the following fees from a Business Entity offering dental services:
   1. Initial triennial registration, $300 per location;
   2. Renewal of triennial registration, $300 per location; and
   3. Late triennial registration renewal, $100 per location in addition to the fee under subsection (2).

**Historical Note**
R4-11-403. Licensing Fees

A. As expressly authorized under A.R.S. §§ 32-1236, 32-1287, and 32-1297.06, the Board establishes and shall collect the following licensing fees:

1. Dentist triennial renewal fee: $510;
2. Dentist prorated initial license fee: $110;
3. Dental hygienist triennial renewal fee: $255;
4. Dental hygienist prorated initial license fee: $55;
5. Denturist triennial renewal fee: $233; and
6. Denturist prorated initial license fee: $46.

B. The following license-related fees are established in or expressly authorized by statute. The Board shall collect the fees:

1. Jurisprudence examination fee:
   a. Dentists: $300;
   b. Dental Hygienists: $100; and
   c. Denturists: $250.
2. Licensure by credential fee:
   a. Dentists: $2,000; and
   b. Dental Hygienists: $1,000.
3. Penalty to reinstate an expired license or certificate: $100 for a dentist, dental hygienist, or denturist in addition to renewal fee specified under subsection (A).
4. Penalty for a dentist, dental hygienist, or denturist who fails to notify Board of a change of mailing address:
   a. Failure after 10 days: $50; and
   b. Failure after 30 days: $100.

Historical Note

Adopted effective December 6, 1974 (Supp. 75-1). Former Section R4-11-43 renumbered as Section R4-11-402, repealed, and new Section R4-11-402 adopted effective July 29, 1981 (Supp. 81-4). Amended effective February 16, 1995 (Supp. 95-1). Former Section R4-11-402 renumbered to R4-11-601, new Section R4-11-402 renumbered from R4-11-902 and amended by final rulemaking at 5 A.A.R. 580, effective February 4, 1999 (Supp. 99-1). Section repealed; new Section adopted by final rulemaking at 6 A.A.R. 748, effective February 2, 2000 (Supp. 00-1). Section repealed; new Section made by final rulemaking at 11 A.A.R. 793, effective April 2, 2005 (05-1). Amended by final rulemaking at 22 A.A.R. 3697, effective February 6, 2017 (Supp. 16-4).

R4-11-404. Repealed

Historical Note

Adopted effective December 6, 1974 (Supp. 75-1). Former Section R4-11-45 renumbered as Section R4-11-404 and repealed effective July 29, 1981 (Supp. 81-4). Adopted effective February 16, 1995 (Supp. 95-1). Former Section R4-11-404 renumbered to R4-11-602, new Section R4-11-404 renumbered from R4-11-903 and amended by final rulemaking at 5 A.A.R. 580, effective February 4, 1999 (Supp. 99-1). Section repealed; new Section adopted by final rulemaking at 6 A.A.R. 748, effective February 2, 2000 (Supp. 00-1). Section repealed by final rulemaking at 11 A.A.R. 793, effective April 2, 2005 (05-1).
R4-11-405. Charges for Board Services
The Board shall charge the following for the services provided:

1. Duplicate license: $25;
2. Duplicate certificate: $25;
3. License verification:
   a. For licensee: $25; and
   b. For non-licensee: $5;
4. Copy of audio recording: $10;
5. Photocopies (per page): $.25;
6. Mailing lists:
   a. Dentists:
      i. In-state licensees - paper or labels: $150;
      ii. All licensees - paper or labels: $175; and
      iii. Mailing list in digital format: $100;
   b. Dental hygienists:
      i. In-state licensees - paper or labels: $150;
      ii. All licensees - paper or labels: $175; and
      iii. Mailing list in digital format: $100; and
   c. Denturists: All certificate holders - paper, labels, or digital format: $5; and
7. Board meeting agendas and minutes (mailed directly to consumer):
   a. Agendas and minutes: $75 for 12 months;
   b. Agendas only: $25 for 12 months; and
   c. Minutes only: $50 for 12 months.

Historical Note

R4-11-406. Anesthesia and Sedation Permit Fees
A. As expressly authorized under A.R.S. § 32-1207, the Board establishes and shall collect the following fees:
   1. Section 1301 permit fee: $300 plus $25 for each additional location;
   2. Section 1302 permit fee: $300 plus $25 for each additional location;
   3. Section 1303 permit fee: $300 plus $25 for each additional location; and
   4. Section 1304 permit fee: $300 plus $25 for each additional location.
B. Upon successful completion of an initial onsite evaluation and upon receipt of the required permit fee, the Board shall issue a separate Section 1301, 1302, 1303, or 1304 permit to a dentist for each location requested by the dentist. A permit expires on December 31 of every fifth year.
C. Permit renewal fees:
   1. Section 1301 permit renewal fee: $300 plus $25 for each additional location;
   2. Section 1302 permit renewal fee: $300 plus $25 for each additional location;
   3. Section 1303 permit renewal fee: $300 plus $25 for each additional location; and
   4. Section 1304 permit renewal fee: $300 plus $25 for each additional location.

Historical Note
Adopted effective March 23, 1976 (Supp. 76-2). Former Section R4-11-47 renumbered as Section R4-11-406 without change effective July 29, 1981 (Supp. 81-4). Repealed effective
February 16, 1995 (Supp. 95-1). New Section R4-11-406 renumbered from R4-11-906 and amended by final rulemaking at 5 A.A.R. 580, effective February 4, 1999 (Supp. 99-1). Section repealed; new Section R4-11-406 renumbered from R4-11-407 and amended by final rulemaking at 6 A.A.R. 748, effective February 2, 2000 (Supp. 00-1). Amended by final rulemaking at 9 A.A.R. 4130, effective November 8, 2003 (Supp. 03-3). Amended by final rulemaking at 22 A.A.R. 3697, effective February 6, 2017 (Supp. 16-4).

R4-11-407. Renumbered

Historical Note

R4-11-408. Repealed

Historical Note

R4-11-409. Repealed

Historical Note

ARTICLE 5. DENTISTS

R4-11-501. Dentist of Record
A. A dentist of record shall ensure that each patient record has the treatment records for a patient treated in any dental office, clinic, hospital dental clinic, or charitable organization that offers dental services, and the full name of a dentist who is responsible for all of the patient’s treatment.
B. A dentist of record shall obtain a patient’s consent to change the treatment plan before changing the treatment plan that the patient originally agreed to, including any additional costs the patient may incur because of the change.
C. When a dentist who is a dentist of record decides to leave the practice of dentistry or a particular place of practice in which the dentist is the dentist of record, the dentist shall ensure before leaving the practice that a new dentist of record is entered on each patient record.
D. A dentist of record is responsible for the care given to a patient while the dentist was the dentist of record even after being replaced as the dentist of record by another dentist.
E. A dentist of record shall:
   1. Remain responsible for the care of a patient during the course of treatment; and
   2. Be available to the patient through the dentist’s office, an emergency number, an answering service, or a substituting dentist.
F. A dentist’s failure to comply with subsection (E) constitutes patient abandonment, and the Board may impose discipline under A.R.S. Title 32, Chapter 11, Article 3.

Historical Note
Adopted effective December 6, 1974 (Supp. 75-1). Former Section R4-11-62 renumbered as Section R4-11-501 without change effective July 29, 1981 (Supp. 81-4). Former Section R4-11-501 repealed, new Section R4-11-501 renumbered from R4-11-1102 and amended by final rulemaking at 5 A.A.R. 580, effective February 4, 1999 (Supp. 99-1). Section amended by final rulemaking at 11 A.A.R. 793, effective April 2, 2005 (Supp. 05-1).
R4-11-502. Affiliated Practice
A. A dentist in a private for profit setting shall not enter into more than 15 affiliated practice relationships under A.R.S. § 32-1289 at one time.
B. There is no limit to the number of affiliated practice relationships a dentist may enter into when working in a government, public health, or non-profit organization under Section 501(C)(3) of the Internal Revenue Code.
C. Each affiliated practice dentist shall be available telephonically or electronically during the business hours of the affiliated practice dental hygienist to provide an appropriate level of contact, communication, and consultation.
D. The affiliated practice agreement shall include a provision for a substitute dentist in addition to the requirements of A.R.S. § 32-1289(F), to cover an extenuating circumstance that renders the affiliated practice dentist unavailable for contact, communication, or consultation with the affiliated practice dental hygienist.

Historical Note

R4-11-503. Repealed

Historical Note
Adopted effective December 6, 1974 (Supp. 75-1). Former Section R4-11-64 repealed, new Section R4-11-64 adopted effective March 23, 1976 (Supp. 76-2). Former Section R4-11-64 renumbered as Section R4-11-503 without change effective July 29, 1981 (Supp. 81-4). Former Section R4-11-503 repealed by final rulemaking at 5 A.A.R. 580, effective February 4, 1999 (Supp. 99-1).

R4-11-504. Renumbered

Historical Note
Adopted effective December 6, 1974 (Supp. 75-1). Former Section R4-11-65 repealed, new Section R4-11-65 adopted effective May 23, 1976 (Supp. 76-2). Former Section R4-11-65 renumbered as Section R4-11-504, repealed, and new Section R4-11-504 adopted effective July 29, 1981 (Supp. 81-4). Former Section R4-11-504 renumbered to R4-11-702 by final rulemaking at 5 A.A.R. 580, effective February 4, 1999 (Supp. 99-1).

R4-11-505. Repealed

Historical Note
Adopted effective March 23, 1976 (Supp. 76-2). Former Section R4-11-66 renumbered as Section R4-11-505 and repealed effective July 29, 1981 (Supp. 81-4).

R4-11-506. Repealed

Historical Note

ARTICLE 6. DENTAL HYGIENISTS
R4-11-601. Duties and Qualifications
A. A dental hygienist may apply preventative and therapeutic agents under the general supervision of a licensed dentist.
B. A dental hygienist may perform a procedure not specifically authorized by A.R.S. § 32-1281 when all of the following conditions are satisfied:
   1. The procedure is recommended or prescribed by the supervising dentist;
   2. The hygienist has received instruction, training, or education to perform the procedure in a safe manner; and
   3. The procedure is performed under the general supervision of a licensed dentist.

C. The Board shall ensure that a dental hygienist is qualified to administer local anesthesia and nitrous oxide analgesia as authorized by A.R.S. § 32-1281(F)(1) and (2), by requiring evidence that the hygienist has completed courses in techniques taught at a recognized dental hygiene school or recognized dental school, as defined in A.R.S. § 32-1201(16) and (17), that consist of a minimum of 36 clock hours of instruction, and has passed examinations in theoretical knowledge and clinical competency in the following subject areas:
   1. Review of head and neck anatomy;
   2. Pharmacology of anesthetic and analgesic agents;
   3. Medical - dental history considerations;
   4. Emergency procedures;
   5. Selection of appropriate armamentarium and agents;
   6. Nitrous oxide administration;
   7. Clinical practice, under direct supervision, as defined in A.R.S. § 32-1281(H)(1), including at least three experiences administering each of the following:
      a. Posterior superior alveolar injection,
      b. Middle superior alveolar injection,
      c. Anterior superior alveolar injection,
      d. Nasopalatine injection,
      e. Greater - palatine injection,
      f. Inferior alveolar nerve injection,
      g. Lingual injection,
      h. Mental injection,
      i. Long buccal injections, and
      j. Nitrous oxide analgesia.

D. In addition to the recognized course of study described in subsection (C), the hygienist shall successfully complete the examination in local anesthesia given by the Western Regional Examining Board. The hygienist shall submit proof of the successful completion of the local anesthesia examination to the Board. The Board shall then issue a Local Anesthesia Certificate.

E. For purposes of qualification of a dental hygienist to place interrupted sutures as authorized by A.R.S. § 32-1281(F)(3), the Board recognizes courses in advanced periodontal therapy offered by a recognized dental hygiene school or a recognized dental school, as defined in A.R.S. § 32-1201(16) and (17), that consist of a minimum of 200 clock hours of instruction and require a dental hygienist’s successful completion of those examinations of a theoretical knowledge and clinical competency in the following subject areas:
   1. A review of oral histology,
   2. Inflammation and pathogenesis of a periodontal pocket,
   3. Patient assessment,
   4. Dental hygiene treatment planning,
   5. Advanced root planing and debridement,
   6. Subgingival curettage,
   7. Suturing,
   8. Wound repair and new attachment, and
   9. Clinical experience in each of the following:
      a. Root planing,
      b. Subgingival curettage, and
      c. Suturing.
F. The hygienist shall submit proof of the successful completion of a recognized course in advanced periodontal therapy, as described in subsection (E), to the Board. The Board shall then issue a certification sticker for Suture Placement, which shall be affixed to the hygienist’s license.

G. A dental hygienist shall not perform an irreversible procedure.

H. To qualify to use emerging scientific technology as authorized by A.R.S. § 32-1281(D)(2), a dental hygienist shall successfully complete a course of study that meets the following criteria:
   1. Is a course offered by a recognized dental school as defined in A.R.S. § 32-1201(17), a recognized dental hygiene school as defined in A.R.S. § 32-1201(16), or sponsored by a national or state dental or dental hygiene association or government agency;
   2. Includes didactic instruction with a written examination;
   3. Includes hands-on clinical instruction; and
   4. Is technology that is scientifically based and supported by studies published in peer reviewed dental journals.

Historical Note
Adopted effective December 6, 1974 (Supp. 75-1). Former Section R4-11-82 renumbered as Section R4-11-601 without change effective July 29, 1981 (Supp. 81-4). Former Section R4-11-601 repealed, new Section R4-11-601 renumbered from R4-11-402 and amended by final rulemaking at 5 A.A.R. 580, effective February 4, 1999 (Supp. 99-1). Amended by final rulemaking at 13 A.A.R. 962, effective May 5, 2007 (Supp. 07-1).

R4-11-602. Care of Homebound Patients
Dental hygienists treating homebound patients shall provide only treatment prescribed by the dentist of record in the diagnosis and treatment plan. The diagnosis and treatment plan shall be based on examination data obtained not more than 12 months before the treatment is administered.

Historical Note
Adopted effective December 6, 1974 (Supp. 75-1). Former Section R4-11-83 renumbered as Section R4-11-602 without change effective July 29, 1981 (Supp. 81-4). Former Section R4-11-602 renumbered to R4-11-1001, new Section R4-11-602 renumbered from R4-11-403 and amended by final rulemaking at 5 A.A.R. 580, effective February 4, 1999 (Supp. 99-1).

R4-11-603. Limitation on Number Supervised
A dentist shall not supervise more than three dental hygienists at a time.

Historical Note
Adopted effective December 6, 1974 (Supp. 75-1). Former Section R4-11-84 renumbered as Section R4-11-603 without change effective July 29, 1981 (Supp. 81-4). Former Section R4-11-603 renumbered to R4-11-1002, new Section R4-11-603 renumbered from R4-11-408 and amended by final rulemaking at 5 A.A.R. 580, effective February 4, 1999 (Supp. 99-1).

R4-11-604. Selection Committee and Process
A. The Board shall appoint a selection committee to screen candidates for the dental hygiene committee. The selection committee consists of three members. The Board shall appoint at least two members who are dental hygienists and one member who is a current Board member. The Board shall fill any vacancy for the unexpired portion of the term.
B. Each selection committee member’s term is one year.
C. By majority vote, the selection committee shall nominate each candidate for the dental hygiene committee and transmit a list of names to the Board for approval, including at least one alternate.

Historical Note
New Section R4-11-604 adopted by final rulemaking at 5 A.A.R. 580, effective February 4, 1999 (Supp. 99-1).
R4-11-605. Dental Hygiene Committee
A. The Board shall appoint seven members to the dental hygiene committee as follows:
   1. One dentist appointed at the annual December Board meeting, currently serving as a Board member, for a one year term;
   2. One dental hygienist appointed at the annual December Board meeting, currently serving as a Board member and possessing the qualifications required in Article 6, for a one-year term;
   3. Four dental hygienists that possess the qualifications required in Article 6; and
   4. One lay person.
B. Except for members appointed as prescribed in subsections (A)(1) and (2), the Board shall appoint dental hygiene committee members for staggered terms of three years, beginning January 1, 1999, and limit each member to two consecutive terms. The Board shall fill any vacancy for the unexpired portion of the term.
C. The dental hygiene committee shall annually elect a chairperson at the first meeting convened during the calendar year.

Historical Note
New Section R4-11-605 adopted by final rulemaking at 5 A.A.R. 580, effective February 4, 1999 (Supp. 99-1).

R4-11-606. Candidate Qualifications and Submissions
A. A dental hygienist who seeks membership on the dental hygiene committee shall possess a license in good standing, issued by the Board.
B. A dental hygienist who is not a Board member and qualifies under subsection (A) shall submit a letter of intent and resume to the Board.
C. The selection committee shall consider all of the following criteria when nominating a candidate for the dental hygiene committee:
   1. Geographic representation,
   2. Experience in postsecondary curriculum analysis and course development,
   3. Public health experience, and
   4. Dental hygiene clinical experience.

Historical Note
New Section R4-11-606 adopted by final rulemaking at 5 A.A.R. 580, effective February 4, 1999 (Supp. 99-1).

R4-11-607. Duties of the Dental Hygiene Committee
A. The committee shall advise the Board on all matters relating to the regulation of dental hygienists.
B. In performing the duty in subsection (A), the committee may:
   1. Act as a liaison for the Board, promoting communication and providing a forum for discussion of dental hygiene regulatory issues;
   2. Review applications, syllabi, and related materials and make recommendations to the Board regarding certification of courses in local anesthesia, nitrous oxide analgesia, and suture placement under Article 6 and other procedures which may require certification under Article 6;
   3. Review documentation submitted by dental hygienists to determine compliance with the continuing education requirement for license renewal under Article 12 and make recommendations to the Board regarding compliance;
   4. Make recommendations to the Board concerning statute and rule development which affect dental hygienists’ education, licensure, regulation, or practice;
   5. Provide advice to the Board on standards and scope of practice which affect dental hygiene practice; 6. Provide ad hoc committees to the Board upon request;
7. Request that the Board consider recommendations of the committee at the next regularly scheduled Board meeting; and
8. Make recommendations to the Board for approval of dental hygiene consultants.

C. Committee members who are licensed dentists or dental hygienists may serve as Western Regional Examining Board (WREB) examiners or Board consultants.

D. The committee shall meet at least two times per calendar year. The chairperson or the president of the Board, or their respective designees, may call a meeting of the committee.

E. The Board may assign additional duties to the committee.

**Historical Note**

New Section R4-11-607 adopted by final rulemaking at 5 A.A.R. 580, effective February 4, 1999 (Supp. 99-1).

---

**R4-11-608. Dental Hygiene Consultants**

After submission of a current curriculum vitae or resume and approval by the Board, dental hygiene consultants may:

1. Act as Western Regional Examining Board (WREB) examiners for the clinical portion of the dental hygiene examination;
2. Act as Western Regional Examining Board (WREB) examiners for the local anesthesia portion of the dental hygiene examination;
3. Participate in Board-related procedures, including clinical evaluations, investigation of complaints concerning infection control, insurance fraud, or the practice of supervised personnel, and any other procedures not directly related to evaluating a dentist's quality of care; and
4. Participate in onsite office evaluations for infection control, as part of a team.

**Historical Note**

New Section R4-11-608 adopted by final rulemaking at 5 A.A.R. 580, effective February 4, 1999 (Supp. 99-1).

---

**R4-11-609. Affiliated Practice**

A. To perform dental hygiene services under an affiliated practice relationship pursuant to A.R.S. § 32-1289, a dental hygienist shall:
   1. Provide evidence to the Board of successfully completing a total of 12 hours of recognized continuing dental education that consists of the following subject areas:
      a. A minimum of four hours in medical emergencies; and
      b. A minimum of eight hours in at least two of the following areas:
         i. Pediatric or other special health care needs,
         ii. Preventative dentistry, or
         iii. Public health community-based dentistry, and
   2. Hold a current certificate in basic cardiopulmonary resuscitation (CPR).

B. A dental hygienist shall complete the required continuing dental education before entering an affiliated practice relationship. The dental hygienist shall complete the continuing dental education in subsection (A) before renewing the dental hygienist's license. The dental hygienist may take the continuing dental education online but shall not exceed the allowable hours indicated in R4-11-1209(B)(1).

C. To comply with A.R.S. § 32-1289(E) and (F) and this Section, a dental hygienist shall submit a completed affidavit on a form supplied by the Board office. Board staff shall review the affidavit to determine compliance with all requirements.

D. A dental hygienist who practices or applies to practice under an affiliated practice relationship shall ensure that all signatures in an affiliated practice agreement, amendment, notification, and affidavit are notarized.
E. Each affiliated practice dentist shall be available telephonically or electronically during the business hours of the affiliated practice dental hygienist to provide an appropriate level of contact, communication, and consultation.

F. The affiliated practice agreement shall include a provision for a substitute dentist, to cover an extenuating circumstance that renders the affiliated practice dentist unavailable for contact, communication, and consultation with the affiliated practice dental hygienist.

**Historical Note**

New Section made by final rulemaking at 13 A.A.R. 962, effective May 5, 2007 (Supp. 07-1).

### ARTICLE 7. DENTAL ASSISTANTS

**R4-11-701. Procedures and Functions Performed by a Dental Assistant under Supervision**

A. A dental assistant may perform the following procedures and functions under the direct supervision of a licensed dentist:

1. Place dental material into a patient's mouth in response to a licensed dentist's instruction;
2. Cleanse the supragingival surface of the tooth in preparation for:
   a. The placement of bands, crowns, and restorations;
   b. Dental dam application;
   c. Acid etch procedures; and
   d. Removal of dressings and packs;
3. Remove excess cement from inlays, crowns, bridges, and orthodontic appliances with hand instruments;
4. Remove temporary cement, interim restorations, and periodontal dressings with hand instruments;
5. Remove sutures;
6. Place and remove dental dams and matrix bands;
7. Fabricate and place interim restorations with temporary cement;
8. Apply sealants;
9. Apply topical fluorides;
10. Prepare a patient for nitrous oxide and oxygen analgesia administration upon the direct instruction and presence of a dentist; or
11. Observe a patient during nitrous oxide and oxygen analgesia as instructed by the dentist.

B. A dental assistant may perform the following procedures and functions under the general supervision of a licensed dentist:

1. Train or instruct patients in oral hygiene techniques, preventive procedures, dietary counseling for caries and plaque control, and provide pre-and post-operative instructions relative to specific office treatment;
2. Collect and record information pertaining to extraoral conditions; and
3. Collect and record information pertaining to existing intraoral conditions.

**Historical Note**

Adopted effective April 27, 1977 (Supp. 77-2). Former Section R4-11-100 renumbered as Section R4-11-701 and amended effective July 29, 1981 (Supp. 81-4). Former Section R4-11-701 renumbered to R4-11-1701, new Section R4-11-701 renumbered from R4-11-502 and amended by final rulemaking at 5 A.A.R. 580, effective February 4, 1999 (Supp. 99-1).

**R4-11-702. Limitations on Procedures or Functions Performed by a Dental Assistant under Supervision**

A dental assistant shall not perform the following procedures or functions:

1. A procedure which by law only licensed dentists, licensed dental hygienists, or certified denturists can perform;
2. Intraoral carvings of dental restorations or prostheses;
3. Final jaw registrations;
4. Taking final impressions for any activating orthodontic appliance, fixed or removable prosthesis;
5. Activating orthodontic appliances; or
6. An irreversible procedure.

**Historical Note**
Adopted effective April 27, 1977 (Supp. 77-2). Former Section R4-11-101 renumbered as Section R4-11-702 without change effective July 29, 1981 (Supp. 81-4). Former Section R4-11-702 repealed, new Section R4-11-702 renumbered from R4-11-504 and amended by final rulemaking at 5 A.A.R. 580, effective February 4, 1999 (Supp. 99-1).

**R4-11-703. Repealed**

**Historical Note**
Adopted effective April 27, 1977 (Supp. 77-2). Former Section R4-11-102 renumbered as Section R4-11-703 without change effective July 29, 1981 (Supp. 81-4). Former Section R4-11-703 repealed by final rulemaking at 5 A.A.R. 580, effective February 4, 1999 (Supp. 99-1).

**R4-11-704. Repealed**

**Historical Note**
Adopted effective April 27, 1977 (Supp. 77-2). Former Section R4-11-103 renumbered as Section R4-11-704 without change effective July 29, 1981 (Supp. 81-4). Former Section R4-11-704 repealed by final rulemaking at 5 A.A.R. 580, effective February 4, 1999 (Supp. 99-1).

**R4-11-705. Repealed**

**Historical Note**
Adopted effective April 27, 1977 (Supp. 77-2). Former Section R4-11-104 renumbered as Section R4-11-705 without change effective July 29, 1981 (Supp. 81-4). Former Section R4-11-705 repealed by final rulemaking at 5 A.A.R. 580, effective February 4, 1999 (Supp. 99-1).

**R4-11-706. Repealed**

**Historical Note**
Adopted effective April 27, 1977 (Supp. 77-2). Former Section R4-11-105 renumbered as Section R4-11-706 without change effective July 29, 1981 (Supp. 81-4). Former Section R4-11-706 repealed by final rulemaking at 5 A.A.R. 580, effective February 4, 1999 (Supp. 99-1).

**R4-11-707. Repealed**

**Historical Note**
Adopted effective April 27, 1977 (Supp. 77-2). Former Section R4-11-106 renumbered as Section R4-11-707 without change effective July 29, 1981 (Supp. 81-4). Former Section R4-11-707 repealed by final rulemaking at 5 A.A.R. 580, effective February 4, 1999 (Supp. 99-1).

**R4-11-708. Repealed**

**Historical Note**
Adopted effective April 27, 1977 (Supp. 77-2). Former Section R4-11-107 renumbered as Section R4-11-708 without change effective July 29, 1981 (Supp. 81-4). Former Section R4-11-708 repealed by final rulemaking at 5 A.A.R. 580, effective February 4, 1999 (Supp. 99-1).
R4-11-709. Repealed

Historical Note
Adopted effective April 27, 1977 (Supp. 77-2). Former Section R4-11-108 renumbered as Section R4-11-709 without change effective July 29, 1981 (Supp. 81-4). Former Section R4-11-709 repealed by final rulemaking at 5 A.A.R. 580, effective February 4, 1999 (Supp. 99-1).

R4-11-710. Repealed

Historical Note
Adopted effective April 27, 1977 (Supp. 77-2). Former Section R4-11-109 renumbered as Section R4-11-710 without change effective July 29, 1981 (Supp. 81-4). Former Section R4-11-710 repealed by final rulemaking at 5 A.A.R. 580, effective February 4, 1999 (Supp. 99-1).

ARTICLE 8. DENTURISTS
R4-11-801. Expired

Historical Note

R4-11-802. Expired

Historical Note

R4-11-803. Renumbered

Historical Note

R4-11-804. Renumbered

Historical Note
ARTICLE 9. RESTRICTED PERMITS

R4-11-901. Application for Restricted Permit

A. An applicant for a restricted permit shall provide the following information and documentation on a form provided by the Board:

1. A sworn statement of the applicant’s qualifications for a restricted permit;
2. A photograph of the applicant that is no more than six months old;
3. A letter of endorsement from any other jurisdiction in which an applicant is licensed, sent directly from that jurisdiction to the Board;
4. A letter of endorsement from the applicant’s commanding officer or superior if the applicant is in the military or employed by the United States government;
5. A copy of the applicant’s current cardiopulmonary resuscitation certification that meets the requirements of R4-11-301(A)(6); and
6. A copy of the applicant’s pending contract with a charitable dental clinic or organization offering dental or dental hygiene services.

B. The Board may request that an applicant provide a copy of a certified document that indicates the reason for a name change if the applicant’s application contains different names.

Historical Note

R4-11-902. Issuance of a Restricted Permit

Before issuing a restricted permit under A.R.S. §§ 32-1237 through 32-1239 or 32-1292, the Board shall investigate the statutory qualifications of the charitable dental clinic or organization. The Board shall not recognize a dental clinic or organization under A.R.S. §§ 32-1237 through 32-1239 or 32-1292 as a charitable dental clinic or organization permitted to employ dentists or dental hygienists not licensed in Arizona who hold restricted permits unless the Board makes the following findings of fact:

1. That the entity is a dental clinic or organization offering professional dental or dental hygiene services in a manner consistent with the public health;
2. That the dental clinic or organization offering dental or dental hygiene services is operated for charitable purposes only, offering dental or dental hygiene services either without compensation to the clinic or organization or with compensation at the minimum rate to provide only reimbursement for dental supplies and overhead costs;
3. That the persons performing dental or dental hygiene services for the dental clinic or organization do so without compensation; and
4. That the charitable dental clinic or organization operates in accordance with applicable provisions of law.

**Historical Note**

**R4-11-903. Recognition of a Charitable Dental Clinic Organization**
In order for the Board to make the findings required in R4-11-902, the charitable clinic or organization shall provide information to the Board, such as employment contracts with restricted permit holders, Articles and Bylaws, and financial records.

**Historical Note**
Adopted effective September 7, 1979 (Supp. 79-5). Former Section R4-11-132 renumbered as Section R4-11-903, repealed, and new Section R4-11-903 adopted effective July 29, 1981 (Supp. 81-4). Former Section R4-11-903 renumbered to R4-11-403, new Section R4-11-903 renumbered from R4-11-1003 and amended by final rulemaking at 5 A.A.R. 580, effective February 4, 1999 (Supp. 99-1).

**R4-11-904. Determination of Minimum Rate**
In determining whether professional services are provided at the minimum rate to provide reimbursement for dental supplies and overhead costs under A.R.S. §§ 32-1237(1) or 32-1292(A)(1), the Board shall obtain and review information relating to the actual cost of dental supplies to the dental clinic or organization, the actual overhead costs of the dental clinic or organization, the amount of charges for the dental or dental hygiene services offered, and any other information relevant to its inquiry.

**Historical Note**
Adopted effective September 7, 1979 (Supp. 79-5). Former Section R4-11-133 renumbered as Section R4-11-904 without change effective July 29, 1981 (Supp. 81-4). Former Section R4-11-904 renumbered to R4-11-404, new Section R4-11-904 renumbered from R4-11-1004 and amended by final rulemaking at 5 A.A.R. 580, effective February 4, 1999 (Supp. 99-1). Section amended by final rulemaking at 11 A.A.R. 793, effective April 2, 2005 (Supp. 05-1).

**R4-11-905. Expired**

**Historical Note**

**R4-11-906. Expired**

**Historical Note**

R4-11-907. Repealed

Historical Note

R4-11-908. Repealed

Historical Note
Adopted effective April 4, 1986 (Supp. 86-2). Former Section R4-11-908 repealed by final rulemaking at 5 A.A.R. 580, effective February 4, 1999 (Supp. 99-1).

R4-11-909. Renumbered

Historical Note

ARTICLE 10. DENTAL TECHNICIANS

R4-11-1001. Expired

Historical Note

R4-11-1002. Expired

Historical Note
Adopted effective November 28, 1980 (Supp. 80-6). Former Section R4-11-141 renumbered as Section R4-11- 1002 without change effective July 29, 1981 (Supp. 81-4). Former Section R4-11-1002 renumbered to R4-11- 902, new Section R4-11-1002 renumbered from R4-11- 603 and amended by final rulemaking at 5 A.A.R. 580, effective February 4, 1999 (Supp. 99-1). Section expired under A.R.S. § 41-1056(J) at 23 A.A.R. 2575, effective August 25, 2017 (Supp. 17-3).

R4-11-1003. Renumbered

Historical Note
Adopted effective November 28, 1980 (Supp. 80-6). Former Section R4-11-142 renumbered as Section R4-11- 1003 without change effective July 29, 1981 (Supp. 81-4). Former Section R4-11-1003 renumbered to R4-11-903 by final rulemaking at 5 A.A.R. 580, effective February 4, 1999 (Supp. 99-1).

R4-11-1004. Renumbered

Historical Note
Adopted effective November 28, 1980 (Supp. 80-6). Former Section R4-11-143 renumbered as Section R4-11- 1004 without change effective July 29, 1981 (Supp. 81-4). Former
R4-11-1004. Renumbered

Historical Note
Adopted effective November 28, 1980 (Supp. 80-6). Former Section R4-11-144 renumbered as Section R4-11-1004 without change effective July 29, 1981 (Supp. 81-4). Former Section R4-11-1005 renumbered to R4-11-904 by final rulemaking at 5 A.A.R. 580, effective February 4, 1999 (Supp. 99-1).

R4-11-1005. Renumbered

Historical Note
Adopted effective November 28, 1980 (Supp. 80-6). Former Section R4-11-144 renumbered as Section R4-11-1005 without change effective July 29, 1981 (Supp. 81-4). Former Section R4-11-1005 renumbered to R4-11-905 by final rulemaking at 5 A.A.R. 580, effective February 4, 1999 (Supp. 99-1).

R4-11-1006. Repealed

Historical Note

ARTICLE 11. ADVERTISING

R4-11-1101. Advertising
A dentist may advertise specific dental services or certification in a non-specialty area only if the advertisement includes the phrase “Services provided by an Arizona licensed general dentist.” A dental hygienist may advertise specific dental hygiene services only if the advertisement includes the phrase “Services provided by an Arizona licensed dental hygienist.” A denturist may advertise specific denture services only if the advertisement includes the phrase “Services provided by an Arizona certified denturist.”

Historical Note

R4-11-1102. Advertising as a Recognized Specialist
A. A dentist may advertise as a specialist or use the terms “specialty” or “specialist” to describe professional services only if the dentist limits the dentist’s practice exclusively to one or more specialty area that are:
1. Recognized by a board that certifies specialists for the area of specialty; and
2. Accredited by the Commission on Dental Accreditation of the American Dental Association.
B. The following specialty areas meet the requirements of subsection (A):
1. Endodontics,
2. Oral and maxillofacial surgery,
3. Orthodontics and dentofacial orthopedics,
4. Pediatric dentistry,
5. Periodontics,
6. Prosthodontics,
7. Dental Public Health,
8. Oral and Maxillofacial Pathology, and
C. For purposes of this Article, a dentist who wishes to advertise as a specialist or a multiple-specialist in a recognized field under subsection (B) shall meet the criteria in one or more of the following categories:
1. Grandfathered: A dentist who declared a specialty area before December 31, 1964, according to requirements established by the American Dental Association, and has a practice limited to a dentistry area approved by the American Dental Association;
2. Educationally qualified: A dentist who has successfully completed an educational program of two or more years in a specialty area accredited by the Commission on Dental Accreditation of the American Dental Association, as specified by the Council on Dental Education of the American Dental Association;
3. Board eligible: A dentist who has met the guidelines of a specialty board that operates in accordance with the requirements established by the American Dental Association in a specialty area recognized by the Board, if the specialty board:
   a. Has established examination requirements and standards,
   b. Appraised an applicant’s qualifications,
   c. Administered comprehensive examinations, and
   d. Upon completion issues a certificate to a dentist who has achieved diplomate status; or
4. Board certified: A dentist who has met the requirements of a specialty board referenced in subsection (C)(3), and who has received a certificate from the specialty board, indicating the dentist has achieved diplomate status.

D. A dentist, dental hygienist, or denturist whose advertising implies that services rendered in a dental office are of a specialty area other than those listed in subsection (B) and recognized by a specialty board that has been accredited by the Commission on Dental Accreditation of the American Dental Association violates this Article and A.R.S. § 32-1201(18)(u), and is subject to discipline under A.R.S. Title 32, Chapter 11.

**Historical Note**

R4-11-1103. Reserved

R4-11-1104. Repealed

**Historical Note**

R4-11-1105. Repealed

**Historical Note**

**ARTICLE 12. CONTINUING DENTAL EDUCATION AND RENEWAL REQUIREMENTS**

R4-11-1201. Continuing Dental Education
A. A licensee or certificate holder shall:
   1. Satisfy a continuing dental education requirement that is designed to provide an understanding of current developments, skills, procedures, or treatment related to the licensee’s or certificate holder’s practice; and
   2. Complete the recognized continuing dental education required by this Article each renewal period.
B. A licensee or certificate holder receiving an initial license or certificate shall complete the prescribed credit hours of recognized continuing dental education by the end of the first full renewal period.
R4-11-1202. Continuing Dental Education Compliance and Renewal Requirements

A. When applying for a renewal license, certificate, or restricted permit, a licensee, certificate holder, or restricted permit holder shall complete a renewal application provided by the Board.

B. Before receiving a renewal license or certificate, each licensee or certificate holder shall possess a current form of one of the following:

1. A current cardiopulmonary resuscitation (CPR) healthcare provider certificate from the American Red Cross, the American Heart Association, or another certifying agency;
2. Advanced cardiac life support (ACLS) course completion confirmation from the American Heart Association or another agency. The confirmation must indicate that the course was completed within two years immediately before submitting a renewal application; or
3. Pediatric advanced life support (PALS) course completion confirmation from the American Heart Association or another agency. The confirmation must indicate that the course was completed within two years immediately before submitting a renewal application.

C. A licensee or certificate holder shall include an affidavit affirming the licensee's or certificate holder’s completion of the prescribed credit hours of recognized continuing dental education with a renewal application. A licensee or certificate holder shall include on the affidavit the licensee’s or certificate holder’s name, license or certificate number, the number of hours completed in each category, and the total number of hours completed for activities defined in R4-11-1209(A)(4).

D. A licensee or certificate holder shall submit a written request for an extension before the renewal deadline prescribed in A.R.S. §§ 32-1236, 32-1276.02, 32-1287, and 32-1297.06. If a licensee or certificate holder fails to meet the credit hour requirement because of military service, dental or religious missionary activity, residence in a foreign country, or other extenuating circumstances as determined by the Board, the Board, upon written request, may grant an extension of time to complete the recognized continuing dental education credit hour requirement.

E. The Board shall:

1. Only accept recognized continuing dental education credits accrued during the prescribed period immediately before license or certificate renewal, and
2. Not allow recognized continuing dental education credit accrued in a renewal period in excess of the amount required in this Article to be carried forward to the next renewal period.

F. A licensee or certificate holder shall maintain documentation of attendance for each program for which credit is claimed that verifies the recognized continuing dental education credit hours the licensee or certificate holder participated in during the most recently completed renewal period.

G. Each year, the Board shall audit continuing dental education requirement compliance on a random basis or when information is obtained which indicates a licensee or certificate holder may not be in compliance with this Article. A licensee or certificate holder selected for audit shall provide the Board with documentation of attendance that shows compliance with the continuing dental education requirements within 60 days from the date the licensee or certificate holder received notice of the audit by certified mail.

H. If a licensee or certificate holder is found to not be in compliance with the continuing dental education requirements, the Board may take any disciplinary or non-disciplinary action authorized by A.R.S. Title 32, Chapter 11.

Historical Note
Adopted effective May 21, 1982 (Supp. 82-3). Former Section R4-11-1202 renumbered to R4-11-802, new Section R4-11-1202 renumbered from R4-11-1402 and amended by final rulemaking at 5 A.A.R. 580, effective February 4, 1999 (Supp. 99-1). Section amended by
R4-11-1203. Dentists and Dental Consultants
Dentists and dental consultants shall complete 72 hours of recognized continuing dental education in each renewal period as follows:
1. At least 42 credit hours in any of the following areas: Dental and medical health, preventive services, dental diagnosis and treatment planning, dental recordkeeping, dental clinical procedures, managing medical emergencies, pain management, dental public health, and courses in corrective and restorative oral health and basic dental sciences, which may include current research, new concepts in dentistry, and behavioral and biological sciences that are oriented to dentistry. A licensee who holds a permit to administer general anesthesia, deep sedation, parenteral sedation, or oral sedation who is required to obtain continuing education pursuant to Article 13 may apply those credit hours to the requirements of this Section;
2. No more than 18 credit hours in the following areas: Dental practice organization and management, patient management skills, and methods of health care delivery;
3. At least three credit hours in chemical dependency, which may include tobacco cessation;
4. At least three credit hours in infectious diseases or infectious disease control;
5. At least three credit hours in CPR healthcare provider, ACLS and PALS. Coursework may be completed online if the course requires a physical demonstration of skills; and
6. At least three credit hours in ethics or Arizona dental jurisprudence.

Historical Note

R4-11-1204. Dental Hygienists
A. A dental hygienist shall complete 54 credit hours of recognized continuing dental education in each renewal period as follows:
1. At least 31 credit hours in any of the following areas: Dental and medical health, and dental hygiene services, periodontal disease, care of implants, maintenance of cosmetic restorations and sealants, radiology safety and techniques, managing medical emergencies, pain management, dental recordkeeping, dental public health, and new concepts in dental hygiene;
2. No more than 14 credit hours in one or more of the following areas: Dental hygiene practice organization and management, patient management skills, and methods of health care delivery;
3. At least three credit hours in one or more of the following areas: chemical dependency, tobacco cessation, ethics, risk management, or Arizona dental jurisprudence;
4. At least three credit hours in infectious diseases or infectious disease control; and
5. At least three credit hours in CPR healthcare provider, ACLS and PALS. Coursework may be completed online if the course requires a physical demonstration of skills.
B. A licensee who performs dental hygiene services under an affiliated practice relationship who is required to obtain continuing education under R4-11-609 may apply those credit hours to the requirements of this Section.

Historical Note

R4-11-1205. Denturists
Denturists shall complete 36 credit hours of recognized continuing dental education in each renewal period as follows:
1. At least 21 credit hours in any of the following areas: Medical and dental health, laboratory procedures, clinical procedures, dental recordkeeping, removable prosthetics, pain management, dental public health, and new technology in dentistry;
2. No more than six credit hours in one or more of the following areas: Denturist practice organization and management, patient management skills, and methods of health care delivery;
3. At least one credit hour in chemical dependency, which may include tobacco cessation;
4. At least two credit hours in infectious diseases or infectious disease control;
5. At least three credit hours in CPR healthcare provider, ACLS and PALS. Coursework may be completed online if the course requires a physical demonstration of skills; and
6. At least three credit hours in ethics or Arizona dental jurisprudence.

Historical Note

R4-11-1206. Restricted Permit Holders - Dental
In addition to the requirements in R4-11-1202, a dental restricted permit holder shall comply with the following requirements:
1. When applying for renewal under A.R.S. § 32-1238, the restricted permit holder shall provide information to the Board that the restricted permit holder has completed 24 credit hours of recognized continuing dental education yearly.
2. To determine whether to grant the renewal, the Board shall only consider recognized continuing dental education credits accrued during the 36 months immediately before the renewal deadline prescribed in A.R.S. § 32-1236.
3. A dental restricted permit holder shall complete the 24 hours of recognized continuing dental education before renewal as follows:
   a. At least 12 credit hours in one or more of the subjects enumerated in R4-11-1203(1);
   b. No more than six credit hours in one or more of the subjects enumerated in R4-11-1203(2);
   c. At least one credit hour in the subjects enumerated in R4-11-1203(3);
   d. At least one credit hour in the subjects enumerated in R4-11-1203(4);
   e. At least three credit hours in the subjects enumerated in R4-11-1203(5); and
   f. At least one credit hour in the subjects enumerated in R4-11-1203(6).

Historical Note

R4-11-1207. Restricted Permit Holders - Dental Hygiene
In addition to the requirements in R4-11-1202, a dental hygiene restricted permit holder shall comply with the following:

1. When applying for renewal under A.R.S. § 32-1292, the restricted permit holder shall provide information to the Board that the restricted permit holder has completed 18 credit hours of recognized continuing dental education yearly.
2. To determine whether to grant renewal, the Board shall only consider recognized continuing dental education credits accrued during the 36 months immediately before the renewal deadline prescribed in A.R.S. § 32-1287.
3. A dental hygiene restricted permit holder shall complete the 18 hours of recognized continuing dental education before renewal as follows:
   a. At least 9 credit hours in one or more of the subjects enumerated in R4-11-1204(1);
   b. No more than three credit hours in one or more of the subjects enumerated in R4-11-1204(2);
   c. At least one credit hour in the subjects enumerated in R4-11-1204(3);
   d. At least two credit hours in the subjects enumerated in R4-11-1204(4) and
e. At least three credit hours in the subjects enumerated in R4-11-1204(5).

Historical Note
New Section R4-11-1207 renumbered from R4-11-1408 and amended by final rulemaking at 5 A.A.R. 580, effective February 4, 1999 (Supp. 99-1). Section repealed; new Section made by final rulemaking at 11 A.A.R. 793, effective April 2, 2005 (Supp. 05-1). Amended by final rulemaking at 19 A.A.R. 3873, effective January 5, 2014 (Supp. 13-4).

R4-11-1208. Retired Licensees or Certificate Holders
A retired licensee or certificate holder shall:
1. Except for the number of credit hours required, comply with the requirements in R4-11-1202; and
2. When applying for renewal under A.R.S. § 32-1236 for a dentist, A.R.S. § 32-1287 for a dental hygienist, and A.R.S. § 32-1297.06 for a denturist, provide information to the Board that the retired licensee or certificate holder has completed the following credit hours of recognized continuing dental education per renewal period:
   a. Dentist - 27 credit hours of which no less than three credit hours shall be for CPR;
   b. Dental hygienist - 21 credit hours of which no less than three credit hours shall be for CPR; and
c. Denturist - 9 credit hours of which no less than three credit hours shall be for CPR.

Historical Note
New Section made by final rulemaking at 11 A.A.R. 793, effective April 2, 2005 (Supp. 05-1).

R4-11-1209. Types of Courses
A. A licensee or certificate holder shall obtain recognized continuing dental education from one or more of the following activities:
1. Seminars, symposiums, lectures, or programs designed to provide an understanding of current developments, skills, procedures, or treatment related to the practice of dentistry;
2. Seminars, symposiums, lectures, or programs designed to provide an understanding of current developments, skills, procedures, or treatment related to the practice of dentistry by means of audio-video technology in which the licensee is provided all seminar, symposium, lecture or program materials and the technology permits attendees to fully participate; or
3. Curricula designed to prepare for specialty board certification as a specialist or recertification examinations or advanced training at an accredited institution as defined in A.R.S. Title 32, Chapter 11; and
4. Subject to the limitations in subsection (B), any of the following activities that provide an understanding of current developments, skills, procedures, or treatment related to the practice of dentistry:
   a. A correspondence course, video, internet or similar self-study course, if the course includes an examination and the licensee or certificate holder passes the examination;
   b. Participation on the Board, in Board complaint investigations including clinical evaluations or anesthesia and sedation permit evaluations;
   c. Participation in peer review of a national or state dental, dental hygiene, or denturist association or participation in quality of care or utilization review in a hospital, institution, or governmental agency;
   d. Providing dental-related instruction to dental, dental hygiene, or denturist students, or allied health professionals in a recognized dental school, recognized dental hygiene school, or recognized denturist school or providing dental-related instruction sponsored by a national, state, or local dental, dental hygiene, or denturist association;
   e. Publication or presentation of a dental paper, report, or book authored by the licensee or certificate holder that provides information on current developments, skills, procedures, or treatment related to the practice of dentistry. A licensee or certificate holder may claim credit hours:
      i. Only once for materials presented;
      ii. Only if the date of publication or original presentation was during the applicable renewal period; and
      iii. One credit hour for each hour of preparation, writing, and presentation; or
   f. Providing dental, dental hygiene, or denturist services in a Board-recognized charitable dental clinical or organization.

B. The following limitations apply to the total number of credit hours earned per renewal period in any combination of the activities listed in subsection (A)(4):
   1. Dentists and Dental Hygienists, no more than 24 hours;
   2. Denturists, no more than 12 hours;
   3. Retired or Restricted Permit Holder Dentists or Dental Hygienists, no more than nine hours; and
   4. Retired Denturists, no more than three hours.

Historical Note
New Section made by final rulemaking at 11 A.A.R. 793, effective April 2, 2005 (Supp. 05-1).
Amended by final rulemaking at 19 A.A.R. 3873, effective January 5, 2014 (Supp. 13-4).

ARTICLE 13. GENERAL ANESTHESIA AND SEDATION
R4-11-1301. General Anesthesia and Deep Sedation
A. Before administering general anesthesia, or deep sedation by any means, in a dental office or dental clinic, a dentist shall possess a Section 1301 permit issued by the Board. The dentist may renew a Section 1301 permit every five years by complying with R4-11-1307.
B. To obtain or renew a Section 1301 permit, a dentist shall:
   1. Submit a completed application on a form provided by the Board office that, in addition to the requirements of subsections (B)(2) and (3), and R4-11-1307, includes:
      a. General information about the applicant such as:
         i. Name;
         ii. Home and office addresses and telephone numbers;
         iii. Limitations of practice;
         iv. Hospital affiliations;
         v. Denial, curtailment, revocation, or suspension of hospital privileges;
vi. Denial of membership in, denial of renewal of membership in, or disciplinary action by a dental organization; and
vii. Denial of licensure by, denial of renewal of licensure by, or disciplinary action by a dental regulatory body; and
b. The dentist’s dated and signed affidavit stating that the information provided is true, and that the dentist has read and complied with the Board’s statutes and rules;

2. On forms provided by the Board, provide a dated and signed affidavit attesting that any office or dental clinic where the dentist will administer general anesthesia or deep sedation:
   a. Contains the following properly operating equipment and supplies during the provision of general anesthesia and deep sedation:
      i. Emergency drugs;
      ii. Electrocardiograph monitor;
      iii. Pulse oximeter;
      iv. Cardiac defibrillator or automated external defibrillator (AED);
      v. Positive pressure oxygen and supplemental oxygen;
      vi. Suction equipment, including endotracheal, tonsillar, or pharyngeal and emergency backup medical suction device;
      vii. Laryngoscope, multiple blades, backup batteries, and backup bulbs;
      viii. Endotracheal tubes and appropriate connectors;
      ix. Magill forceps;
      x. Oropharyngeal and nasopharyngeal airways;
      xi. Auxiliary lighting; xii. Stethoscope; and
      xiii. Blood pressure monitoring device; and
   b. Maintains a staff of supervised personnel capable of handling procedures, complications, and emergency incidents. All personnel involved in administering and monitoring general anesthesia or deep sedation shall hold a current course completion confirmation in cardiopulmonary resuscitation (CPR) Health Care Provider Level;

3. Hold a valid license to practice dentistry in this state;
4. Maintain a current permit to prescribe and administer controlled substances in this state issued by the United States Drug Enforcement Administration; and
5. Provide confirmation of completing coursework within the two years prior to submitting the permit application in one or more of the following:
   a. Advanced cardiac life support (ACLS) from the American Heart Association or another agency that follows the same procedures, standards, and techniques for training as the American Heart Association;
   b. Pediatric advanced life support (PALS) in a practice treating pediatric patients; or
   c. A recognized continuing education course in advanced airway management.

C. Initial applicants shall meet one or more of the following conditions:
   1. Complete, within the three years before submitting the permit application, a full credit load, as defined by the training program, during one calendar year of training, in anesthesiology or related academic subjects, beyond the undergraduate dental school level in a training program described in R4-11-1306(A), offered by a hospital accredited by the Joint Commission on Accreditation of Hospitals Organization, or sponsored by a university accredited by the American Dental Association Commission on Dental Accreditation;
   2. Be, within the three years before submitting the permit application, a Diplomate of the American Board of Oral and Maxillofacial Surgeons or eligible for examination by the American Board of Oral and Maxillofacial surgeons, a Fellow of the American Association of Oral and Maxillofacial surgeons, a Fellow of the American Dental Society of Anesthesiology, a Diplomate of the National Dental Board of Anesthesiology, or a Diplomate of the American Dental Board of Anesthesiology; or
3. For an applicant who completed the requirements of subsections (C)(1) or (C)(2) more than three years before submitting the permit application, provide the following documentation:
   a. On a form provided by the Board, a written affidavit affirming that the applicant has administered general anesthesia or deep sedation to a minimum of 25 patients within the year before submitting the permit application or 75 patients within the last five years before submitting the permit application;
   b. A copy of the general anesthesia or deep sedation permit in effect in another state or certification of military training in general anesthesia or deep sedation from the applicant’s commanding officer; and
   c. On a form provided by the Board, a written affidavit affirming the completion of 30 clock hours of continuing education taken within the last five years as outlined in R4-11-1306(B)(1)(a) through (f).

D. After submitting the application and written evidence of compliance with requirements in subsection (B) and, if applicable, subsection (C) to the Board, the applicant shall schedule an onsite evaluation by the Board during which the applicant shall administer general anesthesia or deep sedation. After the applicant completes the application requirements and successfully completes the onsite evaluation, a Section 1301 permit shall be issued to the applicant.

1. The onsite evaluation team shall consist of: a. Two dentists who are Board members, or Board designees for initial applications; or b. One dentist who is a Board member or Board designee for renewal applications.

2. The onsite team shall evaluate the following:
   a. The availability of equipment and personnel as specified in subsection (B)(2);
   b. Proper administration of general anesthesia or deep sedation to a patient by the applicant in the presence of the evaluation team;
   c. Successful responses by the applicant to oral examination questions from the evaluation team about patient management, medical emergencies, and emergency medications;
   d. Proper documentation of controlled substances, that includes a perpetual inventory log showing the receipt, administration, dispensing, and destruction of controlled substances;
   e. Proper recordkeeping as specified in subsection (E) by reviewing the records generated for the patient specified in subsection (D)(2)(b); and
   f. For renewal applicants, records supporting continued competency as specified in R4-11-1306.

3. The evaluation team shall recommend one of the following:
   a. Pass. Successful completion of the onsite evaluation;
   b. Conditional Approval for failing to have appropriate equipment, proper documentation of controlled substances, or proper recordkeeping. The applicant must submit proof of correcting the deficiencies before a permit is issued;
   c. Category 1 Evaluation Failure. The applicant must review the appropriate subject matter and schedule a subsequent evaluation by two Board Members or Board designees not less than 30 days from the failed evaluation. An example is failure to recognize and manage one emergency;
   d. Category 2 Evaluation Failure. The applicant must complete Board approved continuing education in subject matter within the scope of the onsite evaluation as identified by the evaluators and schedule a subsequent evaluation by two Board Members or Board designees not less than 60 days from the failed evaluation. An example is failure to recognize and manage more than one emergency; or
   e. Category 3 Evaluation Failure. The applicant must complete Board approved remedial continuing education with the subject matter outlined in R4-11-1306 as identified by the evaluators and reapply not less than 90 days from the failed evaluation. An example is failure to recognize and manage an anesthetic urgency.
4. The onsite evaluation of an additional dental office or dental clinic in which general anesthesia or deep sedation is administered by an existing Section 1301 permit holder may be waived by the Board staff upon receipt in the Board office of an affidavit verifying compliance with subsection (D)(2)(a).

5. A Section 1301 mobile permit may be issued if a Section 1301 permit holder travels to dental offices or dental clinics to provide anesthesia or deep sedation. The applicant must submit a completed affidavit verifying:
   a. That the equipment and supplies for the provision of anesthesia or deep sedation as required in subsection (B)(2)(a) either travel with the Section 1301 permit holder or are in place and in appropriate condition at the dental office or dental clinic where anesthesia or deep sedation is provided, and
   b. Compliance with subsection (B)(2)(b).

E. A Section 1301 permit holder shall keep an anesthesia or deep sedation record for each general anesthesia or deep sedation procedure that includes the following entries:
   1. Pre-operative and post-operative electrocardiograph documentation;
   2. Pre-operative, intra-operative, and post-operative pulse oximeter documentation;
   3. Pre-operative, intra-operative, and post-operative blood pressure and vital sign documentation;
   4. A list of all medications given, with dosage and time intervals, and route and site of administration;
   5. Type of catheter or portal with gauge;
   6. Indicate nothing by mouth or time of last intake of food or water;
   7. Consent form; and
   8. Time of discharge and status, including name of escort.

F. The Section 1301 permit holder, for intravenous access, shall use a new infusion set, including a new infusion line and new bag of fluid, for each patient.

G. The Section 1301 permit holder shall utilize supplemental oxygen for patients receiving general anesthesia or deep sedation for the duration of the procedure.

H. The Section 1301 permit holder shall continuously supervise the patient from the initiation of anesthesia or deep sedation until termination of the anesthesia or deep sedation procedure and oxygenation, ventilation, and circulation are stable. The Section 1301 permit holder shall not commence with the administration of a subsequent anesthetic case until the patient is in monitored recovery or meets the guidelines for discharge.

I. A Section 1301 permit holder may employ the following health care professionals to provide anesthesia or sedation services and shall ensure that the health care professional continuously supervises the patient from the administration of anesthesia or sedation until termination of the anesthesia or sedation procedure and oxygenation, ventilation, and circulation are stable:
   1. An allopathic or osteopathic physician currently licensed in Arizona by the Arizona Medical Board or the Arizona Board of Osteopathic Examiners who has successfully completed a residency program in anesthesiology approved by the American Council on Graduate Medical Education (ACGME) or the American Osteopathic Association (AOA) or who is certified by either the American Board of Anesthesiology or the American Osteopathic Board of Anesthesiology and is credentialed with anesthesia privileges through an Arizona licensed medical facility, or
   2. A Certified Registered Nurse Anesthetist (CRNA) currently licensed in Arizona who provides services under the Nurse Practice Act in A.R.S. Title 32, Chapter 15.

J. A Section 1301 permit holder may also administer parenteral sedation without obtaining a Section 1302 permit.

**Historical Note**

New Section R4-11-1301 renumbered from R4-11-802 and amended by final rulemaking at 5 A.A.R. 580, effective February 4, 1999 (Supp. 99-1). Amended by final rulemaking at 9
R4-11-1302. Parenteral Sedation
A. Before administering parenteral sedation in a dental office or dental clinic, a dentist shall possess a Section 1302 permit issued by the Board. The dentist may renew a Section 1302 permit every five years by complying with R4-11-1307.
   1. A Section 1301 permit holder may also administer parenteral sedation.
   2. A Section 1302 permit holder shall not administer or employ any agents which have a narrow margin for maintaining consciousness including, but not limited to, ultrashort acting barbiturates, propofol, parenteral ketamine, or similarly acting drugs, agents, or techniques, or any combination thereof that would likely render a patient deeply sedated, generally anesthetized or otherwise not meeting the conditions of moderate sedation.

B. To obtain or renew a Section 1302 permit, the dentist shall:
   1. Submit a completed application on a form provided by the Board office that, in addition to the requirements of subsections (B)(2) and (3) and R4-11-1307, includes:
      a. General information about the applicant such as:
         i. Name;
         ii. Home and office addresses and telephone numbers;
         iii. Limitations of practice;
         iv. Hospital affiliations;
         v. Denial, curtailment, revocation, or suspension of hospital privileges;
         vi. Denial of membership in, denial of renewal of membership in, or disciplinary action by a dental organization; and
         vii. Denial of licensure by, denial of renewal of licensure by, or disciplinary action by a dental regulatory body; and
      b. The dentist’s dated and signed affidavit stating that the information provided is true, and that the dentist has read and complied with the Board’s statutes and rules;
   2. On forms provided by the Board, provide a dated and signed affidavit attesting that any dental office or dental clinic where the dentist will administer parenteral sedation by intravenous or intramuscular route:
      a. Contains the following properly operating equipment and supplies during the provision of parenteral sedation by the permit holder or general anesthesia or deep sedation by a physician anesthesiologist or Certified Registered Nurse Anesthetist (CRNA):
         i. Emergency drugs;
         ii. Positive pressure oxygen and supplemental oxygen;
         iii. Stethoscope;
         iv. Suction equipment, including tonsillar or pharyngeal and emergency backup medical suction device;
         v. Oropharyngeal and nasopharyngeal airways;
         vi. Pulse oximeter;
         vii. Auxiliary lighting;
         viii. Blood pressure monitoring device; and
         ix. Cardiac defibrillator or automated external defibrillator (AED); and
      b. Maintains a staff of supervised personnel capable of handling procedures, complications, and emergency incidents, including at least one staff member who:
         i. Holds a current course completion confirmation in cardiopulmonary resuscitation (CPR) health care provider level;
         ii. Is present during the parenteral sedation procedure; and
         iii. After the procedure, monitors the patient until discharge;
   3. Hold a valid license to practice dentistry in this state;
4. Maintain a current permit to prescribe and administer controlled substances in this state issued by the United States Drug Enforcement Administration;
5. Provide confirmation of completing coursework within the two years prior to submitting the permit application in one or more of the following:
   a. Advanced cardiac life support (ACLS) from the American Heart Association or another agency that follows the same procedures, standards, and techniques for training as the American Heart Association;
   b. Pediatric advanced life support (PALS) in a practice treating pediatric patients; or
   c. A recognized continuing education course in advanced airway management.
C. Initial applicants shall meet one of the following conditions:
   1. Successfully complete Board-recognized undergraduate, graduate, or postgraduate education within the three years before submitting the permit application, that includes the following:
      a. Sixty (60) didactic hours of basic parenteral sedation to include:
         i. Physical evaluation;
         ii. Management of medical emergencies;
         iii. The importance of and techniques for maintaining proper documentation; and
         iv. Monitoring and the use of monitoring equipment; and
      b. Hands-on administration of parenteral sedative medications to at least 20 patients in a manner consistent with this Section; or
   2. An applicant who completed training in parenteral sedation more than three years before submitting the permit application shall provide the following documentation:
      a. On a form provided by the Board, a written affidavit affirming that the applicant has administered parenteral sedation to a minimum of 25 patients within the year or 75 patients within the last five years before submitting the permit application;
      b. A copy of the parenteral sedation permit in effect in another state or certification of military training in parenteral sedation from the applicant's commanding officer; and
      c. On a form provided by the Board, a written affidavit affirming the completion of 30 clock hours of continuing education taken within the last five years as outlined in R4-11-1306(B)(1)(b) through (f).
D. After submitting the application and written evidence of compliance with requirements outlined in subsection (B) and, if applicable, subsection (C) to the Board, the applicant shall schedule an onsite evaluation by the Board during which the applicant shall administer parenteral sedation. After the applicant completes the application requirements and successfully completes the onsite evaluation, the Board shall issue a Section 1302 permit to the applicant.
   1. The onsite evaluation team shall consist of:
      a. Two dentists who are Board members, or Board designees for initial applications, or
      b. One dentist who is a Board member or Board designee for renewal applications.
   2. The onsite team shall evaluate the following:
      a. The availability of equipment and personnel as specified in subsection (B)(2);
      b. Proper administration of parenteral sedation to a patient by the applicant in the presence of the evaluation team;
      c. Successful responses by the applicant to oral examination questions from the evaluation team about patient management, medical emergencies, and emergency medications;
      d. Proper documentation of controlled substances, that includes a perpetual inventory log showing the receipt, administration, dispensing, and destruction of all controlled substances;
      e. Proper recordkeeping as specified in subsection (E) by reviewing the records generated for the patient receiving parenteral sedation as specified in subsection (D)(2)(b); and
f. For renewal applicants, records supporting continued competency as specified in R4-11-1306.

3. The evaluation team shall recommend one of the following:
   a. Pass. Successful completion of the onsite evaluation;
   b. Conditional Approval for failing to have appropriate equipment, proper documentation of controlled substances, or proper recordkeeping. The applicant must submit proof of correcting the deficiencies before a permit is issued;
   c. Category 1 Evaluation Failure. The applicant must review the appropriate subject matter and schedule a subsequent evaluation by two Board Members or Board designees not less than 30 days from the failed evaluation. An example is failure to recognize and manage one emergency;
   d. Category 2 Evaluation Failure. The applicant must complete Board approved continuing education in subject matter within the scope of the onsite evaluation as identified by the evaluators and schedule a subsequent evaluation by two Board Members or Board designees not less than 60 days from the failed evaluation. An example is failure to recognize and manage more than one emergency; or
   e. Category 3 Evaluation Failure. The applicant must complete Board approved remedial continuing education with the subject matter outlined in R4-11-1306 as identified by the evaluators and reapply not less than 90 days from the failed evaluation. An example is failure to recognize and manage an anesthetic urgency.

4. The onsite evaluation of an additional dental office or dental clinic in which parenteral sedation is administered by an existing Section 1302 permit holder may be waived by the Board staff upon receipt in the Board office of an affidavit verifying compliance with subsection (D)(2)(a).

5. A Section 1302 mobile permit may be issued if a Section 1302 permit holder travels to dental offices or dental clinics to provide parenteral sedation. The applicant must submit a completed affidavit verifying:
   a. That the equipment and supplies for the provision of parenteral sedation as required in R4-11-1302(B)(2)(a) either travel with the Section 1302 permit holder or are in place and in appropriate working condition at the dental office or dental clinic where parenteral sedation is provided, and
   b. Compliance with R4-11-1302(B)(2)(b).

E. A Section 1302 permit holder shall keep a parenteral sedation record for each parenteral sedation procedure that:
   1. Includes the following entries:
      a. Pre-operative, intra-operative, and post-operative pulse oximeter documentation;
      b. Pre-operative, intra-operative, and post-operative blood pressure and vital sign documentation;
      c. A list of all medications given, with dosage and time intervals and route and site of administration;
      d. Type of catheter or portal with gauge;
      e. Indicate nothing by mouth or time of last intake of food or water;
      f. Consent form; and
      g. Time of discharge and status, including name of escort; and
   2. May include pre-operative and post-operative electrocardiograph report.

F. The Section 1302 permit holder shall establish intravenous access on each patient receiving parenteral sedation utilizing a new infusion set, including a new infusion line and new bag of fluid.

G. The Section 1302 permit holder shall utilize supplemental oxygen for patients receiving parenteral sedation for the duration of the procedure.

H. The Section 1302 permit holder shall continuously supervise the patient from the initiation of parenteral sedation until termination of the parenteral sedation procedure and oxygenation, ventilation and circulation are stable. The Section 1302 permit holder shall not commence with the
administration of a subsequent anesthetic case until the patient is in monitored recovery or meets the guidelines for discharge.

I. A Section 1302 permit holder may employ a health care professional as specified in R4-11-1301(I).

Historical Note


R4-11-1303. Oral Sedation

A. Before administering oral sedation in a dental office or dental clinic, a dentist shall possess a Section 1303 permit issued by the Board. The dentist may renew a Section 1303 permit every five years by complying with R4-11-1307.

1. A Section 1301 permit holder or Section 1302 permit holder may also administer oral sedation without obtaining a Section 1303 permit.

2. The administration of a single drug for minimal sedation does not require a Section 1303 permit if:

   a. The administered dose is within the Food and Drug Administration's (FDA) maximum recommended dose as printed in FDA approved labeling for unmonitored home use;
      i. Incremental multiple doses of the drug may be administered until the desired effect is reached, but does not exceed the maximum recommended dose; and
      ii. During minimal sedation, a single supplemental dose may be administered. The supplemental dose may not exceed one-half of the initial dose and the total aggregate dose may not exceed one and one-half times the FDA maximum recommended dose on the date of treatment; and
   b. Nitrous oxide/oxygen may be administered in addition to the oral drug as long as the combination does not exceed minimal sedation.

B. To obtain or renew a Section 1303 permit, a dentist shall:

1. Submit a completed application on a form provided by the Board office that, in addition to the requirements of subsections (B)(2) and (3) and R4-11-1307, includes:

   a. General information about the applicant such as:
      i. Name;
      ii. Home and office addresses and telephone numbers;
      iii. Limitations of practice;
      iv. Hospital affiliations;
      v. Denial, curtailment, revocation, or suspension of hospital privileges;
      vi. Denial of membership in, denial of renewal of membership in, or disciplinary action by a dental organization; and
      vii. Denial of licensure by, denial of renewal of licensure by, or disciplinary action by a dental regulatory body; and

   b. The dentist’s dated and signed affidavit stating that the information provided is true, and that the dentist has read and complied with the Board’s statutes and rules;

2. On forms provided by the Board, provide a dated and signed affidavit attesting that any dental office or dental clinic where the dentist will administer oral sedation:

   a. Contains the following properly operating equipment and supplies during the provision of sedation:
      i. Emergency drugs;
      ii. Cardiac defibrillator or automated external defibrillator (AED);
      iii. Positive pressure oxygen and supplemental oxygen;
      iv. Stethoscope;
v. Suction equipment, including tonsillar or pharyngeal and emergency backup medical suction device;
vi. Pulse oximeter;
vii. Blood pressure monitoring device; and
viii. Auxiliary lighting; and
b. Maintains a staff of supervised personnel capable of handling procedures, complications, and emergency incidents, including at least one staff member who:
   i. Holds a current certificate in cardiopulmonary resuscitation (CPR) Health Care Provider Level;
   ii. Is present during the oral sedation procedure; and
   iii. After the procedure, monitors the patient until discharge;
3. Hold a valid license to practice dentistry in this state;
4. Maintain a current permit to prescribe and administer controlled substances in this state issued by the United States Drug Enforcement Administration;
5. Provide confirmation of completing coursework within the two years prior to submitting the permit application in one or more of the following:
   a. Cardiopulmonary resuscitation (CPR) Health Care Provider Level from the American Heart Association, American Red Cross, or another agency that follows the same procedures, standards, and techniques for training as the American Heart Association or American Red Cross;
   b. Pediatric advanced life support (PALS) in a practice treating pediatric patients; or
   c. A recognized continuing education course in advanced airway management.
C. Initial applicants shall meet one of the following:
   1. Complete a Board-recognized post-doctoral residency program that includes documented training in oral sedation within the last three years before submitting the permit application; or
   2. Complete a Board recognized post-doctoral residency program that includes documented training in oral sedation more than three years before submitting the permit application shall provide the following documentation:
      a. On a form provided by the Board, a written affidavit affirming that the applicant has administered oral sedation to a minimum of 25 patients within the year or 75 patients within the last five years before submitting the permit application;
      b. A copy of the oral sedation permit in effect in another state or certification of military training in oral sedation from the applicant’s commanding officer; and
      c. On a form provided by the Board, a written affidavit affirming the completion of 30 hours of continuing education taken within the last five years as outlined in R4-11-1306(C)(1)(a) through (f); or
   3. Provide proof of participation in 30 clock hours of Board recognized undergraduate, graduate, or post-graduate education in oral sedation within the three years before submitting the permit application that includes:
      a. Training in basic oral sedation,
      b. Pharmacology,
      c. Physical evaluation,
      d. Management of medical emergencies,
      e. The importance of and techniques for maintaining proper documentation, and
      f. Monitoring and the use of monitoring equipment.
D. After submitting the application and written evidence of compliance with requirements in subsection (B) and, if applicable, subsection (C) to the Board, the applicant shall schedule an onsite evaluation by the Board. After the applicant completes the application requirements and successfully completes the onsite evaluation, the Board shall issue a Section 1303 permit to the applicant.
   1. The onsite evaluation team shall consist of:
      a. For initial applications, two dentists who are Board members, or Board designees.
      b. For renewal applications, one dentist who is a Board member, or Board designee.
   2. The onsite team shall evaluate the following:
a. The availability of equipment and personnel as specified in subsection (B)(2);
b. Successful responses by the applicant to oral examination questions from the 
evaluation team about patient management, medical emergencies, and emergency 
medications;
c. Proper documentation of controlled substances, that includes a perpetual 
inventory log showing the receipt, administration, dispensing, and destruction of 
controlled substances;
d. Proper recordkeeping as specified in subsection (E) by reviewing the forms that 
document the oral sedation record; and
e. For renewal applicants, records supporting continued competency as specified in 
R4-11-1306.

3. The evaluation team shall recommend one of the following:
a. Pass. Successful completion of the onsite evaluation;
b. Conditional Approval for failing to have appropriate equipment, proper 
documentation of controlled substance, or proper recordkeeping. The applicant must 
submit proof of correcting the deficiencies before permit will be issued;
c. Category 1 Evaluation Failure. The applicant must review the appropriate subject 
matter and schedule a subsequent evaluation by two Board Members or Board 
designees not less than 30 days from the failed evaluation. An example is failure to 
recognize and manage one emergency; or
d. Category 2 Evaluation Failure. The applicant must complete Board approved 
continuing education in subject matter within the scope of the onsite evaluation as 
identified by the evaluators and schedule a subsequent evaluation by two Board 
Members or Board designees not less than 60 days from the failed evaluation. An 
example is failure to recognize and manage more than one emergency.

4. The onsite evaluation of an additional dental office or dental clinic in which oral sedation is 
administered by a Section 1303 permit holder may be waived by the Board staff upon receipt 
in the Board office of an affidavit verifying compliance with subsection (D)(2)(a).

5. A Section 1303 mobile permit may be issued if the Section 1303 permit holder travels to 
dental offices or dental clinics to provide oral sedation. The applicant must submit a 
completed affidavit verifying:
a. That the equipment and supplies for the provision of oral sedation as required in 
R4-11-1303(B)(2)(a) either travel with the Section 1303 permit holder or are in place 
and in appropriate condition at the dental office or dental clinic where oral sedation is 
provided, and
b. Compliance with R4-11-1303(B)(2)(b).

E. A Section 1303 permit holder shall keep an oral sedation record for each oral sedation procedure 
that:

1. Includes the following entries:
a. Pre-operative, intra-operative, and post-operative, pulse oximeter oxygen 
saturation and pulse rate documentation;
b. Pre-operative and post-operative blood pressure;
c. Documented reasons for not taking vital signs if a patient’s behavior or emotional 
state prevents monitoring personnel from taking vital signs;
d. List of all medications given, including dosage and time intervals;
e. Patient’s weight;
f. Consent form;
g. Special notes, such as, nothing by mouth or last intake of food or water; and
h. Time of discharge and status, including name of escort; and

2. May include the following entries:
a. Pre-operative and post-operative electrocardiograph report; and
b. Intra-operative blood pressures.
F. The Section 1303 permit holder shall utilize supplemental oxygen for patients receiving oral sedation for the duration of the procedure.

G. The Section 1303 permit holder shall ensure the continuous supervision of the patient from the administration of oral sedation until oxygenation, ventilation and circulation are stable and the patient is appropriately responsive for discharge from the dental office or dental clinic.

H. A Section 1303 permit holder may employ a health care professional to provide anesthesia services, if all of the following conditions are met:

1. The physician anesthesiologist or CRNA meets the requirements as specified in R4-11-1301(I);
2. The Section 1303 permit holder has completed coursework within the two years prior to submitting the permit application in one or more of the following:
   a. ACLS from the American Heart Association or another agency that follows the same procedures, standards, and techniques for training as the American Heart Association;
   b. PALS in a practice treating pediatric patients;
   c. A recognized continuing education course in advanced airway management;
3. The Section 1303 permit holder ensures that:
   a. The dental office or clinic contains the equipment and supplies listed in R4-11-1304(B)(2)(a) during the provision of anesthesia or sedation by the physician anesthesiologist or CRNA;
   b. The anesthesia or sedation record contains all the entries listed in R4-11-1304(D);
   c. For intravenous access, the physician anesthesiologist or CRNA uses a new infusion set, including a new infusion line and new bag of fluid for each patient; and
   d. The patient is continuously supervised from the administration of anesthesia or sedation until the termination of the anesthesia or sedation procedure and oxygenation, ventilation and circulation are stable. The Section 1303 permit holder shall not commence with a subsequent procedure or treatment until the patient is in monitored recovery or meets the guidelines for discharge.

Historical Note

New Section R4-11-1303 renumbered from R4-11-805 and amended by final rulemaking at 5 A.A.R. 580, effective February 4, 1999 (Supp. 99-1). Former Section R4-11-1303 renumbered to R4-11-1304; new Section R4-11-1303 made by final rulemaking at 9 A.A.R. 1054, effective May 6, 2003 (Supp. 03-1). Amended by final rulemaking at 19 A.A.R. 341, effective April 6, 2013 (Supp. 13-1).

R4-11-1304. Permit to Employ or Work with a Physician Anesthesiologist or Certified Registered Nurse Anesthetist (CRNA)

A. This Section does not apply to a Section 1301 permit holder or a Section 1302 permit holder practicing under the provisions of R4-11-1302(I) or a Section 1303 permit holder practicing under the provisions of R4-11-1303(H). A dentist may utilize a physician anesthesiologist or certified registered nurse anesthetist (CRNA) for anesthesia or sedation services while the dentist provides treatment in the dentist’s office or dental clinic after obtaining a Section 1304 permit issued by the Board.

   1. The physician anesthesiologist or CRNA meets the requirements as specified in R4-11-1301(I).
   2. The dentist permit holder shall provide all dental treatment and ensure that the physician anesthesiologist or CRNA remains on the dental office or dental clinic premises until any patient receiving anesthesia or sedation services is discharged.
   3. A dentist may renew a Section 1304 permit every five years by complying with R4-11-1307.

B. To obtain or renew a Section 1304 permit, a dentist shall:

   1. Submit a completed application on a form provided by the Board office that, in addition to the requirements of subsections (B)(2) and (3) and R4-11-1307 includes:
a. General information about the applicant such as:
   i. Name;
   ii. Home and office addresses and telephone numbers;
   iii. Limitations of practice;
   iv. Hospital affiliations;
   v. Denial, curtailment, revocation, or suspension of hospital privileges;
   vi. Denial of membership in, denial of renewal of membership in, or disciplinary action by a dental organization; and
   vii. Denial of licensure by, denial of renewal of licensure by, or disciplinary action by a dental regulatory body; and
b. The dentist’s dated and signed affidavit stating that the information provided is true, and that the dentist has read and complied with the Board’s statutes and rules;

2. On forms provided by the Board, provide a dated and signed affidavit attesting that any dental office or dental clinic where the dentist provides treatment during administration of general anesthesia or sedation by a physician anesthesiologist or CRNA:
   a. Contains the following properly operating equipment and supplies during the provision of general anesthesia and sedation:
      i. Emergency drugs;
      ii. Electrocardiograph monitor;
      iii. Pulse oximeter;
      iv. Cardiac defibrillator or automated external defibrillator (AED);
      v. Positive pressure oxygen and supplemental continuous flow oxygen;
      vi. Suction equipment, including endotracheal, tonsillar or pharyngeal and emergency backup medical suction device;
      vii. Laryngoscope, multiple blades, backup batteries and backup bulbs;
      viii. Endotracheal tubes and appropriate connectors;
      ix. Magill forceps;
      x. Oropharyngeal and nasopharyngeal airways;
      xi. Auxiliary lighting;
      xii. Stethoscope; and
      xiii. Blood pressure monitoring device; and
   b. Maintains a staff of supervised personnel capable of handling procedures, complications, and emergency incidents. All personnel involved in administering and monitoring general anesthesia or sedation shall hold a current course completion confirmation in cardiopulmonary resuscitation (CPR) Health Care Provider level;

3. Hold a valid license to practice dentistry in this state; and

4. Provide confirmation of completing coursework within the last two years prior to submitting the permit application in one or more of the following:
   a. Advanced cardiac life support (ACLS) from the American Heart Association or another agency that follows the same procedures, standards, and techniques for training as the American Heart Association;
   b. Pediatric advanced life support (PALS) in a practice treating pediatric patients; or
   c. A recognized continuing education course in advanced airway management.

C. After submitting the application and written evidence of compliance with requirements in subsection (B) to the Board, the applicant shall schedule an onsite evaluation by the Board. After the applicant completes the application requirements and successfully completes the onsite evaluation, the Board shall issue the applicant a Section 1304 permit.
   1. The onsite evaluation team shall consist of one dentist who is a Board member, or Board designee.
   2. The onsite team shall evaluate the following:
      a. The availability of equipment and personnel as specified in subsection (B)(2);
b. Proper documentation of controlled substances, that includes a perpetual inventory log showing the receipt, administration, dispensing, and destruction of controlled substances; and
c. Proper recordkeeping as specified in subsection (E) by reviewing previous anesthesia or sedation records.
3. The evaluation team shall recommend one of the following:
   a. Pass. Successful completion of the onsite evaluation; or
   b. Conditional approval for failing to have appropriate equipment, proper documentation of controlled substances, or proper recordkeeping. The applicant must submit proof of correcting the deficiencies before a permit is issued.
4. The evaluation of an additional dental office or dental clinic in which a Section 1304 permit holder provides treatment during the administration general anesthesia or sedation by a physician anesthesiologist or CRNA may be waived by the Board staff upon receipt in the Board office of an affidavit verifying compliance with subsection (B)(2).

D. A Section 1304 permit holder shall keep an anesthesia or sedation record for each general anesthesia and sedation procedure that includes the following entries:
   1. Pre-operative and post-operative electrocardiograph documentation;
   2. Pre-operative, intra-operative, and post-operative, pulse oximeter documentation;
   3. Pre-operative, intra-operative, and post-operative blood pressure and vital sign documentation; and
   4. A list of all medications given, with dosage and time intervals and route and site of administration;
   5. Type of catheter or portal with gauge;
   6. Indicate nothing by mouth or time of last intake of food or water;
   7. Consent form; and
   8. Time of discharge and status, including name of escort.
E. For intravenous access, a Section 1304 permit holder shall ensure that the physician anesthesiologist or CRNA uses a new infusion set, including a new infusion line and new bag of fluid for each patient.
F. A Section 1304 permit holder shall ensure that the physician anesthesiologist or CRNA utilizes supplemental continuous flow oxygen for patients receiving general anesthesia or sedation for the duration of the procedure.
G. The Section 1304 permit holder shall continuously supervise the patient from the administration of anesthesia or sedation until termination of the anesthesia or sedation procedure and oxygenation, ventilation and circulation are stable. The Section 1304 permit holder shall not commence with a subsequent procedure or treatment until the patient is in monitored recovery or meets the guidelines for discharge.

**Historical Note**

New Section R4-11-1304 renumbered from R4-11-805 and amended by final rulemaking at 5 A.A.R. 580, effective February 4, 1999 (Supp. 99-1). Former Section R4- 11-1304 renumbered to R4-11-1305; new Section R4-11- 1304 renumbered from R4-11-1303 and amended by final rulemaking at 9 A.A.R. 1054, effective May 6, 2003 (Supp. 03-1). Section repealed; new Section made by final rulemaking at 19 A.A.R. 341, effective April 6, 2013 (Supp. 13-1).

**R4-11-1305. Reports of Adverse Occurrences**
If a death, or incident requiring emergency medical response, occurs in a dental office or dental clinic during the administration of or recovery from general anesthesia, deep sedation, moderate sedation, or minimal sedation, the permit holder and the treating dentist involved shall submit a complete report of the incident to the Board within 10 days after the occurrence.
Historical Note
New Section R4-11-1305 renumbered from R4-11-806 and amended by final rulemaking at 5 A.A.R. 580, effective February 4, 1999 (Supp. 99-1). Former Section R4-11-1305 renumbered to R4-11-1306; new Section R4-11-1305 renumbered from R4-11-1304 and amended by final rulemaking at 9 A.A.R. 1054, effective May 6, 2003 (Supp. 03-1). Section repealed; new Section made by final rulemaking at 19 A.A.R. 341, effective April 6, 2013 (Supp. 13-1).

R4-11-1306. Education; Continued Competency
A. To obtain a Section 1301, permit by satisfying the education requirement of R4-11-1301(B)(6), a dentist shall successfully complete an advanced graduate or post-graduate education program in pain control.
   1. The program shall include instruction in the following subject areas:
      a. Anatomy and physiology of the human body and its response to the various pharmacologic agents used in pain control;
      b. Physiological and psychological risks for the use of various modalities of pain control;
      c. Psychological and physiological need for various forms of pain control and the potential response to pain control procedures;
      d. Techniques of local anesthesia, sedation, and general anesthesia, and psychological management and behavior modification, as they relate to pain control in dentistry; and
      e. Handling emergencies and complications related to pain control procedures, including the maintenance of respiration and circulation, immediate establishment of an airway, and cardiopulmonary resuscitation.
   2. The program shall consist of didactic and clinical training. The didactic component of the program shall:
      a. Be the same for all dentists, whether general practitioners or specialists; and
      b. Include each subject area listed in subsection (A)(1).
   3. The program shall provide at least one calendar year of training as prescribed in R4-11-1301(B)(6)(a).
B. To maintain a Section 1301 or 1302 permit under R4-11-1301 or R4-11-1302 a permit holder shall:
   1. Participate in 30 clock hours of continuing education every five years in one or more of the following areas:
      a. General anesthesia,
      b. Parenteral sedation,
      c. Physical evaluation,
      d. Medical emergencies,
      e. Monitoring and use of monitoring equipment, or
      f. Pharmacology of drugs and non-drug substances used in general anesthesia or parenteral sedation; and
   2. Provide confirmation of completing coursework within the two years prior to submitting the renewal application from one or more of the following:
      a. Advanced cardiac life support (ACLS) from the American Heart Association or another agency that follows the same procedures, standards, and techniques for training as the American Heart Association;
      b. Pediatric advanced life support (PALS) in a practice treating pediatric patients; or
      c. A recognized continuing education course in advanced airway management;
   3. Complete at least 10 general anesthesia, deep sedation or parenteral sedation cases a calendar year; and
   4. Apply a maximum of six hours from subsection (B)(2) toward the continuing education requirements for subsection (B)(1).
C. To maintain a Section 1303 permit issued under R4-11-1303, a permit holder shall:
   1. Participate in 30 clock hours of continuing education every five years in one or more of the following areas:
      a. Oral sedation,
      b. Physical evaluation,
      c. Medical emergencies,
      d. Monitoring and use of monitoring equipment, or
      e. Pharmacology of oral sedation drugs and non-drug substances; and
   2. Provide confirmation of completing coursework within the two years prior to submitting the renewal application from one or more of the following:
      a. Cardiopulmonary resuscitation (CPR) Health Care Provider level from the American Heart Association, American Red Cross or another agency that follows the same procedures, standards, and techniques for training as the American Heart Association or American Red Cross;
      b. Advanced cardiac life support (ACLS) from the American Heart Association or another agency that follows the same procedures, standards, and techniques for training as the American Heart Association;
      c. Pediatric advanced life support (PALS);
      d. A recognized continuing education course in advanced airway management; and
   3. Complete at least 10 oral sedation cases a calendar year.

Historical Note
Section R4-11-1306 renumbered from R4-11-1305 and amended by final rulemaking at 9 A.A.R. 1054, effective May 6, 2003 (Supp. 03-1). Amended by final rulemaking at 19 A.A.R. 341, effective April 6, 2013 (Supp. 13-1).

R4-11-1307. Renewal of Permit
A. To renew a Section 1301, 1302, or 1303 permit, the permit holder shall:
   1. Provide written documentation of compliance with the applicable continuing education requirements in R4-11-1306;
   2. Provide written documentation of compliance with the continued competency requirements in R4-11-1306;
   3. Before December 31 of the year the permit expires, submit a completed application on a form provided by the Board office as described in R4-11-1301, R4-11-1302, or R4-11-1303; and
   4. Not less than 90 days before the expiration of a permit holder’s current permit, arrange for an onsite evaluation as described in R4-11-1301, R4-11-1302, or R4-11-1303.
B. To renew a Section 1304 permit, the permit holder shall:
   1. Before December 31 of the year the permit expires, submit a completed application on a form provided by the Board office as described in R4-11-1304; and
   2. Not less than 90 days before the expiration of a permit holder’s current permit, arrange for an onsite evaluation as described in R4-11-1304.
C. After the permit holder successfully completes the evaluation and submits the required affidavits, the Board shall renew a Section 1301, 1302, 1303, 1304 permit, as applicable.
D. The Board may stagger due dates for renewal applications.

Historical Note
Made by final rulemaking at 19 A.A.R. 341, effective April 6, 2013 (Supp. 13-1).
ARTICLE 14. DISPENSING DRUGS AND DEVICES

R4-11-1401. Prescribing
A. In addition to the requirements of A.R.S. § 32-1298(C), a dentist shall ensure that a prescription order contains the following information:
   1. Date of issuance;
   2. Name and address of the patient to whom the prescription is issued;
   3. Name, strength, dosage form, and quantity of the drug or name and quantity of the device prescribed;
   4. Name and address of the dentist prescribing the drug; and
   5. Drug Enforcement Administration registration number of the dentist, if prescribing a controlled substance.
B. Before dispensing a drug or device, a dentist shall present to the patient a written prescription for the drug or device being dispensed that includes on the prescription the following statement in bold type: “This prescription may be filled by the prescribing dentist or by a pharmacy of your choice.”

Historical Note
Adopted effective July 21, 1995 (Supp. 95-3). Former Section R4-11-1401 repealed, new Section R4-11-1401 adopted by final rulemaking at 5 A.A.R. 580, effective February 4, 1999 (Supp. 99-1). Section repealed; new Section made by final rulemaking at 11 A.A.R. 793, effective April 2, 2005 (Supp. 05-1).

R4-11-1402. Labeling and Dispensing
A. A dentist shall include the following information on the label of all drugs and devices dispensed:
   1. The dentist’s name, address, and telephone number;
   2. The serial number;
   3. The date the drug or device is dispensed;
   4. The patient’s name;
   5. Name, strength, and quantity of drug or name and quantity of device dispensed;
   6. The name of the drug or device manufacturer or distributor;
   7. Directions for use and cautionary statement necessary for safe and effective use of the drug or device; and
   8. If a controlled substance is prescribed, the cautionary statement “Caution: Federal law prohibits the transfer of this drug to any person other than the patient for whom it was prescribed.”
B. Before delivery to the patient, the dentist shall prepare and package the drug or device to ensure compliance with the prescription and personally inform the patient of the name of the drug or device, directions for its use, precautions, and storage requirements.
C. A dentist shall purchase all dispensed drugs and devices from a manufacturer, distributor, or pharmacy that is properly licensed in this state or one of the other 49 states, the District of Columbia, the Commonwealth of Puerto Rico, or a territory of the United States of America.
D. When dispensing a prescription drug or device from a prescription order, a dentist shall perform the following professional practices:
   1. Verify the legality and pharmaceutical feasibility of dispensing a drug based upon:
      a. A patient’s allergies,
      b. Incompatibilities with a patient’s currently-taken medications,
      c. A patient’s use of unusual quantities of dangerous drugs or narcotics, and
      d. The frequency of refills;
   2. Verify that the dosage is within proper limits;
   3. Interpret the prescription order;
   4. Prepare, package, and label, or assume responsibility for preparing, packaging, and labeling, the drug or device dispensed under each prescription order;
   5. Check the label to verify that the label precisely communicates the prescriber’s directions and hand-initial each label;
6. Record, or assume responsibility for recording, the serial number and date dispensed on the front of the original prescription order; and
7. Record on the original prescription order the name or initials of the dentist who dispensed the order.

**Historical Note**
Adopted effective July 21, 1995 (Supp. 95-3). Former Section R4-11-1402 renumbered to R4-11-1201, new Section R4-11-1402 adopted by final rulemaking at 5 A.A.R. 580, effective February 4, 1999 (Supp. 99-1). Section repealed; new Section made by final rulemaking at 11 A.A.R. 793, effective April 2, 2005 (Supp. 05-1).

**R4-11-1403. Storage and Packaging**
A dentist shall:
1. Keep all prescription-only drugs and devices in a secured area and control access to the secured area by written procedure. The dentist shall make the written procedure available to the Board or its authorized agents on demand for inspection or copying;
2. Keep all controlled substances secured in a locked cabinet or room, control access to the cabinet or room by written procedure, and maintain an ongoing inventory of the contents. The dentist shall make the written procedure available to the Board or its authorized agents on demand for inspection or copying;
3. Maintain drug storage areas so that the temperature in the drug storage areas does not exceed 85º F;
4. Not dispense a drug or device that has expired or is improperly labeled;
5. Not redispense a drug or device that has been returned;
6. Dispense a drug or device:
   a. In a prepackaged container or light-resistant container with a consumer safety cap, unless the patient or patient’s representative requests a non-safety cap; and
   b. With a label that is mechanically or electronically printed;
7. Destroy an outdated, deteriorated, or defective controlled substance according to Drug Enforcement Administration regulations or by using a reverse distributor. A list of reverse distributors may be obtained from the Drug Enforcement Administration; and
8. Destroy an outdated, deteriorated, or defective non-controlled substance drug or device by returning it to the supplier or by using a reverse distributor. A list of reverse distributors may be obtained from the Drug Enforcement Administration.

**Historical Note**
Adopted effective July 21, 1995 (Supp. 95-3). Former Section R4-11-1403 renumbered to R4-11-1202, new Section R4-11-1403 adopted by final rulemaking at 5 A.A.R. 580, effective February 4, 1999 (Supp. 99-1). Section repealed; new Section made by final rulemaking at 11 A.A.R. 793, effective April 2, 2005 (Supp. 05-1).

**R4-11-1404. Recordkeeping**
A. A dentist shall:
1. Chronologically date and sequentially number prescription orders in the order that the drugs or devices are originally dispensed;
2. Sequentially file orders separately from patient records, as follows:
   a. File Schedule II drug orders separately from all other prescription orders;
   b. File Schedule III, IV, and V drug orders separately from all other prescription orders; and
   c. File all other prescription orders separately from orders specified in subsections (A)(2)(a) and (b);
3. Record the name of the manufacturer or distributor of the drug or device dispensed on each prescription order and label;
4. Record the name or initials of the dentist dispensing the drug or device on each prescription order and label; and
5. Record the date the drug or device is dispensed on each prescription order and label.

B. A dentist shall record in the patient’s dental record the name, dosage form, and strength of the drug or device dispensed, the quantity or volume dispensed, the date the drug or device is dispensed, and the dental therapeutic reasons for dispensing the drug or device.

C. A dentist shall maintain:
   1. Purchase records of all drugs and devices for three years from the date purchased; and
   2. Dispensing records of all drugs and devices for three years from the date dispensed.

D. A dentist who dispenses controlled substances:
   1. Shall inventory Schedule II, III, IV, and V controlled substances as prescribed by A.R.S. § 36-2523;
   2. Shall perform a controlled substance inventory on March 1 annually, if directed by the Board, and at the opening or closing of a dental practice;
   3. Shall maintain the inventory for three years from the inventory date;
   4. May use one inventory book for all controlled substances;
   5. When conducting an inventory of Schedule II controlled substances, shall take an exact count;
   6. When conducting an inventory of Schedule III, IV, and V controlled substances, shall take an exact count or may take an estimated count if the stock container contains fewer than 1001 units.

E. A dentist shall maintain invoices for drugs and devices dispensed for three years from the date of the invoices, filed as follows:
   1. File Schedule II controlled substance invoices separately from records that are not Schedule II controlled substance invoices;
   2. File Schedule III, IV, and V controlled substance invoices separately from records that are not Schedule III, IV, and V controlled substance invoices; and
   3. File all non-controlled substance invoices separately from the invoices referenced in subsections (E)(1) and (2).

F. A dentist shall file Drug Enforcement Administration order form (DEA Form 222) for a controlled substance sequentially and separately from every other record.

Historical Note
Adopted effective July 21, 1995 (Supp. 95-3). Former Section R4-11-1404 renumbered to R4-11-1203, new Section R4-11-1404 adopted by final rulemaking at 5 A.A.R. 580, effective February 4, 1999 (Supp. 99-1). Section repealed; new Section made by final rulemaking at 11 A.A.R. 793, effective April 2, 2005 (Supp. 05-1).

R4-11-1405. Compliance
A. A dentist who determines that there has been a theft or loss of drugs or controlled substances from the dentist’s office shall immediately notify a local law enforcement agency and the Board and provide written notice of the theft or loss in the following manner:
   1. For non-controlled substance drug theft or loss, provide the law enforcement agency and the Board with a written report explaining the theft or loss; or
   2. For controlled substance theft or loss, complete a DEA 106 form; and
   3. Provide copies of the DEA 106 form to the Drug Enforcement Administration and the Board within seven days of the discovery.

B. A dentist who dispenses drugs or devices in a manner inconsistent with this Article is subject to discipline under A.R.S. Title 32, Chapter 11, Article 3.

Historical Note
Adopted effective July 21, 1995 (Supp. 95-3). Former Section R4-11-1405 renumbered to R4-11-1204, new Section R4-11-1405 adopted by final rulemaking at 5 A.A.R. 580, effective
February 4, 1999 (Supp. 99-1). Section repealed; new Section made by final rulemaking at 11 A.A.R. 793, effective April 2, 2005 (Supp. 05-1).

R4-11-1406. Dispensing for Profit Registration and Renewal
A. A dentist who is currently licensed to practice dentistry in Arizona may dispense controlled substances, prescription-only drugs, and prescription-only devices for profit only after providing the Board the following information:
   1. A completed registration form that includes the following information:
      a. The dentist's name and dental license number;
      b. A list of the types of drugs and devices to be dispensed for profit, including controlled substances; and
      c. Locations where the dentist desires to dispense the drugs and devices for profit; and
   2. A copy of the dentist’s current Drug Enforcement Administration Certificate of Registration for each dispensing location from which the dentist desires to dispense the drugs and devices for profit.
B. The Board shall issue a numbered certificate indicating the dentist is registered with the Board to dispense drugs and devices for profit.
C. A dentist shall renew a registration to dispense drugs and devices for profit by complying with the requirements in subsection (A) before the dentist’s license renewal date. When a dentist has made timely and complete application for the renewal of a registration, the dentist may continue to dispense until the Board approves or denies the application. Failure to renew a registration shall result in immediate loss of dispensing for profit privileges.

Historical Note
Adopted effective July 21, 1995; inadvertently not published with Supp. 95-3 (Supp. 95-4). Former Section R4- 11-1406 renumbered to R4-11-1205, new Section R4-11- 1406 adopted by final rulemaking at 5 A.A.R. 580, effective February 4, 1999 (Supp. 99-1). Section repealed; new Section made by final rulemaking at 11 A.A.R. 793, effective April 2, 2005 (Supp. 05-1).

R4-11-1407. Renumbered
Historical Note
Adopted effective July 21, 1995 (Supp. 95-3). Former Section R4-11-1407 renumbered to R4-11-1206 by final rulemaking at 5 A.A.R. 580, effective February 4, 1999 (Supp. 99-1).

R4-11-1408. Renumbered
Historical Note
Adopted effective July 21, 1995 (Supp. 95-3). Former Section R4-11-1408 renumbered to R4-11-1207 by final rulemaking at 5 A.A.R. 580, effective February 4, 1999 (Supp. 99-1).

R4-11-1409. Repealed
Historical Note
Adopted effective July 21, 1995 (Supp. 95-3). Former Section R4-11-1409 repealed by final rulemaking at 5 A.A.R. 580, effective February 4, 1999 (Supp. 99-1).

ARTICLE 15. COMPLAINTS, INVESTIGATIONS, DISCIPLINARY ACTION
R4-11-1501. Ex-parte Communication
A complainant, licensee, certificate holder, business entity or mobile dental permit holder against whom a complaint is filed, shall not engage in ex-parte communication by means of a written or oral communication between a decision maker, fact finder, or Board member and only one party to the proceeding.
R4-11-1502. Dental Consultant Qualifications  A dentist, dental hygienist, or denturist approved as a Board dental consultant shall:
   1. Possess a valid license or certificate to practice in Arizona;
   2. Have practiced at least five years in Arizona; and
   3. Not have been disciplined by the Board within the past five years.

R4-11-1503. Initial Complaint Review
A. The Board’s procedures for complaint notification are:
   1. Board personnel shall notify the complainant and licensee, certificate holder, business entity or mobile dental permit holder by certified U.S. Mail when the following occurs:
      a. A formal interview is scheduled,
      b. The complaint is tabled,
      c. A postponement or continuance is granted, and
      d. A subpoena, notice, or order is issued.
   2. Board personnel shall provide the licensee, certificate holder, business entity, or mobile dental permit holder with a copy of the complaint.
   3. If a complaint alleges a violation of the state or federal criminal code, the Board shall refer the complaint to the proper law enforcement agency.

B. The Board’s procedures for complaints referred to clinical evaluation are:
   1. Except as provided in subsection (B)(1)(a), the president’s designee shall appoint one or more dental consultants to perform a clinical evaluation. If there is more than one dental consultant, the dental consultants do not need to be present at the same time.
      a. If the complaint involves a dental hygienist, denturist, or dentist who is a recognized specialist in one of the areas listed in R4-11-1102(B), the president’s designee shall appoint a dental consultant from that area of practice or specialty.
      b. The Board shall not disclose the identity of the licensee to a dental consultant performing a clinical examination before the Board receives the dental consultant’s report.
   2. The dental consultant shall prepare and submit a clinical evaluation report. The president’s designee shall provide a copy of the clinical evaluation report to the licensee or certificate holder. The licensee or certificate holder may submit a written response to the clinical evaluation report.

R4-11-1504. Postponement of Interview
A. The licensee, certificate holder, business entity, or mobile dental permit holder may request a postponement of a formal interview. The Board or its designee shall grant a postponement until the
next regularly scheduled Board meeting if the licensee, certificate holder, business entity, or mobile dental permit holder makes a postponement request and the request:

1. Is made in writing,
2. States the reason for the postponement, and
3. Is received by the Board within 15 calendar days after the date the respondent received the formal interview request.

B. Within 48 hours of receipt of a request for postponement of a formal interview, the Board or its designee shall:

1. Review and either deny or approve the request for postponement; and
2. Notify in writing the complainant and licensee, certificate holder, business entity, or mobile dental permit holder of the decision to either deny or approve the request for postponement.

**Historical Note**


**ARTICLE 16. EXPIRED**

**R4-11-1601. Expired**

**Historical Note**


**ARTICLE 17. REHEARING OR REVIEW**

**R4-11-1701. Procedure**

A. Except as provided in subsection (F), a licensee, certificate holder, or business entity who is aggrieved by an order issued by the Board may file a written motion for rehearing or review with the Board, pursuant to A.R.S. Title 41, Chapter 6, Article 10, specifying the grounds for rehearing or review.

B. A licensee, certificate holder, or business entity filing a motion for rehearing or review under this rule may amend the motion at any time before it is ruled upon by the Board. The opposing party may file a response within 15 days after the date the motion for rehearing or review is filed. The Board may require that the parties file supplemental memoranda explaining the issues raised in the motion, and may permit oral argument.

C. The Board may grant a rehearing or review of the order for any of the following causes materially affecting a licensee, certificate holder, or business entity's rights:

1. Irregularity in the proceedings of the Board or any order or abuse of discretion, which deprived a licensee, certificate holder, or business entity of a fair hearing;
2. Misconduct of the Board, its personnel, the administrative law judge, or the prevailing party;
3. Accident or surprise which could not have been prevented by ordinary prudence;
4. Excessive or insufficient penalties;
5. Error in the admission or rejection of evidence or other errors of law occurring at the hearing or during the progress of the proceeding;
6. That the findings of fact or decision is arbitrary, capricious, or an abuse of discretion;
7. That the findings of fact of decision is not justified by the evidence or is contrary to law; or
8. Newly discovered, material evidence which could not, with reasonable diligence, have been discovered and produced at the original hearing.
D. The Board may affirm or modify the order or grant a rehearing or review to all or part of the issues for any of the reasons in subsection (C). The Board, within the time for filing a motion for rehearing or review, may grant a rehearing or review on its own initiative for any reason for which it might have granted relief on motion of a party. An order granting a rehearing or review shall specify the grounds on which rehearing or review is granted, and any rehearing or review shall cover only those matters specified.

E. When a motion for rehearing or review is based upon affidavits, they shall be served with the motion. An opposing party may, within 15 days after such service, serve opposing affidavits.

F. If the Board makes specific findings that the immediate effectiveness of the order is necessary for the preservation of public health and safety and that a rehearing or review is impracticable, unnecessary, or contrary to the public interest, the order may be issued as a final order without an opportunity for a rehearing or review. If an order is issued as a final order without an opportunity or rehearing or review, the aggrieved party shall make an application for judicial review of the order within the time limits permitted for application for judicial review of the Board's final order.

G. The Board shall rule on the motion for rehearing or review within 15 days after the response has been filed, or at the Board's next meeting after the motion is received, whichever is later.

Historical Note
New Section R4-11-1701 renumbered from R4-11-701 and amended by final rulemaking at 5 A.A.R. 580, effective February 4, 1999 (Supp. 99-1). Amended by final rulemaking at 21 A.A.R. 2971, effective January 2, 2016 (Supp. 15-4).

ARTICLE 18. BUSINESS ENTITIES

R4-11-1801. Application
Before offering dental services, a business entity required to be registered under A.R.S. § 32-1213 shall apply for registration on an application form supplied by the Board. In addition to the requirements of A.R.S. § 32-1213(B) and the fee under R4-11-402, the registration application shall include a sworn statement from the applicant that:

1. The information provided by the business entity is true and correct, and
2. No information is omitted from the application.

Historical Note
New Section made by final rulemaking at 11 A.A.R. 793, effective April 2, 2005 (Supp. 05-1).

R4-11-1802. Display of Registration
A. A business entity shall ensure that the receipt for the current registration period is:

1. Conspicuously displayed in the dental practice in a manner that is always readily observable by patients and visitors, and
2. Exhibited to members of the Board or to duly authorized agents of the Board on request.

B. A business entity’s receipt for the licensure period immediately preceding shall be kept on display until replaced by the receipt for the current period.

Historical Note
New Section made by final rulemaking at 11 A.A.R. 793, effective April 2, 2005 (Supp. 05-1).
TABLE OF CONTENTS

ARIZONA REVISED STATUTES

Article 1 – Dental Board

32-1201 Definitions
32-1201.01 Definition of unprofessional conduct
32-1202 Scope of practice; practice of dentistry
32-1203 State board of dental examiners; qualifications of members; terms
32-1204 Removal from office
32-1205 Organization; meetings; quorum; staff
32-1206 Compensation of board
32-1207 Powers and duties; executive director; immunity; fees; definition
32-1208 Failure to respond to subpoena; civil penalty
32-1209 Admissibility of records in evidence
32-1210 Annual report
32-1212 Dental board fund
32-1213 Business entities; registration; renewal; civil penalty; exceptions

Article 2 – Licensing

32-1231 Persons not required to be licensed
32-1232 Qualifications of applicant; application; fee; fingerprint clearance card
32-1233 Applications for licensure; examination requirements
32-1234 Dental consultant license
32-1235 Reinstatement of license or certificate; application for previously denied license or certificate
32-1236 Dentist triennial licensure; continuing education; license reinstatement; license for each place of practice; notice of change of address or place of practice; retired and disabled license status; penalties
32-1237 Restricted permit
32-1238 Issuance of restricted permit
32-1239 Practice under restricted permit
32-1240 Licensure by credential; examinations; waiver; fee
32-1241 Training permits; qualified military health professionals

Article 3 – Regulation

32-1261 Practicing without license; classification
32-1262 Corporate practice; display of name and license receipt or license; duplicate licenses; fee
32-1263 Grounds for disciplinary action; definition
32-1263.01 Types of disciplinary action; letter of concern; judicial review; notice; removal of notice; violation; classification
32-1263.02 Investigation and adjudication of complaints; disciplinary action; civil penalty; immunity; subpoena authority; definitions
32-1263.03 Executive director; complaints; termination; review
32-1264 Maintenance of records
32-1265 Interpretation of chapter
32-1266 Prosecution of violations
32-1267 Use of fraudulent instruments; classification
32-1268 Violations; classification; required proof
32-1269 Violation; classification; injunctive relief
32-1270 Deceased or incapacitated dentists; notification
32-1271 Marking of dentures for identification; retention and release of information
Article 3.1 – Licensing and Regulation of Dental Therapists

32-1276 Definitions
32-1276.01 Application for licensure; requirements; fingerprint clearance card; denial or suspension of application
32-1276.02 Dental therapist triennial licensure; continuing education; license renewal and reinstatement; fees; civil penalties; retired and disabled license status
32-1276.03 Practice of dental therapy; authorized procedures; supervision requirements; restrictions
32-1276.04 Dental therapists; clinical practice; supervising dentists; written collaborative practice agreements
32-1276.05 Dental therapists; supervising dentists; collaborative practice relationships
32-1276.06 Practicing without a license; violation; classification
32-1276.07 Licensure by credential; examination waiver; fee
32-1276.08 Dental therapy schools; credit for prior experience or coursework

Article 4 – Licensing and Regulation of Dental Hygienists

32-1281 Practicing as dental hygienist; supervision requirements; definitions
32-1282 Administration and enforcement
32-1283 Disposition of revenues
32-1284 Qualifications of applicant; application; fee; fingerprint clearance card; rules; denial or suspension of application
32-1285 Applicants for licensure; examination requirements
32-1286 Recognized dental hygiene schools; credit for prior learning
32-1287 Dental hygienist triennial licensure; continuing education; license reinstatement; notice of change of address; penalties; retired and disabled licensees
32-1288 Practicing without license; classification
32-1289 Employment of dental hygienist by public agency; institution or school
32-1289.01 Dental hygienists; affiliated practice relationships; rules; definition
32-1290 Grounds for censure; probation; suspension or revocation of license; procedure
32-1291 Dental assistants; regulation; duties
32-1291.01 Expanded function dental assistants; training and examination requirements; duties
32-1292 Restricted permits; suspension; expiration; renewal
32-1292.01 Licensure by credential; examinations; waiver; fee

Article 5 – Certification and Regulation of Denturists

32-1293 Practicing as denturist; denture technology; dental laboratory technician
32-1294 Supervision by dentist; definitions; mouth preparation by dentist; liability; business association
32-1295 Board of dental examiners; additional powers and duties
32-1296 Qualifications of applicant
32-1297.01 Application for certification; fingerprint clearance card; denial; suspension
32-1297.03 Qualification for reexamination
32-1297.04 Fees
32-1297.05 Disposition of revenues
32-1297.06 Denturist certification; continuing education; certificate reinstatement; certificate for each place of practice; notice of change of address or place of practice; penalties
32-1297.07 Discipline; procedure
32-1297.08 Injunction
32-1297.09 Violations; classification
Article 6 – Dispensing of Drugs and Devices
32-1298 Dispensing of drugs and devices; conditions; civil penalty; definition

Article 7 – Rehabilitation
32-1299 Substance abuse treatment and rehabilitation program; private contract; funding; confidential stipulation agreement

Article 8 – Mobile Dental Facilities and Portable Dental Units
32-1299.21 Definitions
32-1299.22 Mobile dental facilities; portable dental units; permits; exceptions
32-1299.23 Permit application; fees; renewal; notification of changes
32-1299.24 Standards of operation and practice
32-1299.25 Informed consent; information for patients
32-1299.26 Disciplinary actions; cessation of operation
ARIZONA ADMINISTRATIVE CODE (RULES)

Article 1 – Definitions
R4-11-101 Definitions
R4-11-102 Renumbered
R4-11-103 Renumbered
R4-11-104 Repealed
R4-11-105 Repealed

Article 2 – Licensure by Credential
R4-11-201 Clinical Examination; Requirements
R4-11-202 Dental Licensure by Credential; Application
R4-11-203 Dental Hygienist Licensure by Credential; Application
R4-11-204 Dental Assistant Radiography Certification by Credential
R4-11-205 Application for Dental Assistant Radiography Certification by Credential
R4-11-206 Repealed
R4-11-207 Repealed
R4-11-208 Repealed
R4-11-209 Repealed
R4-11-210 Repealed
R4-11-211 Repealed
R4-11-212 Repealed
R4-11-213 Repealed
R4-11-214 Repealed
R4-11-215 Repealed
R4-11-216 Repealed

Article 3 – Examinations, Licensing Qualifications, Application and Renewal, Time-Frames
R4-11-301 Application
R4-11-302 Repealed
R4-11-303 Application Processing Procedures; Issuance, Denial, and Renewal of Dental Licenses, Restricted Permits, Dental Hygiene Licenses, Dental Consultant Licenses, Denturist Certificate, Drug or Device Dispensing Registrations, Business Entity Registration and Mobile Dental Facility and Portable Dental Unit Permits
R4-11-304 Application Processing Procedures; Issuance and Denial of Dental Assistant Certificates Radiography Certification by Credential
R4-11-305 Application Processing Procedures; Issuance, Denial, and Renewal of General Anesthesia and Deep Sedation Permits, Parental Sedation Permits, Oral Sedation Permits, and Permit to Employ a Physician Anesthesiologist or CNRA 11

Article 4 – Fees
R4-11-401 Retired or Disabled Licensure Renewal Fee
R4-11-402 Business Entity Fees
R4-11-403 Licensing Fees
R4-11-404 Repealed
R4-11-405 Charges for Board Services
R4-11-406 Anesthesia and Sedation Permit Fees
R4-11-407 Renumbered
R4-11-408 Repealed
R4-11-409 Repealed
Article 5 – Dentists
R4-11-501 Dentist of Record
R4-11-502 Affiliated Practice
R4-11-504 Renumbered
R4-11-505 Repealed
R4-11-506 Repealed

Article 6 – Dental Hygienists
R4-11-601 Duties and Qualifications
R4-11-602 Care of Homebound Patients
R4-11-603 Limitation on Number Supervised
R4-11-604 Selection Committee and Process
R4-11-605 Dental Hygiene Committee
R4-11-606 Candidate Qualifications and Submissions
R4-11-607 Duties of the Dental Hygiene Committee
R4-11-608 Dental Hygiene Consultants
R4-11-609 Affiliated Practice

Article 7 – Dental Assistants
R4-11-701 Procedures and Functions Performed by a Dental Assistant under Supervision
R4-11-702 Limitations on Procedures or Functions Performed by a Dental Assistant under Supervision
R4-11-703 Repealed
R4-11-704 Repealed
R4-11-705 Repealed
R4-11-706 Repealed
R4-11-707 Repealed
R4-11-708 Repealed
R4-11-709 Repealed
R4-11-710 Repealed

Article 8 – Denturists
R4-11-801 Expired
R4-11-802 Expired
R4-11-803 Renumbered
R4-11-804 Renumbered
R4-11-805 Renumbered
R4-11-806 Renumbered

Article 9 – Restricted Permits
R4-11-901 Application for Restricted Permit
R4-11-902 Issuance of a Restricted Permit
R4-11-903 Recognition of a Charitable Dental Clinic Organization
R4-11-904 Determination of Minimum Rate
R4-11-905 Expired
R4-11-906 Expired
R4-11-907 Repealed
R4-11-908 Repealed
R4-11-909 Renumbered

Article 10 – Dental Technicians
R4-11-1001 Expired
Article 11 – Advertising

R4-11-1101 Advertising
R4-11-1102 Advertising as a Recognized Specialist
R4-11-1103 Reserved
R4-11-1104 Repealed
R4-11-1105 Repealed

Article 12 – Continuing Dental Education and Renewal Requirements

R4-11-1201 Continuing Dental Education
R4-11-1202 Continuing Dental Education Compliance and Renewal Requirements
R4-11-1203 Dentists and Dental Consultants
R4-11-1204 Dental Hygienists
R4-11-1205 Denturists
R4-11-1206 Restricted Permit Holders – Dental
R4-11-1207 Restricted Permit Holders – Dental Hygiene
R4-11-1208 Retired Licensees or Certificate Holders
R4-11-1209 Types of Courses

Article 13 – General Anesthesia and Sedation

R4-11-1301 General Anesthesia and Deep Sedation
R4-11-1302 Parenteral Sedation
R4-11-1303 Oral Sedation
R4-11-1304 Permit to Employ or Work with a Physician Anesthesiologist or Certified Registered Nurse Anesthetist (CNRA)
R4-11-1305 Reports of Adverse Occurrences
R4-11-1306 Education; Continued Competency
R4-11-1307 Renewal of Permit

Article 14 – Dispensing Drugs and Devices

R4-11-1401 Prescribing
R4-11-1402 Labeling and Dispensing
R4-11-1403 Storage and Packaging
R4-11-1404 Recordkeeping
R4-11-1405 Compliance
R4-11-1406 Dispensing for Profit Registration and Renewal
R4-11-1407 Renumbered
R4-11-1408 Renumbered
R4-11-1409 Repealed

Article 15 – Complaints, Investigations, Disciplinary Action

R4-11-1501 Ex-parte Communication
R4-11-1502 Dental Consultant Qualifications
R4-11-1503 Initial Complaint Review
R4-11-1504 Postponement of Interview

Article 16 – Expired

R4-11-1601 Expired
Article 17 – Rehearing or Review
R4-11-1701 Procedure

Article 18 – Business Entities
R4-11-1801 Application
R4-11-1802 Display of Registration
In this chapter, unless the context otherwise requires:

1. "Affiliated practice dental hygienist" means any licensed dental hygienist who is able, pursuant to section 32-1289.01, to initiate treatment based on the dental hygienist's assessment of a patient's needs according to the terms of a written affiliated practice agreement with a dentist, to treat the patient without the presence of a dentist and to maintain a provider-patient relationship.

2. "Auxiliary personnel" means all dental assistants, dental technicians, dental x-ray technicians and other persons employed by dentists or firms and businesses providing dental services to dentists.

3. "Board" means the state board of dental examiners.

4. "Business entity" means a business organization that has an ownership that includes any persons who are not licensed or certified to provide dental services in this state, that offers to the public professional services regulated by the board and that is established pursuant to the laws of any state or foreign country.

5. "Dental assistant" means any person who acts as an assistant to a dentist, dental therapist or dental hygienist by rendering personal services to a patient that involve close proximity to the patient while the patient is under treatment or observation or undergoing diagnostic procedures.

6. "Dental hygienist" means any person who is licensed and engaged in the general practice of dental hygiene and all related and associated duties, including educational, clinical and therapeutic dental hygiene procedures.

7. "Dental incompetence" means lacking in sufficient dentistry knowledge or skills, or both, in that field of dentistry in which the dentist, dental therapist, denturist or dental hygienist concerned engages, to a degree likely to endanger the health of that person's patients.

8. "Dental laboratory technician" means any person, other than a licensed dentist, who, pursuant to a written work order of a dentist, fabricates artificial teeth, prosthetic appliances or other mechanical and artificial contrivances designed to correct or alleviate injuries or defects, both developmental and acquired, disorders or deficiencies of the human oral cavity, teeth, investing tissues, maxilla or mandible or adjacent associated structures.

9. "Dental therapist" means any person who is licensed and engaged in the general practice of dental therapy and all related and associated duties, including educational, clinical and therapeutic dental therapy procedures.

10. "Dental x-ray laboratory technician" means any person, other than a licensed dentist, who, pursuant to a written work order of a dentist, performs dental and maxillofacial radiography, including cephalometrics, panoramic and maxillofacial tomography and other dental related nonfluoroscopic diagnostic imaging modalities.
11. "Dentistry", "dentist" and "dental" mean the general practice of dentistry and all specialties or restricted practices of dentistry.

12. "Denturist" means a person practicing denture technology pursuant to article 5 of this chapter.

13. "Disciplinary action" means regulatory sanctions that are imposed by the board in combination with, or as an alternative to, revocation or suspension of a license and that may include:

(a) Imposition of an administrative penalty in an amount not to exceed two thousand dollars for each violation of this chapter or rules adopted under this chapter.

(b) Imposition of restrictions on the scope of practice.

(c) Imposition of peer review and professional education requirements.

(d) Imposition of censure or probation requirements best adapted to protect the public welfare, which may include a requirement for restitution to the patient resulting from violations of this chapter or rules adopted under this chapter.

14. "Irregularities in billing" means submitting any claim, bill or government assistance claim to any patient, responsible party or third-party payor for dental services rendered that is materially false with the intent to receive unearned income as evidenced by any of the following:

(a) Charges for services not rendered.

(b) Any treatment date that does not accurately reflect the date when the service and procedures were actually completed.

(c) Any description of a dental service or procedure that does not accurately reflect the actual work completed.

(d) Any charge for a service or procedure that cannot be clinically justified or determined to be necessary.

(e) Any statement that is material to the claim and that the licensee knows is false or misleading.

(f) An abrogation of the copayment provisions of a dental insurance contract by a waiver of all or a part of the copayment from the patient if this results in an excessive or fraudulent charge to a third party or if the waiver is used as an enticement to receive dental services from that provider. This subdivision does not interfere with a contractual relationship between a third-party payor and a licensee or business entity registered with the board.

(g) Any other practice in billing that results in excessive or fraudulent charges to the patient.

15. "Letter of concern" means an advisory letter to notify a licensee or a registered business entity that, while the evidence does not warrant disciplinary action, the board believes that the licensee or registered business entity should modify or eliminate certain practices and that continuation of the activities that led to the information being submitted to the board may result in board action against the practitioner's license or the business entity's registration. A letter of concern is not a disciplinary action. A letter of concern is a public document and may be used in a future disciplinary action.
16. "Licensed" means licensed pursuant to this chapter.

17. "Place of practice" means each physical location at which a person who is licensed pursuant to this chapter performs services subject to this chapter.

18. "Primary mailing address" means the address on file with the board and to which official board correspondence, notices or documents are delivered in a manner determined by the board.

19. "Recognized dental hygiene school" means a school that has a dental hygiene program with a minimum two academic year curriculum, or the equivalent of four semesters, and that is approved by the board and accredited by the American dental association commission on dental accreditation.

20. "Recognized dental school" means a dental school that is accredited by the American dental association commission on dental accreditation.

21. "Recognized dental therapy school" means a school that is accredited or that has received initial accreditation by the American dental association commission on dental accreditation.

22. "Recognized denturist school" means a denturist school that maintains standards of entrance, study and graduation and that is accredited by the United States department of education or the council on higher education accreditation.


24. "Teledentistry" means the use of data transmitted through interactive audio, video or data communications for the purposes of examination, diagnosis, treatment planning, consultation and directing the delivery of treatment by dentists and dental providers in settings permissible under this chapter or specified in rules adopted by the board.

32-1201.01. Definition of unprofessional conduct

For the purposes of this chapter, "unprofessional conduct" means the following acts, whether occurring in this state or elsewhere:

1. Intentionally betraying a professional confidence or intentionally violating a privileged communication except as either of these may otherwise be required by law. This paragraph does not prevent members of the board from the full and free exchange of information with the licensing and disciplinary boards of other states, territories or districts of the United States or foreign countries, with the Arizona state dental association or any of its component societies or with the dental societies of other states, counties, districts, territories or foreign countries.

2. Using controlled substances as defined in section 36-2501, narcotic drugs, dangerous drugs or marijuana as defined in section 13-3401, or hypnotic drugs, including acetylsalicylic acid derivatives, barbituric acid derivatives, chloral, paraldehyde, phenylhydantoin derivatives, sulfonmethane derivatives or any compounds, mixtures or preparations that may be used for producing hypnotic effects, or alcohol to the extent that it affects the ability of the dentist, dental therapist, denturist or dental hygienist to practice that person's profession.
3. Prescribing, dispensing or using drugs for other than accepted dental therapeutic purposes or for other than medically indicated supportive therapy in conjunction with managing a patient's dental needs.

4. Committing gross malpractice or repeated acts constituting malpractice.

5. Acting or assuming to act as a member of the board if this is not true.

6. Procuring or attempting to procure a certificate of the national board of dental examiners or a license to practice dentistry or dental hygiene by fraud or misrepresentation or by knowingly taking advantage of the mistake of another.

7. Having professional connection with or lending one's name to an illegal practitioner of dentistry or any of the other healing arts.

8. Representing that a manifestly not correctable condition, disease, injury, ailment or infirmity can be permanently corrected, or that a correctable condition, disease, injury, ailment or infirmity can be corrected within a stated time, if this is not true.

9. Offering, undertaking or agreeing to correct, cure or treat a condition, disease, injury, ailment or infirmity by a secret means, method, device or instrumentality.

10. Refusing to divulge to the board, on reasonable notice and demand, the means, method, device or instrumentality used in the treatment of a condition, disease, injury, ailment or infirmity.

11. Dividing a professional fee or offering, providing or receiving any consideration for patient referrals among or between dental care providers or dental care institutions or entities. This paragraph does not prohibit the division of fees among licensees who are engaged in a bona fide employment, partnership, corporate or contractual relationship for the delivery of professional services.

12. Knowingly making any false or fraudulent statement, written or oral, in connection with the practice of dentistry.

13. Having a license refused, revoked or suspended or any other disciplinary action taken against a dentist by, or voluntarily surrendering a license in lieu of disciplinary action to, any other state, territory, district or country, unless the board finds that this action was not taken for reasons that relate to the person's ability to safely and skillfully practice dentistry or to any act of unprofessional conduct.

14. Committing any conduct or practice that constitutes a danger to the health, welfare or safety of the patient or the public.

15. Obtaining a fee by fraud or misrepresentation, or wilfully or intentionally filing a fraudulent claim with a third party for services rendered or to be rendered to a patient.


17. Employing unlicensed persons to perform or aiding and abetting unlicensed persons in the performance of work that can be done legally only by licensed persons.
18. Practicing dentistry under a false or assumed name in this state, other than as allowed by section 32-1262.

19. Wilfully or intentionally causing or permitting supervised personnel or auxiliary personnel operating under the licensee's supervision to commit illegal acts or perform an act or operation other than that permitted under article 4 of this chapter and rules adopted by the board pursuant to section 32-1282.

20. Committing the following advertising practices:

(a) Publishing or circulating, directly or indirectly, any false, fraudulent or misleading statements concerning the skill, methods or practices of the licensee or of any other person.

(b) Advertising in any manner that tends to deceive or defraud the public.

21. Failing to dispense drugs and devices in compliance with article 6 of this chapter.

22. Failing to comply with a board order, including an order of censure or probation.

23. Failing to comply with a board subpoena in a timely manner.

24. Failing or refusing to maintain adequate patient records.

25. Failing to allow properly authorized board personnel, on demand, to inspect the place of practice and examine and have access to documents, books, reports and records maintained by the licensee or certificate holder that relate to the dental practice or dental-related activity.

26. Refusing to submit to a body fluid examination as required through a monitored treatment program or pursuant to a board investigation into a licensee's or certificate holder's alleged substance abuse.

27. Failing to inform a patient of the type of material the dentist will use in the patient's dental filling and the reason why the dentist is using that particular filling.

28. Failing to report in writing to the board any evidence that a dentist, dental therapist, denturist or dental hygienist is or may be:

(a) Professionally incompetent.

(b) Engaging in unprofessional conduct.

(c) Impaired by drugs or alcohol.

(d) Mentally or physically unable to safely engage in the activities of a dentist, dental therapist, denturist or dental hygienist pursuant to this chapter.

29. Filing a false report pursuant to paragraph 28 of this section.
30. Practicing dentistry, dental therapy, dental hygiene or denturism in a business entity that is not registered with the board as required by section 32-1213.

31. Dispensing a schedule II controlled substance that is an opioid.

32. Providing services or procedures as a dental therapist that exceed the scope of practice or exceed the services or procedures authorized in the written collaborative practice agreement.

32-1202. Scope of practice; practice of dentistry

For the purposes of this chapter, the practice of dentistry is the diagnosis, surgical or nonsurgical treatment and performance of related adjunctive procedures for any disease, pain, deformity, deficiency, injury or physical condition of the human tooth or teeth, alveolar process, gums, lips, cheek, jaws, oral cavity and associated tissues, including the removal of stains, discolorations and concretions.

32-1203. State board of dental examiners; qualifications of members; terms

A. The state board of dental examiners is established consisting of six licensed dentists, two licensed dental hygienists, two public members and one business entity member appointed by the governor for a term of four years, to begin and end on January 1.

B. Before appointment by the governor, a prospective member of the board shall submit a full set of fingerprints to the governor for the purpose of obtaining a state and federal criminal records check pursuant to section 41-1750 and Public Law 92-544. The department of public safety may exchange this fingerprint data with the federal bureau of investigation.

C. The business entity member and the public members may participate in all board proceedings and determinations, except in the preparing, giving or grading of examinations for licensure. Dental hygienist board members may participate in all board proceedings and determinations, except in the preparing, giving and grading of examinations that do not relate to dental hygiene procedures.

D. A board member shall not serve more than two consecutive terms.

E. For the purposes of this section, business entity member does not include a person who is licensed pursuant to this chapter.

32-1204. Removal from office

The governor may remove a member of the board for persistent neglect of duty, incompetency, unfair, biased, partial or dishonorable conduct, or gross immorality. Conviction of a felony or revocation of the dental license of a member of the board shall ipso facto terminate his membership.

32-1205. Organization; meetings; quorum; staff

A. The board shall elect from its membership a president and a vice-president who shall act also as secretary-treasurer.

B. Board meetings shall be conducted pursuant to title 38, chapter 3, article 3.1. A majority of the board constitutes a quorum. Beginning September 1, 2015, meetings held pursuant to this
subsection shall be audio recorded and the audio recording shall be posted to the board's website within five business days after the meeting.

C. The board may employ an executive director, subject to title 41, chapter 4, article 4 and legislative appropriation.

D. The board or the executive director may employ personnel, as necessary, subject to title 41, chapter 4, article 4 and legislative appropriation.

**32-1206. Compensation of board**

Members of the board are entitled to receive compensation in the amount of two hundred fifty dollars for each day actually spent in performing necessary work authorized by the board and all expenses necessarily and properly incurred while performing this work.

**32-1207. Powers and duties; executive director; immunity; fees; definition**

A. The board shall:

1. Adopt rules that are not inconsistent with this chapter for regulating its own conduct, for holding examinations and for regulating the practice of dentists and supervised personnel and registered business entities, provided:

   (a) Regulation of supervised personnel is based on the degree of education and training of the supervised personnel, the state of scientific technology available and the necessary degree of supervision of the supervised personnel by dentists.

   (b) Except as provided pursuant to sections 32-1276.03 and 32-1281, only licensed dentists may perform diagnosis and treatment planning, prescribe medication and perform surgical procedures on hard and soft tissues.

   (c) Only a licensed dentist, a dental therapist either under the direct supervision of a dentist or pursuant to a written collaborative practice agreement or a dental hygienist in consultation with a dentist may perform examinations, oral health assessments and treatment sequencing for dental hygiene procedures.

2. Adopt a seal.

3. Maintain a record that is available to the board at all times of its acts and proceedings, including the issuance, denial, renewal, suspension or revocation of licenses and the disposition of complaints. The existence of a pending complaint or investigation shall not be disclosed to the public. Records of complaints shall be available to the public, except only as follows:

   (a) If the board dismisses or terminates a complaint, the record of the complaint shall not be available to the public.

   (b) If the board has issued a nondisciplinary letter of concern, the record of the complaint shall be available to the public only for a period of five years after the date the board issued the letter of concern.
(c) If the board has required additional nondisciplinary continuing education pursuant to section 32-1263.01 but has not taken further action, the record of the complaint shall be available to the public only for a period of five years after the licensee satisfies this requirement.

(d) If the board has assessed a nondisciplinary civil penalty pursuant to section 32-1208 but has not taken further action, the record of the complaint shall be available to the public only for a period of five years after the licensee satisfies this requirement.

4. Establish a uniform and reasonable standard of minimum educational requirements consistent with the accreditation standards of the American dental association commission on dental accreditation to be observed by dental schools, dental therapy schools and dental hygiene schools in order to be classified as recognized dental schools, dental therapy schools or dental hygiene schools.

5. Establish a uniform and reasonable standard of minimum educational requirements that are consistent with the accreditation standards of the United States department of education or the council on higher education accreditation and that must be observed by denture technology schools in order to be classified as recognized denture technology schools.

6. Determine the reputability and classification of dental schools, dental therapy schools, dental hygiene schools and denture technology schools in accordance with their compliance with the standard set forth in paragraph 4 or 5 of this subsection, whichever is applicable.

7. Issue licenses to persons who the board determines are eligible for licensure pursuant to this chapter.

8. Determine the eligibility of applicants for restricted permits and issue restricted permits to those found eligible.

9. Pursuant to section 32-1263.02, investigate charges of misconduct on the part of licensees and persons to whom restricted permits have been issued.

10. Issue a letter of concern, which is not a disciplinary action but refers to practices that may lead to a violation and to disciplinary action.

11. Issue decrees of censure, fix periods and terms of probation, suspend or revoke licenses, certificates and restricted permits, as the facts may warrant, and reinstate licenses, certificates and restricted permits in proper cases.

12. Collect and disburse monies.

13. Perform all other duties that are necessary to enforce this chapter and that are not specifically or by necessary implication delegated to another person.

14. Establish criteria for the renewal of permits issued pursuant to board rules relating to general anesthesia and sedation.

B. The board may:

1. Sue and be sued.
2. Issue subpoenas, including subpoenas to the custodian of patient records, compel attendance of witnesses, administer oaths and take testimony concerning all matters within the board's jurisdiction. If a person refuses to obey a subpoena issued by the board, the refusal shall be certified to the superior court and proceedings shall be instituted for contempt of court.

3. Adopt rules:

(a) Prescribing requirements for continuing education for renewal of all licenses issued pursuant to this chapter.

(b) Prescribing educational and experience prerequisites for the administration of intravenous or intramuscular drugs for the purpose of sedation or for use of general anesthetics in conjunction with a dental treatment procedure.

(c) Prescribing requirements for obtaining licenses for retired licensees or licensees who have a disability, including the triennial license renewal fee.

4. Hire consultants to assist the board in the performance of its duties and employ persons to provide investigative, professional and clerical assistance as the board deems necessary.

5. Contract with other state or federal agencies as required to carry out the purposes of this chapter.

6. If determined by the board, order physical, psychological, psychiatric and competency evaluations of licensed dentists, dental therapists and dental hygienists, certified denturists and applicants for licensure and certification at the expense of those individuals.

C. The executive director or the executive director's designee may:

1. Issue and renew licenses, certificates and permits to applicants who meet the requirements of this chapter.

2. Initiate an investigation if evidence appears to demonstrate that a dentist, dental therapist, dental hygienist, denturist or restricted permit holder may be engaged in unprofessional conduct or may be unable to safely practice dentistry.

3. Initiate an investigation if evidence appears to demonstrate that a business entity may be engaged in unethical conduct.

4. Subject to board approval, enter into a consent agreement with a dentist, dental therapist, denturist, dental hygienist or restricted permit holder if there is evidence of unprofessional conduct.

5. Subject to board approval, enter into a consent agreement with a business entity if there is evidence of unethical conduct.

6. Refer cases to the board for a formal interview.

7. If delegated by the board, enter into a stipulation agreement with a person under the board's jurisdiction for the treatment, rehabilitation and monitoring of chemical substance abuse or misuse.
D. Members of the board are personally immune from liability with respect to all acts done and actions taken in good faith and within the scope of their authority.

E. The board by rule shall require that a licensee obtain a permit for the application of general anesthesia, semiconscious sedation or conscious sedation, shall establish and collect a fee of not more than three hundred dollars to cover administrative costs connected with issuing the permit and shall conduct inspections to ensure compliance.

F. The board by rule may establish and collect fees for license verification, board meeting agendas and minutes, published lists and mailing labels.

G. This section does not prohibit the board from conducting its authorized duties in a public meeting.

H. For the purposes of this section, "record of complaint" means the document reflecting the final disposition of a complaint or investigation.

32-1208. Failure to respond to subpoena; civil penalty

In addition to any disciplinary action authorized by statute, the board may assess a nondisciplinary civil penalty in an amount not to exceed five hundred dollars for a licensee who fails to respond to a subpoena issued by the board pursuant to this chapter.

32-1209. Admissibility of records in evidence

A copy of any part of the recorded proceedings of the board certified by the executive director, or a certificate by the executive director that any asserted or purported record, name, license number, restricted permit number or action is not entered in the recorded proceedings of the board, may be admitted as evidence in any court in this state. A person making application and paying a fee set by the board may procure from the executive director a certified copy of any portion of the records of the board unless these records are classified as confidential as provided by law. Unless otherwise provided by law, all records concerning an investigation, examination materials, records of examination grading and applicants' performance and transcripts of educational institutions concerning applicants are confidential and are not public records. "Records of applicants' performance" does not include records of whether an applicant passed or failed an examination.

32-1210. Annual report

A. Not later than October 1 of each year, the board shall make an annual written report to the governor for the preceding year that includes the following information:

1. The number of licensed dentists in the state.

2. The number of licenses issued during the preceding year and to whom issued.

3. The number of examinations held and the dates of the examinations.

4. The facts with respect to accusations filed with the board, of hearings held in connection with those accusations and the results of those hearings.

5. The facts with respect to prosecution of persons charged with violations of this chapter.
6. A full and complete statement of financial transactions of the board.

7. Any other matters that the board wishes to include in the report or that the governor requires.

B. On request of the governor the board shall submit a supplemental report.

32-1212. Dental board fund

A. Except as provided in subsection C of this section, pursuant to sections 35-146 and 35-147, the executive director of the board shall each month deposit ten per cent of all fees, fines and other revenue received by the board, in the state general fund and deposit the remaining ninety per cent in the dental board fund.

B. Monies deposited in the dental board fund shall be subject to the provisions of section 35-143.01.

C. Monies from administrative penalties received pursuant to section 32-1263.01 shall be deposited, pursuant to sections 35-146 and 35-147, in the state general fund.

32-1213. Business entities; registration; renewal; civil penalty; exceptions

A. A business entity may not offer dental services pursuant to this chapter unless:

1. The entity is registered with the board pursuant to this section.

2. The services are conducted by a licensee pursuant to this chapter.

B. The business entity must file a registration application on a form provided by the board. The application must include:

1. A description of the entity’s services offered to the public.

2. The name of any dentist who is authorized to provide and who is responsible for providing the dental services offered at each office.

3. The names and addresses of the officers and directors of the business entity.

4. A registration fee prescribed by the board in rule.

C. A business entity must file a separate registration application and pay a fee for each branch office in this state.

D. A registration expires three years after the date the board issues the registration. A business entity that wishes to renew a registration must submit an application for renewal as prescribed by the board on a triennial basis on a form provided by the board before the expiration date. An entity that fails to renew the registration before the expiration date is subject to a late fee as prescribed by the board by rule. The board may stagger the dates for renewal applications.

E. The business entity must notify the board in writing within thirty days after any change:
1. In the entity's name, address or telephone number.

2. In the officers or directors of the business entity.

3. In the name of any dentist who is authorized to provide and who is responsible for providing the dental services in any facility.

F. The business entity shall establish a written protocol for the secure storage, transfer and access of the dental records of the business entity's patients. This protocol must include, at a minimum, procedures for:

1. Notifying patients of the future locations of their records if the business entity terminates or sells the practice.

2. Disposing of unclaimed dental records.

3. The timely response to requests by patients for copies of their records.

G. The business entity must notify the board within thirty days after the dissolution of any registered business entity or the closing or relocation of any facility and must disclose to the board the entity's procedure by which its patients may obtain their records.

H. The board may do any of the following pursuant to its disciplinary procedures if an entity violates the board's statutes or rules:

1. Refuse to issue a registration.

2. Suspend or revoke a registration.

3. Impose a civil penalty of not more than $2,000 for each violation.

4. Enter a decree of censure.

5. Issue an order prescribing a period and terms of probation that are best adapted to protect the public welfare and that may include a requirement for restitution to a patient for a violation of this chapter or rules adopted pursuant to this chapter.

6. Issue a letter of concern if a business entity's actions may cause the board to take disciplinary action.

I. The board shall deposit, pursuant to sections 35-146 and 35-147, civil penalties collected pursuant to this section in the state general fund.

J. This section does not apply to:

1. A sole proprietorship or partnership that consists exclusively of dentists who are licensed pursuant to this chapter.

2. Any of the following entities licensed under title 20:
(a) A service corporation.
(b) An insurer authorized to transact disability insurance.
(c) A prepaid dental plan organization that does not provide directly for prepaid dental services.
(d) A health care services organization that does not provide directly for dental services.

3. A professional corporation or professional limited liability company, the shares of which are exclusively owned by dentists who are licensed pursuant to this chapter and that is formed to engage in the practice of dentistry pursuant to title 10, chapter 20 or title 29 relating to professional limited liability companies.

4. A facility regulated by the federal government or a state, district or territory of the United States.

5. An administrator or executor of the estate of a deceased dentist or a person who is legally authorized to act for a dentist who has been adjudicated to be mentally incompetent for not more than one year after the date the board receives notice of the dentist's death or incapacitation pursuant to section 32-1270.

K. A facility that offers dental services to the public by persons licensed under this chapter shall be registered by the board unless the facility is any of the following:

1. Owned by a dentist who is licensed pursuant to this chapter.
2. Regulated by the federal government or a state, district or territory of the United States.

L. Except for issues relating to insurance coding and billing that require the name, signature and license number of the dentist providing treatment, this section does not:

1. Authorize a licensee in the course of providing dental services for an entity registered pursuant to this section to disregard or interfere with a policy or practice established by the entity for the operation and management of the business.
2. Authorize an entity registered pursuant to this section to establish or enforce a business policy or practice that may interfere with the clinical judgment of the licensee in providing dental services for the entity or may compromise a licensee's ability to comply with this chapter.

M. The board shall adopt rules that provide a method for the board to receive the assistance and advice of business entities licensed pursuant to this chapter in all matters relating to the regulation of business entities.

N. An individual currently holding a surrendered or revoked license to practice dentistry or dental hygiene in any state or jurisdiction in the United States may not have a majority ownership interest in the business entity registered pursuant to this section. Revocation and surrender of licensure shall be limited to disciplinary actions resulting in loss of license or surrender of license instead of disciplinary action. Dentists or dental hygienists affected by this subsection shall have one year after the surrender or revocation to divest themselves of their ownership interest. This subsection does not apply to publicly held companies. For the purposes of this subsection, "majority ownership interest" means an ownership interest greater than fifty percent.
Article 2 – Licensure

32-1231. Persons not required to be licensed

This chapter does not prohibit:

1. A dentist, dental therapist or dental hygienist who is officially employed in the service of the United States from practicing dentistry in the dentist's, dental therapist's or dental hygienist's official capacity, within the scope of that person's authority, on persons who are enlisted in, directly connected with or under the immediate control of some branch of service of the United States.

2. A person, whether or not licensed by this state, from practicing dental therapy either:

   (a) In the discharge of official duties on behalf of the United States government, including the United States department of veterans affairs, the United States public health service and the Indian health service.

   (b) While employed by tribal health programs authorized pursuant to Public Law 93-638 or urban Indian health programs.

3. An intern or student of dentistry, dental therapy or dental hygiene from operating in the clinical departments or laboratories of a recognized dental school, dental therapy school, dental hygiene school or hospital under the supervision of a dentist.

4. An unlicensed person from performing for a licensed dentist merely mechanical work on inert matter not within the oral cavity in the construction, making, alteration or repairing of any artificial dental substitute or any dental restorative or corrective appliance, if the casts or impressions for that work have been furnished by a licensed dentist and the work is directly supervised by the dentist for whom done or under a written authorization signed by the dentist, but the burden of proving that written authorization or direct supervision is on the person charged with having violated this provision.

5. A clinician who is not licensed in this state from giving demonstrations, before bona fide dental societies, study clubs and groups of professional students, that are free to the persons on whom made.

6. The state director of dental public health from performing the director's administrative duties as prescribed by law.

7. A dentist or dental hygienist to whom a restricted permit has been issued from practicing dentistry or dental hygiene in this state as provided in sections 32-1237 and 32-1292.

8. A dentist, dental therapist or dental hygienist who is not practicing on the public at large from practicing in a recognized dental school, recognized dental therapy school or recognized dental hygiene school.

32-1232. Qualifications of applicant; application; fee; fingerprint clearance card

A. An applicant for licensure shall be of good moral character, shall meet the requirements of section 32-1233 and shall hold a diploma conferring a degree of doctor of dental medicine or doctor of dental surgery from a recognized dental school.
B. Each candidate shall submit a written application to the board accompanied by a nonrefundable Arizona dental jurisprudence examination fee of three hundred dollars. The board shall waive this fee for candidates who are holders of valid restricted permits. Each candidate shall also obtain a valid fingerprint clearance card issued pursuant to section 41-1758.03.

C. The board may deny an application for a license, for license renewal or for a restricted permit if the applicant:

1. Has committed any act that would be cause for censure, probation or suspension or revocation of a license under this chapter.

2. While unlicensed, committed or aided and abetted the commission of any act for which a license is required by this chapter.

3. Knowingly made any false statement in the application.

4. Has had a license to practice dentistry revoked by a dental regulatory board in another jurisdiction in the United States for an act that occurred in that jurisdiction and that constitutes unprofessional conduct pursuant to this chapter.

5. Is currently under suspension or restriction by a dental regulatory board in another jurisdiction in the United States for an act that occurred in that jurisdiction and that constitutes unprofessional conduct pursuant to this chapter.

6. Has surrendered, relinquished or given up a license to practice dentistry in lieu of disciplinary action by a dental regulatory board in another jurisdiction in the United States for an act that occurred in that jurisdiction and that constitutes unprofessional conduct pursuant to this chapter.

D. The board shall suspend an application for a license, for license renewal or for a restricted permit if the applicant is currently under investigation by a dental regulatory board in another jurisdiction. The board shall not issue or deny a license to the applicant until the investigation is resolved.

32-1233. Applicants for licensure; examination requirements

An applicant for licensure shall have passed all of the following:

1. The written national dental board examinations.

2. The western regional examining board examination or a clinical examination administered by another state or regional testing agency in the United States within five years preceding filing the application.

3. The Arizona dental jurisprudence examination.

32-1234. Dental consultant license

A. A person may apply for a dental consultant license if the applicant demonstrates to the board's satisfaction that the applicant:
1. Has continuously held a license to practice dentistry for at least twenty-five years issued by one or more states or territories of the United States or the District of Columbia, but is not currently licensed to practice dentistry in Arizona.

2. Is of good moral character.

3. Has not had a license to practice dentistry revoked by a dental regulatory board in another jurisdiction in the United States for an act that occurred in that jurisdiction and that constitutes unprofessional conduct pursuant to this chapter.

4. Is not currently under suspension or restriction by a dental regulatory board in another jurisdiction in the United States for an act that occurred in that jurisdiction and that constitutes unprofessional conduct pursuant to this chapter.

5. Has not surrendered, relinquished or given up a license to practice dentistry in lieu of disciplinary action by a dental regulatory board in another jurisdiction in the United States for an act that occurred in that jurisdiction and that constitutes unprofessional conduct pursuant to this chapter.

6. Meets the applicable requirements of section 32-1232.

7. Meets the requirements of section 32-1233, paragraphs 1 and 3. If an applicant has taken a state written theory examination instead of the written national dental board examinations, the applicant must provide the board with official documentation of passing the written theory examinations in the state where the applicant holds a current license. The board shall then determine the applicant's eligibility for a license pursuant to this section.

8. Meets the application requirements as prescribed in rule by the board.

B. The board shall suspend an application for a dental consultant license if the applicant is currently under investigation by a dental regulatory board in another jurisdiction in the United States. The board shall not issue or deny a license to the applicant until the investigation is resolved.

C. A person to whom a dental consultant license is issued shall practice dentistry only in the course of the person’s employment or on behalf of an entity licensed under title 20 with the practice limited to supervising or conducting utilization review or other claims or case management activity on behalf of the entity licensed pursuant to title 20. A person who holds a dental consultant license is prohibited from providing direct patient care.

D. This section shall not be deemed to require a person to apply for or hold a dental consultant license in order for that person to serve as a consultant to or engage in claims review activity for an entity licensed pursuant to title 20.

E. Except as provided in subsection B of this section, a dental consultant licensee is subject to all of the provisions of this chapter that are applicable to licensed dentists.

32-1235. Reinstatement of license or certificate; application for previously denied license or certificate

A. On written application the board may issue a new license or certificate to a dentist, dental therapist, dental hygienist or denturist whose license or certificate was previously suspended or
revoked by the board or surrendered by the applicant if the applicant demonstrates to the board’s satisfaction that the applicant is completely rehabilitated with respect to the conduct that was the basis for the suspension, revocation or surrender. In making its decision, the board shall determine:

1. That the applicant has not engaged in any conduct during the suspension, revocation or surrender period that would have constituted a basis for revocation pursuant to section 32-1263.

2. If a criminal conviction was a basis for the suspension, revocation or surrender, that the applicant’s civil rights have been fully restored pursuant to statute or any other applicable recognized judicial or gubernatorial order.

3. That the applicant has made restitution to any aggrieved person as ordered by a court of competent jurisdiction.

4. That the applicant demonstrates any other standard of rehabilitation the board determines is appropriate.

B. Except as provided in subsection C of this section, a person may not submit an application for reinstatement less than five years after the date of suspension, revocation or surrender.

C. The board shall vacate its previous order to suspend or revoke a license or certificate if that suspension or revocation was based on a conviction of a felony or an offense involving moral turpitude and that conviction has been reversed on appeal. The person may submit an application for reinstatement as soon as the court enters the reversal.

D. An applicant for reinstatement must comply with all initial licensing or certification requirements prescribed by this chapter.

E. A person whose application for a license or certificate has been denied for failure to meet academic requirements may apply for licensure or certification not less than two years after the denial.

F. A person whose application for a license has been denied pursuant to section 32-1232, subsection C may apply for licensure not less than five years after the denial.

32-1236. Dentist triennial licensure; continuing education; license reinstatement; license for each place of practice; notice of change of address or place of practice; retired and disabled license status; penalties

A. Except as provided in section 32-4301, a license expires thirty days after the licensee’s birthday every third year. On or before the licensee’s birthday every third year, every licensed dentist shall submit to the board a complete renewal application and pay a license renewal fee of not more than $650, established by a formal vote of the board. At least once every three years, before establishing the fee, the board shall review the amount of the fee in a public meeting. Any change in the amount of the fee shall be applied prospectively to a licensee at the time of licensure renewal. The fee prescribed by this subsection does not apply to a retired dentist or to a dentist with a disability.

B. A licensee shall include a written affidavit with the renewal application that affirms that the licensee complies with board rules relating to continuing education requirements. A licensee is not required to complete the written affidavit if the licensee received an initial license within the year
immediately preceding the expiration date of the license or the licensee is in disabled status. If the licensee is not in compliance with board rules relating to continuing education, the board may grant an extension of time to complete these requirements if the licensee includes a written request for an extension with the renewal application instead of the written affidavit and the renewal application is received on or before the licensee's birthday of the expiration year. The board shall consider the extension request based on criteria prescribed by the board by rule. If the board denies an extension request, the license expires thirty days after the licensee's birthday.

C. A person applying for licensure for the first time in this state shall pay a prorated fee for the period remaining until the licensee's next birthday. This fee shall not exceed one-third of the fee established pursuant to subsection A of this section. Subsequent licensure renewal shall be conducted pursuant to this section.

D. An expired license may be reinstated by submitting a complete renewal application within the twenty-four-month period immediately following the expiration of the license with payment of the renewal fee and a $100 penalty. Whenever issued, reinstatement is as of the date of application and entitles the applicant to licensure only for the remainder of the applicable three-year period. If a person does not reinstate a license pursuant to this subsection, the person must reapply for licensure pursuant to this chapter.

E. Each licensee must provide to the board in writing both of the following:

1. A primary mailing address.

2. The address for each place of practice.

F. A licensee maintaining more than one place of practice shall obtain from the board a duplicate license for each office. A fee set by the board shall be charged for each duplicate license. The licensee shall notify the board in writing within ten days after opening the additional place or places of practice. The board shall impose a penalty of $50 for failure to notify the board.

G. A licensee who is fully retired and a licensee who has a permanent disability may contribute services to a recognized charitable institution and still retain that classification for triennial registration purposes on payment of a reduced renewal fee as prescribed by the board by rule.

H. A licensee applying for retired or disabled status shall:

1. Relinquish any prescribing privileges and shall attest by affidavit that the licensee has surrendered to the United States drug enforcement administration any registration issued pursuant to the federal controlled substances act and has surrendered to the board any registration issued pursuant to section 36-2606.

2. If the licensee holds a permit to dispense drugs and devices pursuant to section 32-1298, surrender that permit to the board.

3. Attest by affidavit that the licensee is not currently engaged in the practice of dentistry.

I. A licensee who changes the licensee's primary mailing address or place of practice address shall notify the board of that change in writing within ten days. The board shall impose a penalty of $50 if
a licensee fails to notify the board of the change within that time. The board shall increase the penalty imposed to $100 if a licensee fails to notify it of the change within thirty days.

32-1237. Restricted permit

A person may apply for a restricted permit if the applicant demonstrates to the board’s satisfaction that the applicant:

1. Has a pending contract with a recognized charitable dental clinic or organization that offers dental services without compensation or at a rate that only reimburses the clinic for dental supplies and overhead costs and the applicant will receive no compensation for dental services provided at the clinic or organization.

2. Has a license to practice dentistry issued by another state or territory of the United States or the District of Columbia.

3. Has been actively engaged in one or more of the following for three years immediately preceding the application:
   (a) The practice of dentistry.
   (b) An approved dental residency training program.
   (c) Postgraduate training deemed by the board equivalent to an approved dental residency training program.

4. Is competent and proficient to practice dentistry.

5. Meets the requirements of section 32-1232, subsection A, other than the requirement to meet section 32-1233.

32-1238. Issuance of restricted permit

A restricted permit may be issued by the board without examination or payment of fee for a period not to exceed one year or until June 30th, whichever is lesser, and shall automatically expire at that time. The board may, in its discretion and pursuant to rules or regulations not inconsistent with this chapter, renew such restricted permit for periods not to exceed one year.

32-1239. Practice under restricted permit

A person to whom a restricted permit is issued shall be entitled to practice dentistry only in the course of his employment by a recognized charitable dental clinic or organization as approved by the board, on the following conditions:

1. He shall file a copy of his employment contract with the board and such contract shall contain the following provisions:
   (a) That applicant understands and acknowledges that if his employment by the charitable dental clinic or organization is terminated prior to the expiration of his restricted permit, his restricted permit
will be automatically revoked and he will voluntarily surrender the permit to the board and will no longer be eligible to practice unless or until he has satisfied the requirements of section 32-1237 or has successfully passed the examination as provided in this article.

(b) He shall be employed by a dental clinic or organization organized and operated for charitable purposes offering dental services without compensation. The term “employed” as used in this subdivision shall include the performance of dental services without compensation.

(c) He shall be subject to all the provisions of this chapter applicable to licensed dentists.

32-1240. Licensure by credential; examinations; waiver; fee

A. The board by rule may waive the examination requirements of this article on receipt of evidence satisfactory to the board that the applicant has passed the clinical examination of another state or testing agency more than five years before submitting an application for licensure pursuant to this chapter and the other state or testing agency maintains a standard of licensure that is substantially equivalent to that of this state as determined by the board. The board by rule shall require:

1. A minimum number of active practice hours within a specific time period before the applicant submits the application. The board shall define what constitutes active practice.

2. An affirmation that the applicant has completed the continuing education requirements of the jurisdiction where the applicant is licensed.

B. The applicant shall pay a licensure by credential fee of not more than two thousand dollars as prescribed by the board.

32-1241. Training permits; qualified military health professionals

A. The board shall issue a training permit to a qualified military health professional who is practicing dentistry in the United States armed forces and who is discharging the health professional’s official duties by participating in a clinical training program based at a civilian hospital affiliated with the United States department of defense.

B. Before the board issues the training permit, the qualified military health professional must submit a written statement from the United States department of defense that the applicant:

1. Is a member of the United States armed forces who is performing duties for and at the direction of the United States department of defense at a location in this state approved by the United States department of defense.

2. Has a current license or is credentialed to practice dentistry in a jurisdiction of the United States.

3. Meets all required qualification standards prescribed pursuant to 10 United States Code section 1094(d) relating to the licensure requirements for health professionals.

4. Has not had a license to practice revoked by a regulatory board in another jurisdiction in the United States for an act that occurred in that jurisdiction that constitutes unprofessional conduct pursuant to this chapter.
5. Is not currently under investigation, suspension or restriction by a regulatory board in another jurisdiction in the United States for an act that occurred in that jurisdiction that constitutes unprofessional conduct pursuant to this chapter.

6. Has not surrendered, relinquished or given up a license in lieu of disciplinary action by a regulatory board in another jurisdiction in the United States for an act that occurred in that jurisdiction that constitutes unprofessional conduct pursuant to this chapter. This paragraph does not prevent the board from considering the request for a training permit of a qualified military health professional who surrendered, relinquished or gave up a license in lieu of disciplinary action by a regulatory board in another jurisdiction if that regulatory board subsequently reinstated the qualified military health professional’s license.

C. The qualified military health professional may not open an office or designate a place to meet patients or receive calls relating to the practice of dentistry in this state outside of the facilities and programs of the approved civilian hospital.

D. The qualified military health professional may not practice outside of the professional's scope of practice.

E. A training permit issued pursuant to this section is valid for one year. The qualified military health professional may apply annually to the board to renew the permit. With each application to renew the qualified military health professional must submit a written statement from the United States department of defense asking the board for continuation of the training permit.

F. The board may not impose a fee to issue or renew a training permit to a qualified military health professional pursuant to this section.

**Article 3 – Regulation**

**32-1261. Practicing without license; classification**

Except as otherwise provided a person is guilty of a class 6 felony who, without a valid license or business entity registration as prescribed by this chapter:

1. Practices dentistry or any branch of dentistry as described in section 32-1202.

2. In any manner or by any means, direct or indirect, advertises, represents or claims to be engaged or ready and willing to engage in that practice as described in section 32-1202.

3. Manages, maintains or carries on, in any capacity or by any arrangement, a practice, business, office or institution for the practice of dentistry, or that is advertised, represented or held out to the public for that purpose.

**32-1262. Corporate practice; display of name and license receipt or license; duplicate licenses; fee**

A. It is lawful to practice dentistry as a professional corporation or professional limited liability company.

B. It is lawful to practice dentistry as a business organization if the business organization is registered as a business entity pursuant to this chapter.
C. It is lawful to practice dentistry under a name other than that of the licensed practitioners if the name is not deceptive or misleading.

D. If practicing as a professional corporation or professional limited liability company, the name and address of record of the dentist owners of the practice shall be conspicuously displayed at the entrance to each owned location.

E. If practicing as a business organization that is registered as a business entity pursuant to section 32-1213, the receipt for the current registration period must be conspicuously displayed at the entrance to each place of practice.

F. A licensee's receipt for the current licensure period shall be displayed in the licensee's place of practice in a manner that is always readily observable by patients or visitors and shall be exhibited to members of the board or to duly authorized agents of the board on request. The receipt for the licensure period immediately preceding shall be kept on display until replaced by the receipt for the current period. During the year in which the licensee is first licensed and until the receipt for the following period is received, the license shall be displayed in lieu of the receipt.

G. If a dentist maintains more than one place of practice, the board may issue one or more duplicate licenses or receipts on payment of a fee fixed by the board not exceeding twenty-five dollars for each duplicate.

H. If a licensee legally changes the licensee's name from that in which the license was originally issued, the board, on satisfactory proof of the change and surrender of the original license, if obtainable, may issue a new license in the new name and shall charge the established fee for duplicate licenses.

32-1263. Grounds for disciplinary action; definition

A. The board may invoke disciplinary action against any person who is licensed under this chapter for any of the following reasons:

1. Unprofessional conduct as defined in section 32-1201.01.

2. Conviction of a felony or of a misdemeanor involving moral turpitude, in which case the record of conviction or a certified copy is conclusive evidence.

3. Physical or mental incompetence to practice pursuant to this chapter.

4. Committing or aiding, directly or indirectly, a violation of or noncompliance with any provision of this chapter or of any rules adopted by the board pursuant to this chapter.

5. Dental incompetence as defined in section 32-1201.

B. This section does not establish a cause of action against a licensee or a registered business entity that makes a report of unprofessional conduct or unethical conduct in good faith.

C. The board may take disciplinary action against a business entity that is registered pursuant to this chapter for unethical conduct.
D. For the purposes of this section, "unethical conduct" means the following acts occurring in this state or elsewhere:

1. Failing to report in writing to the board any evidence that a dentist, dental therapist, denturist or dental hygienist is or may be professionally incompetent, is or may be guilty of unprofessional conduct, is or may be impaired by drugs or alcohol or is or may be mentally or physically unable to safely engage in the permissible activities of a dentist, dental therapist, denturist or dental hygienist.

2. Falsely reporting to the board that a dentist, dental therapist, denturist or dental hygienist is or may be guilty of unprofessional conduct, is or may be impaired by drugs or alcohol or is or may be mentally or physically unable to safely engage in the permissible activities of a dentist, dental therapist, denturist or dental hygienist.

3. Obtaining or attempting to obtain a registration or registration renewal by fraud or by misrepresentation.

4. Knowingly filing with the board any application, renewal or other document that contains false information.

5. Failing to register or failing to submit a renewal registration with the board pursuant to section 32-1213.

6. Failing to provide the following persons with access to any place for which a registration has been issued or for which an application for a registration has been submitted in order to conduct a site investigation, inspection or audit:
   
   (a) The board or its employees or agents.
   
   (b) An authorized federal or state official.

7. Failing to notify the board of a change in officers and directors, a change of address or a change in the dentists providing services pursuant to section 32-1213, subsection E.

8. Failing to provide patient records pursuant to section 32-1264.

9. Obtaining a fee by fraud or misrepresentation or wilfully or intentionally filing a fraudulent claim with a third party for services rendered or to be rendered to a patient.

10. Engaging in repeated irregularities in billing.

11. Engaging in the following advertising practices:

   (a) Publishing or circulating, directly or indirectly, any false or fraudulent or misleading statements concerning the skill, methods or practices of a registered business entity, a licensee or any other person.

   (b) Advertising in any manner that tends to deceive or defraud the public.

12. Failing to comply with a board subpoena in a timely manner.
13. Failing to comply with a final board order, including a decree of censure, a period or term of probation, a consent agreement or a stipulation.

14. Employing or aiding and abetting unlicensed persons to perform work that must be done by a person licensed pursuant to this chapter.

15. Engaging in any conduct or practice that constitutes a danger to the health, welfare or safety of the patient or the public.

16. Engaging in a policy or practice that interferes with the clinical judgment of a licensee providing dental services for a business entity or compromising a licensee's ability to comply with this chapter.

17. Engaging in a practice by which a dental hygienist, dental therapist or dental assistant exceeds the scope of practice or restrictions included in a written collaborative practice agreement.

32-1263.01. Types of disciplinary action; letter of concern; judicial review; notice; removal of notice; violation; classification

A. The board may take any one or a combination of the following disciplinary actions against any person licensed under this chapter:

1. Revocation of license to practice.

2. Suspension of license to practice.

3. Entering a decree of censure, which may require that restitution be made to an aggrieved party.

4. Issuance of an order fixing a period and terms of probation best adapted to protect the public health and safety and to rehabilitate the licensed person. The order fixing a period and terms of probation may require that restitution be made to the aggrieved party.

5. Imposition of an administrative penalty in an amount not to exceed two thousand dollars for each violation of this chapter or rules adopted under this chapter.

6. Imposition of a requirement for restitution of fees to the aggrieved party.

7. Imposition of restrictions on the scope of practice.

8. Imposition of peer review and professional education requirements.

9. Imposition of community service.

B. The board may issue a letter of concern if a licensee’s continuing practices may cause the board to take disciplinary action. The board may also issue a nondisciplinary order requiring the licensee to complete a prescribed number of hours of continuing education in an area or areas prescribed by the board to provide the licensee with the necessary understanding of current developments, skills, procedures or treatment.
C. Failure to comply with any order of the board, including an order of censure or probation, is cause for suspension or revocation of a license.

D. All disciplinary and final nondisciplinary actions or orders, not including letters of concern or advisory letters, issued by the board against a licensee or certificate holder shall be posted to that licensee's or certificate holder's profile on the board's website. For the purposes of this subsection, only final nondisciplinary actions and orders that are issued after January 1, 2018 shall be posted.

E. Except as provided in section 41-1092.08, subsection H, final decisions of the board are subject to judicial review pursuant to title 12, chapter 7, article 6.

F. If the state board of dental examiners acts to modify any dentist's prescription-writing privileges, it shall immediately notify the Arizona state board of pharmacy of the modification.

G. The board may post a notice of its suspension or revocation of a license at the licensee's place of business. This notice shall remain posted for sixty days. A person who removes this notice without board or court authority before that time is guilty of a class 3 misdemeanor.

H. A licensee or certificate holder shall respond in writing to the board within twenty days after a notice of hearing is served. A licensee who fails to answer the charges in a complaint and notice of hearing issued pursuant to this article and title 41, chapter 6, article 10 is deemed to admit the acts charged in the complaint, and the board may revoke or suspend the license without a hearing.

32-1263.02. Investigation and adjudication of complaints; disciplinary action; civil penalty; immunity; subpoena authority; definitions

A. The board on its motion, or the executive director if delegated by the board, may investigate any evidence that appears to show the existence of any of the causes or grounds for disciplinary action as provided in section 32-1263. The board may investigate any complaint that alleges the existence of any of the causes or grounds for disciplinary action as provided in section 32-1263. The board shall not act on its own motion or on a complaint received by the board if the allegation of unprofessional conduct, unethical conduct or any other violation of this chapter against a professional who holds an Arizona license occurred more than four years before the complaint is received by the board. The four-year time limitation does not apply to:

1. Medical malpractice settlements or judgments, allegations of sexual misconduct or an incident or occurrence that involved a felony, diversion of a controlled substance or impairment while practicing by the licensee.

2. The board's consideration of the specific unprofessional conduct related to the licensee's failure to disclose conduct or a violation as required by law.

B. At the request of the complainant, the board shall not disclose to the respondent the complainant name unless the information is essential to proceedings conducted pursuant to this article.

C. The board or its designees shall conduct necessary investigations, including interviews between representatives of the board and the licensee with respect to any information obtained by or filed with the board under subsection A of this section. The results of the investigation conducted by a designee shall be forwarded to the board for its review.
D. If, based on the information it receives under subsection A of this section, the board finds that the public health, safety or welfare imperatively requires emergency action and incorporates a finding to that effect in its order, the board may order a summary suspension of the respondent's license pursuant to section 41-1092.11 pending proceedings for revocation or other action.

E. If a complaint refers to quality of care, the patient may be referred for a clinical evaluation at the discretion of the board.

F. If, after completing its investigation, the board finds that the information provided pursuant to subsection A of this section is insufficient to merit disciplinary action against the licensee, the board may take any of the following actions:

1. Dismiss the complaint.

2. Issue a nondisciplinary letter of concern to the licensee.

3. Issue a nondisciplinary order requiring the licensee to complete a prescribed number of hours of continuing education in an area or areas prescribed by the board to provide the licensee with the necessary understanding of current developments, skills, procedures or treatment.

4. Assess a nondisciplinary civil penalty in an amount not to exceed five hundred dollars if the complaint involves the licensee's failure to respond to a board subpoena.

G. If, after completing its investigation, the board finds that the information provided pursuant to subsection A of this section is sufficient to merit disciplinary action against the licensee, the board may request that the licensee participate in a formal interview before the board. If the licensee refuses or accepts the invitation for a formal interview and the results indicate that grounds may exist for revocation or suspension, the board shall issue a formal complaint and order that a hearing be held pursuant to title 41, chapter 6, article 10. If, after completing a formal interview, the board finds that the protection of the public requires emergency action, it may order a summary suspension of the license pursuant to section 41-1092.11 pending formal revocation proceedings or other action authorized by this section.

H. If, after completing a formal interview, the board finds that the information provided under subsection A of this section is insufficient to merit suspension or revocation of the license, it may take any of the following actions:

1. Dismiss the complaint.

2. Order disciplinary action pursuant to section 32-1263.01, subsection A.

3. Enter into a consent agreement with the licensee for disciplinary action.

4. Order nondisciplinary continuing education pursuant to section 32-1263.01, subsection B.

5. Issue a nondisciplinary letter of concern to the licensee.

I. A copy of the board's order issued pursuant to this section shall be given to the complainant and to the licensee. Pursuant to title 41, chapter 6, article 10, the licensee may petition for rehearing or review.
J. Any person who in good faith makes a report or complaint as provided in this section to the board or to any person or committee acting on behalf of the board is not subject to liability for civil damages as a result of the report.

K. The board, through its president or the president's designee, may issue subpoenas to compel the attendance of witnesses and the production of documents and may administer oaths, take testimony and receive exhibits in evidence in connection with an investigation initiated by the board or a complaint filed with the board. In case of disobedience to a subpoena, the board may invoke the aid of any court of this state in requiring the attendance and testimony of witnesses and the production of documentary evidence.

L. Patient records, including clinical records, medical reports, laboratory statements and reports, files, films, reports or oral statements relating to diagnostic findings or treatment of patients, any information from which a patient or a patient's family may be identified or information received and records kept by the board as a result of the investigation procedures taken pursuant to this chapter, are not available to the public.

M. The board may charge the costs of formal hearings conducted pursuant to title 41, chapter 6, article 10 to a licensee it finds to be in violation of this chapter.

N. The board may accept the surrender of an active license from a licensee who is subject to a board investigation and who admits in writing to any of the following:

1. Being unable to safely engage in the practice of dentistry.

2. Having committed an act of unprofessional conduct.

3. Having violated this chapter or a board rule.

O. In determining the appropriate disciplinary action under this section, the board may consider any previous nondisciplinary and disciplinary actions against a licensee.

P. If a licensee who is currently providing dental services for a registered business entity believes that the registered business entity has engaged in unethical conduct as defined pursuant to section 32-1263, subsection D, paragraph 16, the licensee must do both of the following before filing a complaint with the board:

1. Notify the registered business entity in writing that the licensee believes that the registered business entity has engaged in a policy or practice that interferes with the clinical judgment of the licensee or that compromises the licensee's ability to comply with the requirements of this chapter. The licensee shall specify in the notice the reasons for this belief.

2. Provide the registered business entity with at least ten calendar days to respond in writing to the assertions made pursuant to paragraph 1 of this subsection.

Q. A licensee who files a complaint pursuant to subsection P of this section shall provide the board with a copy of the licensee's notification and the registered business entity's response, if any.

R. A registered business entity may not take any adverse employment action against a licensee because the licensee complies with the requirements of subsection P of this section.
S. For the purposes of this section:

1. "License" includes a certificate issued pursuant to this chapter.

2. "Licensee" means a dentist, dental therapist, dental hygienist, denturist, dental consultant, restricted permit holder or business entity regulated pursuant to this chapter.

32-1263.03. Executive director; complaints; termination; review

A. If delegated by the board, the executive director, with the concurrence of the board's investigative staff, may terminate a complaint if the investigative staff's review indicates the complaint is without merit and that termination is appropriate.

B. The executive director may not terminate a complaint if a court has entered a medical malpractice judgment against a person licensed under this chapter.

C. At each regularly scheduled board meeting, the executive director shall provide to the board a list of each complaint the executive director terminated pursuant to subsection A since the preceding board meeting.

D. A person who is aggrieved by an action taken by the executive director pursuant to subsection A may file a written request that the board review that action. The request must be filed within thirty days after that person is notified of the executive director's action by personal delivery or, if the notification is mailed to that person's last known residence or place of business, within thirty-five days after the date on the notification. At the next regular board meeting, the board shall review the executive director's action. On review, the board shall approve, modify or reject the executive director's action.

32-1264. Maintenance of records

A. A person who is licensed or certified pursuant to this chapter shall make and maintain legible written records concerning all diagnoses, evaluations and treatments of each patient of record. A licensee or certificate holder shall maintain records that are stored or produced electronically in retrievable paper form. These records shall include:

1. All treatment notes, including current health history and clinical examinations.

2. Prescription and dispensing information, including all drugs, medicaments and dental materials used for patient care.

3. Diagnosis and treatment planning.

4. Dental and periodontal charting. Specialist charting must include areas of requested care and notation of visual oral examination describing any areas of potential pathology or radiographic irregularities.

5. All radiographs.

B. Records are available for review and for treatment purposes to the dentist, dental therapist, dental hygienist or denturist providing care.
C. On request, the licensee or certificate holder shall allow properly authorized board personnel to have access to the licensee’s or certificate holder’s place of practice to conduct an inspection and must make the licensee’s or certificate holder’s records, books and documents available to the board as part of an investigation process.

D. Within fifteen business days after a patient's written request, that patient's dentist, dental therapist, dental hygienist or denturist or a registered business entity shall transfer legible and diagnostic quality copies of that patient's records to another licensee or certificate holder or that patient. The patient may be charged for the reasonable costs of copying and forwarding these records. A dentist, dental therapist, dental hygienist, denturist or registered business entity may require that payment of reproduction costs be made in advance, unless the records are necessary for continuity of care, in which case the records shall not be withheld. Copies of records shall not be withheld because of an unpaid balance for dental services.

E. Unless otherwise required by law, a person who is licensed or certified pursuant to this chapter or a business entity that is registered pursuant to this chapter must retain the original or a copy of a patient's dental records as follows:

1. If the patient is an adult, for at least six years after the last date the adult patient received dental services from that provider.

2. If the patient is a child, for at least three years after the child's eighteenth birthday or for at least six years after the last date the child received dental services from the provider, whichever occurs later.

32-1265. Interpretation of chapter

Nothing in this chapter shall be construed to abridge a license issued under laws of this state relating to medicine or surgery.

32-1266. Prosecution of violations

The attorney general shall act for the board in all matters requiring legal assistance, but the board may employ other or additional counsel in its own behalf. The board shall assist prosecuting officers in enforcement of this chapter, and in so doing may engage suitable persons to assist in investigations and in the procurement and presentation of evidence. Subpoenas or other orders issued by the board may be served by any officer empowered to serve processes, who shall receive the fees prescribed by law. Expenditures made in carrying out provisions of this section shall be paid from the dental board fund.

32-1267. Use of fraudulent instruments; classification

A person is guilty of a class 5 felony who:

1. Knowingly presents to or files with the board as his own a diploma, degree, license, certificate or identification belonging to another, or which is forged or fraudulent.

2. Exhibits or displays any instrument described in paragraph 1 with intent that it be used as evidence of the right of such person to practice dentistry in this state.
3. With fraudulent intent alters any instrument described in paragraph 1 or uses or attempts to use it when so altered.

4. Sells, transfers or offers to sell or transfer, or who purchases, procures or offers to purchase or procure a diploma, license, certificate or identification, with intent that it be used as evidence of the right to practice dentistry in this state by a person other than the one to whom it belongs or is issued.

32-1268. Violations; classification; required proof

A. A person is guilty of a class 2 misdemeanor who:

1. Employs, contracts with, or by any means procures the assistance of, or association with, for the purpose of practicing dentistry, a person not having a valid license therefor.

2. Fails to obey a summons or other order regularly and properly issued by the board.

3. Violates any provision of this chapter for which the penalty is not specifically prescribed.

B. In a prosecution or hearing under this chapter, it is necessary to prove only a single act of violation and not a general course of conduct, and where the violation is continued over a period of one or more days each day constitutes a separate violation subject to the penalties prescribed in this chapter.

32-1269. Violation; classification; injunctive relief

A. A person convicted under this chapter is guilty of a class 2 misdemeanor unless another classification is specifically prescribed in this chapter. Violations shall be prosecuted by the county attorney and tried before the superior court in the county in which the violation occurs.

B. In addition to penalties provided in this chapter, the courts of the state are vested with jurisdiction to prevent and restrain violations of this chapter as nuisances per se, and the county attorneys shall, and the board may, institute proceedings in equity to prevent and restrain violations. A person damaged, or threatened with loss or injury, by reason of a violation of this chapter is entitled to obtain injunctive relief in any court of competent jurisdiction against any damage or threatened loss or injury by reason of a violation of this chapter.

32-1270. Deceased or incapacitated dentists; notification

A. An administrator or executor of the estate of a deceased dentist, or a person who is legally authorized to act for a dentist who has been adjudicated to be mentally incompetent, must notify the board within sixty days after the dentist's death or incapacitation. The administrator or executor may employ a licensed dentist for a period of not more than one year to:

1. Continue the deceased or incapacitated dentist's practice.

2. Conclude the affairs of the deceased or incapacitated dentist, including the sale of any assets.

B. An administrator or executor operating a practice pursuant to this section for more than one year must register as a business entity pursuant to section 32-1213.
32-1271. Marking of dentures for identification; retention and release of information

A. Every complete upper or lower denture fabricated by a licensed dentist, or fabricated pursuant to the dentist's work order, must be marked with the patient's name unless the patient objects. The marking must be done during fabrication and must be permanent, legible and cosmetically acceptable. The dentist or the dental laboratory shall determine the location of the marking and the methods used to implant or apply it. The dentist must inform the patient that the marking is used only to identify the patient, and the patient may choose which marking is to appear on the dentures.

B. The dentist must retain the records of marked dentures and may not release the records to any person except to law enforcement officers in any emergency that requires personal identification by means of dental records or to anyone authorized by the patient to receive this information.

Article 3.1 – Licensing and Regulation of Dental Therapists

32-1276. Definitions

In this article, unless the context otherwise requires:

1. "Applicant" means a person who is applying for licensure to practice dental therapy in this state.

2. "Direct supervision" means that a licensed dentist is present in the office and available to provide treatment or care to a patient and observe a dental therapist's work.

3. "Licensee" means a person who holds a license to practice dental therapy in this state.

32-1276.01. Application for licensure; requirements; fingerprint clearance card; denial or suspension of application

A. An applicant for licensure as a dental therapist in this state shall do all of the following:

1. Apply to the board on a form prescribed by the board.

2. Verify under oath that all statements in the application are true to the applicant's knowledge.

3. Enclose with the application:

   (a) A recent photograph of the applicant.

   (b) The application fee established by the board by rule.

B. The board may grant a license to practice dental therapy to an applicant who meets all of the following requirements:

1. Is licensed as a dental hygienist pursuant to article 4 of this chapter.

2. Graduates from a dental therapy education program that is accredited by or holds an initial accreditation from the American dental association commission on dental accreditation and that is offered through an accredited higher education institution recognized by the United States department of education.
3. Successfully passes both of the following:

(a) Within five years before filing the application, a clinical examination that is either:

(i) The western regional examining board examination.

(ii) An examination in dental therapy administered by another state or testing agency that is substantially equivalent to the western regional examining board examination, as determined by the state board of dental examiners.

(b) The Arizona dental jurisprudence examination.

4. Is not subject to any grounds for denial of the application under this chapter.

5. Obtains a valid fingerprint clearance card issued pursuant to title 41, chapter 12, article 3.1.

6. Meets all requirements for licensure established by the board by rule.

C. The board may deny an application for licensure or license renewal if the applicant:

1. Has committed an act that would be cause for censure, probation or suspension or revocation of a license under this chapter.

2. While unlicensed, committed or aided and abetted the commission of an act for which a license is required by this chapter.

3. Knowingly made any false statement in the application.

4. Has had a license to practice dental therapy revoked by a regulatory board in another jurisdiction in the United States for an act that occurred in that jurisdiction and that constitutes unprofessional conduct pursuant to this chapter.

5. Is currently suspended or restricted by a regulatory board in another jurisdiction in the United States for an act that occurred in that jurisdiction and that constitutes unprofessional conduct pursuant to this chapter.

6. Has surrendered, relinquished or given up a license to practice dental therapy instead of having disciplinary action taken against the applicant by a regulatory board in another jurisdiction in the United States for an act that occurred in that jurisdiction and that constitutes unprofessional conduct pursuant to this chapter.

D. The board shall suspend an application for licensure if the applicant is currently under investigation by a dental regulatory board in another jurisdiction. The board shall not issue a license or deny an application for licensure until the investigation is completed.
A. Except as provided in section 32-4301, a license issued under this article expires thirty days after the licensee's birthday every third year. On or before the licensee's birthday every third year, each licensed dental therapist shall submit to the board a complete renewal application and pay a license renewal fee established by a formal vote of the board. At least once every three years, before establishing the fee, the board shall review the amount of the fee in a public meeting. Any change in the amount of the fee shall be applied prospectively to a licensee at the time of licensure renewal. The fee prescribed by this subsection does not apply to a retired dental therapist or to a dental therapist with a disability.

B. A licensee shall include a written affidavit with the renewal application that affirms that the licensee complies with board rules relating to continuing education requirements. A licensee is not required to complete the written affidavit if the licensee received an initial license within the year immediately preceding the expiration date of the license or the licensee is in disabled status. If the licensee is not in compliance with board rules relating to continuing education, the board may grant an extension of time to complete these requirements if the licensee includes a written request for an extension with the renewal application instead of the written affidavit and the renewal application is received on or before the licensee's birthday of the expiration year. The board shall consider the extension request based on criteria prescribed by the board by rule. If the board denies an extension request, the license expires thirty days after the licensee's birthday of the expiration year.

C. An applicant for a dental therapy license for the first time in this state shall pay a prorated fee for the period remaining until the licensee's next birthday. This fee may not exceed one-third of the fee prescribed pursuant to subsection A of this section. Subsequent applications shall be conducted pursuant to this section.

D. An expired license may be reinstated by submitting a complete renewal application within the twenty-four-month period immediately following the expiration of the license with payment of the renewal fee and a $100 penalty. When the license is issued, reinstatement is as of the date of application and entitles the applicant to licensure only for the remainder of the applicable three-year period. If a person does not reinstate a license pursuant to this subsection, the person must reapply for licensure pursuant to this article.

E. A licensee shall notify the board in writing within ten days after the licensee changes the primary mailing address listed with the board. The board shall impose a civil penalty of $50 if a licensee fails to notify the board of the change within that time. The board shall increase the civil penalty to $100 if a licensee fails to notify the board of the change within thirty days.

F. A licensee who is at least sixty-five years of age and who is fully retired and a licensee who has a permanent disability may contribute services to a recognized charitable institution and still retain that classification for triennial registration purposes by paying a reduced renewal fee as prescribed by the board by rule.

G. A licensee is not required to maintain a dental hygienist license.
A. A person is deemed to be a practicing dental therapist if the person does any of the acts or performs any operations included in the general practice of dental therapists or dental therapy or any related and associated duties.

B. Either under the direct supervision of a dentist or pursuant to a written collaborative practice agreement, a licensed dental therapist may do any of the following:

1. Perform oral evaluations and assessments of dental disease and formulate individualized treatment plans.

2. Perform comprehensive charting of the oral cavity.

3. Provide oral health instruction and disease prevention education, including motivational interviewing, nutritional counseling and dietary analysis.

4. Expose and process dental radiographic images.

5. Perform dental prophylaxis, scaling, root planing and polishing procedures.

6. Dispense and administer oral and topical nonnarcotic analgesics and anti-inflammatory and antibiotic medications as prescribed by a licensed health care provider.

7. Apply topical preventive and prophylactic agents, including fluoride varnishes, antimicrobial agents, silver diamine fluoride and pit and fissure sealants.

8. Perform pulp vitality testing.

9. Apply desensitizing medicaments or resins.

10. Fabricate athletic mouth guards and soft occlusal guards.


12. Administer nitrous oxide analgesics and local anesthetics.

13. Perform simple extraction of erupted primary teeth.

14. Perform nonsurgical extractions of periodontally diseased permanent teeth that exhibit plus three or grade three mobility and that are not impacted, fractured, unerupted or in need of sectioning for removal.

15. Perform emergency palliative treatments of dental pain that is related to care or a service described in this section.

16. Prepare and place direct restorations in primary and permanent teeth.
17. Fabricate and place single-tooth temporary crowns.

18. Prepare and place preformed crowns on primary teeth.

19. Perform indirect and direct pulp capping on permanent teeth.

20. Perform indirect pulp capping on primary teeth.


22. Provide minor adjustments and repairs on removable prostheses.

23. Place and remove space maintainers.

24. Perform all functions of a dental assistant and expanded function dental assistant.

25. Perform other related services and functions that are authorized by the supervising dentist within the dental therapist's scope of practice and for which the dental therapist is trained.


27. Perform any other duties of a dental therapist that are authorized by the board by rule.

C. A dental therapist may not:

1. Dispense or administer a narcotic drug.

2. Independently bill for services to any individual or third-party payor.

D. A person may not claim to be a dental therapist unless that person is licensed as a dental therapist under this article.

32-1276.04. Dental therapists; clinical practice; supervising dentists; written collaborative practice agreements

A. A dental therapist may practice only in the following practice settings or locations, including mobile dental units, that are operated or served by any of the following:

1. A federally qualified community health center.

2. A health center program that has received a federal look-alike designation.

3. A community health center.

4. A nonprofit dental practice or a nonprofit organization that provides dental care to low-income and underserved individuals.
5. A private dental practice that provides dental care for community health center patients of record who are referred by the community health center.

B. A dental therapist may practice in this state either under the direct supervision of a dentist or pursuant to a written collaborative practice agreement. Before a dental therapist may enter into a written collaborative practice agreement, the dental therapist shall complete one thousand hours of dental therapy clinical practice under the direct supervision of a dentist who is licensed in this state and shall provide documentation satisfactory to the board of having completed this requirement.

C. A practicing dentist who holds an active license pursuant to this chapter and a licensed dental therapist who holds an active license pursuant to this article may enter into a written collaborative practice agreement for the delivery of dental therapy services. The supervising dentist shall provide or arrange for another dentist or specialist to provide any service needed by the dental therapist's patient that exceeds the dental therapist's authorized scope of practice.

D. A dentist may not enter into more than four separate written collaborative practice agreements for the delivery of dental therapy services.

E. A written collaborative practice agreement between a dentist and a dental therapist shall do all of the following:

1. Address any limit on services and procedures to be performed by the dental therapist, including types of populations and any age-specific or procedure-specific practice protocol, including case selection criteria, assessment guidelines and imaging frequency.

2. Address any limit on practice settings established by the supervising dentist and the level of supervision required for various services or treatment settings.

3. Establish practice protocols, including protocols for informed consent, recordkeeping, managing medical emergencies and providing care to patients with complex medical conditions, including requirements for consultation before initiating care.

4. Establish protocols for quality assurance, administering and dispensing medications and supervising dental assistants.

5. Include specific protocols to govern situations in which the dental therapist encounters a patient requiring treatment that exceeds the dental therapist's authorized scope of practice or the limits imposed by the collaborative practice agreement.

6. Specify that the extraction of permanent teeth may be performed only under the direct supervision of a dentist and consistent with section 32-1276.03, subsection B, paragraph 14.

F. Except as provided in section 32-1276.03, subsection B, paragraph 14, to the extent authorized by the supervising dentist in the written collaborative practice agreement, a dental therapist may practice dental therapy procedures authorized under this article in a practice setting in which the supervising dentist is not on-site and has not previously examined the patient or rendered a diagnosis.

G. The written collaborative practice agreement must be signed and maintained by both the supervising dentist and the dental therapist and may be updated and amended as necessary by both
the supervising dentist and dental therapist. The supervising dentist and dental therapist shall submit a copy of the agreement and any amendment to the agreement to the board.

32-1276.05. Dental therapists; supervising dentists; collaborative practice relationships

A. A dentist who holds an active license pursuant to this chapter and a dental therapist who holds an active license pursuant to this article may enter into a collaborative practice relationship through a written collaborative practice agreement for the delivery of dental therapy services.

B. Each dental practice shall disclose to a patient whether the patient is scheduled to see the dentist or dental therapist.

C. Each dentist in a collaborative practice relationship shall:

1. Be available to provide appropriate contact, communication and consultation with the dental therapist.

2. Adopt procedures to provide timely referral of patients whom the dental therapist refers to a licensed dentist for examination. The dentist to whom the patient is referred shall be geographically available to see the patient.

D. Each dental therapist in a collaborative practice relationship shall:

1. Perform only those duties within the terms of the written collaborative practice agreement.

2. Maintain an appropriate level of contact with the supervising dentist.

E. The dental therapist and the supervising dentist shall notify the board of the beginning of the collaborative practice relationship and provide the board with a copy of the written collaborative practice agreement and any amendments to the agreement within thirty days after the effective date of the agreement or amendment. The dental therapist and supervising dentist shall also notify the board within thirty days after the termination date of the written collaborative practice agreement if the date is different than the termination date provided in the agreement.

F. Subject to the terms of the written collaborative practice agreement, a dental therapist may perform all dental therapy procedures authorized in section 32-1276.03. The dentist's presence, examination, diagnosis and treatment plan are not required unless specified by the written collaborative practice agreement.

32-1276.06. Practicing without a license; violation; classification

It is a class 6 felony for a person to practice dental therapy in this state unless the person has obtained a license from the board as provided in this article.

32-1276.07. Licensure by credential; examination waiver; fee

A. The board by rule may waive the examination requirements of this article on receipt of evidence satisfactory to the board that the applicant has passed the clinical examination of another state or testing agency more than five years before submitting the application for licensure pursuant to this article and the other state or testing agency maintains a standard of licensure or certification that is
substantially equivalent to that of this state as determined by the board. The board by rule shall require:

1. A minimum number of active practice hours within a specific time period before the applicant submits the application. The board shall prescribe what constitutes active practice.

2. An affirmation that the applicant has completed the continuing education requirements of the jurisdiction where the applicant is licensed or certified.

B. The applicant shall pay a licensure by credential fee as established by the board in rule.

C. An applicant under this section is not required to obtain a dental hygienist license in this state if the board determines that the applicant otherwise meets the requirements for dental therapist licensure.

32-1276.08. Dental therapy schools; credit for prior experience or coursework

Notwithstanding any other law, a recognized dental therapy school may grant advanced standing or credit for prior learning to a student who has prior experience or has completed coursework that the school determines is equivalent to didactic and clinical education in its accredited program.

Article 4 – Licensing and Regulation of Dental Hygienists

32-1281. Practicing as dental hygienist; supervision requirements; definitions

A. A person is deemed to be practicing as a dental hygienist if the person does any of the acts or performs any of the operations included in the general practice of dental hygienists, dental hygiene and all related and associated duties.

B. A licensed dental hygienist may perform the following:

1. Prophylaxis.

2. Scaling.

3. Closed subgingival curettage.

4. Root planing.

5. Administering local anesthetics and nitrous oxide.

6. Inspecting the oral cavity and surrounding structures for the purposes of gathering clinical data to facilitate a diagnosis.

7. Periodontal screening or assessment.

8. Recording clinical findings.

9. Compiling case histories.
10. Exposing and processing dental radiographs.

11. All functions authorized and deemed appropriate for dental assistants.

12. Except as provided in paragraph 13 of this subsection, those restorative functions permissible for an expanded function dental assistant if qualified pursuant to section 32-1291.01.

13. Placing interim therapeutic restorations after successfully completing a course at an institution accredited by the commission on dental accreditation of the American dental association.

C. The board by rule shall prescribe the circumstances under which a licensed dental hygienist may:

1. Apply preventive and therapeutic agents to the hard and soft tissues.

2. Use emerging scientific technology and prescribe the necessary training, experience and supervision to operate newly developed scientific technology. A dentist who supervises a dental hygienist whose duties include the use of emerging scientific technology must have training on using the emerging technology that is equal to or greater than the training the dental hygienist is required to obtain.

3. Perform other procedures not specifically authorized by this section.

D. Except as provided in subsections E, F and I of this section, a dental hygienist shall practice under the general supervision of a dentist who is licensed pursuant to this chapter.

E. A dental hygienist may practice under the general supervision of a physician who is licensed pursuant to chapter 13 or 17 of this title in an inpatient hospital setting.

F. A dental hygienist may perform the following procedures on meeting the following criteria and under the following conditions:

1. Administering local anesthetics under the direct supervision of a dentist who is licensed pursuant to this chapter after:

   (a) The dental hygienist successfully completes a course in administering local anesthetics that includes didactic and clinical components in both block and infiltration techniques offered by a dental or dental hygiene program accredited by the commission on dental accreditation of the American dental association.

   (b) The dental hygienist successfully completes an examination in local anesthesia given by the western regional examining board or a written and clinical examination of another state or regional examination that is substantially equivalent to the requirements of this state, as determined by the board.

   (c) The board issues to the dental hygienist a local anesthesia certificate on receipt of proof that the requirements of subdivisions (a) and (b) of this paragraph have been met.

2. Administering local anesthetics under general supervision to a patient of record if all of the following are true:
(a) The dental hygienist holds a local anesthesia certificate issued by the board.

(b) The patient is at least eighteen years of age.

(c) The patient has been examined by a dentist who is licensed pursuant to this chapter within the previous twelve months.

(d) There has been no change in the patient's medical history since the last examination. If there has been a change in the patient's medical history within that time, the dental hygienist must consult with the dentist before administering local anesthetics.

(e) The supervising dentist who performed the examination has approved the patient for being administered local anesthetics by the dental hygienist under general supervision and has documented this approval in the patient's record.

3. Administering nitrous oxide analgesia under the direct supervision of a dentist who is licensed pursuant to this chapter after:

(a) The dental hygienist successfully completes a course in administering nitrous oxide analgesia that includes didactic and clinical components offered by a dental or dental hygiene program accredited by the commission on dental accreditation of the American dental association.

(b) The board issues to the dental hygienist a nitrous oxide analgesia certificate on receipt of proof that the requirements of subdivision (a) of this paragraph have been met.

G. The board may issue local anesthesia and nitrous oxide analgesia certificates to a licensed dental hygienist on receipt of evidence satisfactory to the board that the dental hygienist holds a valid certificate or credential in good standing in the respective procedure issued by a licensing board of another jurisdiction of the United States.

H. A dental hygienist may perform dental hygiene procedures in the following settings:

1. On a patient of record of a dentist within that dentist's office.

2. Except as prescribed in section 32-1289.01, in a health care facility, long-term care facility, public health agency or institution, public or private school or homebound setting on patients who have been examined by a dentist within the previous year.

3. In an inpatient hospital setting pursuant to subsection E of this section.

I. A dental hygienist may provide dental hygiene services under an affiliated practice relationship with a dentist as prescribed in section 32-1289.01.

J. For the purposes of this article:

1. "Assessment" means a limited, clinical inspection that is performed to identify possible signs of oral or systemic disease, malformation or injury and the potential need for referral for diagnosis and treatment, and may include collecting clinical information to facilitate an examination, diagnosis and treatment plan by a dentist.
2. "Direct supervision" means that the dentist is present in the office while the dental hygienist is treating a patient and is available for consultation regarding procedures that the dentist authorizes and for which the dentist is responsible.

3. "General supervision" means:

(a) That the dentist is available for consultation, whether or not the dentist is in the dentist's office, over procedures that the dentist has authorized and for which the dentist remains responsible.

(b) With respect to an inpatient hospital setting, that a physician who is licensed pursuant to chapter 13 or 17 of this title is available for consultation, whether or not the physician is physically present at the hospital.

4. "Interim therapeutic restoration" means a provisional restoration that is placed to stabilize a primary or permanent tooth and that consists of removing soft material from the tooth using only hand instrumentation, without using rotary instrumentation, and subsequently placing an adhesive restorative material.

5. "Screening" means determining an individual's need to be seen by a dentist for diagnosis and does not include an examination, diagnosis or treatment planning.

32-1282. Administration and enforcement

A. So far as applicable, the board shall have the same powers and duties in administering and enforcing this article that it has under section 32-1207 in administering and enforcing articles 1, 2 and 3 of this chapter.

B. The board shall adopt rules that provide a method for the board to receive the assistance and advice of dental hygienists licensed pursuant to this chapter in all matters relating to the regulation of dental hygienists.

32-1283. Disposition of revenues

The provisions of section 32-1212 shall apply to all fees, fines and other revenues received by the board under this article.

32-1284. Qualifications of applicant; application; fee; fingerprint clearance card; rules; denial or suspension of application

A. An applicant for licensure as a dental hygienist shall be at least eighteen years of age, shall be of good moral character, shall meet the requirements of section 32-1285 and shall present to the board evidence of graduation or a certificate of satisfactory completion in a course or curriculum in dental hygiene from a recognized dental hygiene school. A candidate shall make written application to the board accompanied by a nonrefundable Arizona dental jurisprudence examination fee of one hundred dollars. The board shall waive this fee for candidates who are holders of valid restricted permits. Each candidate shall also obtain a valid fingerprint clearance card issued pursuant to section 41-1758.03.

B. The board shall adopt rules that govern the practice of dental hygienists and that are not inconsistent with this chapter.
C. The board may deny an application for licensure or an application for license renewal if the applicant:

1. Has committed an act that would be cause for censure, probation or suspension or revocation of a license under this chapter.

2. While unlicensed, committed or aided and abetted the commission of an act for which a license is required by this chapter.

3. Knowingly made any false statement in the application.

4. Has had a license to practice dental hygiene revoked by a regulatory board in another jurisdiction in the United States for an act that occurred in that jurisdiction and that constitutes unprofessional conduct pursuant to this chapter.

5. Is currently under suspension or restriction by a regulatory board in another jurisdiction in the United States for an act that occurred in that jurisdiction and that constitutes unprofessional conduct pursuant to this chapter.

6. Has surrendered, relinquished or given up a license to practice dental hygiene instead of disciplinary action by a regulatory board in another jurisdiction in the United States for an act that occurred in that jurisdiction and that constitutes unprofessional conduct pursuant to this chapter.

D. The board shall suspend an application for a license if the applicant is currently under investigation by a dental regulatory board in another jurisdiction. The board shall not issue or deny a license to the applicant until the investigation is resolved.

32-1285. Applicants for licensure; examination requirements

An applicant for licensure shall have passed all of the following:

1. The national dental hygiene board examination.

2. A clinical examination that is completed within five years preceding filing the application and that is either of the following:

   (a) The western regional examining board examination.
   
   (b) An examination administered by another state or testing agency that is substantially equivalent to the requirements of this state, as determined by the board.

3. The Arizona dental jurisprudence examination.

32-1286. Recognized dental hygiene schools; credit for prior learning

Notwithstanding any law to the contrary, a recognized dental hygiene school may grant advanced standing or credit for prior learning to a student who has prior experience or course work that the school determines is equivalent to didactic and clinical education in its accredited program.
32-1287. Dental hygienist triennial licensure; continuing education; license reinstatement; notice of change of address; penalties; retired and disabled license status

A. Except as provided in section 32-4301, a license expires thirty days after the licensee's birthday every third year. On or before the licensee's birthday every third year, every licensed dental hygienist shall submit to the board a complete renewal application and pay a license renewal fee of not more than $325, established by a formal vote of the board. At least once every three years, before establishing the fee, the board shall review the amount of the fee in a public meeting. Any change in the amount of the fee shall be applied prospectively to a licensee at the time of licensure renewal. The fee prescribed by this section does not apply to a retired hygienist or a hygienist with a disability.

B. A licensee shall include a written affidavit with the renewal application that affirms that the licensee complies with board rules relating to continuing education requirements. A licensee is not required to complete the written affidavit if the licensee received an initial license within the year immediately preceding the expiration date of the license or the licensee is in disabled status. If the licensee is not in compliance with board rules relating to continuing education, the board may grant an extension of time to complete these requirements if the licensee includes a written request for an extension with the renewal application instead of the written affidavit and the renewal application is received on or before the licensee's birthday of the expiration year. The board shall consider the extension request based on criteria prescribed by the board by rule. If the board denies an extension request, the license expires thirty days after the licensee's birthday of the expiration year.

C. A person applying for a license for the first time in this state shall pay a prorated fee for the period remaining until the licensee's next birthday. This fee shall not exceed one-third of the fee established pursuant to subsection A of this section. Subsequent registrations shall be conducted pursuant to this section.

D. An expired license may be reinstated by submitting a complete renewal application within the twenty-four-month period immediately following the expiration of the license with payment of the renewal fee and a $100 penalty. Whenever issued, reinstatement is as of the date of application and entitles the applicant to licensure only for the remainder of the applicable three-year period. If a person does not reinstate a license pursuant to this subsection, the person must reapply for licensure pursuant to this chapter.

E. A licensee shall notify the board in writing within ten days after the licensee changes the primary mailing address listed with the board. The board shall impose a penalty of $50 if a licensee fails to notify the board of the change within that time. The board shall increase the penalty imposed to $100 if a licensee fails to notify it of the change within thirty days.

F. A licensee who is over sixty-five years of age and who is fully retired and a licensee who has a permanent disability may contribute services to a recognized charitable institution and still retain that classification for triennial registration purposes on payment of a reduced renewal fee as prescribed by the board by rule.

32-1288. Practicing without license; classification

It is a class 1 misdemeanor for a person to practice dental hygiene in this state unless the person has obtained a license from the board as provided in this article.
32-1289. Employment of dental hygienist by public agency, institution or school

A. A public health agency or institution or a public or private school authority may employ dental hygienists to perform necessary dental hygiene procedures under either direct or general supervision pursuant to section 32-1281.

B. A dental hygienist employed by or working under contract or as a volunteer for a public health agency or institution or a public or private school authority before an examination by a dentist may perform a screening or assessment and apply sealants and topical fluoride.

32-1289.01. Dental hygienists; affiliated practice relationships; rules; definition

A. A dentist who holds an active license pursuant to this chapter and a dental hygienist who holds an active license pursuant to this article may enter into an affiliated practice relationship to deliver dental hygiene services.

B. A dental hygienist shall satisfy all of the following to be eligible to enter into an affiliated practice relationship with a dentist pursuant to this section to deliver dental hygiene services in an affiliated practice relationship:

1. Hold an active license in good standing pursuant to this article.

2. Enter into an affiliated practice relationship with a dentist who holds an active license pursuant to this chapter.

3. Be actively engaged in dental hygiene practice for at least five hundred hours in each of the two years immediately preceding the affiliated practice relationship.

C. An affiliated practice agreement between a dental hygienist and a dentist shall be in writing and:

1. Shall identify at least the following:

   (a) The affiliated practice settings in which the dental hygienist may deliver services pursuant to the affiliated practice relationship.

   (b) The services to be provided and any procedures and standing orders the dental hygienist must follow. The standing orders shall include the circumstances in which a patient may be seen by the dental hygienist.

   (c) The conditions under which the dental hygienist may administer local anesthesia and provide root planing.

   (d) Circumstances under which the affiliated practice dental hygienist must consult with the affiliated practice dentist before initiating further treatment on patients who have not been seen by a dentist within twelve months after the initial treatment by the affiliated practice dental hygienist.

2. May include protocols for supervising dental assistants.
D. The following requirements apply to all dental hygiene services provided through an affiliated practice relationship:

1. Patients who have been assessed by the affiliated practice dental hygienist shall be directed to the affiliated practice dentist for diagnosis, treatment or planning that is outside the dental hygienist’s scope of practice, and the affiliated practice dentist may make any necessary referrals to other dentists.

2. The affiliated practice dental hygienist shall consult with the affiliated practice dentist if the proposed treatment is outside the scope of the agreement.

3. The affiliated practice dental hygienist shall consult with the affiliated practice dentist before initiating treatment on patients presenting with a complex medical history or medication regimen.

4. The patient shall be informed in writing that the dental hygienist providing the care is a licensed dental hygienist and that the care does not take the place of a diagnosis or treatment plan by a dentist.

E. A contract for dental hygiene services with licensees who have entered into an affiliated practice relationship pursuant to this section may be entered into only by:

1. A health care organization or facility.

2. A long-term care facility.

3. A public health agency or institution.

4. A public or private school authority.

5. A government-sponsored program.

6. A private nonprofit or charitable organization.

7. A social service organization or program.

F. An affiliated practice dental hygienist may not provide dental hygiene services in a setting that is not listed in subsection E of this section.

G. Each dentist in an affiliated practice relationship shall:

1. Be available to provide an appropriate level of contact, communication and consultation with the affiliated practice dental hygienist during the business hours of the affiliated practice dental hygienist.

2. Adopt standing orders applicable to dental hygiene procedures that may be performed and populations that may be treated by the affiliated practice dental hygienist under the terms of the applicable affiliated practice agreement and to be followed by the affiliated practice dental hygienist in each affiliated practice setting in which the affiliated practice dental hygienist performs dental hygiene services under the affiliated practice relationship.
3. Adopt procedures to provide timely referral of patients referred by the affiliated practice dental hygienist to a licensed dentist for examination and treatment planning. If the examination and treatment planning is to be provided by the dentist, that treatment shall be scheduled in an appropriate time frame. The affiliated practice dentist or the dentist to whom the patient is referred shall be geographically available to see the patient.

4. Not permit the provision of dental hygiene services by more than six affiliated practice dental hygienists at any one time.

H. Each affiliated practice dental hygienist, when practicing under an affiliated practice relationship:

1. May perform only those duties within the terms of the affiliated practice relationship.

2. Shall maintain an appropriate level of contact, communication and consultation with the affiliated practice dentist.

3. Is responsible and liable for all services rendered by the affiliated practice dental hygienist under the affiliated practice relationship.

I. The affiliated practice dental hygienist and the affiliated practice dentist shall notify the board of the beginning of the affiliated practice relationship and provide the board with a copy of the agreement and any amendments to the agreement within thirty days after the effective date of the agreement or amendment. The affiliated practice dental hygienist and the affiliated practice dentist shall also notify the board within thirty days after the termination date of the affiliated practice relationship if this date is different than the agreement termination date.

J. Subject to the terms of the written affiliated practice agreement entered into between a dentist and a dental hygienist, a dental hygienist may:

1. Perform all dental hygiene procedures authorized by this chapter, except for performing any diagnostic procedures that are required to be performed by a dentist and administering nitrous oxide. The dentist's presence and an examination, diagnosis and treatment plan are not required unless specified by the affiliated practice agreement.

2. Supervise dental assistants, including dental assistants who are certified to perform functions pursuant to section 32-1291.

K. The board shall adopt rules regarding participation in affiliated practice relationships by dentists and dental hygienists that specify the following:

1. Additional continuing education requirements that must be satisfied by a dental hygienist.

2. Additional standards and conditions that may apply to affiliated practice relationships.

3. Compliance with the dental practice act and rules adopted by the board.

L. For the purposes of this section, "affiliated practice relationship" means the delivery of dental hygiene services, pursuant to an agreement, by a dental hygienist who is licensed pursuant to this article and who refers the patient to a dentist who is licensed pursuant to this chapter for any necessary further diagnosis, treatment and restorative care.
32-1290. **Grounds for censure, probation, suspension or revocation of license; procedure**

After a hearing pursuant to title 41, chapter 6, article 10, the board may suspend or revoke the license issued to a person under this article or censure or place on probation any such person for any of the causes set forth as grounds for censure, probation, suspension or revocation in section 32-1263.

32-1291. **Dental assistants; regulation; duties**

A. A dental assistant may expose radiographs for dental diagnostic purposes under either the general supervision of a dentist or the direct supervision of an affiliated practice dental hygienist licensed pursuant to this chapter if the assistant has passed an examination approved by the board.

B. A dental assistant may polish the natural and restored surfaces of the teeth under either the general supervision of a dentist or the direct supervision of an affiliated practice dental hygienist licensed pursuant to this chapter if the assistant has passed an examination approved by the board.

32-1291.01. **Expanded function dental assistants; training and examination requirements; duties**

A. A dental assistant may perform expanded functions after meeting one of the following:

1. Successfully completing a board-approved expanded function dental assistant training program at an institution accredited by the American dental association commission on dental accreditation and on successfully completing examinations in dental assistant expanded functions approved by the board.

2. Providing both:

   (a) Evidence of currently holding or having held within the preceding ten years a license, registration, permit or certificate in expanded functions in restorative procedures issued by another state or jurisdiction in the United States.

   (b) Proof acceptable to the board of clinical experience in the expanded functions listed in subsection B of this section.

B. Expanded functions include the placement, contouring and finishing of direct restorations or the placement and cementation of prefabricated crowns following the preparation of the tooth by a licensed dentist. The restorative materials used shall be determined by the dentist.

C. An expanded function dental assistant may place interim therapeutic restorations under the general supervision and direction of a licensed dentist following a consultation conducted through teledentistry.

D. An expanded function dental assistant may apply sealants and fluoride varnish under the general supervision and direction of a licensed dentist.

E. A licensed dental hygienist may engage in expanded functions pursuant to section 32-1281, subsection B, paragraph 12 following a course of study and examination equivalent to that required for an expanded function dental assistant as specified by the board.
A. The board may issue a restricted permit to practice dental hygiene to an applicant who:

1. Has a pending contract with a recognized charitable dental clinic or organization that offers dental hygiene services without compensation or at a rate that reimburses the clinic only for dental supplies and overhead costs and the applicant will not receive compensation for dental hygiene services provided at the clinic or organization.

2. Has a license to practice dental hygiene issued by a regulatory jurisdiction in the United States.

3. Has been actively engaged in the practice of dental hygiene for three years immediately preceding the application.

4. Is, to the board's satisfaction, competent to practice dental hygiene.

5. Meets the requirements of section 32-1284, subsection A that do not relate to examination.

B. A person who holds a restricted permit issued by the board may practice dental hygiene only in the course of the person's employment by a recognized charitable dental clinic or organization approved by the board.

C. The applicant for a restricted permit must file a copy of the person's employment contract with the board that includes a statement signed by the applicant that the applicant:

1. Understands that if that person's employment is terminated before the restricted permit expires, the permit is automatically revoked and that person must voluntarily surrender the permit to the board and is no longer eligible to practice unless that person meets the requirements of sections 32-1284 and 32-1285 or passes the examination required in this article.

2. Must be employed without compensation by a dental clinic or organization that is operated for a charitable purpose.

3. Is subject to the provisions of this chapter that apply to the regulation of dental hygienists.

D. The board may deny an application for a restricted permit if the applicant:

1. Has committed an act that is a cause for disciplinary action pursuant to this chapter.

2. While unlicensed, committed or aided and abetted the commission of any act for which a license is required pursuant to this chapter.

3. Knowingly made a false statement in the application.

4. Has had a license to practice dental hygiene revoked by a dental regulatory board in another jurisdiction in the United States for an act that occurred in that jurisdiction and that constitutes unprofessional conduct pursuant to this chapter.
5. Is currently under suspension or restriction by a dental regulatory board in another jurisdiction in the United States for an act that occurred in that jurisdiction and that constitutes unprofessional conduct pursuant to this chapter.

6. Has surrendered, relinquished or given up a license to practice dental hygiene instead of disciplinary action by a dental regulatory board in another jurisdiction in the United States for an act that occurred in that jurisdiction and that constitutes unprofessional conduct pursuant to this chapter.

E. The board shall suspend an application for a restricted permit or an application for restricted permit renewal if the applicant is currently under investigation by a dental regulatory board in another jurisdiction. The board shall not issue or deny a restricted permit to the applicant until the investigation is resolved.

F. A restricted permit expires either one year after the date of issue or June 30, whichever date first occurs. The board may renew a restricted permit for terms that do not exceed one year.

32-1292.01. Licensure by credential; examinations; waiver; fee

A. The board by rule may waive the examination requirements of this article on receipt of evidence satisfactory to the board that the applicant has passed the clinical examination of another state or testing agency more than five years before submitting an application for licensure pursuant to this chapter and the other state or testing agency maintains a standard of licensure that is substantially equivalent to that of this state as determined by the board. The board by rule shall require:

1. A minimum number of active practice hours within a specific time period before the applicant submits the application. The board shall define what constitutes active practice.

2. An affirmation that the applicant has completed the continuing education requirements of the jurisdiction where the applicant is licensed.

B. The applicant shall pay a licensure by credential fee of not more than one thousand dollars as prescribed by the board.

Article 5 – Certification and Regulation of Denturists

32-1293. Practicing as denturist; denture technology; dental laboratory technician

A. Notwithstanding the provisions of section 32-1202, nothing in this chapter shall be construed to prohibit a denturist certified pursuant to the provisions of this article from practicing denture technology.

B. A person is deemed to be practicing denture technology who:

1. Takes impressions and bite registrations for the purpose of or with a view to the making, producing, reproducing, construction, finishing, supplying, altering or repairing of complete upper or lower prosthetic dentures, or both, or removable partial dentures for the replacement of missing teeth.

2. Fits or advertises, offers, agrees, or attempts to fit any complete upper or lower prosthetic denture, or both, or adjusts or alters the fit of any full prosthetic denture, or fits or adjusts or alters the fit of removable partial dentures for the replacement of missing teeth.
C. In addition to the practices described in subsection B of this section, a person certified to practice denture technology may also construct, repair, reline, reproduce or duplicate full or partial prosthetic dentures or otherwise engage in the activities of a dental laboratory technician.

D. No person may perform an act described in subsection B of this section except a licensed dentist, a holder of a restricted permit pursuant to section 32-1238, a certified denturist or auxiliary personnel authorized to perform any such act by rule or regulation of the board pursuant to section 32-1207, subsection A, paragraph 1.

32-1294. Supervision by dentist; definitions; mouth preparation by dentist; liability; business association

A. A denturist may practice only in the office of a licensed dentist, denominated as such.

B. All work by a denturist shall be performed under the general supervision of a licensed dentist. For the purposes of this section, "general supervision" means the dentist is available for consultation in person or by phone during the performance of the procedures by a denturist pursuant to section 32-1293, subsection B. The dentist shall examine the patient initially, check the completed denture as to fit, form and function and perform such other procedures as the board may specify by rule or regulation. For the purposes of this section "completed denture" means a relined, rebased, duplicated or repaired denture or a new denture. Both the dentist and the denturist shall certify that the dentist has performed the initial examination and the final fitting as required in this subsection, and retain the certification in the patient's file.

C. When taking impressions or bite registrations for the purpose of constructing removable partial dentures or when checking the fit of a partial denture, all mouth preparation must be done by the dentist. The denturist is specifically prohibited from performing any cutting or surgery on hard or soft tissue in the mouth. By rule and regulation the board may further regulate the practice of the denturist in regard to removable partial dentures.

D. No more than two denturists may perform their professional duties under a dentist's general supervision at any one time.

E. A licensed dentist supervising a denturist shall be personally liable for any consequences arising from the performance of the denturist's duties.

F. A certified denturist and the dentist supervising his work may make any lawful agreement between themselves regarding fees, compensation and business association.

G. Any sign, advertisement or other notice displaying the name of the office must include the name of the responsible dentist.

32-1295. Board of dental examiners; additional powers and duties

A. In addition to other powers and duties prescribed by this chapter, the board shall:

1. As far as applicable, exercise the same powers and duties in administering and enforcing this article as it exercises under section 32-1207 in administering and enforcing other articles of this chapter.
2. Determine the eligibility of applicants for certification and issue certificates to applicants who it determines are qualified for certification.

3. Investigate charges of misconduct on the part of certified denturists.

4. Issue decrees of censure, fix periods and terms of probation, suspend or revoke certificates as the facts may warrant and reinstate certificates in proper cases.

B. The board may:

1. Adopt rules prescribing requirements for continuing education for renewal of all certificates issued pursuant to this article.

2. Hire consultants to assist the board in the performance of its duties.

C. In all matters relating to discipline and certifying of denturists and the approval of examinations, the board, by rule, shall provide for receiving the assistance and advice of denturists who have been previously certified pursuant to this chapter.

32-1296. Qualifications of applicant

A. To be eligible for certification to practice denture technology an applicant shall:

1. Be of good moral character.

2. Hold a high school diploma or its equivalent.

3. Present to the board evidence of graduation from a recognized denturist school or a certificate of satisfactory completion of a course or curriculum in denture technology from a recognized denturist school.

4. Pass a board approved examination.

B. A candidate for certification shall submit a written application to the board that includes a nonrefundable Arizona dental jurisprudence examination fee as prescribed by the board.

32-1297.01. Application for certification; fingerprint clearance card; denial; suspension

A. Each applicant for certification shall submit a written application to the board accompanied by a nonrefundable jurisprudence examination fee and obtain a valid fingerprint clearance card issued pursuant to section 41-1758.03.

B. The board may deny an application for certification or for certification renewal if the applicant:

1. Has committed any act that would be cause for censure, probation, suspension or revocation of a certificate under this chapter.

2. Has knowingly made any false statement in the application.
3. While uncertified, has committed or aided and abetted the commission of any act for which a certificate is required under this chapter.

4. Has had a certificate to practice denture technology revoked by a regulatory board in another jurisdiction in the United States or Canada for an act that occurred in that jurisdiction and that constitutes unprofessional conduct pursuant to this chapter.

5. Is currently under investigation, suspension or restriction by a regulatory board in another jurisdiction in the United States or Canada for an act that occurred in that jurisdiction and that constitutes unprofessional conduct pursuant to this chapter.

6. Has surrendered, relinquished or given up a certificate to practice denture technology in lieu of disciplinary action by a regulatory board in another jurisdiction in the United States or Canada for an act that occurred in that jurisdiction and that constitutes unprofessional conduct pursuant to this chapter.

C. The board shall suspend an application for certification if the applicant is currently under investigation by a denturist regulatory board in another jurisdiction. The board shall not issue or deny certification to the applicant until the investigation is resolved.

32-1297.03. Qualification for reexamination

An applicant for examination who has previously failed two or more examinations, as a condition of eligibility to take any further examination, shall furnish to the board satisfactory evidence of having successfully completed additional training in a recognized denturist school or refresher courses approved by the board or the board’s testing agency.

32-1297.04. Fees

The board shall establish and collect fees, not to exceed the following amounts:

1. For an examination in jurisprudence, two hundred fifty dollars.

2. For each replacement or duplicate certificate, twenty-five dollars.

32-1297.05. Disposition of revenues

The provisions of section 32-1212 shall apply to all fees, penalties and other revenues received by the board under this article.

32-1297.06. Denturist certification; continuing education; certificate reinstatement; certificate for each place of practice; notice of change of address or place of practice; penalties

A. Except as provided in section 32-4301, a certification expires thirty days after the certificate holder’s birthday every third year. On or before the certificate holder’s birthday every third year, every certified denturist shall submit to the board a complete renewal application and shall pay a certificate renewal fee of not more than $300, established by a formal vote of the board. At least once every three years, before establishing the fee, the board shall review the amount of the fee in a public meeting. Any change in the amount of the fee shall be applied prospectively to a certificate
holder at the time of certification renewal. This requirement does not apply to a retired denturist or to a denturist with a disability.

B. A certificate holder shall include a written affidavit with the renewal application that affirms that the certificate holder complies with board rules relating to continuing education requirements. A certificate holder is not required to complete the written affidavit if the certificate holder received an initial certification within the year immediately preceding the expiration date of the certificate or the certificate holder is in disabled status. If the certificate holder is not in compliance with board rules relating to continuing education, the board may grant an extension of time to complete these requirements if the certificate holder includes a written request for an extension with the renewal application instead of the written affidavit and the renewal application is received on or before the certificate holder's birthday of the expiration year. The board shall consider the extension request based on criteria prescribed by the board by rule. If the board denies an extension request, the certificate expires thirty days after the certificate holder's birthday of the expiration year.

C. A person applying for a certificate for the first time in this state shall pay a prorated fee for the period remaining until the certificate holder's next birthday. This fee shall not exceed one-third of the fee established pursuant to subsection A of this section. Subsequent certifications shall be conducted pursuant to this section.

D. An expired certificate may be reinstated by submitting a complete renewal application within the twenty-four-month period immediately following the expiration of the certificate with payment of the renewal fee and a $100 penalty. Whenever issued, reinstatement is as of the date of application and entitles the applicant to certification only for the remainder of the applicable three-year period. If a person does not reinstate a certificate pursuant to this subsection, the person must reapply for certification pursuant to this chapter.

E. Each certificate holder must provide to the board in writing both of the following:

1. A primary mailing address.

2. The address for each place of practice.

F. A certificate holder maintaining more than one place of practice shall obtain from the board a duplicate certificate for each office. The board shall set and charge a fee for each duplicate certificate. A certificate holder shall notify the board in writing within ten days after opening an additional place of practice.

G. A certificate holder shall notify the board in writing within ten days after changing a primary mailing address or place of practice address listed with the board. The board shall impose a $50 penalty if a certificate holder fails to notify the board of the change within that time. The board shall increase the penalty imposed to $100 if a certificate holder fails to notify it of the change within thirty days.

32-1297.07. Discipline; procedure

A. After a hearing pursuant to title 41, chapter 6, article 10, the board may suspend or revoke the license issued to a person under this article or censure or place on probation any person for any of the causes set forth as grounds for censure, probation, suspension or revocation in section 32-1263.
B. The board on its own motion may investigate any evidence which appears to show the existence of any of the causes set forth in section 32-1263. The board shall investigate the report under oath of any person which appears to show the existence of any of the causes set forth in section 32-1263. Any person reporting pursuant to this section who provides the information in good faith shall not be subject to liability for civil damages as a result.

C. Except as provided in section 41-1092.08, subsection H, final decisions of the board are subject to judicial review pursuant to title 12, chapter 7, article 6.

32-1297.08. Injunction

A. An injunction shall issue to enjoin the practice of denture technology by any of the following:

1. One neither certified to practice as a denturist nor licensed to practice as a dentist.

2. One certified as a denturist from practicing without proper supervision by a dentist as required by this article.

3. A denturist whose continued practice will or might cause irreparable damage to the public health and safety prior to the time proceedings pursuant to section 32-1297.07 could be instituted and completed.

B. A petition for injunction shall be filed by the board in the superior court for Maricopa county or in the county where the defendant resides or is found. Any citizen is also entitled to obtain injunctive relief in any court of competent jurisdiction because of the threat of injury to the public health and welfare.

C. Issuance of an injunction shall not relieve the respondent from being subject to any other proceedings provided for by law.

32-1297.09. Violations; classification

A person is guilty of a class 2 misdemeanor who:

1. Not licensed as a dentist, practices denture technology without certification as provided by this article.

2. Exhibits or displays a certificate, diploma, degree or identification of another or a forged or fraudulent certificate, diploma, degree or identification with the intent that it be used as evidence of the right of such person to practice as a denturist in this state.

3. Fails to obey a summons or other order regularly and properly issued by the board.

4. Is a licensed dentist responsible for a denturist under this article who fails to personally supervise the work of the denturist.
Article 6 – Dispensing of Drugs and Devices

32-1298. Dispensing of drugs and devices; conditions; civil penalty; definition

A. A dentist may dispense drugs, except schedule II controlled substances that are opioids, and devices kept by the dentist if:

1. All drugs are dispensed in packages labeled with the following information:

   (a) The dispensing dentist's name, address and telephone number.

   (b) The date the drug is dispensed.

   (c) The patient's name.

   (d) The name and strength of the drug, directions for its use and any cautionary statements.

2. The dispensing dentist enters into the patient's dental record the name and strength of the drug dispensed, the date the drug is dispensed and the therapeutic reason.

3. The dispensing dentist keeps all drugs in a locked cabinet or room, controls access to the cabinet or room by a written procedure and maintains an ongoing inventory of its contents.

B. Except in an emergency situation, a dentist who dispenses drugs for a profit without being registered by the board to do so is subject to a civil penalty by the board of not less than three hundred dollars and not more than one thousand dollars for each transaction and is prohibited from further dispensing for a period of time as prescribed by the board.

C. Before dispensing a drug pursuant to this section, the patient shall be given a written prescription on which appears the following statement in bold type: "This prescription may be filled by the prescribing dentist or by a pharmacy of your choice."

D. A dentist shall dispense for profit only to the dentist's own patient and only for conditions being treated by that dentist. The dentist shall provide direct supervision of an attendant involved in the dispensing process. For the purposes of this subsection, "direct supervision" means that a dentist is present and makes the determination as to the legitimacy or advisability of the drugs or devices to be dispensed.

E. This section shall be enforced by the board, which shall establish rules regarding labeling, recordkeeping, storage and packaging of drugs that are consistent with the requirements of chapter 18 of this title. The board may conduct periodic inspections of dispensing practices to ensure compliance with this section and applicable rules.

F. For the purposes of this section, "dispense" means the delivery by a dentist of a prescription drug or device to a patient, except for samples packaged for individual use by licensed manufacturers or repackagers of drugs, and includes the prescribing, administering, packaging, labeling and security necessary to prepare and safeguard the drug or device for delivery.
Article 7 – Rehabilitation

32-1299. Substance abuse treatment and rehabilitation program; private contract; funding; confidential stipulation agreement

A. The board may establish a confidential program for the treatment and rehabilitation of dentists, dental therapists, denturists and dental hygienists who are impaired by alcohol or drug abuse. This program shall include education, intervention, therapeutic treatment and posttreatment monitoring and support.

B. The board may contract with other organizations to operate the program established pursuant to this section. A contract with a private organization shall include the following requirements:

1. Periodic reports to the board regarding treatment program activity.

2. Release to the board on demand of all treatment records.

3. Periodic reports to the board regarding each dentist's, dental therapist's, denturist's or dental hygienist's diagnosis and prognosis and recommendations for continuing care, treatment and supervision.

4. Immediate reporting to the board of the name of an impaired practitioner whom the treating organization believes to be a danger to self or others.

5. Immediate reporting to the board of the name of a practitioner who refuses to submit to treatment or whose impairment is not substantially alleviated through treatment.

C. The board may allocate an amount of not more than twenty dollars annually or sixty dollars triennially from each fee it collects from the renewal of active licenses for the operation of the program established by this section.

D. A dentist, dental therapist, denturist or hygienist who, in the opinion of the board, is impaired by alcohol or drug abuse shall agree to enter into a confidential nondisciplinary stipulation agreement with the board. The board shall place a licensee or certificate holder on probation if the licensee or certificate holder refuses to enter into a stipulation agreement with the board and may take other action as provided by law. The board may also refuse to issue a license or certificate to an applicant if the applicant refuses to enter into a stipulation agreement with the board.

E. In the case of a licensee or certificate holder who is impaired by alcohol or drug abuse after completing a second monitoring program pursuant to a stipulation agreement under subsection D of this section, the board shall determine whether:

1. To refer the matter for a formal hearing for the purpose of suspending or revoking the license or certificate.

2. The licensee or certificate holder should be placed on probation for a minimum of one year with restrictions necessary to ensure public safety.

3. To enter into another stipulation agreement under subsection D of this section with the licensee or certificate holder.
In this article, unless the context otherwise requires:

1. "Mobile dental facility" means a facility in which dentistry is practiced and that is routinely towed, moved or transported from one location to another.

2. "Permit holder" means a dentist, dental hygienist, denturist or registered business entity that is authorized by this chapter to offer dental services in this state or a nonprofit organization, school district or school or institution of higher education that may employ a licensee to provide dental services and that is authorized by this article to operate a mobile dental facility or portable dental unit.

3. "Portable dental unit" means a nonfacility in which dental equipment used in the practice of dentistry is transported to and used on a temporary basis at an out-of-office location.

A. Beginning January 1, 2012, every mobile dental facility and, except as provided in subsection B, every provider, program or entity using portable dental units in this state must obtain a permit pursuant to this article.

B. A licensee who does not hold a permit for a mobile dental facility or portable dental unit may provide dental services if:

1. Occasional services are provided to a patient of record of a fixed dental office who is treated outside of the dental office.

2. Services are provided by a federal, state or local government agency.

3. Occasional services are performed outside of the licensee's office without charge to a patient or a third party.

4. Services are provided to a patient by an accredited dental or dental hygiene school.

5. The licensee holds a valid permit to provide mobile dental anesthesia services.

6. The licensee is an affiliated practice dental hygienist.

A. An individual or entity that seeks a permit to operate a mobile dental facility or portable dental unit must submit an application on a form provided by the board and pay an annual registration fee prescribed by the board by rule. The permit must be renewed annually not later than the last day of the month in which the permit was issued. Permits not renewed by the expiration date are subject to a late fee as prescribed by the board by rule.
B. A permit holder shall notify the board of any change in address or contact person within ten days after that change. The board shall impose a penalty as prescribed by the board by rule if the permit holder fails to notify the board of that change within that time.

C. If ownership of the mobile dental facility or portable dental unit changes, the prior permit is invalid and a new permit application must be submitted.

32-1299.24. Standards of operation and practice

A. A permit holder must:

1. Comply with all applicable federal, state and local laws, regulations and ordinances dealing with radiographic equipment, flammability, sanitation, zoning and construction standards, including construction standards relating to required access for persons with disabilities.

2. Establish written protocols for follow-up care for patients who are treated in a mobile dental facility or through a portable dental unit. The protocols must include referrals for treatment in a dental office that is permanently established within a reasonable geographic area and may include follow-up care by the mobile dental facility or portable dental unit.

3. Ensure that each mobile dental facility or portable dental unit has access to communication equipment that will enable dental personnel to contact appropriate assistance in an emergency.

4. Identify a person who is licensed pursuant to this chapter, who is responsible to supervise treatment and who, if required by law, will be present when dental services are rendered. This paragraph does not prevent supervision by a dentist providing services or supervision pursuant to the exceptions prescribed in section 32-1231.

5. Display in or on the mobile dental facility or portable dental unit a current valid permit issued pursuant to this article in a manner that is readily observable by patients or visitors.

6. Provide a means of communication during and after business hours to enable the patient or the parent or guardian of a patient to contact the permit holder of the mobile dental facility or portable dental unit for emergency care, follow-up care or information about treatment received.

7. Comply with all requirements for maintenance of records pursuant to section 32-1264 and all other statutory requirements applicable to health care providers and patient records. All records, whether in paper or electronic form, if not in transit, must be maintained in a permanent, secure facility. Records of prior treatment must be readily available during subsequent treatment visits whenever practicable.

8. Ensure that all dentists, dental hygienists and denturists working in the mobile dental facility or portable dental unit hold a valid, current license issued by the board and that all delegated duties are within their respective scopes of practice as prescribed by the applicable laws of this state.

9. Maintain a written or electronic record detailing each location where services are provided, including:

(a) The street address of the service location.
(b) The dates of each session.

(c) The number of patients served.

(d) The types of dental services provided and the quantity of each service provided.

10. Provide to the board or its representative within ten days after a request for a record the written or electronic record required pursuant to paragraph 9 of this subsection.

11. Comply with current recommended infection control practices for dentistry as published by the national centers for disease control and prevention and as adopted by the board.

B. A mobile dental facility or portable dental unit must:

1. Contain equipment and supplies that are appropriate to the scope and level of treatment provided.

2. Have ready access to an adequate supply of potable water.

C. A permit holder or licensee who fails to comply with applicable statutes and rules governing the practice of dentistry, dental hygiene and denturism, the requirements for registered business entities or the requirements of this article is subject to disciplinary action for unethical or unprofessional conduct, as applicable.

32-1299.25. Informed consent; information for patients

A. The permit holder of a mobile dental facility or portable dental unit must obtain appropriate informed consent, in writing or by verbal communication, that is recorded by an electronic or digital device from the patient or the parent or guardian of the patient authorizing specific treatment before it is performed. The signed consent form or verbal communication shall be maintained as part of the patient's record as required in section 32-1264.

B. If services are provided to a minor, the signed consent form or verbal communication must inform the parent or guardian that the treatment of the minor by the mobile dental facility or portable dental unit may affect future benefits the minor may receive under private insurance, the Arizona health care cost containment system or the children's health insurance program.

C. At the conclusion of each patient's visit, the permit holder of a mobile dental facility or portable dental unit shall provide each patient with an information sheet that must contain:

1. Pertinent contact information as required by this section.

2. The name of the dentist or dental hygienist, or both, who provided services.

3. A description of the treatment rendered, including billed service codes, fees associated with treatment and tooth numbers if appropriate.

4. If necessary, referral information to another dentist as required by this article.
D. If the patient or the minor patient's parent or guardian has provided written consent to an institutional facility to access the patient's dental health records, the permit holder shall provide the institution with a copy of the information sheet provided in subsection C.

32-1299.26. Disciplinary actions; cessation of operation

A. A permit holder for a mobile dental facility or portable dental unit that provides dental services to a patient shall refer the patient for follow-up treatment with a licensed dentist or the permit holder if treatment is clinically indicated. A permit holder or licensee who fails to comply with this subsection commits an act of unprofessional conduct or unethical conduct and is subject to disciplinary action pursuant to section 32-1263, subsection A, paragraph 1 or subsection C.

B. The board may do any of the following pursuant to its disciplinary procedures if a mobile dental facility or portable dental unit violates any statute or board rule:

1. Refuse to issue a permit.

2. Suspend or revoke a permit.

3. Impose a civil penalty of not more than two thousand dollars for each violation.

C. If a mobile dental facility or portable dental unit ceases operations, the permit holder must notify the board within thirty days after the last day of operation and must report on the disposition of patient records and charts. In accordance with applicable laws and rules, the permit holder must also notify all active patients of the disposition of records and make reasonable arrangements for the transfer of patient records, including copies of radiographs, to a succeeding practitioner or, if requested, to the patient. For the purposes of this subsection, "active patient" means any person whom the permit holder has examined, treated, cared for or consulted with during the two year period before the discontinuation of practice.
Amend: R4-11-205, R4-11-303, R4-11-304, R4-11-305, R4-11-402, R4-11-405, R4-11-601, R4-11-607, R4-11-608, R4-11-609, R4-11-901, R4-11-1301, R4-11-1302, R4-11-1303, R4-11-1405
GOVERNOR’S REGULATORY REVIEW COUNCIL

ATTORNEY MEMORANDUM - REGULAR RULEMAKING

MEETING DATE: July 6, 2022

TO: Members of the Governor’s Regulatory Review Council (Council)

FROM: Council Staff

DATE: June 13, 2022

SUBJECT: BOARD OF DENTAL EXAMINERS
Title 4, Chapter 11

Amend: R4-11-205, R4-11-303, R4-11-304, R4-11-305, R4-11-402,
R4-11-405, R4-11-601, R4-11-607, R4-11-608, R4-11-609,
R4-11-901, R4-11-1301, R4-11-1302, R4-11-1303, R4-11-1405

Summary:

This regular rulemaking from the Board of Dental Examiners (Board) seeks to amend fifteen (15) rules in Title 4, Chapter 11, Articles 2-4, 6, 9, 13, and 14 which are related to the following:

- Article 2 - Licensure by Credential
- Article 3 - Examinations, Licensing Qualifications, Application and Renewal, Time-Frames
- Article 4 - Fees
- Article 6 - Dental Hygienists
- Article 9 - Restricted Permits
- Article 13 - General Anesthesia and Sedation
- Article 14 - Dispensing Drugs and Devices
The Board proposes to update various rules to update statutory references, process time-frames and submission methods; remove outdated language including some fees; and other formatting changes. Specifically, the Board proposes to increase the processing timeframes for the Board for applications for licenses, certificates, permits, or registrations, specify that fees can be paid “by credit card on the Board’s website or by money order or cashier’s check,” and remove subsections R4-11-601(C) through (F) because state law superseded these sections rendering them obsolete and unenforceable. A.R.S. § 32-1281 already allows a dental hygienist to administer local anesthesia and nitrous oxide and no longer allows a dental hygienist to place interrupted sutures.

1. **Are the rules legal, consistent with legislative intent, and within the agency’s statutory authority?**

   The Board cites both general and specific statutory authority for these rules.

2. **Do the rules establish a new fee or contain a fee increase?**

   This rulemaking does not establish a new fee or contain a fee increase. In fact, the proposed amendments to R4-11-405 remove a variety of fees charged for Board services.

3. **Does the preamble disclose a reference to any study relevant to the rules that the agency reviewed and either did or did not rely upon?**

   The Board did not review or rely on any study in conducting this rulemaking.

4. **Summary of the agency’s economic impact analysis:**

   The Board indicates that there is little to no economic impact because the rulemaking simply clarifies statutory requirements that already exist. Stakeholders include the Board and the Board’s licensees.

5. **Has the agency analyzed the costs and benefits of the rulemaking and determined that the rules impose the least burden and costs to those who are regulated?**

   The Board believes that amending its rules, which are not substantive, is the least intrusive and less costly alternative. They believe the rules are the least burdensome while still achieving their objective and the economic impact is minimized.

6. **What are the economic impacts on stakeholders?**

   The Board is the only state agency affected by the rulemaking amendment and indicates that there will be no costs, including the hiring of more personnel, to manage the effects of the amendments. The benefit is the cleanup of some outdated rules for various reasons and providing more uniformity. There are no new costs to businesses.
7. **Are the final rules a substantial change, considered as a whole, from the proposed rules and any supplemental proposals?**

The Board indicates it removed subsections R4-11-601(C) through (F) relating to Dental Hygienists and relettered the remaining subsections accordingly. The Board indicates it removed these sections based on public comments it received as discussed below. However, the Board states these changes do not render the rule substantially different that the published proposed rule pursuant to A.R.S. § 41-1025(B) because state law superseded these sections rendering them obsolete and unenforceable. The Board states, A.R.S. § 32-1281 already allows a dental hygienist to administer local anesthesia and nitrous oxide and no longer allows a dental hygienist to place interrupted sutures. Thus, the Board states there is no difference in the effect of removing these subsections and all persons affected by the rule will not be regulated any differently.

Council staff does not believe these changes between the Notice of Proposed Rulemaking and the Notice of Final Rulemaking make the rules “substantially different” as described in A.R.S. § 41-1025.

8. **Does the agency adequately address the comments on the proposed rules and any supplemental proposals?**

The Board indicates it received one written comment from the Arizona Dental Hygienists’ Association recommending that the Board eliminate R4-11-601(C) and (D) because statutory authority for those sections changed in 2017. The Board agreed with the recommendation and is removing those sections as discussed above.

The Board indicates the same comment from the Arizona Dental Hygienists’ Association recommended removing R4-11-601(E) and (F) because statutory changes in 2015 eliminated the placement of interrupted sutures from the scope of practice for dental hygienists. The Board agreed with the recommendation and is removing those sections as discussed above.

Council staff believes the Board has adequately addressed the comments on the proposed rules.

9. **Do the rules require a permit or license and, if so, does the agency comply with A.R.S. § 41-1037?**

Pursuant to A.R.S. § 41-1037(A), if an agency proposes an amendment to an existing rule that requires the issuance of a regulatory permit, license, or agency authorization, the agency shall use a general permit, as defined by A.R.S. § 41-1001(11), if the facilities, activities or practices in the class are substantially similar in nature unless certain exceptions apply.

The Board indicates it issues general permits to licensees who meet the criteria established in statute and rule. As such, the Board is in compliance with A.R.S. § 41-1037.
10. **Are the rules more stringent than corresponding federal law and, if so, is there statutory authority to exceed the requirements of federal law?**

Not applicable. The Board indicates there is no corresponding federal law directly applicable to the subject of the proposed rulemaking.

11. **Conclusion**

This regular rulemaking from the Board seeks to amend fifteen (15) rules in Title 4, Chapter 11, Articles 2-4, 6, 9, 13, and 14. The Board proposes to update various rules to update statutory references, process time-frames and submission methods; remove outdated language including some fees; and other formatting changes. Specifically, the Board proposes to increase the processing timeframes for the Board for applications for licenses, certificates, permits, or registrations, specify that fees can be paid “by credit card on the Board’s website or by money order or cashier’s check,” and remove subsections R4-11-601(C) through (F) because state law superseded these sections rendering them obsolete and unenforceable. A.R.S. § 32-1281 already allows a dental hygienist to administer local anesthesia and nitrous oxide and no longer allows a dental hygienist to place interrupted sutures.

The Board is seeking the standard 60-day delayed effective date for these rules pursuant to A.R.S. § 41-1032(A).

Council staff recommends approval of this rulemaking.
May 11, 2022

Ms. Nicole Sornsín, Chair  
The Governor's Regulatory Review Council  
100 North 15th Avenue, Ste. 402  
Phoenix, AZ 85007

Re: A.A.C. Title 4. Professions and Occupations  
Chapter 11. State Board of Dental Examiners  
General Changes

Dear Ms. Sornsín:

The attached final rule package is submitted for review and approval by the Council. The following information is provided for Council's use in reviewing the rule package:

1. **Close of record date:** The rulemaking record was closed on February 15, 2022 following a period for public comment and an oral proceeding.

2. **Relation of the rulemaking to a five-year-review report:** This rulemaking does not relate to a Five-year Review Report.

3. **New fee or fee increase:** This rulemaking does not establish a new fee or increase an existing fee.

4. **Immediate effective date:** An immediate effective date is not requested.

5. **Certification regarding studies:** I certify that the Board did not rely on any studies for this rulemaking.

6. **Certification that the preparer of the EIS notified the JLBC of the number of new full-time employees necessary to implement and enforce the rule:** I certify that the rules in this rulemaking will not require a state agency to employ a new full-time employee. No notification was provided to JLBC.

7. **List of documents enclosed:**
   a. Cover letter signed by the Board's Executive Director;
   b. Notice of Final Rulemaking including the preamble, table of contents for the rulemaking, and rule text; and

Sincerely,

Ryan P. Edmonson  
Executive Director
NOTICE OF FINAL RULEMAKING
TITLE 4. PROFESSIONS AND OCCUPATIONS
CHAPTER 11. STATE BOARD OF DENTAL EXAMINERS

PREAMBLE

1. Articles, Parts, and Sections Affected   Rulemaking Action
R4-11-205       Amend
R4-11-303       Amend
R4-11-304       Amend
R4-11-305       Amend
R4-11-402       Amend
R4-11-405       Amend
R4-11-601       Amend
R4-11-607       Amend
R4-11-608       Amend
R4-11-609       Amend
R4-11-901       Amend
R4-11-1301      Amend
R4-11-1302      Amend
R4-11-1303      Amend
R4-11-1405      Amend

2. Citations to the agency's statutory rulemaking authority to include both the authorizing statute (general) and the implementing statute (specific):
Authorizing statute:  A.R.S. § 32-1207
Implementing statutes:  A.R.S. §§ 32-1201 et seq.

3. The effective date for the rules:
   a. If the agency selected a date earlier than the 60 day effective date as specified in A.R.S. § 41-1032(A), include the earlier date and state the reason or reasons the
agency selected the earlier effective date as provided in A.R.S. § 41-1032(A)(1) through (5):
None

b. If the agency selected a date later than the 60 day effective date as specified in A.R.S. § 41-1032(A), include the later date and state the reason or reasons the agency selected the later effective date as provided in A.R.S. § 41-1032(B):
None

4. Citations to all related notices published in the Register as specified in R1-1-409(A) that pertain to the record of the final rulemaking package:
Notice of Rulemaking Docket Opening: 28 A.A.R. 201, January 14, 2022
Notice of Proposed Rulemaking: 28 A.A.R. 161, January 14, 2022

5. The agency's contact person who can answer questions about the rulemaking:
Name: Ryan Edmonson, Executive Director
Address: Arizona State Board of Dental Examiners
1740 W. Adams St., Ste. 2470
Phoenix, AZ 85007
Telephone: (602) 542-4493
E-Mail: ryan.edmonson@dentalboard.az.gov

6. An agency's justification and reason why a rule should be made, amended, repealed, or renumbered, to include an explanation about the rulemaking:
The Board needs to amend its rules to update various rules to update statutory references, process time-frames and submission methods; remove outdated language including some fees; and other formatting changes.

7. A reference to any study relevant to the rule that the agency reviewed and either relied on or did not rely on in its evaluation of or justification for the rule, where the public may obtain or review each study, all data underlying each study, and any analysis of each study and other supporting material:
No study was reviewed.

8. A showing of good cause why the rulemaking is necessary to promote a statewide interest if the rulemaking will diminish a previous grant of authority of a political subdivision of this state:
Not applicable.

9. **A summary of the economic, small business, and consumer impact:**

There is little to no economic, small business, or consumer impact, other than the cost to the Board to prepare the rule package, because the rulemaking simply clarifies statutory requirements that already exist. There may be some economic impact to licensees with regard to how they may submit forms and fees to the Board and how the Board processes forms and fees. However, the Board believes the submission requirements are necessary to ensure the licensees have met the statutory requirements to practice safely. Thus, the rules are the least burdensome while still achieving their objective and the economic impact is minimized.

10. **A description of any changes between the proposed rulemaking, including supplemental notices, and the final rulemaking:**

The Board removed subsections (C) through (F) and relettered the remaining subsections accordingly in R4-11-601 relating to Dental Hygienists. The Board removed these sections based on the public comments it received as discussed below. However, this change does not render the rule substantially different that the published proposed rule pursuant to A.R.S. § 41-1025(B) because state law superseded these sections rendering them obsolete and unenforceable. A.R.S. § 32-1281 already allows a dental hygienist to administer local anesthesia and nitrous oxide and no longer allows a dental hygienist to place interrupted sutures. Thus, there is no difference in the effect of removing these subsections and all persons affected by the rule will not be regulated any differently.

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

The Board received one written comment from the Arizona Dental Hygienists’ Association recommending that the Board eliminate R4-11-601(C) and (D) because statutory authority for those sections changed in 2017. The Board agreed with the recommendation and is removing those sections as discussed above.

Similarly, the comment from the Arizona Dental Hygienists’ Association recommended removing R4-11-601(E) and (F) because statutory changes in 2015 eliminated the placement of interrupted sutures from the scope of practice for dental hygienists. The Board agreed with the recommendation and is removing those sections as discussed above.
12. All agencies shall list any other matters prescribed by statute applicable to the specific agency or to any specific rule or class of rules. Additionally, an agency subject to Council review under A.R.S. §§ 41-1052 and 41-1055 shall respond to the following questions:
None.

a. Whether the rule requires a permit, whether a general permit is used and if not, the reasons why a general permit is not used:
The Board issues general permits to licensees who meet the criteria established in statute and rule.

b. Whether a federal law is applicable to the subject of the rule, whether the rule is more stringent than federal law and if so, citation to the statutory authority to exceed the requirements of federal law:
There are no federal laws applicable to these rules.

c. Whether a person submitted an analysis to the agency that compares the rule's impact of the competitiveness of business in this state to the impact on business in other states:
No analysis was submitted.

13. A list of any incorporated by reference material as specified in A.R.S. § 41-1028 and its location in the rule:
No materials are incorporated by reference.

14. Whether the rule was previously made, amended, or repealed as an emergency rule. If so, cite the notice published in the Register as specified in R1-1-409(A). Also, the agency shall state where the text was changed between the emergency and the final rulemaking packages:
Not applicable.

15. The full text of the rules follows:
Title 4. professions and occupations
Chapter 11. state board of dental examiners
Article 2. licensure by credential

Section

R4-11-205. Application for Dental Assistant Radiography Certification by Credential

Article 3. Examinations, Licensing Qualifications, Application and Renewal, Time-frames

R4-11-303. Application Processing Procedures: Issuance, Denial, and Renewal of Dental Licenses, Restricted Permits, Dental Hygiene Licenses, Dental Consultant Licenses, Denturist Certificates, Drug or Device Dispensing Registrations, Business Entity Registration and Mobile Dental Facility and Portable Dental Unit Permit

R4-11-304. Application Processing Procedures: Issuance and Denial of Dental Assistant Certificates Radiography Certification by Credential

R4-11-305. Application Processing Procedures: Issuance, Denial, and Renewal of General Anesthesia and Deep Sedation Permits, Parenteral Sedation Permits, Oral Sedation Permits, and Permit to Employ a Physician Anesthesiologist or CRNA Certified Registered Nurse Anesthetist

Article 4. Fees

R4-11-402. Retired or Disabled Licensure Renewal Fee

R4-11-405. Charges for Board Services

Article 6. Dental Hygienists

R4-11-601. Duties and Qualifications

R4-11-607. Duties of the Dental Hygiene Committee

R4-11-608. Dental Hygiene Consultants

R4-11-609. Affiliated Practice

Article 9. Restricted Permits

R4-11-901. Application for Restricted Permit
ARTICLE 13. GENERAL ANESTHESIA AND SEDATION

R4-11-1301. General Anesthesia and Deep Sedation
R4-11-1302. Parenteral Sedation
R4-11-1303. Oral Sedation

ARTICLE 14. DISPENSING DRUGS AND DEVICES

R4-11-1405. Compliance
R4-11-205. Application for Dental Assistant Radiography Certification by Credential

A. An applicant for dental assistant radiography certification by credential shall provide to the Board a completed application, on a form furnished by the Board that contains the following information:

1. A sworn statement of the applicant’s eligibility, and

2. A letter from the issuing institution of endorsement that verifies compliance with R4-11-204.

B. Based upon review of information provided under subsection (A), the Board or its designee shall request that an applicant for dental assistant radiography certification by credential provide a copy of a certified document that indicates the reason for a name change if the applicant’s documentation contains different names.

ARTICLE 3. EXAMINATIONS, LICENSING QUALIFICATIONS, APPLICATION AND RENEWAL, TIME-FRAMES

R4-11-303. Application Processing Procedures: Issuance, Denial, and Renewal of Dental Licenses, Restricted Permits, Dental Hygiene Licenses, Dental Consultant Licenses, Denturist Certificates, Drug or Device Dispensing Registrations, Business Entity Registration and Mobile Dental Facility and Portable Dental Unit Permits
A. The Board office shall complete an administrative completeness review within 24–30 calendar days of the date of receipt of an application for a license, certificate, permit, or registration.

1. Within 14–30 calendar days of receiving an initial or renewal application for a dental license, restricted permit, dental hygiene license, dental consultant license, denturist certificate, drug dispensing registration, business entity Business Entity registration, mobile dental facility or portable dental unit permit, the Board office shall notify the applicant, in writing, whether the application package is complete or incomplete.

2. If the application package is incomplete, the Board office shall provide the applicant with a written notice that includes a comprehensive list of the missing information. The 24–30 calendar day time-frame for the Board office to finish the administrative completeness review is suspended from the date the notice of incompleteness is served until the applicant provides the Board office with all missing information.

3. If the Board office does not provide the applicant with notice regarding administrative completeness, the application package shall be deemed complete 24–30 calendar days after receipt by the Board office.

B. An applicant with an incomplete application package shall submit all missing information within 60 calendar days of service of the notice of incompleteness.

C. Upon receipt of all missing information, the Board office shall notify the applicant, in writing, within 10 30 calendar days, that the application package is complete. If an applicant fails to submit a complete application package within the time allowed in subsection (B), the Board office shall close the applicant's file. An applicant whose file is closed and who later
wishes to obtain a license, certificate, permit, or registration shall apply again as required in R4-11-301.

D. The Board shall not approve or deny an application until the applicant has fully complied with the requirements of A.A.C. Title 4, Chapter 11, Article 3.

E. The Board shall complete a substantive review of the applicant's qualifications in no more than 90 calendar days from the date on which the administrative completeness review of an application package is complete.

1. If the Board finds an applicant to be eligible for a license, certificate, permit, or registration and grants the license, certificate, permit, or registration, the Board office shall notify the applicant in writing.

2. If the Board finds an applicant to be ineligible for a license, certificate, permit, or registration, the Board office shall issue a written notice of denial to the applicant that includes:
   a. Each reason for the denial, with citations to the statutes or rules on which the denial is based;
   b. The applicant's right to request a hearing on the denial, including the number of days the applicant has to file the request;
   c. The applicant's right to request an informal settlement conference under A.R.S. § 41-1092.06; and
   d. The name and telephone number of an agency contact person who can answer questions regarding the application process.

3. If the Board finds deficiencies during the substantive review of an application package, the Board office may issue a comprehensive written request to the applicant for
additional documentation. An additional supplemental written request for information may be issued upon mutual agreement between the Board or Board office and the applicant.

4. The 90-day time-frame for a substantive review of an applicant's qualifications is suspended from the date of a written request for additional documentation until the date that all documentation is received. The applicant shall submit the additional documentation before the next regularly scheduled Board meeting.

5. If the applicant and the Board office mutually agree in writing, the 90-day substantive review time-frame may be extended once for no more than 28 days.

F. The following time-frames apply for an initial or renewal application governed by this Section:

1. Administrative completeness review time-frame: 24–30 calendar days.

2. Substantive review time-frame: 90 calendar days.

3. Overall time-frame: 114–120 calendar days.

G. An applicant whose license is denied has a right to a hearing, an opportunity for rehearing, and, if the denial is upheld, may seek judicial review pursuant to A.R.S. Title 41, Chapter 6, Article 10, and A.R.S. Title 12, Chapter 7, Article 6.

R4-11-304. Application Processing Procedures: Issuance and Denial of Dental Assistant Certificates Radiography Certification by Credential

A. Within 44–30 calendar days of receiving an application from an applicant for a dental assistant radiography certification by credential, the Board or its designee shall notify the
applicant, in writing, that the application package is complete or incomplete. If the package is incomplete, the notice shall specify what information is missing.

B. An applicant with an incomplete application package shall supply the missing information within 60 calendar days from the date of the notice. If the applicant fails to do so, an applicant shall begin the application process anew.

C. Upon receipt of all missing information, within 10 calendar days, the Board or its designee shall notify the applicant, in writing, that the application is complete.

D. The Board or its designee shall not process an application until the applicant has fully complied with the requirements of this Article.

E. The Board or its designee shall notify an applicant, in writing, whether the certificate is granted or denied, no later than 90 calendar days after the date of the notice advising the applicant that the package is complete.

F. The notice of denial shall inform the applicant of the following:

1. The reason for the denial, with a citation to the statute or rule which requires the applicant to pass the examination;

2. The applicant’s right to request a hearing on the denial, including the number of days the applicant has to file the request;

3. The applicant’s right to request an informal settlement conference under A.R.S. § 41-1092.06; and

4. The name and telephone number of an agency contact person or a designee who can answer questions regarding the application process.

G. The following time-frames apply for certificate applications governed by this Section:

1. Administrative completeness review time-frame: 24 calendar days.
2. Substantive review time-frame: 90 calendar days.

3. Overall time-frame: 114 calendar days.

H. An applicant whose certificate is denied has a right to a hearing, an opportunity for rehearing, and, if the denial is upheld, may seek judicial review pursuant to A.R.S. Title 41, Chapter 6, Article 10, and A.R.S. Title 12, Chapter 7, Article 6.

R4-11-305. Application Processing Procedures: Issuance, Denial, and Renewal of General Anesthesia and Deep Sedation Permits, Parenteral Sedation Permits, Oral Sedation Permits, and Permit to Employ a Physician Anesthesiologist or CRNA Certified Registered Nurse Anesthetist

A. The Board office shall complete an administrative completeness review within 24 days from the date of the receipt of an application for a permit.

1. Within 14-30 calendar days of receiving an initial or renewal application for a general anesthesia General Anesthesia and deep sedation Deep Sedation permit, parenteral sedation permit, oral sedation Oral Sedation permit or permit to employ a physician anesthesiologist or CRNA Certified Registered Nurse Anesthetist the Board office shall notify the applicant, in writing, whether the application package is complete or incomplete.

2. If the application package is incomplete, the Board office shall provide the applicant with a written notice that includes a comprehensive list of the missing information. The 24-day time-frame for the Board office to finish the administrative completeness review is suspended from the date the notice of incompleteness is served until the applicant provides the Board office with all missing information.
3. If the Board office does not provide the applicant with notice regarding administrative completeness, the application package shall be deemed complete 24 days after receipt by the Board office.

**B.** An applicant with an incomplete application package shall submit all missing information within 60 calendar days of service of the notice of incompleteness.

**C.** Upon receipt of all missing information, the Board office shall notify the applicant, in writing, within 10 calendar days, that the application package is complete. If an applicant fails to submit a complete application package within the time allowed in subsection (B), the Board office shall close the applicant's file. An applicant whose file is closed and who later wishes to obtain a permit shall apply again as required in A.A.C. Title 4, Chapter 11, Article 13.

**D.** The Board shall not approve or deny an application until the applicant has fully complied with the requirements of this Section and A.A.C. Title 4, Chapter 11, Article 13.

**E.** The Board shall complete a substantive review of the applicant's qualifications in no more than 120 calendar days from the date on which the administrative completeness review of an application package is complete.

1. If the Board finds an applicant to be eligible for a permit and grants the permit, the Board office shall notify the applicant in writing.

2. If the Board finds an applicant to be ineligible for a permit, the Board office shall issue a written notice of denial to the applicant that includes:
   a. Each reason for the denial, with citations to the statutes or rules on which the denial is based;
b. The applicant's right to request a hearing on the denial, including the number of days the applicant has to file the request;

c. The applicant's right to request an informal settlement conference under A.R.S. § 41-1092.06; and

d. The name and telephone number of an agency contact person who can answer questions regarding the application process.

3. If the Board finds deficiencies during the substantive review of an application package, the Board office shall issue a comprehensive written request to the applicant for additional documentation.

4. The 120-day time-frame for a substantive review of an applicant's qualifications is suspended from the date of a written request for additional documentation until the date that all documentation is received.

5. If the applicant and the Board office mutually agree in writing, the 120-day substantive review time-frame may be extended once for no more than 36 days.

F. The following time-frames apply for an initial or renewal application governed by this Section:

1. Administrative completeness review time-frame: 24 calendar days.

2. Substantive review time-frame: 120 calendar days.

3. Overall time-frame: 144 calendar days.

ARTICLE 4. FEES

R4-11-402. Business Entity Fees
As expressly authorized under A.R.S. § 32-1213, the Board establishes and shall collect the following fees from a Business Entity offering dental services paid by credit card on the Board’s website or by money order or cashier’s check:

1. Initial triennial registration, $300 per location;
2. Renewal of triennial registration, $300 per location; and
3. Late triennial registration renewal, $100 per location in addition to the fee under subsection (2).

**R4-11-405. Charges for Board Services**

The Board shall charge the following fees for the services provided paid by credit card on the Board’s website or by money order or cashier’s check:

1. Duplicate license: $25;
2. Duplicate certificate: $25;
3. License verification:
   a. For licensee: $25; and
   b. For non-licensee: $5;
4. Copy of audio recording: $10;
5. Photocopies (per page): $.25;
6. Mailing lists of Licensees in digital format: $100
   a. Dentists:
      i. In-state licensees - paper or labels: $150;
      ii. All licensees - paper or labels: $175; and
      iii. Mailing list in digital format: $100;
b. Dental hygienists:
   i. In-state licensees—paper or labels: $150;
   
   ii. All licensees—paper or labels: $175; and
   
   iii. Mailing list in digital format: $100; and

   c. Denturists: All certificate holders—paper, labels, or digital format: $5; and

7. Board meeting agendas and minutes (mailed directly to consumer):
   a. Agendas and minutes: $75 for 12 months;
   
   b. Agendas only: $25 for 12 months; and
   
   e. Minutes only: $50 for 12 months.

ARTICLE 6. DENTAL HYGIENISTS

R4-11-601. Duties and Qualifications

A. A dental hygienist may apply preventative and therapeutic agents under the general supervision of a licensed dentist.

B. A dental hygienist may perform a procedure not specifically authorized by A.R.S. § 32-1281 when all of the following conditions are satisfied:

1. The procedure is recommended or prescribed by the supervising dentist;

2. The dental hygienist has received instruction, training, or education to perform the procedure in a safe manner; and

3. The procedure is performed under the general supervision of a licensed dentist.

C. The Board shall ensure that a dental hygienist is qualified to administer local anesthesia and nitrous oxide analgesia as authorized by A.R.S. § 32-1281(F)(1) and (2), by requiring
evidence that the hygienist has completed courses in techniques taught at a recognized dental hygiene school or recognized dental school, as defined in A.R.S. § 32-1201(16) and (17), that consist of a minimum of 36 clock hours of instruction, and has passed examinations in theoretical knowledge and clinical competency in the following subject areas:

1. Review of head and neck anatomy;
2. Pharmacology of anesthetic and analgesic agents;
3. Medical—dental history considerations;
4. Emergency procedures;
5. Selection of appropriate armamentarium and agents;
6. Nitrous oxide administration;
7. Clinical practice, under direct supervision, as defined in A.R.S. § 32-1281(H)(1), including at least three experiences administering each of the following:
   a. Posterior superior alveolar injection,
   b. Middle superior alveolar injection,
   c. Anterior superior alveolar injection,
   d. Nasopalatine injection,
   e. Greater palatine injection,
   f. Inferior alveolar nerve injection,
   g. Lingual injection,
   h. Mental injection,
   i. Long buccal injections, and
   j. Nitrous oxide analgesia.
D. In addition to the recognized course of study described in subsection (C), the hygienist shall successfully complete the examination in local anesthesia given by the Western Regional Examining Board. The hygienist shall submit proof of the successful completion of the local anesthesia examination to the Board. The Board shall then issue a Local Anesthesia Certificate.

E. For purposes of qualification of a dental hygienist to place interrupted sutures as authorized by A.R.S. § 32-1281(F)(3), the Board recognizes courses in advanced periodontal therapy offered by a recognized dental hygiene school or a recognized dental school, as defined in A.R.S. § 32-1201(16) and (17), that consist of a minimum of 200 clock hours of instruction and require a dental hygienist’s successful completion of those examinations of a theoretical knowledge and clinical competency in the following subject areas:

1. A review of oral histology,

2. Inflammation and pathogenesis of a periodontal pocket,

3. Patient assessment,

4. Dental hygiene treatment planning,

5. Advanced root planning and debridement,

6. Subgingival curettage,

7. Suturing,

8. Wound repair and new attachment, and

9. Clinical experience in each of the following:
   a. Root planning,
   b. Subgingival curettage, and
   c. Suturing.
F. The hygienist shall submit proof of the successful completion of a recognized course in advanced periodontal therapy, as described in subsection (E), to the Board. The Board shall then issue a certification sticker for Suture Placement, which shall be affixed to the hygienist's license.

G.C. A dental hygienist shall not perform an irreversible procedure Irreversible Procedure.

H.D. To qualify to use emerging scientific technology Emerging Scientific Technology as authorized by A.R.S. § 32-1281(D)(2), a dental hygienist shall successfully complete a course of study that meets the following criteria:

1. Is a course offered by a recognized dental school as defined in A.R.S. § 32-1201(17), a recognized dental hygiene school as defined in A.R.S. § 32-1201(16), or sponsored by a national or state dental or dental hygiene association or government agency;
2. Includes didactic instruction with a written examination;
3. Includes hands-on clinical instruction; and
4. Is technology that is scientifically based and supported by studies published in peer reviewed dental journals.

R4-11-607. Duties of the Dental Hygiene Committee

A. The committee shall advise the Board on all matters relating to the regulation of dental hygienists.

B. In performing the duty in subsection (A), the committee may:

1. Act as a liaison for the Board, promoting communication and providing a forum for discussion of dental hygiene regulatory issues;
2. Review applications, syllabi, and related materials and make recommendations to the Board regarding certification of courses in local anesthesia—local anesthesia, nitrous oxide analgesia—nitrous oxide analgesia, and suture placement under Article 6 and other procedures which may require certification under Article 6;

3. Review documentation submitted by dental hygienists to determine compliance with the continuing education requirement for license renewal under Article 12 and make recommendations to the Board regarding compliance;

4. Make recommendations to the Board concerning statute and rule development which affect dental hygienists’ education, licensure, regulation, or practice;

5. Provide advice to the Board on standards and scope of practice which affect dental hygiene practice;

6. Provide ad hoc committees to the Board upon request;

7. Request that the Board consider recommendations of the committee at the next regularly scheduled Board meeting; and

8. Make recommendations to the Board for approval of dental hygiene consultants.

C. Committee members who are licensed dentists or dental hygienists may serve as Western Regional Examining Board (WREB) dental hygiene examiners or Board consultants.

D. The committee shall meet at least two times per calendar year. The chairperson or the president of the Board, or their respective designees, may call a meeting of the committee.

E. The Board may assign additional duties to the committee.

R4-11-608. Dental Hygiene Consultants
After submission of a current curriculum vitae or resume and approval by the Board, dental hygiene consultants may:

1. Act as Western Regional Examining Board (WREB) dental hygiene examiners for the clinical portion of the dental hygiene examination;

2. Act as Western Regional Examining Board (WREB) dental hygiene examiners for the local anesthesia Local Anesthesia portion of the dental hygiene examination;

3. Participate in Board-related procedures, including clinical evaluations—Clinical Evaluations, investigation of complaints concerning infection control, insurance fraud, or the practice of supervised personnel, and any other procedures not directly related to evaluating a dentist’s quality of care; and

4. Participate in onsite office evaluations for infection control, as part of a team.

R4-11-609. Affiliated Practice

A. To perform dental hygiene services under an affiliated practice relationship pursuant to A.R.S. § 32-1289 32-1289.01, a dental hygienist shall:

1. Provide evidence to the Board of successfully completing a total of 12 hours of recognized continuing dental education—Recognized Continuing Dental Education that consists of the following subject areas:

   a. A minimum of four hours in medical emergencies; and

   b. A minimum of eight hours in at least two of the following areas:

      i. Pediatric or other special health care needs,

      ii. Preventative dentistry, or
iii. Public health community-based dentistry, and

2. Hold a current certificate in basic cardiopulmonary resuscitation (CPR).

B. A dental hygienist shall complete the required continuing dental education before entering an affiliated practice relationship. The dental hygienist shall complete the continuing dental education in subsection (A) before renewing the dental hygienist’s license. The dental hygienist may take the continuing dental education online but shall not exceed the allowable hours indicated in R4-11-1209(B)(1).

C. To comply with A.R.S. § 32-1289(E) and (F) 32-1287(B) and this Section, a dental hygienist shall submit a completed affidavit on a form supplied by the Board office. Board staff shall review the affidavit to determine compliance with all requirements.

D. A dental hygienist who practices or applies to practice under an affiliated practice relationship shall ensure that all signatures in an affiliated practice agreement, amendment, notification, and affidavit are notarized.

E. D. Each affiliated practice dentist shall be available telephonically or electronically during the business hours of the affiliated practice dental hygienist to provide an appropriate level of contact, communication, and consultation.

F. E. The affiliated practice agreement shall include a provision for a substitute dentist, to cover an extenuating circumstance that renders the affiliated practice dentist unavailable for contact, communication, and consultation with the affiliated practice dental hygienist.

ARTICLE 9. RESTRICTED PERMITS

R4-11-901. Application for Restricted Permit
A. An applicant for a restricted permit shall provide the following information and documentation on a form provided by the Board:

1. A sworn statement of the applicant’s qualifications for a restricted permit;
2. A photograph of the applicant that is no more than six months old;
3. A letter of endorsement from any other jurisdiction in which an applicant is licensed or certified verifying that the applicant is licensed or certified in that jurisdiction, sent directly from that jurisdiction to the Board;
4. If the applicant is in the military or employed by the United States government, a letter of endorsement from the applicant’s commanding officer or superior supervisor verifying the applicant is licensed or certified by the military or United States government if the applicant is in the military or employed by the United States government;
5. A copy of the applicant’s current cardiopulmonary resuscitation certification that meets the requirements of R4-11-301(A)(6); and
6. A copy of the applicant’s pending contract with a charitable dental clinic or organization offering dental or dental hygiene services.

B. The Board may request that an applicant provide a copy of a certified document that indicates the reason for a name change if the applicant’s application contains different names.

ARTICLE 13. GENERAL ANESTHESIA AND SEDATION

R4-11-1301. General Anesthesia and Deep Sedation

A. Before administering general anesthesia General Anesthesia, or deep sedation Deep Sedation by any means, in a dental office or dental clinic, a dentist shall possess a Section 1301 permit
Permit issued by the Board. The dentist may renew a Section 1301 permit every five years by complying with R4-11-1307.

B. To obtain or renew a Section 1301 permit, a dentist shall:

1. Submit a completed application on a form provided by the Board office that, in addition to the requirements of subsections (B)(2) and (3), and R4-11-1307, includes:
   a. General information about the applicant such as:
      i. Name;
      ii. Home and office addresses and telephone numbers;
      iii. Limitations of practice;
      iv. Hospital affiliations;
   v. Denial, curtailment, revocation, or suspension of hospital privileges;
   vi. Denial of membership in, denial of renewal of membership in, or disciplinary action by a dental organization; and
   vii. Denial of licensure by, denial of renewal of licensure by, or disciplinary action by a dental regulatory body; and
   b. The dentist’s dated and signed affidavit stating that the information provided is true, and that the dentist has read and complied with the Board’s statutes and rules;

2. On forms provided by the Board, provide a dated and signed affidavit attesting that any office or dental clinic where the dentist will administer general anesthesia or deep sedation:
a. Contains the following properly operating equipment and supplies during the provision of general anesthesia General Anesthesia and deep sedation Deep Sedation:

i. Emergency drugs Drugs;

ii. Electrocardiograph monitor;

iii. Pulse oximeter;

iv. Cardiac defibrillator or automated external defibrillator (AED);

v. Positive pressure oxygen and supplemental oxygen;

vi. Suction equipment, including endotracheal, tonsillar, or pharyngeal and emergency backup medical suction device;

vii. Laryngoscope, multiple blades, backup batteries, and backup bulbs;

viii. Endotracheal tubes and appropriate connectors;

ix. Magill forceps;

x. Oropharyngeal and nasopharyngeal airways;

xi. Auxiliary lighting;

xii. Stethoscope; and

xiii. Blood pressure monitoring device; and

b. Maintains a staff of supervised personnel capable of handling procedures, complications, and emergency incidents. All personnel involved in administering and monitoring general anesthesia General Anesthesia or deep sedation Deep Sedation
shall hold a current course completion confirmation in cardiopulmonary resuscitation (CPR) Health Care Provider Level healthcare provider level;

3. Hold a valid license to practice dentistry in this state;

4. Maintain a current permit to prescribe and administer controlled substances Controlled Substances in this state issued by the United States Drug Enforcement Administration; and

5. Provide confirmation of completing coursework within the two years prior to submitting the permit application in one or more of the following:
   a. Advanced cardiac life support (ACLS) from the American Heart Association or another agency that follows the same procedures, standards, and techniques for training as the American Heart Association;
   b. Pediatric advanced life support (PALS) in a practice treating pediatric patients; or
   c. A recognized continuing education course in advanced airway management.

C. Initial applicants shall meet one or more of the following conditions by submitting to the Board verification of meeting the condition directly from the issuing institution:

1. Complete, within the three years before submitting the permit application, a full credit load, as defined by the training program, during one calendar year of training, in anesthesiology or related academic subjects, beyond the undergraduate dental school level in a training program described in R4-11-1306(A), offered by a hospital accredited by the Joint Commission on Accreditation of Hospitals Organization, or sponsored by a university accredited by the American Dental Association Commission on Dental Accreditation;
2. Be, within the three years before submitting the permit application, a Diplomate of the American Board of Oral and Maxillofacial Surgeons or eligible for examination by the American Board of Oral and Maxillofacial surgeons, a Fellow of the American Association of Oral and Maxillofacial surgeons, a Fellow of the American Dental Society of Anesthesiology, a Diplomate of the National Dental Board of Anesthesiology, or a Diplomate of the American Dental Board of Anesthesiology; or

3. For an applicant who completed the requirements of subsections (C)(1) or (C)(2) more than three years before submitting the permit application, provide the following documentation:

   a. On a form provided by the Board, a written affidavit affirming that the applicant has administered general anesthesia General Anesthesia or deep sedation Deep Sedation to a minimum of 25 patients within the year before submitting the permit application or 75 patients within the last five years before submitting the permit application;

   b. A copy of the general anesthesia General Anesthesia or deep sedation Deep Sedation permit in effect in another state or certification of military training in general anesthesia General Anesthesia or deep sedation Deep Sedation from the applicant’s commanding officer; and

   c. On a form provided by the Board, a written affidavit affirming the completion of 30 clock hours of continuing education taken within the last five years as outlined in R4-11-1306(B)(1)(a) through (f).

D. After submitting the application and written evidence of compliance with requirements in subsection (B) and, if applicable, subsection (C) to the Board, the applicant shall schedule an onsite evaluation by the Board during which the applicant shall administer general anesthesia
General Anesthesia or deep sedation Deep Sedation. After the applicant completes the application requirements and successfully completes the onsite evaluation, a Section 1301 permit Permit shall be issued to the applicant.

1. The onsite evaluation team shall consist of:
   a. Two dentists who are Board members, or Board designees for initial applications; or
   b. One dentist who is a Board member or Board designee for renewal applications.

2. The onsite team shall evaluate the following:
   a. The availability of equipment and personnel as specified in subsection (B)(2);
   b. Proper administration of General Anesthesia or deep sedation Deep Sedation to a patient by the applicant in the presence of the evaluation team;
   c. Successful responses by the applicant to oral examination questions from the evaluation team about patient management, medical emergencies, and emergency medications;
   d. Proper documentation of Controlled Substances, that includes a perpetual inventory log showing the receipt, administration, dispensing, and destruction of Controlled Substances;
   e. Proper recordkeeping as specified in subsection (E) by reviewing the records generated for the patient specified in subsection (D)(2)(b); and
   f. For renewal applicants, records supporting continued competency as specified in R4-11-1306.

3. The evaluation team shall recommend one of the following:
   a. Pass. Successful completion of the onsite evaluation;
b. Conditional Approval for failing to have appropriate equipment, proper
documentation of controlled substances—Controlled Substances, or proper
recordkeeping. The applicant must submit proof of correcting the deficiencies before
a permit is issued;

c. Category 1 Evaluation Failure. The applicant must review the appropriate subject
matter and schedule a subsequent evaluation by two Board Members or Board
designees not less than 30 days from the failed evaluation. An example is failure to
recognize and manage one emergency;

d. Category 2 Evaluation Failure. The applicant must complete Board approved
continuing education in subject matter within the scope of the onsite evaluation as
identified by the evaluators and schedule a subsequent evaluation by two Board
Members or Board designees not less than 60 days from the failed evaluation. An
example is failure to recognize and manage more than one emergency; or

e. Category 3 Evaluation Failure. The applicant must complete Board approved
remedial continuing education with the subject matter outlined in R4-11-1306 as
identified by the evaluators and reapply not less than 90 days from the failed
evaluation. An example is failure to recognize and manage an anesthetic urgency.

4. The onsite evaluation of an additional dental office or dental clinic in which general
anesthesia General Anesthesia or deep sedation Deep Sedation is administered by an
existing Section 1301 permit—Permit holder may be waived by the Board staff upon
receipt in the Board office of an affidavit verifying compliance with subsection (D)(2)(a).
5. A Section 1301 mobile permit may be issued if a Section 1301 permit Permit holder travels to dental offices or dental clinics to provide anesthesia or deep sedation Deep Sedation. The applicant must submit a completed affidavit verifying:
   a. That the equipment and supplies for the provision of anesthesia or deep sedation Deep Sedation as required in subsection (B)(2)(a) either travel with the Section 1301 permit Permit holder or are in place and in appropriate condition at the dental office or dental clinic where anesthesia or deep sedation Deep Sedation is provided, and
   b. Compliance with subsection (B)(2)(b).

E. A Section 1301 permit Permit holder shall keep an anesthesia or deep sedation Deep Sedation record for each general anesthesia General Anesthesia and deep sedation Deep Sedation procedure that includes the following entries:
   1. Pre-operative and post-operative electrocardiograph documentation;
   2. Pre-operative, intra-operative, and post-operative pulse oximeter documentation;
   3. Pre-operative, intra-operative, and post-operative blood pressure and vital sign documentation;
   4. A list of all medications given, with dosage and time intervals, and route and site of administration;
   5. Type of catheter or portal with gauge;
   6. Indicate nothing by mouth or time of last intake of food or water;
   7. Consent form; and
   8. Time of discharge and status, including name of escort.

F. The Section 1301 permit Permit holder, for intravenous access, shall use a new infusion set, including a new infusion line and new bag of fluid, for each patient.
G. The Section 1301 

permit Permit holder shall utilize supplemental oxygen for patients receiving general anesthesia General Anesthesia or deep sedation Deep Sedation for the duration of the procedure.

H. The Section 1301 permit Permit holder shall continuously supervise the patient from the initiation of anesthesia or deep sedation Deep Sedation until termination of the anesthesia or deep sedation Deep Sedation procedure and oxygenation, ventilation, and circulation are stable. The Section 1301 permit Permit holder shall not commence with the administration of a subsequent anesthetic case until the patient is in monitored recovery or meets the guidelines for discharge.

I. A Section 1301 permit Permit holder may employ the following health care professionals to provide anesthesia or sedation services and shall ensure that the health care professional continuously supervises the patient from the administration of anesthesia or sedation until termination of the anesthesia or sedation procedure and oxygenation, ventilation, and circulation are stable:

1. An allopathic or osteopathic physician currently licensed in Arizona by the Arizona Medical Board or the Arizona Board of Osteopathic Examiners who has successfully completed a residency program in anesthesiology approved by the American Council on Graduate Medical Education (ACGME) or the American Osteopathic Association (AOA) or who is certified by either the American Board of Anesthesiology or the American Osteopathic Board of Anesthesiology and is credentialed with anesthesia privileges through an Arizona licensed medical facility, or

2. A Certified Registered Nurse Anesthetist (CRNA) currently licensed in Arizona who provides services under the Nurse Practice Act in A.R.S. Title 32, Chapter 15.
A Section 1301 permit holder may also administer parenteral sedation without obtaining a Section 1302 permit.

R4-11-1302. Parenteral Sedation

A. Before administering parenteral sedation in a dental office or dental clinic, a dentist shall possess a Section 1302 permit issued by the Board. The dentist may renew a Section 1302 permit every five years by complying with R4-11-1307.

1. A Section 1301 permit holder may also administer parenteral sedation.

2. A Section 1302 permit holder shall not administer or employ any agents which have a narrow margin for maintaining consciousness including, but not limited to, ultra-short acting barbiturates, propofol, parenteral ketamine, or similarly acting drugs, agents, or techniques, or any combination thereof that would likely render a patient deeply sedated, generally anesthetized or otherwise not meeting the conditions of moderate sedation.

B. To obtain or renew a Section 1302 permit, the dentist shall:

1. Submit a completed application on a form provided by the Board office that, in addition to the requirements of subsections (B)(2) and (3) and R4-11-1307, includes:

   a. General information about the applicant such as:

      i. Name;

      ii. Home and office addresses and telephone numbers;

      iii. Limitations of practice;

      iv. Hospital affiliations;
v. Denial, curtailment, revocation, or suspension of hospital privileges;

vi. Denial of membership in, denial of renewal of membership in, or disciplinary action by a dental organization; and

vii. Denial of licensure by, denial of renewal of licensure by, or disciplinary action by a dental regulatory body; and

b. The dentist’s dated and signed affidavit stating that the information provided is true, and that the dentist has read and complied with the Board’s statutes and rules;

2. On forms provided by the Board, provide a dated and signed affidavit attesting that any dental office or dental clinic where the dentist will administer parenteral sedation by intravenous or intramuscular route:

a. Contains the following properly operating equipment and supplies during the provision of parenteral sedation by the permit holder or general anesthesia General Anesthesia or deep sedation Deep Sedation by a physician anesthesiologist or Certified Registered Nurse Anesthetist (CRNA):

i. Emergency drugs Drugs;

ii. Positive pressure oxygen and supplemental oxygen;

iii. Stethoscope;

iv. Suction equipment, including tonsillar or pharyngeal and emergency backup medical suction device;

v. Oropharyngeal and nasopharyngeal airways;

vi. Pulse oximeter;
vii. Auxiliary lighting;

viii. Blood pressure monitoring device; and

ix. Cardiac defibrillator or automated external defibrillator (AED); and

b. Maintains a staff of supervised personnel capable of handling procedures, complications, and emergency incidents, including at least one staff member who:
   i. Holds a current course completion confirmation in cardiopulmonary resuscitation (CPR) health care provider level;
   ii. Is present during the parenteral sedation procedure; and
   iii. After the procedure, monitors the patient until discharge;

3. Hold a valid license to practice dentistry in this state;

4. Maintain a current permit to prescribe and administer controlled substances in this state issued by the United States Drug Enforcement Administration;

5. Provide confirmation of completing coursework within the two years prior to submitting the permit application in one or more of the following:
   a. Advanced cardiac life support (ACLS) from the American Heart Association or another agency that follows the same procedures, standards, and techniques for training as the American Heart Association;
   b. Pediatric advanced life support (PALS) in a practice treating pediatric patients; or
   c. A recognized continuing education course in advanced airway management.

C. Initial applicants shall meet one of the following conditions by submitting to the Board verification of meeting the condition directly from the issuing institution:
1. Successfully complete Board-recognized undergraduate, graduate, or postgraduate education within the three years before submitting the permit application, that includes the following:
   a. Sixty (60) didactic hours of basic parenteral sedation to include:
      i. Physical evaluation;
      ii. Management of medical emergencies;
      iii. The importance of and techniques for maintaining proper documentation; and
      iv. Monitoring and the use of monitoring equipment; and
   b. Hands-on administration of parenteral sedative medications to at least 20 patients in a manner consistent with this Section; or

2. An applicant who completed training in parenteral sedation more than three years before submitting the permit application shall provide the following documentation:
   a. On a form provided by the Board, a written affidavit affirming that the applicant has administered parenteral sedation to a minimum of 25 patients within the year or 75 patients within the last five years before submitting the permit application;
   b. A copy of the parenteral sedation permit in effect in another state or certification of military training in parenteral sedation from the applicant's commanding officer; and
   c. On a form provided by the Board, a written affidavit affirming the completion of 30 clock hours of continuing education taken within the last five years as outlined in R4-11-1306(B)(1)(b) through (f).

D. After submitting the application and written evidence of compliance with requirements outlined in subsection (B) and, if applicable, subsection (C) to the Board, the applicant shall
schedule an onsite evaluation by the Board during which the applicant shall administer parenteral sedation. After the applicant completes the application requirements and successfully completes the onsite evaluation, the Board shall issue a Section 1302 permit to the applicant.

1. The onsite evaluation team shall consist of:
   a. Two dentists who are Board members, or Board designees for initial applications, or
   b. One dentist who is a Board member or Board designee for renewal applications.

2. The onsite team shall evaluate the following:
   a. The availability of equipment and personnel as specified in subsection (B)(2);
   b. Proper administration of parenteral sedation to a patient by the applicant in the presence of the evaluation team;
   c. Successful responses by the applicant to oral examination questions from the evaluation team about patient management, medical emergencies, and emergency medications;
   d. Proper documentation of controlled substances, that includes a perpetual inventory log showing the receipt, administration, dispensing, and destruction of all controlled substances;
   e. Proper recordkeeping as specified in subsection (E) by reviewing the records generated for the patient receiving parenteral sedation as specified in subsection (D)(2)(b); and
   f. For renewal applicants, records supporting continued competency as specified in R4-11-1306.

3. The evaluation team shall recommend one of the following:
a. Pass. Successful completion of the onsite evaluation;

b. Conditional Approval for failing to have appropriate equipment, proper documentation of controlled substances—Controlled Substances, or proper recordkeeping. The applicant must submit proof of correcting the deficiencies before a permit is issued;

c. Category 1 Evaluation Failure. The applicant must review the appropriate subject matter and schedule a subsequent evaluation by two Board Members or Board designees not less than 30 days from the failed evaluation. An example is failure to recognize and manage one emergency;

d. Category 2 Evaluation Failure. The applicant must complete Board approved continuing education in subject matter within the scope of the onsite evaluation as identified by the evaluators and schedule a subsequent evaluation by two Board Members or Board designees not less than 60 days from the failed evaluation. An example is failure to recognize and manage more than one emergency; or

e. Category 3 Evaluation Failure. The applicant must complete Board approved remedial continuing education with the subject matter outlined in R4-11-1306 as identified by the evaluators and reapply not less than 90 days from the failed evaluation. An example is failure to recognize and manage an anesthetic urgency.

4. The onsite evaluation of an additional dental office or dental clinic in which parenteral sedation is administered by an existing Section 1302 permit Permit holder may be waived by the Board staff upon receipt in the Board office of an affidavit verifying compliance with subsection (D)(2)(a).
5. A Section 1302 mobile permit may be issued if a Section 1302 permit holder travels to dental offices or dental clinics to provide parenteral sedation. The applicant must submit a completed affidavit verifying:

a. That the equipment and supplies for the provision of parenteral sedation as required in R4-11-1302(B)(2)(a) either travel with the Section 1302 permit holder or are in place and in appropriate working condition at the dental office or dental clinic where parenteral sedation is provided, and

b. Compliance with R4-11-1302(B)(2)(b).

E. A Section 1302 permit holder shall keep a parenteral sedation record for each parenteral sedation procedure that:

1. Includes the following entries:
   a. Pre-operative, intra-operative, and post-operative pulse oximeter documentation;
   b. Pre-operative, intra-operative, and post-operative blood pressure and vital sign documentation;
   c. A list of all medications given, with dosage and time intervals and route and site of administration;
   d. Type of catheter or portal with gauge;
   e. Indicate nothing by mouth or time of last intake of food or water;
   f. Consent form; and
   g. Time of discharge and status, including name of escort; and

2. May include pre-operative and post-operative electrocardiograph report.
F. The Section 1302 permit holder shall establish intravenous access on each patient receiving parenteral sedation utilizing a new infusion set, including a new infusion line and new bag of fluid.

G. The Section 1302 permit holder shall utilize supplemental oxygen for patients receiving parenteral sedation for the duration of the procedure.

H. The Section 1302 permit holder shall continuously supervise the patient from the initiation of parenteral sedation until termination of the parenteral sedation procedure and oxygenation, ventilation and circulation are stable. The Section 1302 permit holder shall not commence with the administration of a subsequent anesthetic case until the patient is in monitored recovery or meets the guidelines for discharge.

I. A Section 1302 permit holder may employ a health care professional as specified in R4-11-1301(I).

R4-11-1303. Oral Sedation

A. Before administering oral sedation in a dental office or dental clinic, a dentist shall possess a Section 1303 permit issued by the Board. The dentist may renew a Section 1303 permit every five years by complying with R4-11-1307.

1. A Section 1301 permit holder or Section 1302 permit holder may also administer oral sedation without obtaining a Section 1303 permit.

2. The administration of a single drug for minimal sedation does not require a Section 1303 permit if:
a. The administered dose is within the Food and Drug Administration’s (FDA) maximum recommended dose as printed in FDA the Food and Drug Administration’s approved labeling for unmonitored home use;

i. Incremental multiple doses of the drug Drug may be administered until the desired effect is reached, but does not exceed the maximum recommended dose; and

ii. During minimal sedation Minimal Sedation, a single supplemental dose may be administered. The supplemental dose may not exceed one-half of the initial dose and the total aggregate dose may not exceed one and one-half times the FDA Food and Drug Administration’s maximum recommended dose on the date of treatment; and

b. Nitrous oxide/oxygen may be administered in addition to the oral drug Drug as long as the combination does not exceed minimal sedation Minimal Sedation.

B. To obtain or renew a Section 1303 permit Permit, a dentist shall:

1. Submit a completed application on a form provided by the Board office that, in addition to the requirements of subsections (B)(2) and (3) and R4-11-1307, includes:

   a. General information about the applicant such as:

      i. Name;

      ii. Home and office addresses and telephone numbers;

      iii. Limitations of practice;

      iv. Hospital affiliations;
v. Denial, curtailment, revocation, or suspension of hospital privileges;

vi. Denial of membership in, denial of renewal of membership in, or disciplinary action by a dental organization; and

vii. Denial of licensure by, denial of renewal of licensure by, or disciplinary action by a dental regulatory body; and

b. The dentist’s dated and signed affidavit stating that the information provided is true, and that the dentist has read and complied with the Board’s statutes and rules;

2. On forms provided by the Board, provide a dated and signed affidavit attesting that any dental office or dental clinic where the dentist will administer oral sedation contains the following properly operating equipment and supplies during the provision of sedation:

   a. Contains the following properly operating equipment and supplies during the provision of sedation:

      i. Emergency drugs;

      ii. Cardiac defibrillator or automated external defibrillator (AED);

      iii. Positive pressure oxygen and supplemental oxygen;

      iv. Stethoscope;

      v. Suction equipment, including tonsillar or pharyngeal and emergency backup medical suction device;

      vi. Pulse oximeter;

      vii. Blood pressure monitoring device; and
viii. Auxiliary lighting; and

b. Maintains a staff of supervised personnel capable of handling procedures, complications, and emergency incidents, including at least one staff member who:
   i. Holds a current certificate in cardiopulmonary resuscitation (CPR) Health Care Provider Level healthcare provider level;
   
   ii. Is present during the oral sedation Oral Sedation procedure; and

   iii. After the procedure, monitors the patient until discharge;

3. Hold a valid license to practice dentistry in this state;

4. Maintain a current permit to prescribe and administer controlled substances Controlled Substances in this state issued by the United States Drug Enforcement Administration;

5. Provide confirmation of completing coursework within the two years prior to submitting the permit application in one or more of the following:
   a. Cardiopulmonary resuscitation (CPR) Health Care Provider Level healthcare provider level from the American Heart Association, American Red Cross, or another agency that follows the same procedures, standards, and techniques for training as the American Heart Association or American Red Cross;
   b. Pediatric advanced life support (PALS) in a practice treating pediatric patients; or
   c. A recognized continuing education course in advanced airway management.

C. Initial applicants shall meet one of the following by submitting to the Board verification of meeting the condition directly from the issuing institution:
1. Complete a Board-recognized post-doctoral residency program that includes documented training in oral sedation Oral Sedation within the last three years before submitting the permit application; or

2. Complete a Board recognized post-doctoral residency program that includes documented training in oral sedation Oral Sedation more than three years before submitting the permit application shall provide the following documentation:
   a. On a form provided by the Board, a written affidavit affirming that the applicant has administered oral sedation Oral Sedation to a minimum of 25 patients within the year or 75 patients within the last five years before submitting the permit application;
   b. A copy of the oral sedation Oral Sedation permit in effect in another state or certification of military training in oral sedation Oral Sedation from the applicant’s commanding officer; and
   c. On a form provided by the Board, a written affidavit affirming the completion of 30 hours of continuing education taken within the last five years as outlined in R4-11-1306(C)(1)(a) through (f); or

3. Provide proof of participation in 30 clock hours of Board-recognized undergraduate, graduate, or post-graduate education in oral sedation Oral Sedation within the three years before submitting the permit application that includes:
   a. Training in basic oral sedation Oral Sedation,
   b. Pharmacology,
   c. Physical evaluation,
   d. Management of medical emergencies,
   e. The importance of and techniques for maintaining proper documentation, and
f. Monitoring and the use of monitoring equipment.

D. After submitting the application and written evidence of compliance with requirements in subsection (B) and, if applicable, subsection (C) to the Board, the applicant shall schedule an onsite evaluation by the Board. After the applicant completes the application requirements and successfully completes the onsite evaluation, the Board shall issue a Section 1303 permit to the applicant.

1. The onsite evaluation team shall consist of:
   a. For initial applications, two dentists who are Board members, or Board designees.
   b. For renewal applications, one dentist who is a Board member, or Board designee.

2. The onsite team shall evaluate the following:
   a. The availability of equipment and personnel as specified in subsection (B)(2);
   b. Successful responses by the applicant to oral examination questions from the evaluation team about patient management, medical emergencies, and emergency medications;
   c. Proper documentation of controlled substances, that includes a perpetual inventory log showing the receipt, administration, dispensing, and destruction of controlled substances;
   d. Proper recordkeeping as specified in subsection (E) by reviewing the forms that document the oral sedation record; and
   e. For renewal applicants, records supporting continued competency as specified in R4-11-1306.

3. The evaluation team shall recommend one of the following:
   a. Pass. Successful completion of the onsite evaluation;
b. Conditional Approval for failing to have appropriate equipment, proper documentation of controlled substance—Controlled Substance, or proper recordkeeping. The applicant must submit proof of correcting the deficiencies before permit will be issued;

c. Category 1 Evaluation Failure. The applicant must review the appropriate subject matter and schedule a subsequent evaluation by two Board Members or Board designees not less than 30 days from the failed evaluation. An example is failure to recognize and manage one emergency; or

d. Category 2 Evaluation Failure. The applicant must complete Board approved continuing education in subject matter within the scope of the onsite evaluation as identified by the evaluators and schedule a subsequent evaluation by two Board Members or Board designees not less than 60 days from the failed evaluation. An example is failure to recognize and manage more than one emergency.

4. The onsite evaluation of an additional dental office or dental clinic in which oral sedation—Oral Sedation is administered by a Section 1303 permit—Permit holder may be waived by the Board staff upon receipt in the Board office of an affidavit verifying compliance with subsection (D)(2)(a).

5. A Section 1303 mobile permit may be issued if the Section 1303 permit—Permit holder travels to dental offices or dental clinics to provide oral sedation—Oral Sedation. The applicant must submit a completed affidavit verifying:

a. That the equipment and supplies for the provision of oral sedation—Oral Sedation as required in R4-11-1303(B)(2)(a) either travel with the Section 1303 permit—Permit
holder or are in place and in appropriate condition at the dental office or dental clinic where oral sedation Oral Sedation is provided, and

b. Compliance with R4-11-1303(B)(2)(b).

E. A Section 1303 permit Permit holder shall keep an oral sedation Oral Sedation record for each oral sedation Oral Sedation procedure that:

1. Includes the following entries:
   a. Pre-operative, intra-operative, and post-operative, pulse oximeter oxygen saturation and pulse rate documentation;
   b. Pre-operative and post-operative blood pressure;
   c. Documented reasons for not taking vital signs if a patient’s behavior or emotional state prevents monitoring personnel from taking vital signs;
   d. List of all medications given, including dosage and time intervals;
   e. Patient’s weight;
   f. Consent form;
   g. Special notes, such as, nothing by mouth or last intake of food or water; and
   h. Time of discharge and status, including name of escort; and

2. May include the following entries:
   a. Pre-operative and post-operative electrocardiograph report; and
   b. Intra-operative blood pressures.

F. The Section 1303 permit Permit holder shall utilize supplemental oxygen for patients receiving oral sedation Oral Sedation for the duration of the procedure.

G. The Section 1303 permit Permit holder shall ensure the continuous supervision of the patient from the administration of oral sedation Oral Sedation until oxygenation, ventilation and
circulation are stable and the patient is appropriately responsive for discharge from the dental office or dental clinic.

H. A Section 1303 permit Permit holder may employ a health care professional to provide anesthesia services, if all of the following conditions are met:

1. The physician anesthesiologist or CRNA Certified Registered Nurse Anesthetist meets the requirements as specified in R4-11-1301(I);

2. The Section 1303 permit Permit holder has completed coursework within the two years prior to submitting the permit application in one or more of the following:
   a. ACLS Advanced cardiac life support from the American Heart Association or another agency that follows the same procedures, standards, and techniques for training as the American Heart Association;
   b. PALS Pediatric advanced life support in a practice treating pediatric patients;
   c. A recognized continuing education course in advanced airway management;

3. The Section 1303 permit Permit holder ensures that:
   a. The dental office or clinic contains the equipment and supplies listed in R4-11-1304(B)(2)(a) during the provision of anesthesia or sedation by the physician anesthesiologist or CRNA Certified Registered Nurse Anesthetist;
   b. The anesthesia or sedation record contains all the entries listed in R4-11-1304(D);
   c. For intravenous access, the physician anesthesiologist or CRNA Certified Registered Nurse Anesthetist uses a new infusion set, including a new infusion line and new bag of fluid for each patient; and
   d. The patient is continuously supervised from the administration of anesthesia or sedation until the termination of the anesthesia or sedation procedure and
oxygenation, ventilation and circulation are stable. The Section 1303 permit holder shall not commence with a subsequent procedure or treatment until the patient is in monitored recovery or meets the guidelines for discharge.

ARTICLE 14. DISPENSING DRUGS AND DEVICES

R4-11-1405. Compliance

A. A dentist who determines that there has been a theft or loss of drugs or controlled substances from the dentist’s office shall immediately notify a local law enforcement agency and the Board and provide written notice of the theft or loss in the following manner:

1. For non-controlled substance drug theft or loss, provide the law enforcement agency and the Board with a written report explaining the theft or loss; or

2. For controlled substance theft or loss, complete a DEA Drug Enforcement Administration’s 106 form; and

3. Provide copies of the DEA Drug Enforcement Administration’s 106 form to the Drug Enforcement Administration and the Board within seven days of the discovery.

B. A dentist who dispenses drugs or devices in a manner inconsistent with this Article is subject to discipline under A.R.S. Title 32, Chapter 11, Article 3.
1. **Identification of the rulemaking:**

The Board needs to amend various rules for general purposes, but nothing substantive.

   a. **The conduct and its frequency of occurrence that the rule is designed to change:**

   The Board needs to amend its rules to update various rules to update statutory references, process time-frames and submission methods; remove outdated language including some fees; and other formatting changes.

   b. **The harm resulting from the conduct the rule is designed to change and the likelihood it will continue to occur if the rule is not changed:**

   There is no harm if the rules are not changed. However, there are some statutory references that are inaccurate, time-frames that are not uniform, outdated language, including reference to a clinical exam organization that is no longer operational. By not amending its rules, the Board would continue to operate with rules that will have to be amended at some point.

   c. **The estimated change in frequency of the targeted conduct expected from the rule change:**

   N/A

2. **A brief summary of the information included in the economic, small business, and consumer impact statement:**

   After going through other Notices of Proposed Rule changes, the Board recognized other ancillary needs that did not fit within the scopes of those NPRs, and therefore, sought out an additional NPR to make non-substantive amendments to its rules.

---

1 If adequate data are not reasonably available, the agency shall explain the limitations of the data, the methods used in an attempt to obtain the data, and characterize the probable impacts in qualitative terms. (A.R.S. § 41-1055(C)).
3. **The person to contact to submit or request additional data on the information included in the economic, small business, and consumer impact statement:**

   Name: Ryan Edmonson, Executive Director  
   Address: Arizona State Board of Dental Examiners  
   1740 W. Adams St., Ste. 2470  
   Phoenix, AZ 85007  
   Telephone: (602) 542-4493  
   E-Mail: ryan.edmonson@dentalboard.az.gov

4. **Persons who will be directly affected by, bear the costs of, or directly benefit from the rulemaking:**

   Other than the costs to the Arizona State Board of Dental Examiners’, the costs are shared by the Board’s licensees.

5. **Cost-benefit analysis:**

   a. **Costs and benefits to state agencies directly affected by the rulemaking** including the number of new full-time employees at the implementing agency required to implement and enforce the proposed rule:

   The Arizona State Board of Dental Examiners is the only state agency affected by the rulemaking amendment and there will not be any costs, including the hiring of more personnel to manage the effects of the amendments. The benefits, as stated above, cleans up some outdated rules for various reasons and provides for more uniformity.

   b. **Costs and benefits to political subdivisions directly affected by the rulemaking:**

   N/A
c. Costs and benefits to businesses directly affected by the rulemaking:
   No new costs will be incurred to businesses; they remain the same whether or not the rules are amended.

6. Impact on private and public employment:
   N/A

7. Impact on small businesses:
   a. Identification of the small business subject to the rulemaking:
      There is no financial impact to small businesses.
   
   b. Administrative and other costs required for compliance with the rulemaking:
      Negligible
   
   c. Description of methods that may be used to reduce the impact on small businesses:
      Again, the Board did not recognize a financial impact to small businesses.

8. Cost and benefit to private persons and consumers who are directly affected by the rulemaking:
   No new costs will be incurred to individuals.

9. Probable effects on state revenues:
   No new revenues or expenses will be incurred.

10. Less intrusive or less costly alternative methods considered:
    The Arizona State Board of Dental Examiners believes that by amending its rules, which are non-substantive, is the less intrusive and less costly alternative.

---

2 Small business has the meaning specified in A.R.S. § 41-1001(20).
February 11, 2022

To: Arizona State Board of Dental Examiners

From: Deborah Kappes, RDH, MPH
      Chair, AzDHA Advocacy Committee

Subject: NPR amending R4-11-601

The AzDHA recommends that the Board take this opportunity to eliminate antiquated rules that no longer make sense due to various changes in statute. We believe our suggestions are consistent with the Board’s justification and explanation in the NPR as to why these rule amendments are necessary. As stated in the Notice, “The Board needs to amend its rules to update various rules to update statutory references, process time-frames and submission methods; remove outdated language including some fees; and other formatting changes.”

1. Strike R4-11-601(C) & (D) pertaining to local anesthesia and nitrous oxide courses and certification as they are outdated and in conflict with § 32-1281(F)(1) and (F)(3) due to statutory changes.

   Prior to 2017, statute required a dental hygienist to complete a “course of study recognized by the Board” and that course was described in rule. That is no longer required by statute. In addition, local anesthesia and nitrous oxide were combined into one certification. That is no longer the case. We refer to the Board’s own instructions for obtaining certification in local anesthesia and/or nitrous oxide as justification for deleting this conflicting language so that rule will align with statute and its own procedures. Allowing this language to remain just adds confusion.

2. Strike R4-11-601(E) & (F) pertaining to qualifications to place interrupted sutures and certification as this procedure was eliminated from a dental hygienist’s scope as of July 2015 and certification stickers for Suture Placement are no longer issued and have not been for many years. Therefore, there is no statutory reason or authority to retain these rules.

It is also our belief that these recommendations would not constitute a “substantial change” to the proposed rules as defined in A.R.S. 41-1025 and therefore would not require the Board to file a Notice of Supplemental Proposed Rulemaking. Instead, the Board may simply make the changes in the Notice of Final Rulemaking and explain the changes in item #10 of the Preamble.

Thank you for the opportunity to provide these comments for your consideration.
ARTICLE 1. DEFINITIONS
R4-11-101. Definitions
The following definitions, and definitions in A.R.S. § 32-1201, apply to this Chapter:
“Analgesia” means a state of decreased sensibility to pain produced by using nitrous oxide (N2O) and oxygen (O2) with or without local anesthesia.
“Application” means, for purposes of Article 3 only, forms designated as applications and all documents and additional information the Board requires to be submitted with an application.
“Business Entity” means a business organization that offers to the public professional services regulated by the Board and is established under the laws of any state or foreign country, including a sole practitioner, partnership, limited liability partnership, corporation, and limited liability company, unless specifically exempted by A.R.S. § 32-1213(J).
“Calculus” means a hard mineralized deposit attached to the teeth.
“Certificate holder” means a denturist who practices denture technology under A.R.S. Title 32, Chapter 11, Article 5.
“Charitable Dental Clinic or Organization” means a non-profit organization meeting the requirements of 26 U.S.C. 501(c)(3) and providing dental or dental hygiene services.
“Clinical evaluation” means a dental examination of a patient named in a complaint regarding the patient's dental condition as it exists at the time the examination is performed.
“Closed subgingival curettage” means the removal of the inner surface of the soft tissue wall of a periodontal pocket in a situation where a flap of tissue has not been intentionally or surgically opened.
“Controlled substance” has the meaning prescribed in A.R.S. § 36-2501(A)(3).
“Credit hour” means one clock hour of participation in a recognized continuing dental education program.
“Deep sedation” is a drug-induced depression of consciousness during which a patient cannot be easily aroused but responds purposefully following repeated or painful stimulation. The ability to independently maintain ventilatory function may be impaired. The patient may require assistance in maintaining a patent airway, and spontaneous ventilation may be inadequate. Cardiovascular function is maintained.
“Dental laboratory technician” or “dental technician” has the meaning prescribed in A.R.S. § 32-1201(7).
“Dentist of record” means a dentist who examines, diagnoses, and formulates treatment plans for a patient and may provide treatment to the patient.
“Designee” means a person to whom the Board delegates authority to act on the Board’s behalf regarding a particular task specified by this Chapter.
“Direct supervision” means, for purposes of Article 7 only, that a licensed dentist is present in the office and available to provide immediate treatment or care to a patient and observe a dental assistant’s work.
“Disabled” means a dentist, dental hygienist, or denturist has totally withdrawn from the active practice of dentistry, dental hygiene, or denturism due to a permanent medical disability and based on a physician’s order.
“Dispense for profit” means selling a drug or device for any amount above the administrative overhead costs to inventory.
“Documentation of attendance” means documents that contain the following information:
  Name of sponsoring entity;
  Course title;
  Number of credit hours;
  Name of speaker; and
Date, time, and location of the course.

“Drug” means:
Articles recognized, or for which standards or specifications are prescribed, in the official compendium;
Articles intended for use in the diagnosis, cure, mitigation, treatment, or prevention of disease in the human body;
Articles other than food intended to affect the structure of any function of the human body; or
Articles intended for use as a component of any articles specified in this definition but does not include devices or components, parts, or accessories of devices.

“Emerging scientific technology” means any technology used in the treatment of oral disease that is not currently generally accepted or taught in a recognized dental or dental hygiene school and use of the technology poses material risks.

“Epithelial attachment” means the layer of cells that extends apically from the depth of the gingival (gum) sulcus (crevice) along the tooth, forming an organic attachment.

“Ex-parte communication” means a written or oral communication between a decision maker, fact finder, or Board member and one party to the proceeding, in the absence of other parties.

“General anesthesia” is a drug-induced loss of consciousness during which the patient is not arousable, even by painful stimulation. The ability to independently maintain ventilatory function is often impaired. The patient often requires assistance in maintaining a patent airway, and positive-pressure ventilation may be required because of depressed spontaneous ventilation or drug-induced depression of neuromuscular function. Cardiovascular function may be impaired.

“General supervision” means, for purposes of Article 7 only, a licensed dentist is available for consultation, whether or not the dentist is in the office, regarding procedures or treatment that the dentist authorizes and for which the dentist remains responsible.

“Homebound patient” means a person who is unable to receive dental care in a dental office as a result of a medically diagnosed disabling physical or mental condition.

“Irreversible procedure” means a single treatment, or a step in a series of treatments, that causes change in the affected hard or soft tissues and is permanent or may require reconstructive or corrective procedures to correct the changes.

“Jurisdiction” means the Board’s power to investigate and rule on complaints that allege grounds for disciplinary action under A.R.S. Title 32, Chapter 11 or this Chapter.

“Licensee” means a dentist, dental hygienist, dental consultant, retired licensee, or person who holds a restricted permit under A.R.S. §§ 32-1237 or 32-1292.

“Local anesthesia” is the elimination of sensations, such as pain, in one part of the body by the injection of an anesthetic drug.

“Minimal sedation” is a minimally depressed level of consciousness that retains a patient’s ability to independently and continuously maintain an airway and respond appropriately to light tactile stimulation, not limited to reflex withdrawal from a painful stimulus, or verbal command and that is produced by a pharmacological or non-pharmacological method or a combination thereof. Although cognitive function and coordination may be modestly impaired, ventilatory and cardiovascular functions are unaffected. In accord with this particular definition, the drugs or techniques used should carry a margin of safety wide enough to render unintended loss of consciousness unlikely.

“Moderate sedation” is a drug-induced depression of consciousness during which a patient responds purposefully to verbal commands either alone or accompanied by light tactile stimulation, not limited to reflex withdrawal from a painful stimulus. No interventions are required to maintain a patent airway, and spontaneous ventilation is adequate. Cardiovascular function is maintained. The drugs or techniques used should carry a margin of safety wide enough to render unintended loss of consciousness unlikely. Repeated dosing of a drug before the effects of previous dosing can be fully recognized may result in a greater alteration of the state of consciousness than intended by the permit holder.

“Nitrous oxide analgesia” means nitrous oxide (N2O/O2) used as an inhalation analgesic.
“Nonsurgical periodontal treatment” means plaque removal, plaque control, supragingival and subgingival scaling, root planing, and the adjunctive use of chemical agents.

“Official compendium” means the latest revision of the United States Pharmacopeia and the National Formulary and any current supplement.

“Oral sedation” is the enteral administration of a drug or nondrug substance or combination inhalation and enterally administered drug or non-drug substance in a dental office or dental clinic to achieve minimal or moderate sedation.

“Parenteral sedation” is a minimally depressed level of consciousness that allows the patient to retain the ability to independently and continuously maintain an airway and respond appropriately to physical stimulation or verbal command and is induced by a pharmacological or non-pharmacological method or a combination of both methods of administration in which the drug bypasses the gastrointestinal tract.

“Patient of record” means a patient who has undergone a complete dental evaluation performed by a licensed dentist.

“Periodontal examination and assessment” means to collect and correlate clinical signs and patient symptoms that point to either the presence of or the potential for periodontal disease.

“Periodontal pocket” means a pathologic fissure bordered on one side by the tooth and on the opposite side by crevicular epithelium and limited in its depth by the epithelial attachment.

“Plaque” means a film-like sticky substance composed of mucoidal secretions containing bacteria and toxic products, dead tissue cells, and debris.

“Polish” means, for the purposes of A.R.S. § 32-1291(B) only, a procedure limited to the removal of plaque and extrinsic stain from exposed natural and restored tooth surfaces that utilizes an appropriate rotary instrument with rubber cup or brush and polishing agent. A licensee or dental assistant shall not represent that this procedure alone constitutes an oral prophylaxis.

“Prescription-only device” means:
- Any device that is restricted by the federal act, as defined in A.R.S. § 32-1901, to use only under the supervision of a medical practitioner; or
- Any device required by the federal act, as defined in A.R.S. § 32-1901, to bear on its label the legend “Rx Only.”

“Prescription-only drug” does not include a controlled substance but does include:
- Any drug that, because of its toxicity or other potentiality for harmful effect, the method of its use, or the collateral measures necessary to its use, is not generally recognized among experts, qualified by scientific training and experience to evaluate its safety and efficacy, as safe for use except by or under the supervision of a medical practitioner;
- Any drug that is limited by an approved new drug application under the federal act or A.R.S. § 32-1962 to use under the supervision of a medical practitioner; Every potentially harmful drug, the labeling of which does not bear or contain full and adequate directions for use by the consumer; or
- Any drug required by the federal act to bear on its label the legend “RX Only.”

“President’s designee” means the Board’s executive director, an investigator, or a Board member acting on behalf of the Board president.

“Preventative and therapeutic agents” means substances used in relation to dental hygiene procedures that affect the hard or soft oral tissues to aid in preventing or treating oral disease.

“Prophylaxis” means a scaling and polishing procedure performed on patients with healthy tissues to remove coronal plaque, calculus, and stains.

“Public member” means a person who is not a dentist, dental hygienist, dental assistant, denturist, or dental technician.

“Recognized continuing dental education” means a program whose content directly relates to the art and science of oral health and treatment, provided by a recognized dental school as defined in A.R.S. § 32-1201(18), recognized dental hygiene school as defined in A.R.S. § 32-1201(17), or recognized denturist school as defined in A.R.S. § 32-1201(19), or sponsored by a national or state dental, dental hygiene, or denturist association, American Dental Association, Continuing Education Recognition Program (ADA CERP) or Academy of General Dentistry, Program
Approval for Continuing Education (AGD PACE) approved provider, dental, dental hygiene, or denturist study club, governmental agency, commercial dental supplier, non-profit organization, accredited hospital, or programs or courses approved by other state, district, or territorial dental licensing boards.

“Restricted permit holder” means a dentist who meets the requirements of A.R.S. § 32-1237 or a dental hygienist who meets the requirements of A.R.S. § 32-1292 and is issued a restricted permit by the Board.

“Retired” means a dentist, dental hygienist, or denturist is at least 65 years old and has totally withdrawn from the active practice of dentistry, dental hygiene, or denturism.

“Root planing” means a definitive treatment procedure designed to remove cementum or surface dentin that is rough, impregnated with calculus, or contaminated with toxins or microorganisms.

“Scaling” means use of instruments on the crown and root surfaces of the teeth to remove plaque, calculus, and stains from these surfaces.

“Section 1301 permit” means a permit to administer general anesthesia and deep sedation, employ or work with a physician anesthesiologist, or employ or work with a Certified Registered Nurse Anesthetist (CRNA) under Article 13.

“Section 1302 permit” means a permit to administer parenteral sedation, employ or work with a physician anesthesiologist, or employ or work with a Certified Registered Nurse Anesthetist (CRNA) under Article 13.

“Section 1303 permit” means a permit to administer oral sedation, employ or work with a physician anesthesiologist, or employ or work with a Certified Registered Nurse Anesthetist (CRNA) under Article 13.

“Section 1304 permit” means a permit to employ or work with a physician anesthesiologist, or employ or work with a Certified Registered Nurse Anesthetist (CRNA) under Article 13.

“Study club” means a group of at least five Arizona licensed dentists, dental hygienists, or denturists who provide written course materials or a written outline for a continuing education presentation that meets the requirements of Article 12.

“Treatment records” means all documentation related directly or indirectly to the dental treatment of a patient.

Historical Note

R4-11-102. Renumbered

Historical Note
Adopted effective May 12, 1977 (Supp. 77-3). Former Section R4-11-02 renumbered as Section R4-11-102 without change effective July 29, 1981 (Supp. 81-4). Former Section R4-11-102 renumbered to R4-11-201, new Section R4-11-101 adopted by final rulemaking at 5 A.A.R. 580, effective February 4, 1999 (Supp. 99-1).

R4-11-103. Renumbered

Historical Note
R4-11-104. Repealed

**Historical Note**

Adopted effective May 12, 1977 (Supp. 77-3). Former Section R4-11-04 renumbered as Section R4-11-104 without change effective July 29, 1981 (Supp. 81-4). Former Section R4-11-104 repealed by final rulemaking at 5 A.A.R. 580, effective February 4, 1999 (Supp. 99-1).

R4-11-105. Repealed

**Historical Note**

Adopted effective May 12, 1977 (Supp. 77-3). Former Section R4-11-05 renumbered as Section R4-11-105 without change effective July 29, 1981 (Supp. 81-4). Former Section R4-11-105 repealed by final rulemaking at 5 A.A.R. 580, effective February 4, 1999 (Supp. 99-1).

**ARTICLE 2. LICENSURE BY CREDENTIAL**

**R4-11-201. Clinical Examination; Requirements**

A. If an applicant is applying under A.R.S. §§ 32-1240(A) or 32-1292.01(A), the Board shall ensure that the applicant has passed the clinical examination of another state, United States territory, District of Columbia or a regional testing agency. Satisfactory completion of the clinical examination may be demonstrated by one of the following:

1. Certified documentation, sent directly from another state, United States territory, District of Columbia or a regional testing agency, that confirms successful completion of the clinical examination or multiple examinations administered by the state, United States territory, District of Columbia or regional testing agency. The certified documentation shall contain the name of the applicant, date of examination or examinations and proof of a passing score; or
2. Certified documentation sent directly from another state, United States territory or District of Columbia dental board that shows the applicant passed that state's, United States territory's or District of Columbia's clinical examination before that state's, United States territory's or District of Columbia's participation in a regional examination. The certified documentation shall contain the name of applicant, date of examination or examinations and proof of a passing score.

B. An applicant shall meet the licensure requirements in R4-11-301 and R4-11-303.

**Historical Note**


**R4-11-202. Dental Licensure by Credential; Application**

A. A dentist applying under A.R.S. § 32-1240(A) shall comply with all other applicable requirements in A.R.S. Title 32, Chapter 11 and this Article.

B. A dentist applying under A.R.S. § 32-1240(A)(1) shall:
1. Have a current dental license in another state, territory or district of the United States; 2. Submit a written affidavit affirming that the dentist has practiced dentistry for a minimum of 5000 hours during the five years immediately before applying for licensure by credential. For purposes of this subsection, dental practice includes experience as a dental educator at a dental program accredited by the American Dental Association Commission on Dental Accreditation or employment as a dentist in a public health setting; 3. Submit a written affidavit affirming that the applicant has complied with the continuing dental education requirement of the state in which the applicant is currently licensed; and 4. Provide evidence regarding the clinical examination by complying with one of the subsections in R4-11-201(A)(1).

C. A dentist applying under A.R.S. § 32-1240(A)(2) shall submit certified documentation sent directly from the applicable state, United States territory, District of Columbia or regional testing agency to the Board that contains the name of applicant, date of examination or examinations and proof of a passing score.

D. For any application submitted under A.R.S. § 32-1240(A), the Board may request additional clarifying evidence required under the applicable subsection in R4-11-201(A)(1).

E. An applicant for dental licensure by credential shall pay the fee prescribed in A.R.S. § 32-1240, except the fee is reduced by 50% for applicants who will be employed or working under contract in: 1. Underserved areas, such as declared or eligible Health Professional Shortage Areas (HPSAs); or 2. Other facilities caring for underserved populations as recognized by the Arizona Department of Health Services and approved by the Board.

F. An applicant for dental licensure by credential who works in areas or facilities described in subsection (E) shall: 1. Commit to a three-year, exclusive service period; 2. File a copy of a contract or employment verification statement with the Board, and 3. As a licensee, submit an annual contract or employment verification statement to the Board by December 31 of each year.

G. A licensee’s failure to comply with the requirements in subsection (F) is considered unprofessional conduct and may result in disciplinary action based on the circumstances of the case.

Historical Note
Former Rule 2b; Former Section R4-11-12 renumbered as Section R4-11-202 and amended effective July 29, 1981 (Supp. 81-4). Former Section R4-11-202 repealed, new Section R4-11-202 renumbered from R4-11-102 and the heading amended by final rulemaking at 5 A.A.R. 580, effective February 4, 1999 (Supp. 99-1). Labeling changes made to reflect current style requirements (Supp. 99-1). Section expired under A.R.S. § 41-1056(E), effective April 30, 2001 (Supp. 01-2). New Section made by final rulemaking at 9 A.A.R. 4126, effective November 8, 2003 (Supp. 03-3). Amended by final rulemaking at 22 A.A.R. 371, effective April 3, 2016 (Supp. 16-1).

R4-11-203. Dental Hygienist Licensure by Credential; Application
A. A dental hygienist applying under A.R.S. § 32-1292.01(A) shall comply with all other applicable requirements in A.R.S. Title 32, Chapter 11 and this Article.
B. A dental hygienist applying under A.R.S. § 32-1292.01(A)(1) shall:
1. Have a current dental hygienist license in another state, territory, or district of the United States;
2. Submit a written affidavit affirming that the applicant has practiced as a dental hygienist for a minimum of 1000 hours during the two years immediately before applying for licensure by credential. For purposes of this subsection, dental hygienist practice includes experience as a dental hygienist educator at a dental program accredited by the American Dental Association Commission on Dental Accreditation or employment as a dental hygienist in a public health setting;
3. Submit a written affidavit affirming that the applicant has complied with the continuing dental hygienist education requirement of the state in which the applicant is currently licensed; and
4. Provide evidence regarding the clinical examination by complying with one of the subsections in R4-11-201(A)(1).

C. A dental hygienist applying under A.R.S. § 32-1292.01(A)(2) shall submit certified documentation sent directly from the applicable state, United States territory, District of Columbia or regional testing agency to the Board that contains the name of applicant, date of examination or examinations and proof of a passing score.

D. For any application submitted under A.R.S. § 32-1292.01(A), the Board may request additional clarifying evidence as required under the applicable subsection in R4-11-201(A).

E. An applicant for dental hygienist licensure by credential shall pay the fee prescribed in A.R.S. § 32-1292.01, except the fee is reduced by 50% for applicants who will be employed or working under contract in:
   1. Underserved areas such as declared or eligible Health Professional Shortage Areas (HPSAs); or
   2. Other facilities caring for underserved populations, as recognized by the Arizona Department of Health Services and approved by the Board.

F. An applicant for dental hygienist licensure by credential who works in areas or facilities described in subsection (E) shall:
   1. Commit to a three-year exclusive service period,
   2. File a copy of a contract or employment verification statement with the Board, and
   3. As a licensee, submit an annual contract or employment verification statement to the Board by December 31 of each year.

G. A licensee’s failure to comply with the requirements in R4-11-203(F) is considered unprofessional conduct and may result in disciplinary action based on the circumstances of the case.

Historical Note
Former Rule 2c; Former Section R4-11-13 repealed, new Section R4-11-13 adopted effective November 20, 1979 (Supp. 79-6). Amended effective October 30, 1980 (Supp. 80-5). Former Section R4-11-13 renegotiated as Section R4-11-203 without change effective July 29, 1981 (Supp. 81-4). Former Section R4-11-203 renegotiated to R4-11-302, new Section R4-11-203 renumbered from R4-11-103 and amended by final rulemaking at 5 A.A.R. 580, effective February 4, 1999 (Supp. 99-1). Section expired under A.R.S. § 41-1056(E), effective April 30, 2001 (Supp. 01-2). New Section made by final rulemaking at 9 A.A.R. 4126, effective November 8, 2003 (Supp. 03-3). Amended by final rulemaking at 22 A.A.R. 371, effective April 3, 2016 (Supp. 16-1).

R4-11-204. Dental Assistant Radiography Certification by Credential
Eligibility. To be eligible for dental assistant radiography certification by credential, an applicant shall have a current certificate or other form of approval for taking dental radiographs, issued by a professional licensing agency in another state, United States territory or the District of Columbia that required successful completion of a written dental radiography examination.

Historical Note
Former Rule 2d; Former Section R4-11-14 repealed, new Section R4-11-14 adopted effective April 27, 1977 (Supp. 77-2). Former Section R4-11-14 renegotiated as Section R4-11-204, repealed, and new Section R4-11-204 adopted effective July 29, 1981 (Supp. 81-4). Former Section R4-11-204 repealed by final rulemaking at 5 A.A.R. 580, effective February 4, 1999 (Supp. 99-1). New Section made by final rulemaking at 9 A.A.R. 4126, effective November 8, 2003 (Supp. 03-3). Amended by final rulemaking at 22 A.A.R. 371, effective April 3, 2016 (Supp. 16-1).
R4-11-205. Application for Dental Assistant Radiography Certification byCredential

A. An applicant for dental assistant radiography certification by credential shall provide to the Board a completed application, on a form furnished by the Board that contains the following information:
   1. A sworn statement of the applicant’s eligibility, and
   2. A letter of endorsement that verifies compliance with R4-11-204.

B. Based upon review of information provided under subsection (A), the Board or its designee shall request that an applicant for dental assistant radiography certification by credential provide a copy of a certified document that indicates the reason for a name change if the applicant’s documentation contains different names.

Historical Note

Former Rule 2e; Former Section R4-11-15 renumbered as Section R4-11-205 without change effective July 29, 1981 (Supp. 81-4). Former Section R4-11-205 repealed by final rulemaking at 5 A.A.R. 580, effective February 4, 1999 (Supp. 99-1). New Section made by final rulemaking at 9 A.A.R. 4126, effective November 8, 2003 (Supp. 03-3).

R4-11-206. Repealed

Historical Note

Former Rule 2f; Amended as an emergency effective July 7, 1978, pursuant to A.R.S. § 41-1003, valid for only 90 days (Supp. 78-4). Former emergency adoption now adopted and amended effective September 7, 1979 (Supp. 79-5). Former Section R4-11-16 renumbered as Section R4-11-206 and amended effective July 29, 1981 (Supp. 81-4). Former Section R4-11-206 repealed by final rulemaking at 5 A.A.R. 580, effective February 4, 1999 (Supp. 99-1).

R4-11-207. Repealed

Historical Note

Former Rule 2g; Former Section R4-11-17 renumbered as Section R4-11-207, repealed, and new Section R4-11-207 adopted effective July 29, 1981 (Supp. 81-4). Former Section R4-11-207 repealed by final rulemaking at 5 A.A.R. 580, effective February 4, 1999 (Supp. 99-1).

R4-11-208. Repealed

Historical Note

Former Section R4-11-20 repealed, new Section R4-11-20 adopted effective May 12, 1977 (Supp. 77-3). Amended effective October 30, 1980 (Supp. 80-5). Former Section R4-11-20 renumbered as Section R4-11-208 without change effective July 29, 1981 (Supp. 81-4). Former Section R4-11-208 repealed by final rulemaking at 5 A.A.R. 580, effective February 4, 1999 (Supp. 99-1).

R4-11-209. Repealed

Historical Note

Adopted effective March 23, 1976 (Supp. 76-2). Former Section R4-11-19 renumbered as R4-11-209 and repealed. Former Section R4-11-21 renumbered as Section R4-11-209 and amended effective July 29, 1981 (Supp. 81-4). Former Section R4-11-209 repealed by final rulemaking at 5 A.A.R. 580, effective February 4, 1999 (Supp. 99-1).

R4-11-210. Repealed

Historical Note

Adopted effective March 23, 1976 (Supp. 76-2). Amended effective June 7, 1978 (Supp. 78-3). Former Section R4-11-22 renumbered as Section R4-11-210 and amended effective July
R4-11-211. Repealed

**Historical Note**
Adopted effective August 26, 1977 (Supp. 77-4). Former Section R4-11-23 renumbered as Section R4-11-211 without change effective July 29, 1981 (Supp. 81-4). Former Section R4-11-211 repealed by final rulemaking at 5 A.A.R. 580, effective February 4, 1999 (Supp. 99-1).

R4-11-212. Repealed

**Historical Note**

R4-11-213. Repealed

**Historical Note**
Adopted as an emergency effective July 7, 1978, pursuant to A.R.S. § 41-1003, valid for only 90 days (Supp. 78-4). Former emergency adoption now adopted effective September 7, 1979 (Supp. 79-5). Former Section R4-11-25 renumbered as Section R4-11-213, repealed, and new Section R4-11-213 adopted effective July 29, 1981 (Supp. 81-4). Former Section R4-11-213 repealed by final rulemaking at 5 A.A.R. 580, effective February 4, 1999 (Supp. 99-1).

R4-11-214. Repealed

**Historical Note**
Former Rule 2h; Amended effective March 23, 1976 (Supp. 76-2). Former Section R4-11-18 renumbered as Section R4-11-214 without change effective July 29, 1981 (Supp. 81-4). Former Section R4-11-214 repealed by final rulemaking at 5 A.A.R. 580, effective February 4, 1999 (Supp. 99-1).

R4-11-215. Repealed

**Historical Note**
Adopted effective June 16, 1982 (Supp. 82-3). Former Section R4-11-215 repealed by final rulemaking at 5 A.A.R. 580, effective February 4, 1999 (Supp. 99-1).

R4-11-216. Repealed

**Historical Note**
Adopted effective June 16, 1982 (Supp. 82-3). Former Section R4-11-216 repealed by final rulemaking at 5 A.A.R. 580, effective February 4, 1999 (Supp. 99-1).

**ARTICLE 3. EXAMINATION, LICENSING QUALIFICATIONS, APPLICATION AND RENEWAL, TIME-FRAMES**

**R4-11-301. Application**
A. An applicant for licensure or certification shall provide the following information and documentation:

1. A sworn statement of the applicant’s qualifications for the license or certificate on a form provided by the Board;
2. A photograph of the applicant that is no more than 6 months old;
3. An official, sealed transcript sent directly to the Board from either:
   a. The applicant’s dental, dental hygiene, or denturist school, or
   b. A verified third-party transcript provider.
4. Except for a dental consultant license applicant, dental and dental hygiene license
   applicants provide proof of successfully completing a clinical examination by submitting:
   a. If applying for dental licensure by examination, a copy of the certificate or score
      card from the Western Regional Examining Board, indicating that the applicant
      passed the Western Regional Examining Board examination within the five years
      immediately before the date the application is filed with the Board;
   b. If applying for dental hygiene licensure by examination, a copy of the certificate or
      scorecard from the Western Regional Examining Board or an Arizona Board-approved
      clinical examination administered by a state, United States territory, District
      of Columbia or regional testing agency. The certificate or scorecard must indicate
      that the applicant passed the examination within the five years immediately before
      the date the application is filed with the Board; or
   c. If applying for licensure by credential, certified documentation sent directly from
      the applicable state, United States territory, District of Columbia or regional testing
      agency to the Board containing the name of the applicant, date of examination or
      examinations and proof of a passing score;
5. Except for a dental consultant license applicant as provided in A.R.S. § 32-1234(A)(7),
   dental and dental hygiene license applicants must have an official score card sent directly
   from the National Board examination to the Board;
6. A copy showing the expiration date of the applicant’s current cardiopulmonary
   resuscitation healthcare provider level certificate from the American Red Cross, the
   American Heart Association, or another certifying agency that follows the same procedures,
   standards, and techniques for CPR training and certification as the American Red Cross or
   American Heart Association;
7. A license or certification verification from any other jurisdiction in which an applicant is
   licensed or certified, sent directly from that jurisdiction to the Board. If the license verification
   cannot be sent directly to the Board from the other jurisdiction, the applicant must submit a
   written affidavit affirming that the license verification submitted was issued by the other
   jurisdiction;
8. If a dental or dental hygiene applicant has been licensed in another jurisdiction for more
   than six months, a copy of the self-inquiry from the National Practitioner Data Bank that is no
   more than 30 days old;
9. If a denturist applicant has been certified in another jurisdiction for more than six months,
   a copy of the self-inquiry from the Health Integrity and Protection Data Bank that is no more
   than 30 days old;
10. If the applicant is in the military or employed by the United States government, a letter of
    endorsement from the applicant’s commanding officer or supervisor that confirms the
    applicant's military service or United States government employment record; and
11. The jurisprudence examination fee.
B. The Board may request that an applicant provide:
   1. An official copy of the applicant’s dental, dental hygiene, or denturist school diploma,
   2. A copy of a certified document that indicates the reason for a name change if the
      applicant’s application contains different names,
   3. Written verification of the applicant’s work history, and
   4. A copy of a high school diploma or equivalent certificate.
C. An applicant shall pass the Arizona jurisprudence examination with a minimum score of 75%.

Historical Note
Former Rule 3A; Former Section R4-11-29 repealed, new Section R4-11-29 adopted
effective April 27, 1977 (Supp. 77-2). Former Section R4-11-29 renumbered as Section R4-
11-301 without change effective July 29, 1981 (Supp. 81-4). Former Section R4-11-301 repealed, new Section R4-11-301 renumbered from R4-11-201 and amended by final rulemaking at 5 A.A.R. 580, effective February 4, 1999 (Supp. 99-1). Section amended by final rulemaking at 11 A.A.R. 793, effective April 2, 2005 (Supp. 05-1). Amended by final rulemaking at 22 A.A.R. 371, effective April 3, 2016 (Supp. 16-1).

R4-11-302. Repealed

Historical Note
Former Rule 3B; Former Section R4-11-30 repealed, new Section R4-11-30 adopted effective April 27, 1977 (Supp. 77-2). Former Section R4-11-30 renumbered as Section R4-11-302 without change effective July 29, 1981 (Supp. 81-4). Former Section R4-11-302 repealed, new Section R4-11-302 renumbered from R4-11-203 and amended by final rulemaking at 5 A.A.R. 580, effective February 4, 1999 (Supp. 99-1). Section repealed by final rulemaking at 22 A.A.R. 371, effective April 3, 2016 (Supp. 16-1).

R4-11-303. Application Processing Procedures: Issuance, Denial, and Renewal of Dental Licenses, Restricted Permits, Dental Hygiene Licenses, Dental Consultant Licenses, Denturist Certificates, Drug or Device Dispensing Registrations, Business Entity Registration and Mobile Dental Facility and Portable Dental Unit Permits

A. The Board office shall complete an administrative completeness review within 24 days of the date of receipt of an application for a license, certificate, permit, or registration.

1. Within 14 calendar days of receiving an initial or renewal application for a dental license, restricted permit, dental hygiene license, dental consultant license, denturist certificate, drug dispensing registration, business entity registration, mobile dental facility or portable dental unit permit, the Board office shall notify the applicant, in writing, whether the application package is complete or incomplete.

2. If the application package is incomplete, the Board office shall provide the applicant with a written notice that includes a comprehensive list of the missing information. The 24-day time-frame for the Board office to finish the administrative completeness review is suspended from the date the notice of incompleteness is served until the applicant provides the Board office with all missing information.

3. If the Board office does not provide the applicant with notice regarding administrative completeness, the application package shall be deemed complete 24 days after receipt by the Board office.

B. An applicant with an incomplete application package shall submit all missing information within 60 calendar days of service of the notice of incompleteness.

C. Upon receipt of all missing information, the Board office shall notify the applicant, in writing, within 10 calendar days, that the application package is complete. If an applicant fails to submit a complete application package within the time allowed in subsection (B), the Board office shall close the applicant's file. An applicant whose file is closed and who later wishes to obtain a license, certificate, permit, or registration shall apply again as required in R4-11-301.

D. The Board shall not approve or deny an application until the applicant has fully complied with the requirements of A.A.C. Title 4, Chapter 11, Article 3.

E. The Board shall complete a substantive review of the applicant's qualifications in no more than 90 calendar days from the date on which the administrative completeness review of an application package is complete.

1. If the Board finds an applicant to be eligible for a license, certificate, permit, or registration and grants the license, certificate, permit, or registration, the Board office shall notify the applicant in writing.

2. If the Board finds an applicant to be ineligible for a license, certificate, permit, or registration, the Board office shall issue a written notice of denial to the applicant that includes:
a. Each reason for the denial, with citations to the statutes or rules on which the denial is based;
b. The applicant's right to request a hearing on the denial, including the number of days the applicant has to file the request;
c. The applicant's right to request an informal settlement conference under A.R.S. § 41-1092.06; and
d. The name and telephone number of an agency contact person who can answer questions regarding the application process.

3. If the Board finds deficiencies during the substantive review of an application package, the Board office may issue a comprehensive written request to the applicant for additional documentation. An additional supplemental written request for information may be issued upon mutual agreement between the Board or Board office and the applicant.

4. The 90-day time-frame for a substantive review of an applicant's qualifications is suspended from the date of a written request for additional documentation until the date that all documentation is received. The applicant shall submit the additional documentation before the next regularly scheduled Board meeting.

5. If the applicant and the Board office mutually agree in writing, the 90-day substantive review time-frame may be extended once for no more than 28 days.

F. The following time-frames apply for an initial or renewal application governed by this Section:
1. Administrative completeness review time-frame: 24 calendar days.
2. Substantive review time-frame: 90 calendar days.
3. Overall time-frame: 114 calendar days.

G. An applicant whose license is denied has a right to a hearing, an opportunity for rehearing, and, if the denial is upheld, may seek judicial review pursuant to A.R.S. Title 41, Chapter 6, Article 10, and A.R.S. Title 12, Chapter 7, Article 6.

Historical Note
Former Rule 3C; Former Section R4-11-31 renumbered as Section R4-11-303 without change effective July 29, 1981 (Supp. 81-4). Former Section R4-11-303 repealed, new Section R4-11-303 adopted by final rulemaking at 5 A.A.R. 580, effective February 4, 1999 (Supp. 99-1). Section amended by final rulemaking at 11 A.A.R. 793, effective April 2, 2005 (Supp. 05-1). Amended by final rulemaking at 22 A.A.R. 371, effective April 3, 2016 (Supp. 16-1).

R4-11-304. Application Processing Procedures: Issuance and Denial of Dental Assistant Certificates Radiography Certification by Credential
A. Within 14 calendar days of receiving an application from an applicant for a dental assistant radiography certification by credential, the Board or its designee shall notify the applicant, in writing, that the application package is complete or incomplete. If the package is incomplete, the notice shall specify what information is missing.
B. An applicant with an incomplete application package shall supply the missing information within 60 calendar days from the date of the notice. If the applicant fails to do so, an applicant shall begin the application process anew.
C. Upon receipt of all missing information, within 10 calendar days, the Board or its designee shall notify the applicant, in writing, that the application is complete.
D. The Board or its designee shall not process an application until the applicant has fully complied with the requirements of this Article.
E. The Board or its designee shall notify an applicant, in writing, whether the certificate is granted or denied, no later than 90 calendar days after the date of the notice advising the applicant that the package is complete.
F. The notice of denial shall inform the applicant of the following:
   1. The reason for the denial, with a citation to the statute or rule which requires the applicant to pass the examination;
2. The applicant’s right to request a hearing on the denial, including the number of days the applicant has to file the request;
3. The applicant’s right to request an informal settlement conference under A.R.S. § 41-1092.06; and
4. The name and telephone number of an agency contact person or a designee who can answer questions regarding the application process.

G. The following time-frames apply for certificate applications governed by this Section:
   1. Administrative completeness review time-frame: 24 calendar days.
   2. Substantive review time-frame: 90 calendar days.
   3. Overall time-frame: 114 calendar days.

H. An applicant whose certificate is denied has a right to a hearing, an opportunity for rehearing, and, if the denial is upheld, may seek judicial review pursuant to A.R.S. Title 41, Chapter 6, Article 10, and A.R.S. Title 12, Chapter 7, Article 6.

Historical Note
Former Rule 3D; Former Section R4-11-32 renumbered as Section R4-11-304 without change effective July 29, 1981 (Supp. 81-4). Former Section R4-11-304 repealed, new Section R4-11-304 adopted by final rulemaking at 5 A.A.R. 580, effective February 4, 1999 (Supp. 99-1). Amended by final rulemaking at 22 A.A.R. 371, effective April 3, 2016 (Supp. 16-1).

R4-11-305. Application Processing Procedures: Issuance, Denial, and Renewal of General Anesthesia and Deep Sedation Permits, Parenteral Sedation Permits, Oral Sedation Permits, and Permit to Employ a Physician Anesthesiologist or CRNA

A. The Board office shall complete an administrative completeness review within 24 days from the date of the receipt of an application for a permit.
   1. Within 14 calendar days of receiving an initial or renewal application for a general anesthesia and deep sedation permit, parenteral sedation permit, oral sedation permit or permit to employ a physician anesthesiologist or CRNA the Board office shall notify the applicant, in writing, whether the application package is complete or incomplete.
   2. If the application package is incomplete, the Board office shall provide the applicant with a written notice that includes a comprehensive list of the missing information. The 24-day time-frame for the Board office to finish the administrative completeness review is suspended from the date the notice of incompleteness is served until the applicant provides the Board office with all missing information.
   3. If the Board office does not provide the applicant with notice regarding administrative completeness, the application package shall be deemed complete 24 days after receipt by the Board office.

B. An applicant with an incomplete application package shall submit all missing information within 60 calendar days of service of the notice of incompleteness.

C. Upon receipt of all missing information, the Board office shall notify the applicant, in writing, within 10 calendar days, that the application package is complete. If an applicant fails to submit a complete application package within the time allowed in subsection (B), the Board office shall close the applicant's file. An applicant whose file is closed and who later wishes to obtain a permit shall apply again as required in A.A.C. Title 4, Chapter 11, Article 13.

D. The Board shall not approve or deny an application until the applicant has fully complied with the requirements of this Section and A.A.C. Title 4, Chapter 11, Article 13.

E. The Board shall complete a substantive review of the applicant's qualifications in no more than 120 calendar days from the date on which the administrative completeness review of an application package is complete.
   1. If the Board finds an applicant to be eligible for a permit and grants the permit, the Board office shall notify the applicant in writing.
2. If the Board finds an applicant to be ineligible for a permit, the Board office shall issue a written notice of denial to the applicant that includes:
   a. Each reason for the denial, with citations to the statutes or rules on which the denial is based;
   b. The applicant's right to request a hearing on the denial, including the number of days the applicant has to file the request;
   c. The applicant's right to request an informal settlement conference under A.R.S. § 41-1092.06; and
   d. The name and telephone number of an agency contact person who can answer questions regarding the application process.
3. If the Board finds deficiencies during the substantive review of an application package, the Board office shall issue a comprehensive written request to the applicant for additional documentation.
4. The 120-day time-frame for a substantive review of an applicant's qualifications is suspended from the date of a written request for additional documentation until the date that all documentation is received.
5. If the applicant and the Board office mutually agree in writing, the 120-day substantive review time-frame may be extended once for no more than 36 days.

F. The following time-frames apply for an initial or renewal application governed by this Section:
1. Administrative completeness review time-frame: 24 calendar days.
2. Substantive review time-frame: 120 calendar days.
3. Overall time-frame: 144 calendar days.

Historical Note

ARTICLE 4. FEES

R4-11-401. Retired or Disabled Licensure Renewal Fee
As expressly authorized under A.R.S. § 32-1207(B)(3)(c), the licensure renewal fee for a retired or disabled dentist or dental hygienist is $15.

Historical Note
Adopted effective December 6, 1974 (Supp. 75-1). Amended effective March 23, 1976 (Supp. 76-2). Former Section R4-11-42 renumbered as Section R4-11-401 and repealed effective July 29, 1981 (Supp. 81-4). Adopted effective February 16, 1995 (Supp. 95-1). Former Section R4-11-401 repealed, new Section R4-11-401 renumbered from R4-11-901 and amended by final rulemaking at 5 A.A.R. 580, effective February 4, 1999 (Supp. 99-1). Section repealed; new Section adopted by final rulemaking at 6 A.A.R. 748, effective February 2, 2000 (Supp. 00-1). Section amended by final rulemaking at 11 A.A.R. 793, effective April 2, 2005 (Supp. 05-1). Amended by final rulemaking at 22 A.A.R. 3697, effective February 6, 2017 (Supp. 16-4).

R4-11-402. Business Entity Fees
As expressly authorized under A.R.S. § 32-1213, the Board establishes and shall collect the following fees from a Business Entity offering dental services:
1. Initial triennial registration, $300 per location;
2. Renewal of triennial registration, $300 per location; and
3. Late triennial registration renewal, $100 per location in addition to the fee under subsection (2).

Historical Note
Adopted effective December 6, 1974 (Supp. 75-1). amended effective March 23, 1976 (Supp. 76-2). Former Section R4-11-43 renumbered as Section R4-11-402, repealed, and new Section R4-11-402 adopted effective July 29, 1981 (Supp. 81-4). Amended effective February 16, 1995 (Supp. 95-1). Former Section R4-11-402 renumbered to R4-11-601, new Section R4-11-402 renumbered from R4-11-902 and amended by final rulemaking at 5 A.A.R. 580, effective February 4, 1999 (Supp. 99-1). Section repealed; new Section adopted by final rulemaking at 6 A.A.R. 748, effective February 2, 2000 (Supp. 00-1). Section repealed; new Section made by final rulemaking at 11 A.A.R. 793, effective April 2, 2005 (05-1). Amended by final rulemaking at 22 A.A.R. 3697, effective February 6, 2017 (Supp. 16-4).

R4-11-403. Licensing Fees
A. As expressly authorized under A.R.S. §§ 32-1236, 32-1287, and 32-1297.06, the Board establishes and shall collect the following licensing fees:
1. Dentist triennial renewal fee: $510;
2. Dentist prorated initial license fee: $110;
3. Dental hygienist triennial renewal fee: $255;
4. Dental hygienist prorated initial license fee: $55;
5. Denturist triennial renewal fee: $233; and
6. Denturist prorated initial license fee: $46.
B. The following license-related fees are established in or expressly authorized by statute. The Board shall collect the fees:
1. Jurisprudence examination fee:
   a. Dentists: $300;
   b. Dental Hygienists: $100; and
   c. Denturists: $250.
2. Licensure by credential fee:
   a. Dentists: $2,000; and
   b. Dental Hygienists: $1,000.
3. Penalty to reinstate an expired license or certificate: $100 for a dentist, dental hygienist, or denturist in addition to renewal fee specified under subsection (A).
4. Penalty for a dentist, dental hygienist, or denturist who fails to notify Board of a change of mailing address:
   a. Failure after 10 days: $50; and
   b. Failure after 30 days: $100.

Historical Note
Adopted effective December 6, 1974 (Supp. 75-1). Former Section R4-11-44 renumbered as Section R4-11-403 and repealed effective July 29, 1981 (Supp. 81-4). Adopted effective February 16, 1995 (Supp. 95-1). Former Section R4-11-403 renumbered to R4-11-602, new Section R4-11-403 renumbered from R4-11-903 and amended by final rulemaking at 5 A.A.R. 580, effective February 4, 1999 (Supp. 99-1). Section repealed; new Section adopted by final rulemaking at 6 A.A.R. 748, effective February 2, 2000 (Supp. 00-1). Section repealed by final rulemaking at 11 A.A.R. 793, effective April 2, 2005 (05-1). New Section made by final rulemaking at 22 A.A.R. 3697, effective February 6, 2017 (Supp. 16-4).

R4-11-404. Repealed

Historical Note
Adopted effective December 6, 1974 (Supp. 75-1). Former Section R4-11-45 renumbered as Section R4-11-404 without change effective July 29, 1981 (Supp. 81-4). Repealed effective February 16, 1995 (Supp. 95-1). New Section R4-11-404 renumbered from R4-11-904 and amended by final rulemaking at 5 A.A.R. 580, effective February 4, 1999 (Supp. 99-1). Amended by final rulemaking at 6 A.A.R. 748, effective February 2, 2000 (Supp. 00-1). Section repealed by final rulemaking at 11 A.A.R. 793, effective April 2, 2005 (05-1).
R4-11-405. Charges for Board Services
The Board shall charge the following for the services provided:
1. Duplicate license: $25;
2. Duplicate certificate: $25;
3. License verification:
   a. For licensee: $25; and
   b. For non-licensee: $5;
4. Copy of audio recording: $10;
5. Photocopies (per page): $.25;
6. Mailing lists:
   a. Dentists:
      i. In-state licensees - paper or labels: $150;
      ii. All licensees - paper or labels: $175; and
      iii. Mailing list in digital format: $100;
   b. Dental hygienists:
      i. In-state licensees - paper or labels: $150;
      ii. All licensees - paper or labels: $175; and
      iii. Mailing list in digital format: $100; and
   c. Denturists: All certificate holders - paper, labels, or digital format: $5; and
7. Board meeting agendas and minutes (mailed directly to consumer):
   a. Agendas and minutes: $75 for 12 months;
   b. Agendas only: $25 for 12 months; and
   c. Minutes only: $50 for 12 months.

Historical Note

R4-11-406. Anesthesia and Sedation Permit Fees
A. As expressly authorized under A.R.S. § 32-1207, the Board establishes and shall collect the following fees:
   1. Section 1301 permit fee: $300 plus $25 for each additional location;
   2. Section 1302 permit fee: $300 plus $25 for each additional location;
   3. Section 1303 permit fee: $300 plus $25 for each additional location; and
   4. Section 1304 permit fee: $300 plus $25 for each additional location.
B. Upon successful completion of an initial onsite evaluation and upon receipt of the required permit fee, the Board shall issue a separate Section 1301, 1302, 1303, or 1304 permit to a dentist for each location requested by the dentist. A permit expires on December 31 of every fifth year.
C. Permit renewal fees:
   1. Section 1301 permit renewal fee: $300 plus $25 for each additional location;
   2. Section 1302 permit renewal fee: $300 plus $25 for each additional location;
   3. Section 1303 permit renewal fee: $300 plus $25 for each additional location; and
   4. Section 1304 permit renewal fee: $300 plus $25 for each additional location.

Historical Note
Adopted effective March 23, 1976 (Supp. 76-2). Former Section R4-11-47 renumbered as Section R4-11-406 without change effective July 29, 1981 (Supp. 81-4). Repealed effective
February 16, 1995 (Supp. 95-1). New Section R4-11-406 renumbered from R4-11-906 and amended by final rulemaking at 5 A.A.R. 580, effective February 4, 1999 (Supp. 99-1). Section repealed; new Section R4-11-406 renumbered from R4-11-407 and amended by final rulemaking at 6 A.A.R. 748, effective February 2, 2000 (Supp. 00-1). Amended by final rulemaking at 9 A.A.R. 4130, effective November 8, 2003 (Supp. 03-3). Amended by final rulemaking at 22 A.A.R. 3697, effective February 6, 2017 (Supp. 16-4).

R4-11-407. Renumbered

Historical Note

R4-11-408. Repealed

Historical Note

R4-11-409. Repealed

Historical Note

ARTICLE 5. DENTISTS

R4-11-501. Dentist of Record
A. A dentist of record shall ensure that each patient record has the treatment records for a patient treated in any dental office, clinic, hospital dental clinic, or charitable organization that offers dental services, and the full name of a dentist who is responsible for all of the patient’s treatment.
B. A dentist of record shall obtain a patient’s consent to change the treatment plan before changing the treatment plan that the patient originally agreed to, including any additional costs the patient may incur because of the change.
C. When a dentist who is a dentist of record decides to leave the practice of dentistry or a particular place of practice in which the dentist is the dentist of record, the dentist shall ensure before leaving the practice that a new dentist of record is entered on each patient record.
D. A dentist of record is responsible for the care given to a patient while the dentist was the dentist of record even after being replaced as the dentist of record by another dentist.
E. A dentist of record shall:
   1. Remain responsible for the care of a patient during the course of treatment; and
   2. Be available to the patient through the dentist’s office, an emergency number, an answering service, or a substituting dentist.
F. A dentist’s failure to comply with subsection (E) constitutes patient abandonment, and the Board may impose discipline under A.R.S. Title 32, Chapter 11, Article 3.

Historical Note
Adopted effective December 6, 1974 (Supp. 75-1). Former Section R4-11-62 renumbered as Section R4-11-501 without change effective July 29, 1981 (Supp. 81-4). Former Section R4-11-501 repealed, new Section R4-11-501 renumbered from R4-11-1102 and amended by final rulemaking at 5 A.A.R. 580, effective February 4, 1999 (Supp. 99-1). Section amended by final rulemaking at 11 A.A.R. 793, effective April 2, 2005 (Supp. 05-1).
R4-11-502. Affiliated Practice
A. A dentist in a private for profit setting shall not enter into more than 15 affiliated practice relationships under A.R.S. § 32-1289 at one time.
B. There is no limit to the number of affiliated practice relationships a dentist may enter into when working in a government, public health, or non-profit organization under Section 501(C)(3) of the Internal Revenue Code.
C. Each affiliated practice dentist shall be available telephonically or electronically during the business hours of the affiliated practice dental hygienist to provide an appropriate level of contact, communication, and consultation.
D. The affiliated practice agreement shall include a provision for a substitute dentist in addition to the requirements of A.R.S. § 32-1289(F), to cover an extenuating circumstance that renders the affiliated practice dentist unavailable for contact, communication, or consultation with the affiliated practice dental hygienist.

Historical Note

R4-11-503. Repealed

Historical Note
Adopted effective December 6, 1974 (Supp. 75-1). Former Section R4-11-64 repealed, new Section R4-11-64 adopted effective March 23, 1976 (Supp. 76-2). Former Section R4-11-64 renumbered as Section R4-11-503 without change effective July 29, 1981 (Supp. 81-4). Former Section R4-11-503 repealed by final rulemaking at 5 A.A.R. 580, effective February 4, 1999 (Supp. 99-1).

R4-11-504. Renumbered

Historical Note
Adopted effective December 6, 1974 (Supp. 75-1). Former Section R4-11-65 repealed, new Section R4-11-65 adopted effective May 23, 1976 (Supp. 76-2). Former Section R4-11-65 renumbered as Section R4-11-504, repealed, and new Section R4-11-504 adopted effective July 29, 1981 (Supp. 81-4). Former Section R4-11-504 renumbered to R4-11-702 by final rulemaking at 5 A.A.R. 580, effective February 4, 1999 (Supp. 99-1).

R4-11-505. Repealed

Historical Note
Adopted effective March 23, 1976 (Supp. 76-2). Former Section R4-11-66 renumbered as Section R4-11-505 and repealed effective July 29, 1981 (Supp. 81-4).

R4-11-506. Repealed

Historical Note

ARTICLE 6. DENTAL HYGIENISTS
R4-11-601. Duties and Qualifications
A. A dental hygienist may apply preventative and therapeutic agents under the general supervision of a licensed dentist.
B. A dental hygienist may perform a procedure not specifically authorized by A.R.S. § 32-1281 when all of the following conditions are satisfied:
   1. The procedure is recommended or prescribed by the supervising dentist;
   2. The hygienist has received instruction, training, or education to perform the procedure in a safe manner; and
   3. The procedure is performed under the general supervision of a licensed dentist.

C. The Board shall ensure that a dental hygienist is qualified to administer local anesthesia and nitrous oxide analgesia as authorized by A.R.S. § 32-1281(F)(1) and (2), by requiring evidence that the hygienist has completed courses in techniques taught at a recognized dental hygiene school or recognized dental school, as defined in A.R.S. § 32-1201(16) and (17), that consist of a minimum of 36 clock hours of instruction, and has passed examinations in theoretical knowledge and clinical competency in the following subject areas:
   1. Review of head and neck anatomy;
   2. Pharmacology of anesthetic and analgesic agents;
   3. Medical - dental history considerations;
   4. Emergency procedures;
   5. Selection of appropriate armamentarium and agents;
   6. Nitrous oxide administration;
   7. Clinical practice, under direct supervision, as defined in A.R.S. § 32-1281(H)(1), including at least three experiences administering each of the following:
      a. Posterior superior alveolar injection,
      b. Middle superior alveolar injection,
      c. Anterior superior alveolar injection,
      d. Nasopalatine injection,
      e. Greater - palatine injection,
      f. Inferior alveolar nerve injection,
      g. Lingual injection,
      h. Mental injection,
      i. Long buccal injections, and
      j. Nitrous oxide analgesia.

D. In addition to the recognized course of study described in subsection (C), the hygienist shall successfully complete the examination in local anesthesia given by the Western Regional Examining Board. The hygienist shall submit proof of the successful completion of the local anesthesia examination to the Board. The Board shall then issue a Local Anesthesia Certificate.

E. For purposes of qualification of a dental hygienist to place interrupted sutures as authorized by A.R.S. § 32-1281(F)(3), the Board recognizes courses in advanced periodontal therapy offered by a recognized dental hygiene school or a recognized dental school, as defined in A.R.S. § 32-1201(16) and (17), that consist of a minimum of 200 clock hours of instruction and require a dental hygienist’s successful completion of those examinations of a theoretical knowledge and clinical competency in the following subject areas:
   1. A review of oral histology,
   2. Inflammation and pathogenesis of a periodontal pocket,
   3. Patient assessment,
   4. Dental hygiene treatment planning,
   5. Advanced root planing and debridement,
   6. Subgingival curettage,
   7. Suturing,
   8. Wound repair and new attachment, and
   9. Clinical experience in each of the following:
      a. Root planing,
      b. Subgingival curettage, and
      c. Suturing.
F. The hygienist shall submit proof of the successful completion of a recognized course in advanced periodontal therapy, as described in subsection (E), to the Board. The Board shall then issue a certification sticker for Suture Placement, which shall be affixed to the hygienist’s license.

G. A dental hygienist shall not perform an irreversible procedure.

H. To qualify to use emerging scientific technology as authorized by A.R.S. § 32-1281(D)(2), a dental hygienist shall successfully complete a course of study that meets the following criteria:
   1. Is a course offered by a recognized dental school as defined in A.R.S. § 32-1201(17), a recognized dental hygiene school as defined in A.R.S. § 32-1201(16), or sponsored by a national or state dental or dental hygiene association or government agency;
   2. Includes didactic instruction with a written examination;
   3. Includes hands-on clinical instruction; and
   4. Is technology that is scientifically based and supported by studies published in peer reviewed dental journals.

Historical Note
Adopted effective December 6, 1974 (Supp. 75-1). Former Section R4-11-82 renumbered as Section R4-11-601 without change effective July 29, 1981 (Supp. 81-4). Former Section R4-11-601 repealed, new Section R4-11-601 renumbered from R4-11-402 and amended by final rulemaking at 5 A.A.R. 580, effective February 4, 1999 (Supp. 99-1). Amended by final rulemaking at 13 A.A.R. 962, effective May 5, 2007 (Supp. 07-1).

R4-11-602. Care of Homebound Patients
Dental hygienists treating homebound patients shall provide only treatment prescribed by the dentist of record in the diagnosis and treatment plan. The diagnosis and treatment plan shall be based on examination data obtained not more than 12 months before the treatment is administered.

Historical Note
Adopted effective December 6, 1974 (Supp. 75-1). Former Section R4-11-83 renumbered as Section R4-11-602 without change effective July 29, 1981 (Supp. 81-4). Former Section R4-11-602 renumbered to R4-11-1001, new Section R4-11-602 renumbered from R4-11-403 and amended by final rulemaking at 5 A.A.R. 580, effective February 4, 1999 (Supp. 99-1).

R4-11-603. Limitation on Number Supervised
A dentist shall not supervise more than three dental hygienists at a time.

Historical Note
Adopted effective December 6, 1974 (Supp. 75-1). Former Section R4-11-84 renumbered as Section R4-11-603 without change effective July 29, 1981 (Supp. 81-4). Former Section R4-11-603 renumbered to R4-11-1002, new Section R4-11-603 renumbered from R4-11-408 and amended by final rulemaking at 5 A.A.R. 580, effective February 4, 1999 (Supp. 99-1).

R4-11-604. Selection Committee and Process
A. The Board shall appoint a selection committee to screen candidates for the dental hygiene committee. The selection committee consists of three members. The Board shall appoint at least two members who are dental hygienists and one member who is a current Board member. The Board shall fill any vacancy for the unexpired portion of the term.
B. Each selection committee member’s term is one year.
C. By majority vote, the selection committee shall nominate each candidate for the dental hygiene committee and transmit a list of names to the Board for approval, including at least one alternate.

Historical Note
New Section R4-11-604 adopted by final rulemaking at 5 A.A.R. 580, effective February 4, 1999 (Supp. 99-1).
R4-11-605. Dental Hygiene Committee
A. The Board shall appoint seven members to the dental hygiene committee as follows:
   1. One dentist appointed at the annual December Board meeting, currently serving as a Board member, for a one year term;
   2. One dental hygienist appointed at the annual December Board meeting, currently serving as a Board member and possessing the qualifications required in Article 6, for a one-year term;
   3. Four dental hygienists that possess the qualifications required in Article 6; and
   4. One lay person.
B. Except for members appointed as prescribed in subsections (A)(1) and (2), the Board shall appoint dental hygiene committee members for staggered terms of three years, beginning January 1, 1999, and limit each member to two consecutive terms. The Board shall fill any vacancy for the unexpired portion of the term.
C. The dental hygiene committee shall annually elect a chairperson at the first meeting convened during the calendar year.

Historical Note
New Section R4-11-605 adopted by final rulemaking at 5 A.A.R. 580, effective February 4, 1999 (Supp. 99-1).

R4-11-606. Candidate Qualifications and Submissions
A. A dental hygienist who seeks membership on the dental hygiene committee shall possess a license in good standing, issued by the Board.
B. A dental hygienist who is not a Board member and qualifies under subsection (A) shall submit a letter of intent and resume to the Board.
C. The selection committee shall consider all of the following criteria when nominating a candidate for the dental hygiene committee:
   1. Geographic representation,
   2. Experience in postsecondary curriculum analysis and course development,
   3. Public health experience, and
   4. Dental hygiene clinical experience.

Historical Note
New Section R4-11-606 adopted by final rulemaking at 5 A.A.R. 580, effective February 4, 1999 (Supp. 99-1).

R4-11-607. Duties of the Dental Hygiene Committee
A. The committee shall advise the Board on all matters relating to the regulation of dental hygienists.
B. In performing the duty in subsection (A), the committee may:
   1. Act as a liaison for the Board, promoting communication and providing a forum for discussion of dental hygiene regulatory issues;
   2. Review applications, syllabi, and related materials and make recommendations to the Board regarding certification of courses in local anesthesia, nitrous oxide analgesia, and suture placement under Article 6 and other procedures which may require certification under Article 6;
   3. Review documentation submitted by dental hygienists to determine compliance with the continuing education requirement for license renewal under Article 12 and make recommendations to the Board regarding compliance;
   4. Make recommendations to the Board concerning statute and rule development which affect dental hygienists’ education, licensure, regulation, or practice;
   5. Provide advice to the Board on standards and scope of practice which affect dental hygiene practice; 6. Provide ad hoc committees to the Board upon request;
7. Request that the Board consider recommendations of the committee at the next regularly scheduled Board meeting; and
8. Make recommendations to the Board for approval of dental hygiene consultants.
C. Committee members who are licensed dentists or dental hygienists may serve as Western Regional Examining Board (WREB) examiners or Board consultants.
D. The committee shall meet at least two times per calendar year. The chairperson or the president of the Board, or their respective designees, may call a meeting of the committee.
E. The Board may assign additional duties to the committee.

Historical Note
New Section R4-11-607 adopted by final rulemaking at 5 A.A.R. 580, effective February 4, 1999 (Supp. 99-1).

R4-11-608. Dental Hygiene Consultants
After submission of a current curriculum vitae or resume and approval by the Board, dental hygiene consultants may:
1. Act as Western Regional Examining Board (WREB) examiners for the clinical portion of the dental hygiene examination;
2. Act as Western Regional Examining Board (WREB) examiners for the local anesthesia portion of the dental hygiene examination;
3. Participate in Board-related procedures, including clinical evaluations, investigation of complaints concerning infection control, insurance fraud, or the practice of supervised personnel, and any other procedures not directly related to evaluating a dentist's quality of care; and
4. Participate in onsite office evaluations for infection control, as part of a team.

Historical Note
New Section R4-11-608 adopted by final rulemaking at 5 A.A.R. 580, effective February 4, 1999 (Supp. 99-1).

R4-11-609. Affiliated Practice
A. To perform dental hygiene services under an affiliated practice relationship pursuant to A.R.S. § 32-1289, a dental hygienist shall:
1. Provide evidence to the Board of successfully completing a total of 12 hours of recognized continuing dental education that consists of the following subject areas:
   a. A minimum of four hours in medical emergencies; and
   b. A minimum of eight hours in at least two of the following areas:
      i. Pediatric or other special health care needs,
      ii. Preventative dentistry, or
      iii. Public health community-based dentistry, and
2. Hold a current certificate in basic cardiopulmonary resuscitation (CPR).
B. A dental hygienist shall complete the required continuing dental education before entering an affiliated practice relationship. The dental hygienist shall complete the continuing dental education in subsection (A) before renewing the dental hygienist's license. The dental hygienist may take the continuing dental education online but shall not exceed the allowable hours indicated in R4-11-1209(B)(1).
C. To comply with A.R.S. § 32-1289(E) and (F) and this Section, a dental hygienist shall submit a completed affidavit on a form supplied by the Board office. Board staff shall review the affidavit to determine compliance with all requirements.
D. A dental hygienist who practices or applies to practice under an affiliated practice relationship shall ensure that all signatures in an affiliated practice agreement, amendment, notification, and affidavit are notarized.
E. Each affiliated practice dentist shall be available telephonically or electronically during the business hours of the affiliated practice dental hygienist to provide an appropriate level of contact, communication, and consultation.

F. The affiliated practice agreement shall include a provision for a substitute dentist, to cover an extenuating circumstance that renders the affiliated practice dentist unavailable for contact, communication, and consultation with the affiliated practice dental hygienist.

**Historical Note**
New Section made by final rulemaking at 13 A.A.R. 962, effective May 5, 2007 (Supp. 07-1).

**ARTICLE 7. DENTAL ASSISTANTS**

**R4-11-701. Procedures and Functions Performed by a Dental Assistant under Supervision**

A. A dental assistant may perform the following procedures and functions under the direct supervision of a licensed dentist:

1. Place dental material into a patient’s mouth in response to a licensed dentist’s instruction;
2. Cleanse the supragingival surface of the tooth in preparation for:
   a. The placement of bands, crowns, and restorations;
   b. Dental dam application;
   c. Acid etch procedures; and
   d. Removal of dressings and packs;
3. Remove excess cement from inlays, crowns, bridges, and orthodontic appliances with hand instruments;
4. Remove temporary cement, interim restorations, and periodontal dressings with hand instruments;
5. Remove sutures;
6. Place and remove dental dams and matrix bands;
7. Fabricate and place interim restorations with temporary cement;
8. Apply sealants;
9. Apply topical fluorides;
10. Prepare a patient for nitrous oxide and oxygen analgesia administration upon the direct instruction and presence of a dentist; or
11. Observe a patient during nitrous oxide and oxygen analgesia as instructed by the dentist.

B. A dental assistant may perform the following procedures and functions under the general supervision of a licensed dentist:

1. Train or instruct patients in oral hygiene techniques, preventive procedures, dietary counseling for caries and plaque control, and provide pre-and post-operative instructions relative to specific office treatment;
2. Collect and record information pertaining to extraoral conditions; and
3. Collect and record information pertaining to existing intraoral conditions.

**Historical Note**
Adopted effective April 27, 1977 (Supp. 77-2). Former Section R4-11-100 renumbered as Section R4-11-701 and amended effective July 29, 1981 (Supp. 81-4). Former Section R4-11-701 renumbered to R4-11-1701, new Section R4-11-701 renumbered from R4-11-502 and amended by final rulemaking at 5 A.A.R. 580, effective February 4, 1999 (Supp. 99-1).

**R4-11-702. Limitations on Procedures or Functions Performed by a Dental Assistant under Supervision**

A dental assistant shall not perform the following procedures or functions:

1. A procedure which by law only licensed dentists, licensed dental hygienists, or certified denturists can perform;
2. Intraoral carvings of dental restorations or prostheses;
3. Final jaw registrations;
4. Taking final impressions for any activating orthodontic appliance, fixed or removable prosthesis;
5. Activating orthodontic appliances; or
6. An irreversible procedure.

**Historical Note**
Adopted effective April 27, 1977 (Supp. 77-2). Former Section R4-11-101 renumbered as Section R4-11-702 without change effective July 29, 1981 (Supp. 81-4). Former Section R4-11-702 repealed, new Section R4-11-702 renumbered from R4-11-504 and amended by final rulemaking at 5 A.A.R. 580, effective February 4, 1999 (Supp. 99-1).

R4-11-703. Repealed

**Historical Note**
Adopted effective April 27, 1977 (Supp. 77-2). Former Section R4-11-102 renumbered as Section R4-11-703 without change effective July 29, 1981 (Supp. 81-4). Former Section R4-11-703 repealed by final rulemaking at 5 A.A.R. 580, effective February 4, 1999 (Supp. 99-1).

R4-11-704. Repealed

**Historical Note**
Adopted effective April 27, 1977 (Supp. 77-2). Former Section R4-11-103 renumbered as Section R4-11-704 without change effective July 29, 1981 (Supp. 81-4). Former Section R4-11-704 repealed by final rulemaking at 5 A.A.R. 580, effective February 4, 1999 (Supp. 99-1).

R4-11-705. Repealed

**Historical Note**
Adopted effective April 27, 1977 (Supp. 77-2). Former Section R4-11-104 renumbered as Section R4-11-705 without change effective July 29, 1981 (Supp. 81-4). Former Section R4-11-705 repealed by final rulemaking at 5 A.A.R. 580, effective February 4, 1999 (Supp. 99-1).

R4-11-706. Repealed

**Historical Note**
Adopted effective April 27, 1977 (Supp. 77-2). Former Section R4-11-105 renumbered as Section R4-11-706 without change effective July 29, 1981 (Supp. 81-4). Former Section R4-11-706 repealed by final rulemaking at 5 A.A.R. 580, effective February 4, 1999 (Supp. 99-1).

R4-11-707. Repealed

**Historical Note**
Adopted effective April 27, 1977 (Supp. 77-2). Former Section R4-11-106 renumbered as Section R4-11-707 without change effective July 29, 1981 (Supp. 81-4). Former Section R4-11-707 repealed by final rulemaking at 5 A.A.R. 580, effective February 4, 1999 (Supp. 99-1).

R4-11-708. Repealed

**Historical Note**
Adopted effective April 27, 1977 (Supp. 77-2). Former Section R4-11-107 renumbered as Section R4-11-708 without change effective July 29, 1981 (Supp. 81-4). Former Section R4-11-708 repealed by final rulemaking at 5 A.A.R. 580, effective February 4, 1999 (Supp. 99-1).
R4-11-709. Repealed

Historical Note
Adopted effective April 27, 1977 (Supp. 77-2). Former Section R4-11-108 renumbered as Section R4-11-709 without change effective July 29, 1981 (Supp. 81-4). Former Section R4-11-709 repealed by final rulemaking at 5 A.A.R. 580, effective February 4, 1999 (Supp. 99-1).

R4-11-710. Repealed

Historical Note
Adopted effective April 27, 1977 (Supp. 77-2). Former Section R4-11-109 renumbered as Section R4-11-710 without change effective July 29, 1981 (Supp. 81-4). Former Section R4-11-710 repealed by final rulemaking at 5 A.A.R. 580, effective February 4, 1999 (Supp. 99-1).

ARTICLE 8. DENTURISTS

R4-11-801. Expired

Historical Note

R4-11-802. Expired

Historical Note

R4-11-803. Renumbered

Historical Note

R4-11-804. Renumbered

Historical Note
R4-11-805. Renumbered

Historical Note

R4-11-806. Renumbered

Historical Note
Adopted effective May 17, 1995 (Supp. 95-2). Former Section R4-11-806 renumbered to R4-11-1305 by final rulemaking at 5 A.A.R. 580, effective February 4, 1999 (Supp. 99-1).

ARTICLE 9. RESTRICTED PERMITS

R4-11-901. Application for Restricted Permit
A. An applicant for a restricted permit shall provide the following information and documentation on a form provided by the Board:
1. A sworn statement of the applicant’s qualifications for a restricted permit;
2. A photograph of the applicant that is no more than six months old;
3. A letter of endorsement from any other jurisdiction in which an applicant is licensed, sent directly from that jurisdiction to the Board;
4. A letter of endorsement from the applicant’s commanding officer or superior if the applicant is in the military or employed by the United States government;
5. A copy of the applicant’s current cardiopulmonary resuscitation certification that meets the requirements of R4-11-301(A)(6); and
6. A copy of the applicant’s pending contract with a charitable dental clinic or organization offering dental or dental hygiene services.

B. The Board may request that an applicant provide a copy of a certified document that indicates the reason for a name change if the applicant’s application contains different names.

Historical Note

R4-11-902. Issuance of a Restricted Permit
Before issuing a restricted permit under A.R.S. §§ 32-1237 through 32-1239 or 32-1292, the Board shall investigate the statutory qualifications of the charitable dental clinic or organization. The Board shall not recognize a dental clinic or organization under A.R.S. §§ 32-1237 through 32-1239 or 32-1292 as a charitable dental clinic or organization permitted to employ dentists or dental hygienists not licensed in Arizona who hold restricted permits unless the Board makes the following findings of fact:
1. That the entity is a dental clinic or organization offering professional dental or dental hygiene services in a manner consistent with the public health;
2. That the dental clinic or organization offering dental or dental hygiene services is operated for charitable purposes only, offering dental or dental hygiene services either without compensation to the clinic or organization or with compensation at the minimum rate to provide only reimbursement for dental supplies and overhead costs;
3. That the persons performing dental or dental hygiene services for the dental clinic or organization do so without compensation; and
4. That the charitable dental clinic or organization operates in accordance with applicable provisions of law.

**Historical Note**

**R4-11-903. Recognition of a Charitable Dental Clinic Organization**
In order for the Board to make the findings required in R4-11-902, the charitable clinic or organization shall provide information to the Board, such as employment contracts with restricted permit holders, Articles and Bylaws, and financial records.

**Historical Note**
Adopted effective September 7, 1979 (Supp. 79-5). Former Section R4-11-132 renumbered as Section R4-11-903, repealed, and new Section R4-11-903 adopted effective July 29, 1981 (Supp. 81-4). Former Section R4-11-903 renumbered to R4-11-403, new Section R4-11-903 renumbered from R4-11-1003 and amended by final rulemaking at 5 A.A.R. 580, effective February 4, 1999 (Supp. 99-1).

**R4-11-904. Determination of Minimum Rate**
In determining whether professional services are provided at the minimum rate to provide reimbursement for dental supplies and overhead costs under A.R.S. §§ 32-1237(1) or 32-1292(A)(1), the Board shall obtain and review information relating to the actual cost of dental supplies to the dental clinic or organization, the actual overhead costs of the dental clinic or organization, the amount of charges for the dental or dental hygiene services offered, and any other information relevant to its inquiry.

**Historical Note**
Adopted effective September 7, 1979 (Supp. 79-5). Former Section R4-11-133 renumbered as Section R4-11-904 without change effective July 29, 1981 (Supp. 81-4). Former Section R4-11-904 renumbered to R4-11-404, new Section R4-11-904 renumbered from R4-11-1004 and amended by final rulemaking at 5 A.A.R. 580, effective February 4, 1999 (Supp. 99-1). Section amended by final rulemaking at 11 A.A.R. 793, effective April 2, 2005 (Supp. 05-1).

**R4-11-905. Expired**

**Historical Note**

**R4-11-906. Expired**

**Historical Note**

R4-11-907. Repealed

Historical Note

R4-11-908. Repealed

Historical Note
Adopted effective April 4, 1986 (Supp. 86-2). Former Section R4-11-908 repealed by final rulemaking at 5 A.A.R. 580, effective February 4, 1999 (Supp. 99-1).

R4-11-909. Renumbered

Historical Note

ARTICLE 10. DENTAL TECHNICIANS

R4-11-1001. Expired

Historical Note

R4-11-1002. Expired

Historical Note
Adopted effective November 28, 1980 (Supp. 80-6). Former Section R4-11-141 renumbered as Section R4-11- 1002 without change effective July 29, 1981 (Supp. 81- 4). Former Section R4-11-1002 renumbered to R4-11- 902, new Section R4-11-1002 renumbered from R4-11- 603 and amended by final rulemaking at 5 A.A.R. 580, effective February 4, 1999 (Supp. 99-1). Section expired under A.R.S. § 41-1056(J) at 23 A.A.R. 2575, effective August 25, 2017 (Supp. 17-3).

R4-11-1003. Renumbered

Historical Note
Adopted effective November 28, 1980 (Supp. 80-6). Former Section R4-11-142 renumbered as Section R4-11- 1003 without change effective July 29, 1981 (Supp. 81- 4). Former Section R4-11-1003 renumbered to R4-11-903 by final rulemaking at 5 A.A.R. 580, effective February 4, 1999 (Supp. 99-1).

R4-11-1004. Renumbered

Historical Note
Adopted effective November 28, 1980 (Supp. 80-6). Former Section R4-11-143 renumbered as Section R4-11- 1004 without change effective July 29, 1981 (Supp. 81- 4). Former
Section R4-11-1004 renumbered to R4-11-904 by final rulemaking at 5 A.A.R. 580, effective February 4, 1999 (Supp. 99-1).

R4-11-1005. Renumbered

Historical Note
Adopted effective November 28, 1980 (Supp. 80-6). Former Section R4-11-144 renumbered as Section R4-11-1005 without change effective July 29, 1981 (Supp. 81-4). Former Section R4-11-1005 renumbered to R4-11-905 by final rulemaking at 5 A.A.R. 580, effective February 4, 1999 (Supp. 99-1).

R4-11-1006. Repealed

Historical Note

ARTICLE 11. ADVERTISING

R4-11-1101. Advertising
A dentist may advertise specific dental services or certification in a non-specialty area only if the advertisement includes the phrase “Services provided by an Arizona licensed general dentist.” A dental hygienist may advertise specific dental hygiene services only if the advertisement includes the phrase “Services provided by an Arizona licensed dental hygienist.” A denturist may advertise specific denture services only if the advertisement includes the phrase “Services provided by an Arizona certified denturist.”

Historical Note

R4-11-1102. Advertising as a Recognized Specialist
A. A dentist may advertise as a specialist or use the terms “specialty” or “specialist” to describe professional services only if the dentist limits the dentist’s practice exclusively to one or more specialty area that are:
   1. Recognized by a board that certifies specialists for the area of specialty; and
   2. Accredited by the Commission on Dental Accreditation of the American Dental Association.
B. The following specialty areas meet the requirements of subsection (A):
   1. Endodontics,
   2. Oral and maxillofacial surgery,
   3. Orthodontics and dentofacial orthopedics,
   4. Pediatric dentistry,
   5. Periodontics,
   6. Prosthodontics,
   7. Dental Public Health,
   8. Oral and Maxillofacial Pathology, and
C. For purposes of this Article, a dentist who wishes to advertise as a specialist or a multiple-specialist in a recognized field under subsection (B) shall meet the criteria in one or more of the following categories:
1. Grandfathered: A dentist who declared a specialty area before December 31, 1964, according to requirements established by the American Dental Association, and has a practice limited to a dentistry area approved by the American Dental Association;

2. Educationally qualified: A dentist who has successfully completed an educational program of two or more years in a specialty area accredited by the Commission on Dental Accreditation of the American Dental Association, as specified by the Council on Dental Education of the American Dental Association;

3. Board eligible: A dentist who has met the guidelines of a specialty board that operates in accordance with the requirements established by the American Dental Association in a specialty area recognized by the Board, if the specialty board:
   a. Has established examination requirements and standards,
   b. Appraised an applicant's qualifications,
   c. Administered comprehensive examinations, and
   d. Upon completion issues a certificate to a dentist who has achieved diplomate status; or

4. Board certified: A dentist who has met the requirements of a specialty board referenced in subsection (C)(3), and who has received a certificate from the specialty board, indicating the dentist has achieved diplomate status.

D. A dentist, dental hygienist, or denturist whose advertising implies that services rendered in a dental office are of a specialty area other than those listed in subsection (B) and recognized by a specialty board that has been accredited by the Commission on Dental Accreditation of the American Dental Association violates this Article and A.R.S. § 32-1201(18)(u), and is subject to discipline under A.R.S. Title 32, Chapter 11.

**Historical Note**

R4-11-1103. Reserved

R4-11-1104. Repealed

**Historical Note**

R4-11-1105. Repealed

**Historical Note**

**ARTICLE 12. CONTINUING DENTAL EDUCATION AND RENEWAL REQUIREMENTS**

R4-11-1201. Continuing Dental Education
A. A licensee or certificate holder shall:
   1. Satisfy a continuing dental education requirement that is designed to provide an understanding of current developments, skills, procedures, or treatment related to the licensee’s or certificate holder’s practice; and
   2. Complete the recognized continuing dental education required by this Article each renewal period.

B. A licensee or certificate holder receiving an initial license or certificate shall complete the prescribed credit hours of recognized continuing dental education by the end of the first full renewal period.
R4-11-1202. Continuing Dental Education Compliance and Renewal Requirements

A. When applying for a renewal license, certificate, or restricted permit, a licensee, certificate holder, or restricted permit holder shall complete a renewal application provided by the Board.

B. Before receiving a renewal license or certificate, each licensee or certificate holder shall possess a current form of one of the following:
   1. A current cardiopulmonary resuscitation (CPR) healthcare provider certificate from the American Red Cross, the American Heart Association, or another certifying agency;
   2. Advanced cardiac life support (ACLS) course completion confirmation from the American Heart Association or another agency. The confirmation must indicate that the course was completed within two years immediately before submitting a renewal application; or
   3. Pediatric advanced life support (PALS) course completion confirmation from the American Heart Association or another agency. The confirmation must indicate that the course was completed within two years immediately before submitting a renewal application.

C. A licensee or certificate holder shall include an affidavit affirming the licensee’s or certificate holder’s completion of the prescribed credit hours of recognized continuing dental education with a renewal application. A licensee or certificate holder shall include on the affidavit the licensee’s or certificate holder’s name, license or certificate number, the number of hours completed in each category, and the total number of hours completed for activities defined in R4-11-1209(A)(4).

D. A licensee or certificate holder shall submit a written request for an extension before the renewal deadline prescribed in A.R.S. §§ 32-1236, 32-1276.02, 32-1287, and 32-1297.06. If a licensee or certificate holder fails to meet the credit hour requirement because of military service, dental or religious missionary activity, residence in a foreign country, or other extenuating circumstances as determined by the Board, the Board, upon written request, may grant an extension of time to complete the recognized continuing dental education credit hour requirement.

E. The Board shall:
   1. Only accept recognized continuing dental education credits accrued during the prescribed period immediately before license or certificate renewal, and
   2. Not allow recognized continuing dental education credit accrued in a renewal period in excess of the amount required in this Article to be carried forward to the next renewal period.

F. A licensee or certificate holder shall maintain documentation of attendance for each program for which credit is claimed that verifies the recognized continuing dental education credit hours the licensee or certificate holder participated in during the most recently completed renewal period.

G. Each year, the Board shall audit continuing dental education requirement compliance on a random basis or when information is obtained which indicates a licensee or certificate holder may not be in compliance with this Article. A licensee or certificate holder selected for audit shall provide the Board with documentation of attendance that shows compliance with the continuing dental education requirements within 60 days from the date the licensee or certificate holder received notice of the audit by certified mail.

H. If a licensee or certificate holder is found to not be in compliance with the continuing dental education requirements, the Board may take any disciplinary or non-disciplinary action authorized by A.R.S. Title 32, Chapter 11.

R4-11-1203. Dentists and Dental Consultants
Dentists and dental consultants shall complete 72 hours of recognized continuing dental education in each renewal period as follows:

1. At least 42 credit hours in any of the following areas: Dental and medical health, preventive services, dental diagnosis and treatment planning, dental recordkeeping, dental clinical procedures, managing medical emergencies, pain management, dental public health, and courses in corrective and restorative oral health and basic dental sciences, which may include current research, new concepts in dentistry, and behavioral and biological sciences that are oriented to dentistry. A licensee who holds a permit to administer general anesthesia, deep sedation, parenteral sedation, or oral sedation who is required to obtain continuing education pursuant to Article 13 may apply those credit hours to the requirements of this Section;
2. No more than 18 credit hours in the following areas: Dental practice organization and management, patient management skills, and methods of health care delivery;
3. At least three credit hours in chemical dependency, which may include tobacco cessation;
4. At least three credit hours in infectious diseases or infectious disease control;
5. At least three credit hours in CPR healthcare provider, ACLS and PALS. Coursework may be completed online if the course requires a physical demonstration of skills; and
6. At least three credit hours in ethics or Arizona dental jurisprudence.

Historical Note

R4-11-1204. Dental Hygienists
A. A dental hygienist shall complete 54 credit hours of recognized continuing dental education in each renewal period as follows:

1. At least 31 credit hours in any of the following areas: Dental and medical health, and dental hygiene services, periodontal disease, care of implants, maintenance of cosmetic restorations and sealants, radiology safety and techniques, managing medical emergencies, pain management, dental recordkeeping, dental public health, and new concepts in dental hygiene;
2. No more than 14 credit hours in one or more of the following areas: Dental hygiene practice organization and management, patient management skills, and methods of health care delivery;
3. At least three credit hours in one or more of the following areas: chemical dependency, tobacco cessation, ethics, risk management, or Arizona dental jurisprudence;
4. At least three credit hours in infectious diseases or infectious disease control; and
5. At least three credit hours in CPR healthcare provider, ACLS and PALS. Coursework may be completed online if the course requires a physical demonstration of skills.

B. A licensee who performs dental hygiene services under an affiliated practice relationship who is required to obtain continuing education under R4-11-609 may apply those credit hours to the requirements of this Section.

Historical Note
R4-11-1205. Denturists
Denturists shall complete 36 credit hours of recognized continuing dental education in each renewal period as follows:

1. At least 21 credit hours in any of the following areas: Medical and dental health, laboratory procedures, clinical procedures, dental recordkeeping, removable prosthetics, pain management, dental public health, and new technology in dentistry;
2. No more than six credit hours in one or more of the following areas: Denturist practice organization and management, patient management skills, and methods of health care delivery;
3. At least one credit hour in chemical dependency, which may include tobacco cessation;
4. At least two credit hours in infectious diseases or infectious disease control;
5. At least three credit hours in CPR healthcare provider, ACLS and PALS. Coursework may be completed online if the course requires a physical demonstration of skills; and
6. At least three credit hours in ethics or Arizona dental jurisprudence.

R4-11-1206. Restricted Permit Holders - Dental
In addition to the requirements in R4-11-1202, a dental restricted permit holder shall comply with the following requirements:

1. When applying for renewal under A.R.S. § 32-1238, the restricted permit holder shall provide information to the Board that the restricted permit holder has completed 24 credit hours of recognized continuing dental education yearly.
2. To determine whether to grant the renewal, the Board shall only consider recognized continuing dental education credits accrued during the 36 months immediately before the renewal deadline prescribed in A.R.S. § 32-1236.
3. A dental restricted permit holder shall complete the 24 hours of recognized continuing dental education before renewal as follows:
   a. At least 12 credit hours in one or more of the subjects enumerated in R4-11-1203(1);
   b. No more than six credit hours in one or more of the subjects enumerated in R4-11-1203(2);
   c. At least one credit hour in the subjects enumerated in R4-11-1203(3);
   d. At least one credit hour in the subjects enumerated in R4-11-1203(4);
   e. At least three credit hours in the subjects enumerated in R4-11-1203(5); and
   f. At least one credit hour in the subjects enumerated in R4-11-1203(6).

R4-11-1207. Restricted Permit Holders - Dental Hygiene
In addition to the requirements in R4-11-1202, a dental hygiene restricted permit holder shall comply with the following:

1. When applying for renewal under A.R.S. § 32-1292, the restricted permit holder shall provide information to the Board that the restricted permit holder has completed 18 credit hours of recognized continuing dental education yearly.
2. To determine whether to grant renewal, the Board shall only consider recognized continuing dental education credits accrued during the 36 months immediately before the renewal deadline prescribed in A.R.S. § 32-1287.
3. A dental hygiene restricted permit holder shall complete the 18 hours of recognized continuing dental education before renewal as follows:
   a. At least 9 credit hours in one or more of the subjects enumerated in R4-11-1204(1);
   b. No more than three credit hours in one or more of the subjects enumerated in R4-11-1204(2);
   c. At least one credit hour in the subjects enumerated in R4-11-1204(3);
   d. At least two credit hours in the subjects enumerated in R4-11-1204(4) and
   e. At least three credit hours in the subjects enumerated in R4-11-1204(5).

Historical Note
New Section R4-11-1207 renumbered from R4-11-1408 and amended by final rulemaking at 5 A.A.R. 580, effective February 4, 1999 (Supp. 99-1). Section repealed; new Section made by final rulemaking at 11 A.A.R. 793, effective April 2, 2005 (Supp. 05-1). Amended by final rulemaking at 19 A.A.R. 3873, effective January 5, 2014 (Supp. 13-4).

R4-11-1208. Retired Licensees or Certificate Holders
A retired licensee or certificate holder shall:

1. Except for the number of credit hours required, comply with the requirements in R4-11-1202; and
2. When applying for renewal under A.R.S. § 32-1236 for a dentist, A.R.S. § 32-1287 for a dental hygienist, and A.R.S. § 32-1297.06 for a denturist, provide information to the Board that the retired licensee or certificate holder has completed the following credit hours of recognized continuing dental education per renewal period:
   a. Dentist - 27 credit hours of which no less than three credit hours shall be for CPR;
   b. Dental hygienist - 21 credit hours of which no less than three credit hours shall be for CPR; and
   c. Denturist - 9 credit hours of which no less than three credit hours shall be for CPR.

Historical Note
New Section made by final rulemaking at 11 A.A.R. 793, effective April 2, 2005 (Supp. 05-1).

R4-11-1209. Types of Courses
A. A licensee or certificate holder shall obtain recognized continuing dental education from one or more of the following activities:

1. Seminars, symposiums, lectures, or programs designed to provide an understanding of current developments, skills, procedures, or treatment related to the practice of dentistry;
2. Seminars, symposiums, lectures, or programs designed to provide an understanding of current developments, skills, procedures, or treatment related to the practice of dentistry by means of audio-video technology in which the licensee is provided all seminar, symposium, lecture or program materials and the technology permits attendees to fully participate; or
3. Curricula designed to prepare for specialty board certification as a specialist or recertification examinations or advanced training at an accredited institution as defined in A.R.S. Title 32, Chapter 11; and
4. Subject to the limitations in subsection (B), any of the following activities that provide an understanding of current developments, skills, procedures, or treatment related to the practice of dentistry:
   a. A correspondence course, video, internet or similar self-study course, if the course includes an examination and the licensee or certificate holder passes the examination;
   b. Participation on the Board, in Board complaint investigations including clinical evaluations or anesthesia and sedation permit evaluations;
   c. Participation in peer review of a national or state dental, dental hygiene, or denturist association or participation in quality of care or utilization review in a hospital, institution, or governmental agency;
   d. Providing dental-related instruction to dental, dental hygiene, or denturist students, or allied health professionals in a recognized dental school, recognized dental hygiene school, or recognized denturist school or providing dental-related instruction sponsored by a national, state, or local dental, dental hygiene, or denturist association;
   e. Publication or presentation of a dental paper, report, or book authored by the licensee or certificate holder that provides information on current developments, skills, procedures, or treatment related to the practice of dentistry. A licensee or certificate holder may claim credit hours:
      i. Only once for materials presented;
      ii. Only if the date of publication or original presentation was during the applicable renewal period; and
      iii. One credit hour for each hour of preparation, writing, and presentation; or
   f. Providing dental, dental hygiene, or denturist services in a Board-recognized charitable dental clinical or organization.

B. The following limitations apply to the total number of credit hours earned per renewal period in any combination of the activities listed in subsection (A)(4):
   1. Dentists and Dental Hygienists, no more than 24 hours;
   2. Denturists, no more than 12 hours;
   3. Retired or Restricted Permit Holder Dentists or Dental Hygienists, no more than nine hours; and
   4. Retired Denturists, no more than three hours.

Historical Note
New Section made by final rulemaking at 11 A.A.R. 793, effective April 2, 2005 (Supp. 05-1).
Amended by final rulemaking at 19 A.A.R. 3873, effective January 5, 2014 (Supp. 13-4).

ARTICLE 13. GENERAL ANESTHESIA AND SEDATION
R4-11-1301. General Anesthesia and Deep Sedation
A. Before administering general anesthesia, or deep sedation by any means, in a dental office or dental clinic, a dentist shall possess a Section 1301 permit issued by the Board. The dentist may renew a Section 1301 permit every five years by complying with R4-11-1307.
B. To obtain or renew a Section 1301 permit, a dentist shall:
   1. Submit a completed application on a form provided by the Board office that, in addition to the requirements of subsections (B)(2) and (3), and R4-11-1307, includes:
      a. General information about the applicant such as:
         i. Name;
         ii. Home and office addresses and telephone numbers;
         iii. Limitations of practice;
         iv. Hospital affiliations;
         v. Denial, curtailment, revocation, or suspension of hospital privileges;
vi. Denial of membership in, denial of renewal of membership in, or disciplinary action by a dental organization; and
vii. Denial of licensure by, denial of renewal of licensure by, or disciplinary action by a dental regulatory body; and
b. The dentist’s dated and signed affidavit stating that the information provided is true, and that the dentist has read and complied with the Board’s statutes and rules.

2. On forms provided by the Board, provide a dated and signed affidavit attesting that any office or dental clinic where the dentist will administer general anesthesia or deep sedation:
   a. Contains the following properly operating equipment and supplies during the provision of general anesthesia and deep sedation:
      i. Emergency drugs;
      ii. Electrocardiograph monitor;
      iii. Pulse oximeter;
      iv. Cardiac defibrillator or automated external defibrillator (AED);
      v. Positive pressure oxygen and supplemental oxygen;
      vi. Suction equipment, including endotracheal, tonsillar, or pharyngeal and emergency backup medical suction device;
      vii. Laryngoscope, multiple blades, backup batteries, and backup bulbs;
      viii. Endotracheal tubes and appropriate connectors;
      ix. Magill forceps;
      x. Oropharyngeal and nasopharyngeal airways;
      xi. Auxiliary lighting; xii. Stethoscope; and
      xiii. Blood pressure monitoring device; and
   b. Maintains a staff of supervised personnel capable of handling procedures, complications, and emergency incidents. All personnel involved in administering and monitoring general anesthesia or deep sedation shall hold a current course completion confirmation in cardiopulmonary resuscitation (CPR) Health Care Provider Level;

3. Hold a valid license to practice dentistry in this state;
4. Maintain a current permit to prescribe and administer controlled substances in this state issued by the United States Drug Enforcement Administration; and
5. Provide confirmation of completing coursework within the two years prior to submitting the permit application in one or more of the following:
   a. Advanced cardiac life support (ACLS) from the American Heart Association or another agency that follows the same procedures, standards, and techniques for training as the American Heart Association;
   b. Pediatric advanced life support (PALS) in a practice treating pediatric patients; or
   c. A recognized continuing education course in advanced airway management.

C. Initial applicants shall meet one or more of the following conditions:
   1. Complete, within the three years before submitting the permit application, a full credit load, as defined by the training program, during one calendar year of training, in anesthesiology or related academic subjects, beyond the undergraduate dental school level in a training program described in R4-11-1306(A), offered by a hospital accredited by the Joint Commission on Accreditation of Hospitals Organization, or sponsored by a university accredited by the American Dental Association Commission on Dental Accreditation;
   2. Be, within the three years before submitting the permit application, a Diplomate of the American Board of Oral and Maxillofacial Surgeons or eligible for examination by the American Board of Oral and Maxillofacial surgeons, a Fellow of the American Association of Oral and Maxillofacial surgeons, a Fellow of the American Dental Society of Anesthesiology, a Diplomate of the National Dental Board of Anesthesiology, or a Diplomate of the American Dental Board of Anesthesiology; or
3. For an applicant who completed the requirements of subsections (C)(1) or (C)(2) more than three years before submitting the permit application, provide the following documentation:
   a. On a form provided by the Board, a written affidavit affirming that the applicant has administered general anesthesia or deep sedation to a minimum of 25 patients within the year before submitting the permit application or 75 patients within the last five years before submitting the permit application;
   b. A copy of the general anesthesia or deep sedation permit in effect in another state or certification of military training in general anesthesia or deep sedation from the applicant’s commanding officer; and
   c. On a form provided by the Board, a written affidavit affirming the completion of 30 clock hours of continuing education taken within the last five years as outlined in R4-11-1306(B)(1)(a) through (f).

D. After submitting the application and written evidence of compliance with requirements in subsection (B) and, if applicable, subsection (C) to the Board, the applicant shall schedule an onsite evaluation by the Board during which the applicant shall administer general anesthesia or deep sedation. After the applicant completes the application requirements and successfully completes the onsite evaluation, a Section 1301 permit shall be issued to the applicant.

1. The onsite evaluation team shall consist of:
   a. Two dentists who are Board members, or Board designees for initial applications; or
   b. One dentist who is a Board member or Board designee for renewal applications.

2. The onsite team shall evaluate the following:
   a. The availability of equipment and personnel as specified in subsection (B)(2);
   b. Proper administration of general anesthesia or deep sedation to a patient by the applicant in the presence of the evaluation team;
   c. Successful responses by the applicant to oral examination questions from the evaluation team about patient management, medical emergencies, and emergency medications;
   d. Proper documentation of controlled substances, that includes a perpetual inventory log showing the receipt, administration, dispensing, and destruction of controlled substances;
   e. Proper recordkeeping as specified in subsection (E) by reviewing the records generated for the patient specified in subsection (D)(2)(b); and
   f. For renewal applicants, records supporting continued competency as specified in R4-11-1306.

3. The evaluation team shall recommend one of the following:
   a. Pass. Successful completion of the onsite evaluation;
   b. Conditional Approval for failing to have appropriate equipment, proper documentation of controlled substances, or proper recordkeeping. The applicant must submit proof of correcting the deficiencies before a permit is issued;
   c. Category 1 Evaluation Failure. The applicant must review the appropriate subject matter and schedule a subsequent evaluation by two Board Members or Board designees not less than 30 days from the failed evaluation. An example is failure to recognize and manage one emergency;
   d. Category 2 Evaluation Failure. The applicant must complete Board approved continuing education in subject matter within the scope of the onsite evaluation as identified by the evaluators and schedule a subsequent evaluation by two Board Members or Board designees not less than 60 days from the failed evaluation. An example is failure to recognize and manage more than one emergency; or
   e. Category 3 Evaluation Failure. The applicant must complete Board approved remedial continuing education with the subject matter outlined in R4-11-1306 as identified by the evaluators and reapply not less than 90 days from the failed evaluation. An example is failure to recognize and manage an anesthetic urgency.
4. The onsite evaluation of an additional dental office or dental clinic in which general anesthesia or deep sedation is administered by an existing Section 1301 permit holder may be waived by the Board staff upon receipt in the Board office of an affidavit verifying compliance with subsection (D)(2)(a).

5. A Section 1301 mobile permit may be issued if a Section 1301 permit holder travels to dental offices or dental clinics to provide anesthesia or deep sedation. The applicant must submit a completed affidavit verifying:
   a. That the equipment and supplies for the provision of anesthesia or deep sedation as required in subsection (B)(2)(a) either travel with the Section 1301 permit holder or are in place and in appropriate condition at the dental office or dental clinic where anesthesia or deep sedation is provided, and
   b. Compliance with subsection (B)(2)(b).

E. A Section 1301 permit holder shall keep an anesthesia or deep sedation record for each general anesthesia and deep sedation procedure that includes the following entries:
   1. Pre-operative and post-operative electrocardiograph documentation;
   2. Pre-operative, intra-operative, and post-operative pulse oximeter documentation;
   3. Pre-operative, intra-operative, and post-operative blood pressure and vital sign documentation;
   4. A list of all medications given, with dosage and time intervals, and route and site of administration;
   5. Type of catheter or portal with gauge;
   6. Indicate nothing by mouth or time of last intake of food or water;
   7. Consent form; and
   8. Time of discharge and status, including name of escort.

F. The Section 1301 permit holder, for intravenous access, shall use a new infusion set, including a new infusion line and new bag of fluid, for each patient.

G. The Section 1301 permit holder shall utilize supplemental oxygen for patients receiving general anesthesia or deep sedation for the duration of the procedure.

H. The Section 1301 permit holder shall continuously supervise the patient from the initiation of anesthesia or deep sedation until termination of the anesthesia or deep sedation procedure and oxygenation, ventilation, and circulation are stable. The Section 1301 permit holder shall not commence with the administration of a subsequent anesthetic case until the patient is in monitored recovery or meets the guidelines for discharge.

I. A Section 1301 permit holder may employ the following health care professionals to provide anesthesia or sedation services and shall ensure that the health care professional continuously supervises the patient from the administration of anesthesia or sedation until termination of the anesthesia or sedation procedure and oxygenation, ventilation, and circulation are stable:
   1. An allopathic or osteopathic physician currently licensed in Arizona by the Arizona Medical Board or the Arizona Board of Osteopathic Examiners who has successfully completed a residency program in anesthesia approved by the American Council on Graduate Medical Education (ACGME) or the American Osteopathic Association (AOA) or who is certified by either the American Board of Anesthesiology or the American Osteopathic Board of Anesthesiology and is credentialed with anesthesia privileges through an Arizona licensed medical facility, or
   2. A Certified Registered Nurse Anesthetist (CRNA) currently licensed in Arizona who provides services under the Nurse Practice Act in A.R.S. Title 32, Chapter 15.

J. A Section 1301 permit holder may also administer parenteral sedation without obtaining a Section 1302 permit.

**Historical Note**

New Section R4-11-1301 renumbered from R4-11-802 and amended by final rulemaking at 5 A.A.R. 580, effective February 4, 1999 (Supp. 99-1). Amended by final rulemaking at 9
R4-11-1302. Parenteral Sedation

A. Before administering parenteral sedation in a dental office or dental clinic, a dentist shall possess a Section 1302 permit issued by the Board. The dentist may renew a Section 1302 permit every five years by complying with R4-11-1307.

1. A Section 1301 permit holder may also administer parenteral sedation.

2. A Section 1302 permit holder shall not administer or employ any agents which have a narrow margin for maintaining consciousness including, but not limited to, ultrashort acting barbiturates, propofol, parenteral ketamine, or similarly acting drugs, agents, or techniques, or any combination thereof that would likely render a patient deeply sedated, generally anesthetized or otherwise not meeting the conditions of moderate sedation.

B. To obtain or renew a Section 1302 permit, the dentist shall:

1. Submit a completed application on a form provided by the Board office that, in addition to the requirements of subsections (B)(2) and (3) and R4-11-1307, includes:
   a. General information about the applicant such as:
      i. Name;
      ii. Home and office addresses and telephone numbers;
      iii. Limitations of practice;
      iv. Hospital affiliations;
      v. Denial, curtailment, revocation, or suspension of hospital privileges;
      vi. Denial of membership in, denial of renewal of membership in, or disciplinary action by a dental organization; and
      vii. Denial of licensure by, denial of renewal of licensure by, or disciplinary action by a dental regulatory body; and
   b. The dentist’s dated and signed affidavit stating that the information provided is true, and that the dentist has read and complied with the Board’s statutes and rules;

2. On forms provided by the Board, provide a dated and signed affidavit attesting that any dental office or dental clinic where the dentist will administer parenteral sedation by intravenous or intramuscular route:
   a. Contains the following properly operating equipment and supplies during the provision of parenteral sedation by the permit holder or general anesthesia or deep sedation by a physician anesthesiologist or Certified Registered Nurse Anesthetist (CRNA):
      i. Emergency drugs;
      ii. Positive pressure oxygen and supplemental oxygen;
      iii. Stethoscope;
      iv. Suction equipment, including tonsillar or pharyngeal and emergency backup medical suction device;
      v. Oropharyngeal and nasopharyngeal airways;
      vi. Pulse oximeter;
      vii. Auxiliary lighting;
      viii. Blood pressure monitoring device; and
      ix. Cardiac defibrillator or automated external defibrillator (AED); and
   b. Maintains a staff of supervised personnel capable of handling procedures, complications, and emergency incidents, including at least one staff member who:
      i. Holds a current course completion confirmation in cardiopulmonary resuscitation (CPR) health care provider level;
      ii. Is present during the parenteral sedation procedure; and
      iii. After the procedure, monitors the patient until discharge;

3. Hold a valid license to practice dentistry in this state;
4. Maintain a current permit to prescribe and administer controlled substances in this state issued by the United States Drug Enforcement Administration;
5. Provide confirmation of completing coursework within the two years prior to submitting the permit application in one or more of the following:
   a. Advanced cardiac life support (ACLS) from the American Heart Association or another agency that follows the same procedures, standards, and techniques for training as the American Heart Association;
   b. Pediatric advanced life support (PALS) in a practice treating pediatric patients; or
   c. A recognized continuing education course in advanced airway management.

C. Initial applicants shall meet one of the following conditions:
   1. Successfully complete Board-recognized undergraduate, graduate, or postgraduate education within the three years before submitting the permit application, that includes the following:
      a. Sixty (60) didactic hours of basic parenteral sedation to include:
         i. Physical evaluation;
         ii. Management of medical emergencies;
         iii. The importance of and techniques for maintaining proper documentation; and
         iv. Monitoring and the use of monitoring equipment; and
      b. Hands-on administration of parenteral sedative medications to at least 20 patients in a manner consistent with this Section; or
   2. An applicant who completed training in parenteral sedation more than three years before submitting the permit application shall provide the following documentation:
      a. On a form provided by the Board, a written affidavit affirming that the applicant has administered parenteral sedation to a minimum of 25 patients within the year or 75 patients within the last five years before submitting the permit application;
      b. A copy of the parenteral sedation permit in effect in another state or certification of military training in parenteral sedation from the applicant's commanding officer; and
      c. On a form provided by the Board, a written affidavit affirming the completion of 30 clock hours of continuing education taken within the last five years as outlined in R4-11-1306(B)(1)(b) through (f).

D. After submitting the application and written evidence of compliance with requirements outlined in subsection (B) and, if applicable, subsection (C) to the Board, the applicant shall schedule an onsite evaluation by the Board during which the applicant shall administer parenteral sedation. After the applicant completes the application requirements and successfully completes the onsite evaluation, the Board shall issue a Section 1302 permit to the applicant.
   1. The onsite evaluation team shall consist of:
      a. Two dentists who are Board members, or Board designees for initial applications, or
      b. One dentist who is a Board member or Board designee for renewal applications.
   2. The onsite team shall evaluate the following:
      a. The availability of equipment and personnel as specified in subsection (B)(2);
      b. Proper administration of parenteral sedation to a patient by the applicant in the presence of the evaluation team;
      c. Successful responses by the applicant to oral examination questions from the evaluation team about patient management, medical emergencies, and emergency medications;
      d. Proper documentation of controlled substances, that includes a perpetual inventory log showing the receipt, administration, dispensing, and destruction of all controlled substances;
      e. Proper recordkeeping as specified in subsection (E) by reviewing the records generated for the patient receiving parenteral sedation as specified in subsection (D)(2)(b); and
f. For renewal applicants, records supporting continued competency as specified in R4-11-1306.

3. The evaluation team shall recommend one of the following:
   a. Pass. Successful completion of the onsite evaluation;
   b. Conditional Approval for failing to have appropriate equipment, proper documentation of controlled substances, or proper recordkeeping. The applicant must submit proof of correcting the deficiencies before a permit is issued;
   c. Category 1 Evaluation Failure. The applicant must review the appropriate subject matter and schedule a subsequent evaluation by two Board Members or Board designees not less than 30 days from the failed evaluation. An example is failure to recognize and manage one emergency;
   d. Category 2 Evaluation Failure. The applicant must complete Board approved continuing education in subject matter within the scope of the onsite evaluation as identified by the evaluators and schedule a subsequent evaluation by two Board Members or Board designees not less than 60 days from the failed evaluation. An example is failure to recognize and manage more than one emergency; or
   e. Category 3 Evaluation Failure. The applicant must complete Board approved remedial continuing education with the subject matter outlined in R4-11-1306 as identified by the evaluators and reapply not less than 90 days from the failed evaluation. An example is failure to recognize and manage an anesthetic urgency.

4. The onsite evaluation of an additional dental office or dental clinic in which parenteral sedation is administered by an existing Section 1302 permit holder may be waived by the Board staff upon receipt in the Board office of an affidavit verifying compliance with subsection (D)(2)(a).

5. A Section 1302 mobile permit may be issued if a Section 1302 permit holder travels to dental offices or dental clinics to provide parenteral sedation. The applicant must submit a completed affidavit verifying:
   a. That the equipment and supplies for the provision of parenteral sedation as required in R4-11-1302(B)(2)(a) either travel with the Section 1302 permit holder or are in place and in appropriate working condition at the dental office or dental clinic where parenteral sedation is provided, and
   b. Compliance with R4-11-1302(B)(2)(b).

E. A Section 1302 permit holder shall keep a parenteral sedation record for each parenteral sedation procedure that:
   1. Includes the following entries:
      a. Pre-operative, intra-operative, and post-operative pulse oximeter documentation;
      b. Pre-operative, intra-operative, and post-operative blood pressure and vital sign documentation;
      c. A list of all medications given, with dosage and time intervals and route and site of administration;
      d. Type of catheter or portal with gauge;
      e. Indicate nothing by mouth or time of last intake of food or water;
      f. Consent form; and
      g. Time of discharge and status, including name of escort; and
   2. May include pre-operative and post-operative electrocardiograph report.

F. The Section 1302 permit holder shall establish intravenous access on each patient receiving parenteral sedation utilizing a new infusion set, including a new infusion line and new bag of fluid. 

G. The Section 1302 permit holder shall utilize supplemental oxygen for patients receiving parenteral sedation for the duration of the procedure.

H. The Section 1302 permit holder shall continuously supervise the patient from the initiation of parenteral sedation until termination of the parenteral sedation procedure and oxygenation, ventilation and circulation are stable. The Section 1302 permit holder shall not commence with the
administration of a subsequent anesthetic case until the patient is in monitored recovery or meets the guidelines for discharge.

I. A Section 1302 permit holder may employ a health care professional as specified in R4-11-1301(I).

**Historical Note**


### R4-11-1303. Oral Sedation

A. Before administering oral sedation in a dental office or dental clinic, a dentist shall possess a Section 1303 permit issued by the Board. The dentist may renew a Section 1303 permit every five years by complying with R4-11-1307.

1. A Section 1301 permit holder or Section 1302 permit holder may also administer oral sedation without obtaining a Section 1303 permit.

2. The administration of a single drug for minimal sedation does not require a Section 1303 permit if:

   a. The administered dose is within the Food and Drug Administration’s (FDA) maximum recommended dose as printed in FDA approved labeling for unmonitored home use;

   i. Incremental multiple doses of the drug may be administered until the desired effect is reached, but does not exceed the maximum recommended dose; and

   ii. During minimal sedation, a single supplemental dose may be administered. The supplemental dose may not exceed one-half of the initial dose and the total aggregate dose may not exceed one and one-half times the FDA maximum recommended dose on the date of treatment; and

   b. Nitrous oxide/oxygen may be administered in addition to the oral drug as long as the combination does not exceed minimal sedation.

B. To obtain or renew a Section 1303 permit, a dentist shall:

1. Submit a completed application on a form provided by the Board office that, in addition to the requirements of subsections (B)(2) and (3) and R4-11-1307, includes:

   a. General information about the applicant such as:

   i. Name;

   ii. Home and office addresses and telephone numbers;

   iii. Limitations of practice;

   iv. Hospital affiliations;

   v. Denial, curtailment, revocation, or suspension of hospital privileges;

   vi. Denial of membership in, denial of renewal of membership in, or disciplinary action by a dental organization; and

   vii. Denial of licensure by, denial of renewal of licensure by, or disciplinary action by a dental regulatory body; and

   b. The dentist’s dated and signed affidavit stating that the information provided is true, and that the dentist has read and complied with the Board’s statutes and rules;

2. On forms provided by the Board, provide a dated and signed affidavit attesting that any dental office or dental clinic where the dentist will administer oral sedation:

   a. Contains the following properly operating equipment and supplies during the provision of sedation:

   i. Emergency drugs;

   ii. Cardiac defibrillator or automated external defibrillator (AED);

   iii. Positive pressure oxygen and supplemental oxygen;

   iv. Stethoscope;
v. Suction equipment, including tonsillar or pharyngeal and emergency backup medical suction device;
vi. Pulse oximeter;

vii. Blood pressure monitoring device; and
viii. Auxiliary lighting; and

b. Maintains a staff of supervised personnel capable of handling procedures, complications, and emergency incidents, including at least one staff member who:
i. Holds a current certificate in cardiopulmonary resuscitation (CPR) Health Care Provider Level;
ii. Is present during the oral sedation procedure; and
iii. After the procedure, monitors the patient until discharge;

3. Hold a valid license to practice dentistry in this state;
4. Maintain a current permit to prescribe and administer controlled substances in this state issued by the United States Drug Enforcement Administration;
5. Provide confirmation of completing coursework within the two years prior to submitting the permit application in one or more of the following:
   a. Cardiopulmonary resuscitation (CPR) Health Care Provider Level from the American Heart Association, American Red Cross, or another agency that follows the same procedures, standards, and techniques for training as the American Heart Association or American Red Cross;
   b. Pediatric advanced life support (PALS) in a practice treating pediatric patients; or
   c. A recognized continuing education course in advanced airway management.

C. Initial applicants shall meet one of the following:
   1. Complete a Board-recognized post-doctoral residency program that includes documented training in oral sedation within the last three years before submitting the permit application; or
   2. Complete a Board recognized post-doctoral residency program that includes documented training in oral sedation more than three years before submitting the permit application shall provide the following documentation:
      a. On a form provided by the Board, a written affidavit affirming that the applicant has administered oral sedation to a minimum of 25 patients within the year or 75 patients within the last five years before submitting the permit application;
      b. A copy of the oral sedation permit in effect in another state or certification of military training in oral sedation from the applicant’s commanding officer; and
      c. On a form provided by the Board, a written affidavit affirming the completion of 30 hours of continuing education taken within the last five years as outlined in R4-11-1306(C)(1)(a) through (f); or
   3. Provide proof of participation in 30 clock hours of Board recognized undergraduate, graduate, or post-graduate education in oral sedation within the three years before submitting the permit application that includes:
      a. Training in basic oral sedation,
      b. Pharmacology,
      c. Physical evaluation,
      d. Management of medical emergencies,
      e. The importance of and techniques for maintaining proper documentation, and
      f. Monitoring and the use of monitoring equipment.

D. After submitting the application and written evidence of compliance with requirements in subsection (B) and, if applicable, subsection (C) to the Board, the applicant shall schedule an onsite evaluation by the Board. After the applicant completes the application requirements and successfully completes the onsite evaluation, the Board shall issue a Section 1303 permit to the applicant.
   1. The onsite evaluation team shall consist of:
      a. For initial applications, two dentists who are Board members, or Board designees.
      b. For renewal applications, one dentist who is a Board member, or Board designee.
   2. The onsite team shall evaluate the following:
a. The availability of equipment and personnel as specified in subsection (B)(2);
b. Successful responses by the applicant to oral examination questions from the 
evaluation team about patient management, medical emergencies, and emergency 
medications;
c. Proper documentation of controlled substances, that includes a perpetual 
inventory log showing the receipt, administration, dispensing, and destruction of 
controlled substances;
d. Proper recordkeeping as specified in subsection (E) by reviewing the forms that 
document the oral sedation record; and

e. For renewal applicants, records supporting continued competency as specified in 
R4-11-1306.

3. The evaluation team shall recommend one of the following:

a. Pass. Successful completion of the onsite evaluation;
b. Conditional Approval for failing to have appropriate equipment, proper 
documentation of controlled substance, or proper recordkeeping. The applicant must 
submit proof of correcting the deficiencies before permit will be issued;
c. Category 1 Evaluation Failure. The applicant must review the appropriate subject 
matter and schedule a subsequent evaluation by two Board Members or Board 
designees not less than 30 days from the failed evaluation. An example is failure to 
recognize and manage one emergency; or
d. Category 2 Evaluation Failure. The applicant must complete Board approved 
continuing education in subject matter within the scope of the onsite evaluation as 
identified by the evaluators and schedule a subsequent evaluation by two Board 
Members or Board designees not less than 60 days from the failed evaluation. An 
example is failure to recognize and manage more than one emergency.

4. The onsite evaluation of an additional dental office or dental clinic in which oral sedation is 
administered by a Section 1303 permit holder may be waived by the Board staff upon receipt 
in the Board office of an affidavit verifying compliance with subsection (D)(2)(a).

5. A Section 1303 mobile permit may be issued if the Section 1303 permit holder travels to 
dental offices or dental clinics to provide oral sedation. The applicant must submit a 
completed affidavit verifying:

a. That the equipment and supplies for the provision of oral sedation as required in 
R4-11-1303(B)(2)(a) either travel with the Section 1303 permit holder or are in place 
and in appropriate condition at the dental office or dental clinic where oral sedation is 
provided, and

b. Compliance with R4-11-1303(B)(2)(b).

E. A Section 1303 permit holder shall keep an oral sedation record for each oral sedation procedure 
that:

1. Includes the following entries:
   a. Pre-operative, intra-operative, and post-operative, pulse oximeter oxygen 
saturation and pulse rate documentation;
   b. Pre-operative and post-operative blood pressure;
   c. Documented reasons for not taking vital signs if a patient’s behavior or emotional 
state prevents monitoring personnel from taking vital signs;
   d. List of all medications given, including dosage and time intervals;
   e. Patient’s weight;
   f. Consent form;
   g. Special notes, such as, nothing by mouth or last intake of food or water; and
   h. Time of discharge and status, including name of escort; and

2. May include the following entries:
   a. Pre-operative and post-operative electrocardiograph report; and
   b. Intra-operative blood pressures.
F. The Section 1303 permit holder shall utilize supplemental oxygen for patients receiving oral sedation for the duration of the procedure.

G. The Section 1303 permit holder shall ensure the continuous supervision of the patient from the administration of oral sedation until oxygenation, ventilation and circulation are stable and the patient is appropriately responsive for discharge from the dental office or dental clinic.

H. A Section 1303 permit holder may employ a health care professional to provide anesthesia services, if all of the following conditions are met:
   1. The physician anesthesiologist or CRNA meets the requirements as specified in R4-11-1301(I);
   2. The Section 1303 permit holder has completed coursework within the two years prior to submitting the permit application in one or more of the following:
      a. ACLS from the American Heart Association or another agency that follows the same procedures, standards, and techniques for training as the American Heart Association;
      b. PALS in a practice treating pediatric patients;
      c. A recognized continuing education course in advanced airway management;
   3. The Section 1303 permit holder ensures that:
      a. The dental office or clinic contains the equipment and supplies listed in R4-11-1304(B)(2)(a) during the provision of anesthesia or sedation by the physician anesthesiologist or CRNA;
      b. The anesthesia or sedation record contains all the entries listed in R4-11-1304(D);
      c. For intravenous access, the physician anesthesiologist or CRNA uses a new infusion set, including a new infusion line and new bag of fluid for each patient; and
      d. The patient is continuously supervised from the administration of anesthesia or sedation until the termination of the anesthesia or sedation procedure and oxygenation, ventilation and circulation are stable. The Section 1303 permit holder shall not commence with a subsequent procedure or treatment until the patient is in monitored recovery or meets the guidelines for discharge.

Historical Note
New Section R4-11-1303 renumbered from R4-11-805 and amended by final rulemaking at 5 A.A.R. 580, effective February 4, 1999 (Supp. 99-1). Former Section R4-11-1303 renumbered to R4-11-1304; new Section R4-11-1303 made by final rulemaking at 9 A.A.R. 1054, effective May 6, 2003 (Supp. 03-1). Amended by final rulemaking at 19 A.A.R. 341, effective April 6, 2013 (Supp. 13-1).

R4-11-1304. Permit to Employ or Work with a Physician Anesthesiologist or Certified Registered Nurse Anesthetist (CRNA)
A. This Section does not apply to a Section 1301 permit holder or a Section 1302 permit holder practicing under the provisions of R4-11-1302(I) or a Section 1303 permit holder practicing under the provisions of R4-11-1303(H). A dentist may utilize a physician anesthesiologist or certified registered nurse anesthetist (CRNA) for anesthesia or sedation services while the dentist provides treatment in the dentist’s office or dental clinic after obtaining a Section 1304 permit issued by the Board.
   1. The physician anesthesiologist or CRNA meets the requirements as specified in R4-11-1301(I).
   2. The dentist permit holder shall provide all dental treatment and ensure that the physician anesthesiologist or CRNA remains on the dental office or dental clinic premises until any patient receiving anesthesia or sedation services is discharged.
   3. A dentist may renew a Section 1304 permit every five years by complying with R4-11-1307.
B. To obtain or renew a Section 1304 permit, a dentist shall:
   1. Submit a completed application on a form provided by the Board office that, in addition to the requirements of subsections (B)(2) and (3) and R4-11-1307 includes:
a. General information about the applicant such as:
   i. Name;
   ii. Home and office addresses and telephone numbers;
   iii. Limitations of practice;
   iv. Hospital affiliations;
   v. Denial, curtailment, revocation, or suspension of hospital privileges;
   vi. Denial of membership in, denial of renewal of membership in, or disciplinary action by a dental organization; and
   vii. Denial of licensure by, denial of renewal of licensure by, or disciplinary action by a dental regulatory body; and

b. The dentist’s dated and signed affidavit stating that the information provided is true, and that the dentist has read and complied with the Board’s statutes and rules;

2. On forms provided by the Board, provide a dated and signed affidavit attesting that any dental office or dental clinic where the dentist provides treatment during administration of general anesthesia or sedation by a physician anesthesiologist or CRNA:
   a. Contains the following properly operating equipment and supplies during the provision of general anesthesia and sedation:
      i. Emergency drugs;
      ii. Electrocardiograph monitor;
      iii. Pulse oximeter;
      iv. Cardiac defibrillator or automated external defibrillator (AED);
      v. Positive pressure oxygen and supplemental continuous flow oxygen;
      vi. Suction equipment, including endotracheal, tonsillar or pharyngeal and emergency backup medical suction device;
      vii. Laryngoscope, multiple blades, backup batteries and backup bulbs;
      viii. Endotracheal tubes and appropriate connectors;
      ix. Magill forceps;
      x. Oropharyngeal and nasopharyngeal airways;
      xi. Auxiliary lighting;
      xii. Stethoscope; and
      xiii. Blood pressure monitoring device; and
   b. Maintains a staff of supervised personnel capable of handling procedures, complications, and emergency incidents. All personnel involved in administering and monitoring general anesthesia or sedation shall hold a current course completion confirmation in cardiopulmonary resuscitation (CPR) Health Care Provider level;

3. Hold a valid license to practice dentistry in this state; and

4. Provide confirmation of completing coursework within the last two years prior to submitting the permit application in one or more of the following:
   a. Advanced cardiac life support (ACLS) from the American Heart Association or another agency that follows the same procedures, standards, and techniques for training as the American Heart Association;
   b. Pediatric advanced life support (PALS) in a practice treating pediatric patients; or
   c. A recognized continuing education course in advanced airway management.

C. After submitting the application and written evidence of compliance with requirements in subsection (B) to the Board, the applicant shall schedule an onsite evaluation by the Board. After the applicant completes the application requirements and successfully completes the onsite evaluation, the Board shall issue the applicant a Section 1304 permit.
   1. The onsite evaluation team shall consist of one dentist who is a Board member, or Board designee.
   2. The onsite team shall evaluate the following:
      a. The availability of equipment and personnel as specified in subsection (B)(2);
b. Proper documentation of controlled substances, that includes a perpetual inventory log showing the receipt, administration, dispensing, and destruction of controlled substances; and
c. Proper recordkeeping as specified in subsection (E) by reviewing previous anesthesia or sedation records.

3. The evaluation team shall recommend one of the following:
   a. Pass. Successful completion of the onsite evaluation; or
   b. Conditional approval for failing to have appropriate equipment, proper documentation of controlled substances, or proper recordkeeping. The applicant must submit proof of correcting the deficiencies before a permit is issued.

4. The evaluation of an additional dental office or dental clinic in which a Section 1304 permit holder provides treatment during the administration general anesthesia or sedation by a physician anesthesiologist or CRNA may be waived by the Board staff upon receipt in the Board office of an affidavit verifying compliance with subsection (B)(2).

D. A Section 1304 permit holder shall keep an anesthesia or sedation record for each general anesthesia and sedation procedure that includes the following entries:
   1. Pre-operative and post-operative electrocardiograph documentation;
   2. Pre-operative, intra-operative, and post-operative, pulse oximeter documentation;
   3. Pre-operative, intra-operative, and post-operative blood pressure and vital sign documentation; and
   4. A list of all medications given, with dosage and time intervals and route and site of administration;
   5. Type of catheter or portal with gauge;
   6. Indicate nothing by mouth or time of last intake of food or water;
   7. Consent form; and
   8. Time of discharge and status, including name of escort.

E. For intravenous access, a Section 1304 permit holder shall ensure that the physician anesthesiologist or CRNA uses a new infusion set, including a new infusion line and new bag of fluid for each patient.

F. A Section 1304 permit holder shall ensure that the physician anesthesiologist or CRNA utilizes supplemental continuous flow oxygen for patients receiving general anesthesia or sedation for the duration of the procedure.

G. The Section 1304 permit holder shall continuously supervise the patient from the administration of anesthesia or sedation until termination of the anesthesia or sedation procedure and oxygenation, ventilation and circulation are stable. The Section 1304 permit holder shall not commence with a subsequent procedure or treatment until the patient is in monitored recovery or meets the guidelines for discharge.

Historical Note

New Section R4-11-1304 renumbered from R4-11-805 and amended by final rulemaking at 5 A.A.R. 580, effective February 4, 1999 (Supp. 99-1). Former Section R4- 11-1304 renumbered to R4-11-1305; new Section R4-11-1304 renumbered from R4-11-1303 and amended by final rulemaking at 9 A.A.R. 1054, effective May 6, 2003 (Supp. 03-1). Section repealed; new Section made by final rulemaking at 19 A.A.R. 341, effective April 6, 2013 (Supp. 13-1).

R4-11-1305. Reports of Adverse Occurrences

If a death, or incident requiring emergency medical response, occurs in a dental office or dental clinic during the administration of or recovery from general anesthesia, deep sedation, moderate sedation, or minimal sedation, the permit holder and the treating dentist involved shall submit a complete report of the incident to the Board within 10 days after the occurrence.
Historical Note
New Section R4-11-1305 renumbered from R4-11-806 and amended by final rulemaking at 5 A.A.R. 580, effective February 4, 1999 (Supp. 99-1). Former Section R4-11-1305 renumbered to R4-11-1306; new Section R4-11-1305 renumbered from R4-11-1304 and amended by final rulemaking at 9 A.A.R. 1054, effective May 6, 2003 (Supp. 03-1). Section repealed; new Section made by final rulemaking at 19 A.A.R. 341, effective April 6, 2013 (Supp. 13-1).

R4-11-1306. Education; Continued Competency
A. To obtain a Section 1301, permit by satisfying the education requirement of R4-11-1301(B)(6), a dentist shall successfully complete an advanced graduate or post-graduate education program in pain control.
   1. The program shall include instruction in the following subject areas:
      a. Anatomy and physiology of the human body and its response to the various pharmacologic agents used in pain control;
      b. Physiological and psychological risks for the use of various modalities of pain control;
      c. Psychological and physiological need for various forms of pain control and the potential response to pain control procedures;
      d. Techniques of local anesthesia, sedation, and general anesthesia, and psychological management and behavior modification, as they relate to pain control in dentistry; and
      e. Handling emergencies and complications related to pain control procedures, including the maintenance of respiration and circulation, immediate establishment of an airway, and cardiopulmonary resuscitation.
   2. The program shall consist of didactic and clinical training. The didactic component of the program shall:
      a. Be the same for all dentists, whether general practitioners or specialists; and
      b. Include each subject area listed in subsection (A)(1).
   3. The program shall provide at least one calendar year of training as prescribed in R4-11-1301(B)(6)(a).
B. To maintain a Section 1301 or 1302 permit under R4-11-1301 or R4-11-1302 a permit holder shall:
   1. Participate in 30 clock hours of continuing education every five years in one or more of the following areas:
      a. General anesthesia,
      b. Parenteral sedation,
      c. Physical evaluation,
      d. Medical emergencies,
      e. Monitoring and use of monitoring equipment, or
      f. Pharmacology of drugs and non-drug substances used in general anesthesia or parenteral sedation; and
   2. Provide confirmation of completing coursework within the two years prior to submitting the renewal application from one or more of the following:
      a. Advanced cardiac life support (ACLS) from the American Heart Association or another agency that follows the same procedures, standards, and techniques for training as the American Heart Association;
      b. Pediatric advanced life support (PALS) in a practice treating pediatric patients; or
      c. A recognized continuing education course in advanced airway management;
   3. Complete at least 10 general anesthesia, deep sedation or parenteral sedation cases a calendar year; and
   4. Apply a maximum of six hours from subsection (B)(2) toward the continuing education requirements for subsection (B)(1).
C. To maintain a Section 1303 permit issued under R4-11-1303, a permit holder shall:
   1. Participate in 30 clock hours of continuing education every five years in one or more of the following areas:
      a. Oral sedation,
      b. Physical evaluation,
      c. Medical emergencies,
      d. Monitoring and use of monitoring equipment, or
      e. Pharmacology of oral sedation drugs and non-drug substances; and
   2. Provide confirmation of completing coursework within the two years prior to submitting the renewal application from one or more of the following:
      a. Cardiopulmonary resuscitation (CPR) Health Care Provider level from the American Heart Association, American Red Cross or another agency that follows the same procedures, standards, and techniques for training as the American Heart Association or American Red Cross;
      b. Advanced cardiac life support (ACLS) from the American Heart Association or another agency that follows the same procedures, standards, and techniques for training as the American Heart Association;
      c. Pediatric advanced life support (PALS);
      d. A recognized continuing education course in advanced airway management; and
   3. Complete at least 10 oral sedation cases a calendar year.

Historical Note
Section R4-11-1306 renumbered from R4-11-1305 and amended by final rulemaking at 9 A.A.R. 1054, effective May 6, 2003 (Supp. 03-1). Amended by final rulemaking at 19 A.A.R. 341, effective April 6, 2013 (Supp. 13-1).

R4-11-1307. Renewal of Permit
A. To renew a Section 1301, 1302, or 1303 permit, the permit holder shall:
   1. Provide written documentation of compliance with the applicable continuing education requirements in R4-11-1306;
   2. Provide written documentation of compliance with the continued competency requirements in R4-11-1306;
   3. Before December 31 of the year the permit expires, submit a completed application on a form provided by the Board office as described in R4-11-1301, R4-11-1302, or R4-11-1303; and
   4. Not less than 90 days before the expiration of a permit holder’s current permit, arrange for an onsite evaluation as described in R4-11-1301, R4-11-1302, or R4-11-1303.
B. To renew a Section 1304 permit, the permit holder shall:
   1. Before December 31 of the year the permit expires, submit a completed application on a form provided by the Board office as described in R4-11-1304; and
   2. Not less than 90 days before the expiration of a permit holder’s current permit, arrange for an onsite evaluation as described in R4-11-1304.
C. After the permit holder successfully completes the evaluation and submits the required affidavits, the Board shall renew a Section 1301, 1302, 1303, 1304 permit, as applicable.
D. The Board may stagger due dates for renewal applications.

Historical Note
Made by final rulemaking at 19 A.A.R. 341, effective April 6, 2013 (Supp. 13-1).
ARTICLE 14. DISPENSING DRUGS AND DEVICES

R4-11-1401. Prescribing
A. In addition to the requirements of A.R.S. § 32-1298(C), a dentist shall ensure that a prescription order contains the following information:
   1. Date of issuance;
   2. Name and address of the patient to whom the prescription is issued;
   3. Name, strength, dosage form, and quantity of the drug or name and quantity of the device prescribed;
   4. Name and address of the dentist prescribing the drug; and
   5. Drug Enforcement Administration registration number of the dentist, if prescribing a controlled substance.
B. Before dispensing a drug or device, a dentist shall present to the patient a written prescription for the drug or device being dispensed that includes on the prescription the following statement in bold type: “This prescription may be filled by the prescribing dentist or by a pharmacy of your choice.”

Historical Note
Adopted effective July 21, 1995 (Supp. 95-3). Former Section R4-11-1401 repealed, new Section R4-11-1401 adopted by final rulemaking at 5 A.A.R. 580, effective February 4, 1999 (Supp. 99-1). Section repealed; new Section made by final rulemaking at 11 A.A.R. 793, effective April 2, 2005 (Supp. 05-1).

R4-11-1402. Labeling and Dispensing
A. A dentist shall include the following information on the label of all drugs and devices dispensed:
   1. The dentist’s name, address, and telephone number;
   2. The serial number;
   3. The date the drug or device is dispensed;
   4. The patient’s name;
   5. Name, strength, and quantity of drug or name and quantity of device dispensed;
   6. The name of the drug or device manufacturer or distributor;
   7. Directions for use and cautionary statement necessary for safe and effective use of the drug or device; and
   8. If a controlled substance is prescribed, the cautionary statement “Caution: Federal law prohibits the transfer of this drug to any person other than the patient for whom it was prescribed.”
B. Before delivery to the patient, the dentist shall prepare and package the drug or device to ensure compliance with the prescription and personally inform the patient of the name of the drug or device, directions for its use, precautions, and storage requirements.
C. A dentist shall purchase all dispensed drugs and devices from a manufacturer, distributor, or pharmacy that is properly licensed in this state or one of the other 49 states, the District of Columbia, the Commonwealth of Puerto Rico, or a territory of the United States of America.
D. When dispensing a prescription drug or device from a prescription order, a dentist shall perform the following professional practices:
   1. Verify the legality and pharmaceutical feasibility of dispensing a drug based upon:
      a. A patient’s allergies,
      b. Incompatibilities with a patient’s currently-taken medications,
      c. A patient’s use of unusual quantities of dangerous drugs or narcotics, and
      d. The frequency of refills;
   2. Verify that the dosage is within proper limits;
   3. Interpret the prescription order;
   4. Prepare, package, and label, or assume responsibility for preparing, packaging, and labeling, the drug or device dispensed under each prescription order;
   5. Check the label to verify that the label precisely communicates the prescriber’s directions and hand-initial each label;
6. Record, or assume responsibility for recording, the serial number and date dispensed on the front of the original prescription order; and
7. Record on the original prescription order the name or initials of the dentist who dispensed the order.

**Historical Note**
Adopted effective July 21, 1995 (Supp. 95-3). Former Section R4-11-1402 renumbered to R4-11-1201, new Section R4-11-1402 adopted by final rulemaking at 5 A.A.R. 580, effective February 4, 1999 (Supp. 99-1). Section repealed; new Section made by final rulemaking at 11 A.A.R. 793, effective April 2, 2005 (Supp. 05-1).

**R4-11-1403. Storage and Packaging**
A dentist shall:
1. Keep all prescription-only drugs and devices in a secured area and control access to the secured area by written procedure. The dentist shall make the written procedure available to the Board or its authorized agents on demand for inspection or copying;
2. Keep all controlled substances secured in a locked cabinet or room, control access to the cabinet or room by written procedure, and maintain an ongoing inventory of the contents. The dentist shall make the written procedure available to the Board or its authorized agents on demand for inspection or copying;
3. Maintain drug storage areas so that the temperature in the drug storage areas does not exceed 85°F;
4. Not dispense a drug or device that has expired or is improperly labeled;
5. Not redispense a drug or device that has been returned;
6. Dispense a drug or device:
   a. In a prepackaged container or light-resistant container with a consumer safety cap, unless the patient or patient’s representative requests a non-safety cap; and
   b. With a label that is mechanically or electronically printed;
7. Destroy an outdated, deteriorated, or defective controlled substance according to Drug Enforcement Administration regulations or by using a reverse distributor. A list of reverse distributors may be obtained from the Drug Enforcement Administration; and
8. Destroy an outdated, deteriorated, or defective non-controlled substance drug or device by returning it to the supplier or by using a reverse distributor. A list of reverse distributors may be obtained from the Drug Enforcement Administration.

**Historical Note**
Adopted effective July 21, 1995 (Supp. 95-3). Former Section R4-11-1403 renumbered to R4-11-1202, new Section R4-11-1403 adopted by final rulemaking at 5 A.A.R. 580, effective February 4, 1999 (Supp. 99-1). Section repealed; new Section made by final rulemaking at 11 A.A.R. 793, effective April 2, 2005 (Supp. 05-1).

**R4-11-1404. Recordkeeping**
A. A dentist shall:
1. Chronologically date and sequentially number prescription orders in the order that the drugs or devices are originally dispensed;
2. Sequentially file orders separately from patient records, as follows:
   a. File Schedule II drug orders separately from all other prescription orders;
   b. File Schedule III, IV, and V drug orders separately from all other prescription orders; and
   c. File all other prescription orders separately from orders specified in subsections (A)(2)(a) and (b);
3. Record the name of the manufacturer or distributor of the drug or device dispensed on each prescription order and label;
4. Record the name or initials of the dentist dispensing the drug or device on each prescription order and label; and
5. Record the date the drug or device is dispensed on each prescription order and label.

B. A dentist shall record in the patient’s dental record the name, dosage form, and strength of the drug or device dispensed, the quantity or volume dispensed, the date the drug or device is dispensed, and the dental therapeutic reasons for dispensing the drug or device.

C. A dentist shall maintain:
   1. Purchase records of all drugs and devices for three years from the date purchased; and
   2. Dispensing records of all drugs and devices for three years from the date dispensed.

D. A dentist who dispenses controlled substances:
   1. Shall inventory Schedule II, III, IV, and V controlled substances as prescribed by A.R.S. § 36-2523;
   2. Shall perform a controlled substance inventory on March 1 annually, if directed by the Board, and at the opening or closing of a dental practice;
   3. Shall maintain the inventory for three years from the inventory date;
   4. May use one inventory book for all controlled substances;
   5. When conducting an inventory of Schedule II controlled substances, shall take an exact count;
   6. When conducting an inventory of Schedule III, IV, and V controlled substances, shall take an exact count or may take an estimated count if the stock container contains fewer than 1001 units.

E. A dentist shall maintain invoices for drugs and devices dispensed for three years from the date of the invoices, filed as follows:
   1. File Schedule II controlled substance invoices separately from records that are not Schedule II controlled substance invoices;
   2. File Schedule III, IV, and V controlled substance invoices separately from records that are not Schedule III, IV, and V controlled substance invoices; and
   3. File all non-controlled substance invoices separately from the invoices referenced in subsections (E)(1) and (2).

F. A dentist shall file Drug Enforcement Administration order form (DEA Form 222) for a controlled substance sequentially and separately from every other record.

**Historical Note**
Adopted effective July 21, 1995 (Supp. 95-3). Former Section R4-11-1404 renumbered to R4-11-1203, new Section R4-11-1404 adopted by final rulemaking at 5 A.A.R. 580, effective February 4, 1999 (Supp. 99-1). Section repealed; new Section made by final rulemaking at 11 A.A.R. 793, effective April 2, 2005 (Supp. 05-1).

**R4-11-1405. Compliance**
A. A dentist who determines that there has been a theft or loss of drugs or controlled substances from the dentist’s office shall immediately notify a local law enforcement agency and the Board and provide written notice of the theft or loss in the following manner:
   1. For non-controlled substance drug theft or loss, provide the law enforcement agency and the Board with a written report explaining the theft or loss; or
   2. For controlled substance theft or loss, complete a DEA 106 form; and
   3. Provide copies of the DEA 106 form to the Drug Enforcement Administration and the Board within seven days of the discovery.

B. A dentist who dispenses drugs or devices in a manner inconsistent with this Article is subject to discipline under A.R.S. Title 32, Chapter 11, Article 3.

**Historical Note**
Adopted effective July 21, 1995 (Supp. 95-3). Former Section R4-11-1405 renumbered to R4-11-1204, new Section R4-11-1405 adopted by final rulemaking at 5 A.A.R. 580, effective
February 4, 1999 (Supp. 99-1). Section repealed; new Section made by final rulemaking at 11 A.A.R. 793, effective April 2, 2005 (Supp. 05-1).

R4-11-1406. Dispensing for Profit Registration and Renewal
A. A dentist who is currently licensed to practice dentistry in Arizona may dispense controlled substances, prescription-only drugs, and prescription-only devices for profit only after providing the Board the following information:
   1. A completed registration form that includes the following information:
      a. The dentist’s name and dental license number;
      b. A list of the types of drugs and devices to be dispensed for profit, including controlled substances; and
      c. Locations where the dentist desires to dispense the drugs and devices for profit; and
   2. A copy of the dentist’s current Drug Enforcement Administration Certificate of Registration for each dispensing location from which the dentist desires to dispense the drugs and devices for profit.
B. The Board shall issue a numbered certificate indicating the dentist is registered with the Board to dispense drugs and devices for profit.
C. A dentist shall renew a registration to dispense drugs and devices for profit by complying with the requirements in subsection (A) before the dentist’s license renewal date. When a dentist has made timely and complete application for the renewal of a registration, the dentist may continue to dispense until the Board approves or denies the application. Failure to renew a registration shall result in immediate loss of dispensing for profit privileges.

Historical Note
Adopted effective July 21, 1995; inadvertently not published with Supp. 95-3 (Supp. 95-4). Former Section R4-11-1406 renumbered to R4-11-1205, new Section R4-11-1406 adopted by final rulemaking at 5 A.A.R. 580, effective February 4, 1999 (Supp. 99-1). Section repealed; new Section made by final rulemaking at 11 A.A.R. 793, effective April 2, 2005 (Supp. 05-1).

R4-11-1407. Renumbered
Historical Note
Adopted effective July 21, 1995 (Supp. 95-3). Former Section R4-11-1407 renumbered to R4-11-1206 by final rulemaking at 5 A.A.R. 580, effective February 4, 1999 (Supp. 99-1).

R4-11-1408. Renumbered
Historical Note
Adopted effective July 21, 1995 (Supp. 95-3). Former Section R4-11-1408 renumbered to R4-11-1207 by final rulemaking at 5 A.A.R. 580, effective February 4, 1999 (Supp. 99-1).

R4-11-1409. Repealed
Historical Note
Adopted effective July 21, 1995 (Supp. 95-3). Former Section R4-11-1409 repealed by final rulemaking at 5 A.A.R. 580, effective February 4, 1999 (Supp. 99-1).

ARTICLE 15. COMPLAINTS, INVESTIGATIONS, DISCIPLINARY ACTION

R4-11-1501. Ex-parte Communication
A complainant, licensee, certificate holder, business entity or mobile dental permit holder against whom a complaint is filed, shall not engage in ex-parte communication by means of a written or oral communication between a decision maker, fact finder, or Board member and only one party to the proceeding.
R4-11-1502. Dental Consultant Qualifications
A dentist, dental hygienist, or denturist approved as a Board dental consultant shall:
1. Possess a valid license or certificate to practice in Arizona;
2. Have practiced at least five years in Arizona; and
3. Not have been disciplined by the Board within the past five years.

R4-11-1503. Initial Complaint Review
A. The Board’s procedures for complaint notification are:
   1. Board personnel shall notify the complainant and licensee, certificate holder, business entity or mobile dental permit holder by certified U.S. Mail when the following occurs:
      a. A formal interview is scheduled,
      b. The complaint is tabled,
      c. A postponement or continuance is granted, and
      d. A subpoena, notice, or order is issued.
   2. Board personnel shall provide the licensee, certificate holder, business entity, or mobile dental permit holder with a copy of the complaint.
   3. If a complaint alleges a violation of the state or federal criminal code, the Board shall refer the complaint to the proper law enforcement agency.

B. The Board’s procedures for complaints referred to clinical evaluation are:
   1. Except as provided in subsection (B)(1)(a), the president’s designee shall appoint one or more dental consultants to perform a clinical evaluation. If there is more than one dental consultant, the dental consultants do not need to be present at the same time.
      a. If the complaint involves a dental hygienist, denturist, or dentist who is a recognized specialist in one of the areas listed in R4-11-1102(B), the president’s designee shall appoint a dental consultant from that area of practice or specialty.
      b. The Board shall not disclose the identity of the licensee to a dental consultant performing a clinical examination before the Board receives the dental consultant’s report.
   2. The dental consultant shall prepare and submit a clinical evaluation report. The president’s designee shall provide a copy of the clinical evaluation report to the licensee or certificate holder. The licensee or certificate holder may submit a written response to the clinical evaluation report.

R4-11-1504. Postponement of Interview
A. The licensee, certificate holder, business entity, or mobile dental permit holder may request a postponement of a formal interview. The Board or its designee shall grant a postponement until the
next regularly scheduled Board meeting if the licensee, certificate holder, business entity, or mobile dental permit holder makes a postponement request and the request:
1. Is made in writing,
2. States the reason for the postponement, and
3. Is received by the Board within 15 calendar days after the date the respondent received the formal interview request.

B. Within 48 hours of receipt of a request for postponement of a formal interview, the Board or its designee shall:
1. Review and either deny or approve the request for postponement; and
2. Notify in writing the complainant and licensee, certificate holder, business entity, or mobile dental permit holder of the decision to either deny or approve the request for postponement.

**Historical Note**

**ARTICLE 16. EXPIRED**
R4-11-1601. Expired

**Historical Note**

**ARTICLE 17. REHEARING OR REVIEW**
R4-11-1701. Procedure
A. Except as provided in subsection (F), a licensee, certificate holder, or business entity who is aggrieved by an order issued by the Board may file a written motion for rehearing or review with the Board, pursuant to A.R.S. Title 41, Chapter 6, Article 10, specifying the grounds for rehearing or review.

B. A licensee, certificate holder, or business entity filing a motion for rehearing or review under this rule may amend the motion at any time before it is ruled upon by the Board. The opposing party may file a response within 15 days after the date the motion for rehearing or review is filed. The Board may require that the parties file supplemental memoranda explaining the issues raised in the motion, and may permit oral argument.

C. The Board may grant a rehearing or review of the order for any of the following causes materially affecting a licensee, certificate holder, or business entity's rights:
1. Irregularity in the proceedings of the Board or any order or abuse of discretion, which deprived a licensee, certificate holder, or business entity of a fair hearing;
2. Misconduct of the Board, its personnel, the administrative law judge, or the prevailing party;
3. Accident or surprise which could not have been prevented by ordinary prudence;
4. Excessive or insufficient penalties;
5. Error in the admission or rejection of evidence or other errors of law occurring at the hearing or during the progress of the proceeding;
6. That the findings of fact or decision is arbitrary, capricious, or an abuse of discretion;
7. That the findings of fact or decision is not justified by the evidence or is contrary to law; or
8. Newly discovered, material evidence which could not, with reasonable diligence, have been discovered and produced at the original hearing.
D. The Board may affirm or modify the order or grant a rehearing or review to all or part of the issues for any of the reasons in subsection (C). The Board, within the time for filing a motion for rehearing or review, may grant a rehearing or review on its own initiative for any reason for which it might have granted relief on motion of a party. An order granting a rehearing or review shall specify the grounds on which rehearing or review is granted, and any rehearing or review shall cover only those matters specified.

E. When a motion for rehearing or review is based upon affidavits, they shall be served with the motion. An opposing party may, within 15 days after such service, serve opposing affidavits.

F. If the Board makes specific findings that the immediate effectiveness of the order is necessary for the preservation of public health and safety and that a rehearing or review is impracticable, unnecessary, or contrary to the public interest, the order may be issued as a final order without an opportunity for a rehearing or review. If an order is issued as a final order without an opportunity or rehearing or review, the aggrieved party shall make an application for judicial review of the order within the time limits permitted for application for judicial review of the Board's final order.

G. The Board shall rule on the motion for rehearing or review within 15 days after the response has been filed, or at the Board's next meeting after the motion is received, whichever is later.

Historical Note
New Section R4-11-1701 renumbered from R4-11-701 and amended by final rulemaking at 5 A.A.R. 580, effective February 4, 1999 (Supp. 99-1). Amended by final rulemaking at 21 A.A.R. 2971, effective January 2, 2016 (Supp. 15-4).

ARTICLE 18. BUSINESS ENTITIES

R4-11-1801. Application
Before offering dental services, a business entity required to be registered under A.R.S. § 32-1213 shall apply for registration on an application form supplied by the Board. In addition to the requirements of A.R.S. § 32-1213(B) and the fee under R4-11-402, the registration application shall include a sworn statement from the applicant that:

1. The information provided by the business entity is true and correct, and
2. No information is omitted from the application.

Historical Note
New Section made by final rulemaking at 11 A.A.R. 793, effective April 2, 2005 (Supp. 05-1).

R4-11-1802. Display of Registration
A. A business entity shall ensure that the receipt for the current registration period is:

1. Conspicuously displayed in the dental practice in a manner that is always readily observable by patients and visitors, and
2. Exhibited to members of the Board or to duly authorized agents of the Board on request.

B. A business entity’s receipt for the licensure period immediately preceding shall be kept on display until replaced by the receipt for the current period.

Historical Note
New Section made by final rulemaking at 11 A.A.R. 793, effective April 2, 2005 (Supp. 05-1).
# TABLE OF CONTENTS

## ARIZONA REVISED STATUTES

### Article 1 – Dental Board

<table>
<thead>
<tr>
<th>Section</th>
<th>Description</th>
</tr>
</thead>
<tbody>
<tr>
<td>32-1201</td>
<td>Definitions</td>
</tr>
<tr>
<td>32-1201.01</td>
<td>Definition of unprofessional conduct</td>
</tr>
<tr>
<td>32-1202</td>
<td>Scope of practice; practice of dentistry</td>
</tr>
<tr>
<td>32-1203</td>
<td>State board of dental examiners; qualifications of members; terms</td>
</tr>
<tr>
<td>32-1204</td>
<td>Removal from office</td>
</tr>
<tr>
<td>32-1205</td>
<td>Organization; meetings; quorum; staff</td>
</tr>
<tr>
<td>32-1206</td>
<td>Compensation of board</td>
</tr>
<tr>
<td>32-1207</td>
<td>Powers and duties; executive director; immunity; fees; definition</td>
</tr>
<tr>
<td>32-1208</td>
<td>Failure to respond to subpoena; civil penalty</td>
</tr>
<tr>
<td>32-1209</td>
<td>Admissibility of records in evidence</td>
</tr>
<tr>
<td>32-1210</td>
<td>Annual report</td>
</tr>
<tr>
<td>32-1212</td>
<td>Dental board fund</td>
</tr>
<tr>
<td>32-1213</td>
<td>Business entities; registration; renewal; civil penalty; exceptions</td>
</tr>
</tbody>
</table>

### Article 2 – Licensing

<table>
<thead>
<tr>
<th>Section</th>
<th>Description</th>
</tr>
</thead>
<tbody>
<tr>
<td>32-1231</td>
<td>Persons not required to be licensed</td>
</tr>
<tr>
<td>32-1232</td>
<td>Qualifications of applicant; application; fee; fingerprint clearance card</td>
</tr>
<tr>
<td>32-1233</td>
<td>Applications for licensure; examination requirements</td>
</tr>
<tr>
<td>32-1234</td>
<td>Dental consultant license</td>
</tr>
<tr>
<td>32-1235</td>
<td>Reinstatement of license or certificate; application for previously denied license or certificate</td>
</tr>
<tr>
<td>32-1236</td>
<td>Dentist triennial licensure; continuing education; license reinstatement; license for each place of practice; notice of change of address or place of practice; retired and disabled license status; penalties</td>
</tr>
<tr>
<td>32-1237</td>
<td>Restricted permit</td>
</tr>
<tr>
<td>32-1238</td>
<td>Issuance of restricted permit</td>
</tr>
<tr>
<td>32-1239</td>
<td>Practice under restricted permit</td>
</tr>
<tr>
<td>32-1240</td>
<td>Licensure by credential; examinations; waiver; fee</td>
</tr>
<tr>
<td>32-1241</td>
<td>Training permits; qualified military health professionals</td>
</tr>
</tbody>
</table>

### Article 3 – Regulation

<table>
<thead>
<tr>
<th>Section</th>
<th>Description</th>
</tr>
</thead>
<tbody>
<tr>
<td>32-1261</td>
<td>Practicing without license; classification</td>
</tr>
<tr>
<td>32-1262</td>
<td>Corporate practice; display of name and license receipt or license; duplicate licenses; fee</td>
</tr>
<tr>
<td>32-1263</td>
<td>Grounds for disciplinary action; definition</td>
</tr>
<tr>
<td>32-1263.01</td>
<td>Types of disciplinary action; letter of concern; judicial review; notice; removal of notice; violation; classification</td>
</tr>
<tr>
<td>32-1263.02</td>
<td>Investigation and adjudication of complaints; disciplinary action; civil penalty; immunity; subpoena authority; definitions</td>
</tr>
<tr>
<td>32-1263.03</td>
<td>Executive director; complaints; termination; review</td>
</tr>
<tr>
<td>32-1264</td>
<td>Maintenance of records</td>
</tr>
<tr>
<td>32-1265</td>
<td>Interpretation of chapter</td>
</tr>
<tr>
<td>32-1266</td>
<td>Prosecution of violations</td>
</tr>
<tr>
<td>32-1267</td>
<td>Use of fraudulent instruments; classification</td>
</tr>
<tr>
<td>32-1268</td>
<td>Violations; classification; required proof</td>
</tr>
<tr>
<td>32-1269</td>
<td>Violation; classification; injunctive relief</td>
</tr>
<tr>
<td>32-1270</td>
<td>Deceased or incapacitated dentists; notification</td>
</tr>
<tr>
<td>32-1271</td>
<td>Marking of dentures for identification; retention and release of information</td>
</tr>
</tbody>
</table>
Article 3.1 – Licensing and Regulation of Dental Therapists

32-1276 Definitions
32-1276.01 Application for licensure; requirements; fingerprint clearance card; denial or suspension of application
32-1276.02 Dental therapist triennial licensure; continuing education; license renewal and reinstatement; fees; civil penalties; retired and disabled license status
32-1276.03 Practice of dental therapy; authorized procedures; supervision requirements; restrictions
32-1276.04 Dental therapists; clinical practice; supervising dentists; written collaborative practice agreements
32-1276.05 Dental therapists; supervising dentists; collaborative practice relationships
32-1276.06 Practicing without a license; violation; classification
32-1276.07 Licensure by credential; examination waiver; fee
32-1276.08 Dental therapy schools; credit for prior experience or coursework

Article 4 – Licensing and Regulation of Dental Hygienists

32-1281 Practicing as dental hygienist; supervision requirements; definitions
32-1282 Administration and enforcement
32-1283 Disposition of revenues
32-1284 Qualifications of applicant; application; fee; fingerprint clearance card; rules; denial or suspension of application
32-1285 Applicants for licensure; examination requirements
32-1286 Recognized dental hygiene schools; credit for prior learning
32-1287 Dental hygienist triennial licensure; continuing education; license reinstatement; notice of change of address; penalties; retired and disabled licensees
32-1288 Practicing without license; classification
32-1289 Employment of dental hygienist by public agency; institution or school
32-1289.01 Dental hygienists; affiliated practice relationships; rules; definition
32-1290 Grounds for censure; probation; suspension or revocation of license; procedure
32-1291 Dental assistants; regulation; duties
32-1291.01 Expanded function dental assistants; training and examination requirements; duties
32-1292 Restricted permits; suspension; expiration; renewal
32-1292.01 Licensure by credential; examinations; waiver; fee

Article 5 – Certification and Regulation of Denturists

32-1293 Practicing as denturist; denture technology; dental laboratory technician
32-1294 Supervision by dentist; definitions; mouth preparation by dentist; liability; business association
32-1295 Board of dental examiners; additional powers and duties
32-1296 Qualifications of applicant
32-1297.01 Application for certification; fingerprint clearance card; denial; suspension
32-1297.03 Qualification for reexamination
32-1297.04 Fees
32-1297.05 Disposition of revenues
32-1297.06 Denturist certification; continuing education; certificate reinstatement; certificate for each place of practice; notice of change of address or place of practice; penalties
32-1297.07 Discipline; procedure
32-1297.08 Injunction
32-1297.09 Violations; classification
Article 6 – Dispensing of Drugs and Devices

32-1298 Dispensing of drugs and devices; conditions; civil penalty; definition

Article 7 – Rehabilitation

32-1299 Substance abuse treatment and rehabilitation program; private contract; funding; confidential stipulation agreement

Article 8 – Mobile Dental Facilities and Portable Dental Units

32-1299.21 Definitions
32-1299.22 Mobile dental facilities; portable dental units; permits; exceptions
32-1299.23 Permit application; fees; renewal; notification of changes
32-1299.24 Standards of operation and practice
32-1299.25 Informed consent; information for patients
32-1299.26 Disciplinary actions; cessation of operation
ARIZONA ADMINISTRATIVE CODE (RULES)

Article 1 – Definitions
R4-11-101 Definitions
R4-11-102 Renumbered
R4-11-103 Renumbered
R4-11-104 Repealed
R4-11-105 Repealed

Article 2 – Licensure by Credential
R4-11-201 Clinical Examination; Requirements
R4-11-202 Dental Licensure by Credential; Application
R4-11-203 Dental Hygienist Licensure by Credential; Application
R4-11-204 Dental Assistant Radiography Certification by Credential
R4-11-205 Application for Dental Assistant Radiography Certification by Credential
R4-11-206 Repealed
R4-11-207 Repealed
R4-11-208 Repealed
R4-11-209 Repealed
R4-11-210 Repealed
R4-11-211 Repealed
R4-11-212 Repealed
R4-11-213 Repealed
R4-11-214 Repealed
R4-11-215 Repealed
R4-11-216 Repealed

Article 3 – Examinations, Licensing Qualifications, Application and Renewal, Time-Frames
R4-11-301 Application
R4-11-302 Repealed
R4-11-303 Application Processing Procedures; Issuance, Denial, and Renewal of Dental Licenses, Restricted Permits, Dental Hygiene Licenses, Dental Consultant Licenses, Denturist Certificate, Drug or Device Dispensing Registrations, Business Entity Registration and Mobile Dental Facility and Portable Dental Unit Permits
R4-11-304 Application Processing Procedures; Issuance and Denial of Dental Assistant Certificates Radiography Certification by Credential
R4-11-305 Application Processing Procedures; Issuance, Denial, and Renewal of General Anesthesia and Deep Sedation Permits, Parental Sedation Permits, Oral Sedation Permits, and Permit to Employ a Physician Anesthesiologist or CNRA 11

Article 4 – Fees
R4-11-401 Retired or Disabled Licensure Renewal Fee
R4-11-402 Business Entity Fees
R4-11-403 Licensing Fees
R4-11-404 Repealed
R4-11-405 Charges for Board Services
R4-11-406 Anesthesia and Sedation Permit Fees
R4-11-407 Renumbered
R4-11-408 Repealed
R4-11-409 Repealed
Article 5 – Dentists
   R4-11-501 Dentist of Record
   R4-11-502 Affiliated Practice
   R4-11-504 Renumbered
   R4-11-505 Repealed
   R4-11-506 Repealed

Article 6 – Dental Hygienists
   R4-11-601 Duties and Qualifications
   R4-11-602 Care of Homebound Patients
   R4-11-603 Limitation on Number Supervised
   R4-11-604 Selection Committee and Process
   R4-11-605 Dental Hygiene Committee
   R4-11-606 Candidate Qualifications and Submissions
   R4-11-607 Duties of the Dental Hygiene Committee
   R4-11-608 Dental Hygiene Consultants
   R4-11-609 Affiliated Practice

Article 7 – Dental Assistants
   R4-11-701 Procedures and Functions Performed by a Dental Assistant under Supervision
   R4-11-702 Limitations on Procedures or Functions Performed by a Dental Assistant under Supervision
   R4-11-703 Repealed
   R4-11-704 Repealed
   R4-11-705 Repealed
   R4-11-706 Repealed
   R4-11-707 Repealed
   R4-11-708 Repealed
   R4-11-709 Repealed
   R4-11-710 Repealed

Article 8 – Denturists
   R4-11-801 Expired
   R4-11-802 Expired
   R4-11-803 Renumbered
   R4-11-804 Renumbered
   R4-11-805 Renumbered
   R4-11-806 Renumbered

Article 9 – Restricted Permits
   R4-11-901 Application for Restricted Permit
   R4-11-902 Issuance of a Restricted Permit
   R4-11-903 Recognition of a Charitable Dental Clinic Organization
   R4-11-904 Determination of Minimum Rate
   R4-11-905 Expired
   R4-11-906 Expired
   R4-11-907 Repealed
   R4-11-908 Repealed
   R4-11-909 Renumbered

Article 10 – Dental Technicians
   R4-11-1001 Expired
Article 11 – Advertising
R4-11-1101 Advertising
R4-11-1102 Advertising as a Recognized Specialist
R4-11-1103 Reserved
R4-11-1104 Repealed
R4-11-1105 Repealed

Article 12 – Continuing Dental Education and Renewal Requirements
R4-11-1201 Continuing Dental Education
R4-11-1202 Continuing Dental Education Compliance and Renewal Requirements
R4-11-1203 Dentists and Dental Consultants
R4-11-1204 Dental Hygienists
R4-11-1205 Denturists
R4-11-1206 Restricted Permit Holders – Dental
R4-11-1207 Restricted Permit Holders – Dental Hygiene
R4-11-1208 Retired Licensees or Certificate Holders
R4-11-1209 Types of Courses

Article 13 – General Anesthesia and Sedation
R4-11-1301 General Anesthesia and Deep Sedation
R4-11-1302 Parenteral Sedation
R4-11-1303 Oral Sedation
R4-11-1304 Permit to Employ or Work with a Physician Anesthesiologist or Certified Registered Nurse Anesthetist (CNRA)
R4-11-1305 Reports of Adverse Occurrences
R4-11-1306 Education; Continued Competency
R4-11-1307 Renewal of Permit

Article 14 – Dispensing Drugs and Devices
R4-11-1401 Prescribing
R4-11-1402 Labeling and Dispensing
R4-11-1403 Storage and Packaging
R4-11-1404 Recordkeeping
R4-11-1405 Compliance
R4-11-1406 Dispensing for Profit Registration and Renewal
R4-11-1407 Renumbered
R4-11-1408 Renumbered
R4-11-1409 Repealed

Article 15 – Complaints, Investigations, Disciplinary Action
R4-11-1501 Ex-parte Communication
R4-11-1502 Dental Consultant Qualifications
R4-11-1503 Initial Complaint Review
R4-11-1504 Postponement of Interview

Article 16 – Expired
R4-11-1601 Expired
Article 17 – Rehearing or Review
   R4-11-1701 Procedure

Article 18 – Business Entities
   R4-11-1801 Application
   R4-11-1802 Display of Registration
In this chapter, unless the context otherwise requires:

1. "Affiliated practice dental hygienist" means any licensed dental hygienist who is able, pursuant to section 32-1289.01, to initiate treatment based on the dental hygienist's assessment of a patient's needs according to the terms of a written affiliated practice agreement with a dentist, to treat the patient without the presence of a dentist and to maintain a provider-patient relationship.

2. "Auxiliary personnel" means all dental assistants, dental technicians, dental x-ray technicians and other persons employed by dentists or firms and businesses providing dental services to dentists.

3. "Board" means the state board of dental examiners.

4. "Business entity" means a business organization that has an ownership that includes any persons who are not licensed or certified to provide dental services in this state, that offers to the public professional services regulated by the board and that is established pursuant to the laws of any state or foreign country.

5. "Dental assistant" means any person who acts as an assistant to a dentist, dental therapist or dental hygienist by rendering personal services to a patient that involve close proximity to the patient while the patient is under treatment or observation or undergoing diagnostic procedures.

6. "Dental hygienist" means any person who is licensed and engaged in the general practice of dental hygiene and all related and associated duties, including educational, clinical and therapeutic dental hygiene procedures.

7. "Dental incompetence" means lacking in sufficient dentistry knowledge or skills, or both, in that field of dentistry in which the dentist, dental therapist, denturist or dental hygienist concerned engages, to a degree likely to endanger the health of that person's patients.

8. "Dental laboratory technician" means any person, other than a licensed dentist, who, pursuant to a written work order of a dentist, fabricates artificial teeth, prosthetic appliances or other mechanical and artificial contrivances designed to correct or alleviate injuries or defects, both developmental and acquired, disorders or deficiencies of the human oral cavity, teeth, investing tissues, maxilla or mandible or adjacent associated structures.

9. "Dental therapist" means any person who is licensed and engaged in the general practice of dental therapy and all related and associated duties, including educational, clinical and therapeutic dental therapy procedures.

10. "Dental x-ray laboratory technician" means any person, other than a licensed dentist, who, pursuant to a written work order of a dentist, performs dental and maxillofacial radiography, including cephalometrics, panoramic and maxillofacial tomography and other dental related nonfluoroscopic diagnostic imaging modalities.
11. "Dentistry", "dentist" and "dental" mean the general practice of dentistry and all specialties or restricted practices of dentistry.

12. "Denturist" means a person practicing denture technology pursuant to article 5 of this chapter.

13. "Disciplinary action" means regulatory sanctions that are imposed by the board in combination with, or as an alternative to, revocation or suspension of a license and that may include:

(a) Imposition of an administrative penalty in an amount not to exceed two thousand dollars for each violation of this chapter or rules adopted under this chapter.

(b) Imposition of restrictions on the scope of practice.

(c) Imposition of peer review and professional education requirements.

(d) Imposition of censure or probation requirements best adapted to protect the public welfare, which may include a requirement for restitution to the patient resulting from violations of this chapter or rules adopted under this chapter.

14. "Irregularities in billing" means submitting any claim, bill or government assistance claim to any patient, responsible party or third-party payor for dental services rendered that is materially false with the intent to receive unearned income as evidenced by any of the following:

(a) Charges for services not rendered.

(b) Any treatment date that does not accurately reflect the date when the service and procedures were actually completed.

(c) Any description of a dental service or procedure that does not accurately reflect the actual work completed.

(d) Any charge for a service or procedure that cannot be clinically justified or determined to be necessary.

(e) Any statement that is material to the claim and that the licensee knows is false or misleading.

(f) An abrogation of the copayment provisions of a dental insurance contract by a waiver of all or a part of the copayment from the patient if this results in an excessive or fraudulent charge to a third party or if the waiver is used as an enticement to receive dental services from that provider. This subdivision does not interfere with a contractual relationship between a third-party payor and a licensee or business entity registered with the board.

(g) Any other practice in billing that results in excessive or fraudulent charges to the patient.

15. "Letter of concern" means an advisory letter to notify a licensee or a registered business entity that, while the evidence does not warrant disciplinary action, the board believes that the licensee or registered business entity should modify or eliminate certain practices and that continuation of the activities that led to the information being submitted to the board may result in board action against the practitioner's license or the business entity's registration. A letter of concern is not a disciplinary action. A letter of concern is a public document and may be used in a future disciplinary action.
16. "Licensed" means licensed pursuant to this chapter.

17. "Place of practice" means each physical location at which a person who is licensed pursuant to this chapter performs services subject to this chapter.

18. "Primary mailing address" means the address on file with the board and to which official board correspondence, notices or documents are delivered in a manner determined by the board.

19. "Recognized dental hygiene school" means a school that has a dental hygiene program with a minimum two academic year curriculum, or the equivalent of four semesters, and that is approved by the board and accredited by the American dental association commission on dental accreditation.

20. "Recognized dental school" means a dental school that is accredited by the American dental association commission on dental accreditation.

21. "Recognized dental therapy school" means a school that is accredited or that has received initial accreditation by the American dental association commission on dental accreditation.

22. "Recognized denturist school" means a denturist school that maintains standards of entrance, study and graduation and that is accredited by the United States department of education or the council on higher education accreditation.


24. "Teledentistry" means the use of data transmitted through interactive audio, video or data communications for the purposes of examination, diagnosis, treatment planning, consultation and directing the delivery of treatment by dentists and dental providers in settings permissible under this chapter or specified in rules adopted by the board.

32-1201.01. Definition of unprofessional conduct

For the purposes of this chapter, "unprofessional conduct" means the following acts, whether occurring in this state or elsewhere:

1. Intentionally betraying a professional confidence or intentionally violating a privileged communication except as either of these may otherwise be required by law. This paragraph does not prevent members of the board from the full and free exchange of information with the licensing and disciplinary boards of other states, territories or districts of the United States or foreign countries, with the Arizona state dental association or any of its component societies or with the dental societies of other states, counties, districts, territories or foreign countries.

2. Using controlled substances as defined in section 36-2501, narcotic drugs, dangerous drugs or marijuana as defined in section 13-3401, or hypnotic drugs, including acetyurea derivatives, barbituric acid derivatives, chloral, paraldehyde, phenylhydantoin derivatives, sulfonmethane derivatives or any compounds, mixtures or preparations that may be used for producing hypnotic effects, or alcohol to the extent that it affects the ability of the dentist, dental therapist, denturist or dental hygienist to practice that person's profession.
3. Prescribing, dispensing or using drugs for other than accepted dental therapeutic purposes or for other than medically indicated supportive therapy in conjunction with managing a patient's dental needs.

4. Committing gross malpractice or repeated acts constituting malpractice.

5. Acting or assuming to act as a member of the board if this is not true.

6. Procuring or attempting to procure a certificate of the national board of dental examiners or a license to practice dentistry or dental hygiene by fraud or misrepresentation or by knowingly taking advantage of the mistake of another.

7. Having professional connection with or lending one's name to an illegal practitioner of dentistry or any of the other healing arts.

8. Representing that a manifestly not correctable condition, disease, injury, ailment or infirmity can be permanently corrected, or that a correctable condition, disease, injury, ailment or infirmity can be corrected within a stated time, if this is not true.

9. Offering, undertaking or agreeing to correct, cure or treat a condition, disease, injury, ailment or infirmity by a secret means, method, device or instrumentality.

10. Refusing to divulge to the board, on reasonable notice and demand, the means, method, device or instrumentality used in the treatment of a condition, disease, injury, ailment or infirmity.

11. Dividing a professional fee or offering, providing or receiving any consideration for patient referrals among or between dental care providers or dental care institutions or entities. This paragraph does not prohibit the division of fees among licensees who are engaged in a bona fide employment, partnership, corporate or contractual relationship for the delivery of professional services.

12. Knowingly making any false or fraudulent statement, written or oral, in connection with the practice of dentistry.

13. Having a license refused, revoked or suspended or any other disciplinary action taken against a dentist by, or voluntarily surrendering a license in lieu of disciplinary action to, any other state, territory, district or country, unless the board finds that this action was not taken for reasons that relate to the person's ability to safely and skillfully practice dentistry or to any act of unprofessional conduct.

14. Committing any conduct or practice that constitutes a danger to the health, welfare or safety of the patient or the public.

15. Obtaining a fee by fraud or misrepresentation, or wilfully or intentionally filing a fraudulent claim with a third party for services rendered or to be rendered to a patient.


17. Employing unlicensed persons to perform or aiding and abetting unlicensed persons in the performance of work that can be done legally only by licensed persons.
18. Practicing dentistry under a false or assumed name in this state, other than as allowed by section 32-1262.

19. Wilfully or intentionally causing or permitting supervised personnel or auxiliary personnel operating under the licensee's supervision to commit illegal acts or perform an act or operation other than that permitted under article 4 of this chapter and rules adopted by the board pursuant to section 32-1282.

20. Committing the following advertising practices:

   (a) Publishing or circulating, directly or indirectly, any false, fraudulent or misleading statements concerning the skill, methods or practices of the licensee or of any other person.

   (b) Advertising in any manner that tends to deceive or defraud the public.

21. Failing to dispense drugs and devices in compliance with article 6 of this chapter.

22. Failing to comply with a board order, including an order of censure or probation.

23. Failing to comply with a board subpoena in a timely manner.

24. Failing or refusing to maintain adequate patient records.

25. Failing to allow properly authorized board personnel, on demand, to inspect the place of practice and examine and have access to documents, books, reports and records maintained by the licensee or certificate holder that relate to the dental practice or dental-related activity.

26. Refusing to submit to a body fluid examination as required through a monitored treatment program or pursuant to a board investigation into a licensee's or certificate holder's alleged substance abuse.

27. Failing to inform a patient of the type of material the dentist will use in the patient's dental filling and the reason why the dentist is using that particular filling.

28. Failing to report in writing to the board any evidence that a dentist, dental therapist, denturist or dental hygienist is or may be:

   (a) Professionally incompetent.

   (b) Engaging in unprofessional conduct.

   (c) Impaired by drugs or alcohol.

   (d) Mentally or physically unable to safely engage in the activities of a dentist, dental therapist, denturist or dental hygienist pursuant to this chapter.

29. Filing a false report pursuant to paragraph 28 of this section.
30. Practicing dentistry, dental therapy, dental hygiene or denturism in a business entity that is not registered with the board as required by section 32-1213.

31. Dispensing a schedule II controlled substance that is an opioid.

32. Providing services or procedures as a dental therapist that exceed the scope of practice or exceed the services or procedures authorized in the written collaborative practice agreement.

32-1202. Scope of practice; practice of dentistry

For the purposes of this chapter, the practice of dentistry is the diagnosis, surgical or nonsurgical treatment and performance of related adjunctive procedures for any disease, pain, deformity, deficiency, injury or physical condition of the human tooth or teeth, alveolar process, gums, lips, cheek, jaws, oral cavity and associated tissues, including the removal of stains, discolorations and concretions.

32-1203. State board of dental examiners; qualifications of members; terms

A. The state board of dental examiners is established consisting of six licensed dentists, two licensed dental hygienists, two public members and one business entity member appointed by the governor for a term of four years, to begin and end on January 1.

B. Before appointment by the governor, a prospective member of the board shall submit a full set of fingerprints to the governor for the purpose of obtaining a state and federal criminal records check pursuant to section 41-1750 and Public Law 92-544. The department of public safety may exchange this fingerprint data with the federal bureau of investigation.

C. The business entity member and the public members may participate in all board proceedings and determinations, except in the preparing, giving or grading of examinations for licensure. Dental hygienist board members may participate in all board proceedings and determinations, except in the preparing, giving and grading of examinations that do not relate to dental hygiene procedures.

D. A board member shall not serve more than two consecutive terms.

E. For the purposes of this section, business entity member does not include a person who is licensed pursuant to this chapter.

32-1204. Removal from office

The governor may remove a member of the board for persistent neglect of duty, incompetency, unfair, biased, partial or dishonorable conduct, or gross immorality. Conviction of a felony or revocation of the dental license of a member of the board shall ipso facto terminate his membership.

32-1205. Organization; meetings; quorum; staff

A. The board shall elect from its membership a president and a vice-president who shall act also as secretary-treasurer.

B. Board meetings shall be conducted pursuant to title 38, chapter 3, article 3.1. A majority of the board constitutes a quorum. Beginning September 1, 2015, meetings held pursuant to this
subsection shall be audio recorded and the audio recording shall be posted to the board's website within five business days after the meeting.

C. The board may employ an executive director, subject to title 41, chapter 4, article 4 and legislative appropriation.

D. The board or the executive director may employ personnel, as necessary, subject to title 41, chapter 4, article 4 and legislative appropriation.

32-1206. **Compensation of board**

Members of the board are entitled to receive compensation in the amount of two hundred fifty dollars for each day actually spent in performing necessary work authorized by the board and all expenses necessarily and properly incurred while performing this work.

32-1207. **Powers and duties; executive director; immunity; fees; definition**

A. The board shall:

1. Adopt rules that are not inconsistent with this chapter for regulating its own conduct, for holding examinations and for regulating the practice of dentists and supervised personnel and registered business entities, provided:

   (a) Regulation of supervised personnel is based on the degree of education and training of the supervised personnel, the state of scientific technology available and the necessary degree of supervision of the supervised personnel by dentists.

   (b) Except as provided pursuant to sections 32-1276.03 and 32-1281, only licensed dentists may perform diagnosis and treatment planning, prescribe medication and perform surgical procedures on hard and soft tissues.

   (c) Only a licensed dentist, a dental therapist either under the direct supervision of a dentist or pursuant to a written collaborative practice agreement or a dental hygienist in consultation with a dentist may perform examinations, oral health assessments and treatment sequencing for dental hygiene procedures.

2. Adopt a seal.

3. Maintain a record that is available to the board at all times of its acts and proceedings, including the issuance, denial, renewal, suspension or revocation of licenses and the disposition of complaints. The existence of a pending complaint or investigation shall not be disclosed to the public. Records of complaints shall be available to the public, except only as follows:

   (a) If the board dismisses or terminates a complaint, the record of the complaint shall not be available to the public.

   (b) If the board has issued a nondisciplinary letter of concern, the record of the complaint shall be available to the public only for a period of five years after the date the board issued the letter of concern.
(c) If the board has required additional nondisciplinary continuing education pursuant to section 32-1263.01 but has not taken further action, the record of the complaint shall be available to the public only for a period of five years after the licensee satisfies this requirement.

(d) If the board has assessed a nondisciplinary civil penalty pursuant to section 32-1208 but has not taken further action, the record of the complaint shall be available to the public only for a period of five years after the licensee satisfies this requirement.

4. Establish a uniform and reasonable standard of minimum educational requirements consistent with the accreditation standards of the American dental association commission on dental accreditation to be observed by dental schools, dental therapy schools and dental hygiene schools in order to be classified as recognized dental schools, dental therapy schools or dental hygiene schools.

5. Establish a uniform and reasonable standard of minimum educational requirements that are consistent with the accreditation standards of the United States department of education or the council on higher education accreditation and that must be observed by denture technology schools in order to be classified as recognized denture technology schools.

6. Determine the reputability and classification of dental schools, dental therapy schools, dental hygiene schools and denture technology schools in accordance with their compliance with the standard set forth in paragraph 4 or 5 of this subsection, whichever is applicable.

7. Issue licenses to persons who the board determines are eligible for licensure pursuant to this chapter.

8. Determine the eligibility of applicants for restricted permits and issue restricted permits to those found eligible.

9. Pursuant to section 32-1263.02, investigate charges of misconduct on the part of licensees and persons to whom restricted permits have been issued.

10. Issue a letter of concern, which is not a disciplinary action but refers to practices that may lead to a violation and to disciplinary action.

11. Issue decrees of censure, fix periods and terms of probation, suspend or revoke licenses, certificates and restricted permits, as the facts may warrant, and reinstate licenses, certificates and restricted permits in proper cases.

12. Collect and disburse monies.

13. Perform all other duties that are necessary to enforce this chapter and that are not specifically or by necessary implication delegated to another person.

14. Establish criteria for the renewal of permits issued pursuant to board rules relating to general anesthesia and sedation.

B. The board may:

1. Sue and be sued.
2. Issue subpoenas, including subpoenas to the custodian of patient records, compel attendance of witnesses, administer oaths and take testimony concerning all matters within the board’s jurisdiction. If a person refuses to obey a subpoena issued by the board, the refusal shall be certified to the superior court and proceedings shall be instituted for contempt of court.

3. Adopt rules:

   (a) Prescribing requirements for continuing education for renewal of all licenses issued pursuant to this chapter.

   (b) Prescribing educational and experience prerequisites for the administration of intravenous or intramuscular drugs for the purpose of sedation or for use of general anesthetics in conjunction with a dental treatment procedure.

   (c) Prescribing requirements for obtaining licenses for retired licensees or licensees who have a disability, including the triennial license renewal fee.

4. Hire consultants to assist the board in the performance of its duties and employ persons to provide investigative, professional and clerical assistance as the board deems necessary.

5. Contract with other state or federal agencies as required to carry out the purposes of this chapter.

6. If determined by the board, order physical, psychological, psychiatric and competency evaluations of licensed dentists, dental therapists and dental hygienists, certified denturists and applicants for licensure and certification at the expense of those individuals.

C. The executive director or the executive director’s designee may:

1. Issue and renew licenses, certificates and permits to applicants who meet the requirements of this chapter.

2. Initiate an investigation if evidence appears to demonstrate that a dentist, dental therapist, dental hygienist, denturist or restricted permit holder may be engaged in unprofessional conduct or may be unable to safely practice dentistry.

3. Initiate an investigation if evidence appears to demonstrate that a business entity may be engaged in unethical conduct.

4. Subject to board approval, enter into a consent agreement with a dentist, dental therapist, denturist, dental hygienist or restricted permit holder if there is evidence of unprofessional conduct.

5. Subject to board approval, enter into a consent agreement with a business entity if there is evidence of unethical conduct.

6. Refer cases to the board for a formal interview.

7. If delegated by the board, enter into a stipulation agreement with a person under the board’s jurisdiction for the treatment, rehabilitation and monitoring of chemical substance abuse or misuse.
D. Members of the board are personally immune from liability with respect to all acts done and actions taken in good faith and within the scope of their authority.

E. The board by rule shall require that a licensee obtain a permit for the application of general anesthesia, semiconscious sedation or conscious sedation, shall establish and collect a fee of not more than three hundred dollars to cover administrative costs connected with issuing the permit and shall conduct inspections to ensure compliance.

F. The board by rule may establish and collect fees for license verification, board meeting agendas and minutes, published lists and mailing labels.

G. This section does not prohibit the board from conducting its authorized duties in a public meeting.

H. For the purposes of this section, "record of complaint" means the document reflecting the final disposition of a complaint or investigation.

32-1208. Failure to respond to subpoena; civil penalty

In addition to any disciplinary action authorized by statute, the board may assess a nondisciplinary civil penalty in an amount not to exceed five hundred dollars for a licensee who fails to respond to a subpoena issued by the board pursuant to this chapter.

32-1209. Admissibility of records in evidence

A copy of any part of the recorded proceedings of the board certified by the executive director, or a certificate by the executive director that any asserted or purported record, name, license number, restricted permit number or action is not entered in the recorded proceedings of the board, may be admitted as evidence in any court in this state. A person making application and paying a fee set by the board may procure from the executive director a certified copy of any portion of the records of the board unless these records are classified as confidential as provided by law. Unless otherwise provided by law, all records concerning an investigation, examination materials, records of examination grading and applicants' performance and transcripts of educational institutions concerning applicants are confidential and are not public records. "Records of applicants' performance" does not include records of whether an applicant passed or failed an examination.

32-1210. Annual report

A. Not later than October 1 of each year, the board shall make an annual written report to the governor for the preceding year that includes the following information:

1. The number of licensed dentists in the state.

2. The number of licenses issued during the preceding year and to whom issued.

3. The number of examinations held and the dates of the examinations.

4. The facts with respect to accusations filed with the board, of hearings held in connection with those accusations and the results of those hearings.

5. The facts with respect to prosecution of persons charged with violations of this chapter.
6. A full and complete statement of financial transactions of the board.

7. Any other matters that the board wishes to include in the report or that the governor requires.

B. On request of the governor the board shall submit a supplemental report.

32-1212. Dental board fund

A. Except as provided in subsection C of this section, pursuant to sections 35-146 and 35-147, the executive director of the board shall each month deposit ten per cent of all fees, fines and other revenue received by the board, in the state general fund and deposit the remaining ninety per cent in the dental board fund.

B. Monies deposited in the dental board fund shall be subject to the provisions of section 35-143.01.

C. Monies from administrative penalties received pursuant to section 32-1263.01 shall be deposited, pursuant to sections 35-146 and 35-147, in the state general fund.

32-1213. Business entities; registration; renewal; civil penalty; exceptions

A. A business entity may not offer dental services pursuant to this chapter unless:

1. The entity is registered with the board pursuant to this section.

2. The services are conducted by a licensee pursuant to this chapter.

B. The business entity must file a registration application on a form provided by the board. The application must include:

1. A description of the entity’s services offered to the public.

2. The name of any dentist who is authorized to provide and who is responsible for providing the dental services offered at each office.

3. The names and addresses of the officers and directors of the business entity.

4. A registration fee prescribed by the board in rule.

C. A business entity must file a separate registration application and pay a fee for each branch office in this state.

D. A registration expires three years after the date the board issues the registration. A business entity that wishes to renew a registration must submit an application for renewal as prescribed by the board on a triennial basis on a form provided by the board before the expiration date. An entity that fails to renew the registration before the expiration date is subject to a late fee as prescribed by the board by rule. The board may stagger the dates for renewal applications.

E. The business entity must notify the board in writing within thirty days after any change:
1. In the entity's name, address or telephone number.

2. In the officers or directors of the business entity.

3. In the name of any dentist who is authorized to provide and who is responsible for providing the dental services in any facility.

F. The business entity shall establish a written protocol for the secure storage, transfer and access of the dental records of the business entity's patients. This protocol must include, at a minimum, procedures for:

1. Notifying patients of the future locations of their records if the business entity terminates or sells the practice.

2. Disposing of unclaimed dental records.

3. The timely response to requests by patients for copies of their records.

G. The business entity must notify the board within thirty days after the dissolution of any registered business entity or the closing or relocation of any facility and must disclose to the board the entity's procedure by which its patients may obtain their records.

H. The board may do any of the following pursuant to its disciplinary procedures if an entity violates the board's statutes or rules:

1. Refuse to issue a registration.

2. Suspend or revoke a registration.

3. Impose a civil penalty of not more than $2,000 for each violation.

4. Enter a decree of censure.

5. Issue an order prescribing a period and terms of probation that are best adapted to protect the public welfare and that may include a requirement for restitution to a patient for a violation of this chapter or rules adopted pursuant to this chapter.

6. Issue a letter of concern if a business entity's actions may cause the board to take disciplinary action.

I. The board shall deposit, pursuant to sections 35-146 and 35-147, civil penalties collected pursuant to this section in the state general fund.

J. This section does not apply to:

1. A sole proprietorship or partnership that consists exclusively of dentists who are licensed pursuant to this chapter.

2. Any of the following entities licensed under title 20:
(a) A service corporation.

(b) An insurer authorized to transact disability insurance.

(c) A prepaid dental plan organization that does not provide directly for prepaid dental services.

(d) A health care services organization that does not provide directly for dental services.

3. A professional corporation or professional limited liability company, the shares of which are exclusively owned by dentists who are licensed pursuant to this chapter and that is formed to engage in the practice of dentistry pursuant to title 10, chapter 20 or title 29 relating to professional limited liability companies.

4. A facility regulated by the federal government or a state, district or territory of the United States.

5. An administrator or executor of the estate of a deceased dentist or a person who is legally authorized to act for a dentist who has been adjudicated to be mentally incompetent for not more than one year after the date the board receives notice of the dentist's death or incapacitation pursuant to section 32-1270.

K. A facility that offers dental services to the public by persons licensed under this chapter shall be registered by the board unless the facility is any of the following:

1. Owned by a dentist who is licensed pursuant to this chapter.

2. Regulated by the federal government or a state, district or territory of the United States.

L. Except for issues relating to insurance coding and billing that require the name, signature and license number of the dentist providing treatment, this section does not:

1. Authorize a licensee in the course of providing dental services for an entity registered pursuant to this section to disregard or interfere with a policy or practice established by the entity for the operation and management of the business.

2. Authorize an entity registered pursuant to this section to establish or enforce a business policy or practice that may interfere with the clinical judgment of the licensee in providing dental services for the entity or may compromise a licensee's ability to comply with this chapter.

M. The board shall adopt rules that provide a method for the board to receive the assistance and advice of business entities licensed pursuant to this chapter in all matters relating to the regulation of business entities.

N. An individual currently holding a surrendered or revoked license to practice dentistry or dental hygiene in any state or jurisdiction in the United States may not have a majority ownership interest in the business entity registered pursuant to this section. Revocation and surrender of licensure shall be limited to disciplinary actions resulting in loss of license or surrender of license instead of disciplinary action. Dentists or dental hygienists affected by this subsection shall have one year after the surrender or revocation to divest themselves of their ownership interest. This subsection does not apply to publicly held companies. For the purposes of this subsection, "majority ownership interest" means an ownership interest greater than fifty percent.
Article 2 – Licensure

32-1231. Persons not required to be licensed

This chapter does not prohibit:

1. A dentist, dental therapist or dental hygienist who is officially employed in the service of the United States from practicing dentistry in the dentist's, dental therapist's or dental hygienist's official capacity, within the scope of that person's authority, on persons who are enlisted in, directly connected with or under the immediate control of some branch of service of the United States.

2. A person, whether or not licensed by this state, from practicing dental therapy either:

(a) In the discharge of official duties on behalf of the United States government, including the United States department of veterans affairs, the United States public health service and the Indian health service.

(b) While employed by tribal health programs authorized pursuant to Public Law 93-638 or urban Indian health programs.

3. An intern or student of dentistry, dental therapy or dental hygiene from operating in the clinical departments or laboratories of a recognized dental school, dental therapy school, dental hygiene school or hospital under the supervision of a dentist.

4. An unlicensed person from performing for a licensed dentist merely mechanical work on inert matter not within the oral cavity in the construction, making, alteration or repairing of any artificial dental substitute or any dental restorative or corrective appliance, if the casts or impressions for that work have been furnished by a licensed dentist and the work is directly supervised by the dentist for whom done or under a written authorization signed by the dentist, but the burden of proving that written authorization or direct supervision is on the person charged with having violated this provision.

5. A clinician who is not licensed in this state from giving demonstrations, before bona fide dental societies, study clubs and groups of professional students, that are free to the persons on whom made.

6. The state director of dental public health from performing the director’s administrative duties as prescribed by law.

7. A dentist or dental hygienist to whom a restricted permit has been issued from practicing dentistry or dental hygiene in this state as provided in sections 32-1237 and 32-1292.

8. A dentist, dental therapist or dental hygienist who is not practicing on the public at large from practicing in a recognized dental school, recognized dental therapy school or recognized dental hygiene school.

32-1232. Qualifications of applicant; application; fee; fingerprint clearance card

A. An applicant for licensure shall be of good moral character, shall meet the requirements of section 32-1233 and shall hold a diploma conferring a degree of doctor of dental medicine or doctor of dental surgery from a recognized dental school.
B. Each candidate shall submit a written application to the board accompanied by a nonrefundable Arizona dental jurisprudence examination fee of three hundred dollars. The board shall waive this fee for candidates who are holders of valid restricted permits. Each candidate shall also obtain a valid fingerprint clearance card issued pursuant to section 41-1758.03.

C. The board may deny an application for a license, for license renewal or for a restricted permit if the applicant:

1. Has committed any act that would be cause for censure, probation or suspension or revocation of a license under this chapter.

2. While unlicensed, committed or aided and abetted the commission of any act for which a license is required by this chapter.

3. Knowingly made any false statement in the application.

4. Has had a license to practice dentistry revoked by a dental regulatory board in another jurisdiction in the United States for an act that occurred in that jurisdiction and that constitutes unprofessional conduct pursuant to this chapter.

5. Is currently under suspension or restriction by a dental regulatory board in another jurisdiction in the United States for an act that occurred in that jurisdiction and that constitutes unprofessional conduct pursuant to this chapter.

6. Has surrendered, relinquished or given up a license to practice dentistry in lieu of disciplinary action by a dental regulatory board in another jurisdiction in the United States for an act that occurred in that jurisdiction and that constitutes unprofessional conduct pursuant to this chapter.

D. The board shall suspend an application for a license, for license renewal or for a restricted permit if the applicant is currently under investigation by a dental regulatory board in another jurisdiction. The board shall not issue or deny a license to the applicant until the investigation is resolved.

32-1233. Applicants for licensure; examination requirements

An applicant for licensure shall have passed all of the following:

1. The written national dental board examinations.

2. The western regional examining board examination or a clinical examination administered by another state or regional testing agency in the United States within five years preceding filing the application.

3. The Arizona dental jurisprudence examination.

32-1234. Dental consultant license

A. A person may apply for a dental consultant license if the applicant demonstrates to the board's satisfaction that the applicant:
1. Has continuously held a license to practice dentistry for at least twenty-five years issued by one or more states or territories of the United States or the District of Columbia, but is not currently licensed to practice dentistry in Arizona.

2. Is of good moral character.

3. Has not had a license to practice dentistry revoked by a dental regulatory board in another jurisdiction in the United States for an act that occurred in that jurisdiction and that constitutes unprofessional conduct pursuant to this chapter.

4. Is not currently under suspension or restriction by a dental regulatory board in another jurisdiction in the United States for an act that occurred in that jurisdiction and that constitutes unprofessional conduct pursuant to this chapter.

5. Has not surrendered, relinquished or given up a license to practice dentistry in lieu of disciplinary action by a dental regulatory board in another jurisdiction in the United States for an act that occurred in that jurisdiction and that constitutes unprofessional conduct pursuant to this chapter.

6. Meets the applicable requirements of section 32-1232.

7. Meets the requirements of section 32-1233, paragraphs 1 and 3. If an applicant has taken a state written theory examination instead of the written national dental board examinations, the applicant must provide the board with official documentation of passing the written theory examinations in the state where the applicant holds a current license. The board shall then determine the applicant’s eligibility for a license pursuant to this section.

8. Meets the application requirements as prescribed in rule by the board.

B. The board shall suspend an application for a dental consultant license if the applicant is currently under investigation by a dental regulatory board in another jurisdiction in the United States. The board shall not issue or deny a license to the applicant until the investigation is resolved.

C. A person to whom a dental consultant license is issued shall practice dentistry only in the course of the person’s employment or on behalf of an entity licensed under title 20 with the practice limited to supervising or conducting utilization review or other claims or case management activity on behalf of the entity licensed pursuant to title 20. A person who holds a dental consultant license is prohibited from providing direct patient care.

D. This section shall not be deemed to require a person to apply for or hold a dental consultant license in order for that person to serve as a consultant to or engage in claims review activity for an entity licensed pursuant to title 20.

E. Except as provided in subsection B of this section, a dental consultant licensee is subject to all of the provisions of this chapter that are applicable to licensed dentists.

32-1235. Reinstatement of license or certificate; application for previously denied license or certificate

A. On written application the board may issue a new license or certificate to a dentist, dental therapist, dental hygienist or denturist whose license or certificate was previously suspended or
revoked by the board or surrendered by the applicant if the applicant demonstrates to the board's satisfaction that the applicant is completely rehabilitated with respect to the conduct that was the basis for the suspension, revocation or surrender. In making its decision, the board shall determine:

1. That the applicant has not engaged in any conduct during the suspension, revocation or surrender period that would have constituted a basis for revocation pursuant to section 32-1263.

2. If a criminal conviction was a basis for the suspension, revocation or surrender, that the applicant's civil rights have been fully restored pursuant to statute or any other applicable recognized judicial or gubernatorial order.

3. That the applicant has made restitution to any aggrieved person as ordered by a court of competent jurisdiction.

4. That the applicant demonstrates any other standard of rehabilitation the board determines is appropriate.

B. Except as provided in subsection C of this section, a person may not submit an application for reinstatement less than five years after the date of suspension, revocation or surrender.

C. The board shall vacate its previous order to suspend or revoke a license or certificate if that suspension or revocation was based on a conviction of a felony or an offense involving moral turpitude and that conviction has been reversed on appeal. The person may submit an application for reinstatement as soon as the court enters the reversal.

D. An applicant for reinstatement must comply with all initial licensing or certification requirements prescribed by this chapter.

E. A person whose application for a license or certificate has been denied for failure to meet academic requirements may apply for licensure or certification not less than two years after the denial.

F. A person whose application for a license has been denied pursuant to section 32-1232, subsection C may apply for licensure not less than five years after the denial.

32-1236. Dentist triennial licensure; continuing education; license reinstatement; license for each place of practice; notice of change of address or place of practice; retired and disabled license status; penalties

A. Except as provided in section 32-4301, a license expires thirty days after the licensee's birthday every third year. On or before the licensee's birthday every third year, every licensed dentist shall submit to the board a complete renewal application and pay a license renewal fee of not more than $650, established by a formal vote of the board. At least once every three years, before establishing the fee, the board shall review the amount of the fee in a public meeting. Any change in the amount of the fee shall be applied prospectively to a licensee at the time of licensure renewal. The fee prescribed by this subsection does not apply to a retired dentist or to a dentist with a disability.

B. A licensee shall include a written affidavit with the renewal application that affirms that the licensee complies with board rules relating to continuing education requirements. A licensee is not required to complete the written affidavit if the licensee received an initial license within the year
immediately preceding the expiration date of the license or the licensee is in disabled status. If the licensee is not in compliance with board rules relating to continuing education, the board may grant an extension of time to complete these requirements if the licensee includes a written request for an extension with the renewal application instead of the written affidavit and the renewal application is received on or before the licensee's birthday of the expiration year. The board shall consider the extension request based on criteria prescribed by the board by rule. If the board denies an extension request, the license expires thirty days after the licensee's birthday.

C. A person applying for licensure for the first time in this state shall pay a prorated fee for the period remaining until the licensee's next birthday. This fee shall not exceed one-third of the fee established pursuant to subsection A of this section. Subsequent licensure renewal shall be conducted pursuant to this section.

D. An expired license may be reinstated by submitting a complete renewal application within the twenty-four-month period immediately following the expiration of the license with payment of the renewal fee and a $100 penalty. Whenever issued, reinstatement is as of the date of application and entitles the applicant to licensure only for the remainder of the applicable three-year period. If a person does not reinstate a license pursuant to this subsection, the person must reapply for licensure pursuant to this chapter.

E. Each licensee must provide to the board in writing both of the following:

1. A primary mailing address.

2. The address for each place of practice.

F. A licensee maintaining more than one place of practice shall obtain from the board a duplicate license for each office. A fee set by the board shall be charged for each duplicate license. The licensee shall notify the board in writing within ten days after opening the additional place or places of practice. The board shall impose a penalty of $50 for failure to notify the board.

G. A licensee who is fully retired and a licensee who has a permanent disability may contribute services to a recognized charitable institution and still retain that classification for triennial registration purposes on payment of a reduced renewal fee as prescribed by the board by rule.

H. A licensee applying for retired or disabled status shall:

1. Relinquish any prescribing privileges and shall attest by affidavit that the licensee has surrendered to the United States drug enforcement administration any registration issued pursuant to the federal controlled substances act and has surrendered to the board any registration issued pursuant to section 36-2606.

2. If the licensee holds a permit to dispense drugs and devices pursuant to section 32-1298, surrender that permit to the board.

3. Attest by affidavit that the licensee is not currently engaged in the practice of dentistry.

I. A licensee who changes the licensee's primary mailing address or place of practice address shall notify the board of that change in writing within ten days. The board shall impose a penalty of $50 if
a licensee fails to notify the board of the change within that time. The board shall increase the penalty imposed to $100 if a licensee fails to notify it of the change within thirty days.

32-1237. Restricted permit

A person may apply for a restricted permit if the applicant demonstrates to the board’s satisfaction that the applicant:

1. Has a pending contract with a recognized charitable dental clinic or organization that offers dental services without compensation or at a rate that only reimburses the clinic for dental supplies and overhead costs and the applicant will receive no compensation for dental services provided at the clinic or organization.

2. Has a license to practice dentistry issued by another state or territory of the United States or the District of Columbia.

3. Has been actively engaged in one or more of the following for three years immediately preceding the application:

   (a) The practice of dentistry.

   (b) An approved dental residency training program.

   (c) Postgraduate training deemed by the board equivalent to an approved dental residency training program.

4. Is competent and proficient to practice dentistry.

5. Meets the requirements of section 32-1232, subsection A, other than the requirement to meet section 32-1233.

32-1238. Issuance of restricted permit

A restricted permit may be issued by the board without examination or payment of fee for a period not to exceed one year or until June 30th, whichever is lesser, and shall automatically expire at that time. The board may, in its discretion and pursuant to rules or regulations not inconsistent with this chapter, renew such restricted permit for periods not to exceed one year.

32-1239. Practice under restricted permit

A person to whom a restricted permit is issued shall be entitled to practice dentistry only in the course of his employment by a recognized charitable dental clinic or organization as approved by the board, on the following conditions:

1. He shall file a copy of his employment contract with the board and such contract shall contain the following provisions:

   (a) That applicant understands and acknowledges that if his employment by the charitable dental clinic or organization is terminated prior to the expiration of his restricted permit, his restricted permit
will be automatically revoked and he will voluntarily surrender the permit to the board and will no longer be eligible to practice unless or until he has satisfied the requirements of section 32-1237 or has successfully passed the examination as provided in this article.

(b) He shall be employed by a dental clinic or organization organized and operated for charitable purposes offering dental services without compensation. The term "employed" as used in this subdivision shall include the performance of dental services without compensation.

(c) He shall be subject to all the provisions of this chapter applicable to licensed dentists.

32-1240. Licensure by credential; examinations; waiver; fee

A. The board by rule may waive the examination requirements of this article on receipt of evidence satisfactory to the board that the applicant has passed the clinical examination of another state or testing agency more than five years before submitting an application for licensure pursuant to this chapter and the other state or testing agency maintains a standard of licensure that is substantially equivalent to that of this state as determined by the board. The board by rule shall require:

1. A minimum number of active practice hours within a specific time period before the applicant submits the application. The board shall define what constitutes active practice.

2. An affirmation that the applicant has completed the continuing education requirements of the jurisdiction where the applicant is licensed.

B. The applicant shall pay a licensure by credential fee of not more than two thousand dollars as prescribed by the board.

32-1241. Training permits; qualified military health professionals

A. The board shall issue a training permit to a qualified military health professional who is practicing dentistry in the United States armed forces and who is discharging the health professional's official duties by participating in a clinical training program based at a civilian hospital affiliated with the United States department of defense.

B. Before the board issues the training permit, the qualified military health professional must submit a written statement from the United States department of defense that the applicant:

1. Is a member of the United States armed forces who is performing duties for and at the direction of the United States department of defense at a location in this state approved by the United States department of defense.

2. Has a current license or is credentialed to practice dentistry in a jurisdiction of the United States.

3. Meets all required qualification standards prescribed pursuant to 10 United States Code section 1094(d) relating to the licensure requirements for health professionals.

4. Has not had a license to practice revoked by a regulatory board in another jurisdiction in the United States for an act that occurred in that jurisdiction that constitutes unprofessional conduct pursuant to this chapter.
5. Is not currently under investigation, suspension or restriction by a regulatory board in another jurisdiction in the United States for an act that occurred in that jurisdiction that constitutes unprofessional conduct pursuant to this chapter.

6. Has not surrendered, relinquished or given up a license in lieu of disciplinary action by a regulatory board in another jurisdiction in the United States for an act that occurred in that jurisdiction that constitutes unprofessional conduct pursuant to this chapter. This paragraph does not prevent the board from considering the request for a training permit of a qualified military health professional who surrendered, relinquished or gave up a license in lieu of disciplinary action by a regulatory board in another jurisdiction if that regulatory board subsequently reinstated the qualified military health professional's license.

C. The qualified military health professional may not open an office or designate a place to meet patients or receive calls relating to the practice of dentistry in this state outside of the facilities and programs of the approved civilian hospital.

D. The qualified military health professional may not practice outside of the professional's scope of practice.

E. A training permit issued pursuant to this section is valid for one year. The qualified military health professional may apply annually to the board to renew the permit. With each application to renew the qualified military health professional must submit a written statement from the United States department of defense asking the board for continuation of the training permit.

F. The board may not impose a fee to issue or renew a training permit to a qualified military health professional pursuant to this section.

**Article 3 – Regulation**

**32-1261. Practicing without license; classification**

Except as otherwise provided a person is guilty of a class 6 felony who, without a valid license or business entity registration as prescribed by this chapter:

1. Practices dentistry or any branch of dentistry as described in section 32-1202.

2. In any manner or by any means, direct or indirect, advertises, represents or claims to be engaged or ready and willing to engage in that practice as described in section 32-1202.

3. Manages, maintains or carries on, in any capacity or by any arrangement, a practice, business, office or institution for the practice of dentistry, or that is advertised, represented or held out to the public for that purpose.

**32-1262. Corporate practice; display of name and license receipt or license; duplicate licenses; fee**

A. It is lawful to practice dentistry as a professional corporation or professional limited liability company.

B. It is lawful to practice dentistry as a business organization if the business organization is registered as a business entity pursuant to this chapter.
C. It is lawful to practice dentistry under a name other than that of the licensed practitioners if the name is not deceptive or misleading.

D. If practicing as a professional corporation or professional limited liability company, the name and address of record of the dentist owners of the practice shall be conspicuously displayed at the entrance to each owned location.

E. If practicing as a business organization that is registered as a business entity pursuant to section 32-1213, the receipt for the current registration period must be conspicuously displayed at the entrance to each place of practice.

F. A licensee's receipt for the current licensure period shall be displayed in the licensee's place of practice in a manner that is always readily observable by patients or visitors and shall be exhibited to members of the board or to duly authorized agents of the board on request. The receipt for the licensure period immediately preceding shall be kept on display until replaced by the receipt for the current period. During the year in which the licensee is first licensed and until the receipt for the following period is received, the license shall be displayed in lieu of the receipt.

G. If a dentist maintains more than one place of practice, the board may issue one or more duplicate licenses or receipts on payment of a fee fixed by the board not exceeding twenty-five dollars for each duplicate.

H. If a licensee legally changes the licensee's name from that in which the license was originally issued, the board, on satisfactory proof of the change and surrender of the original license, if obtainable, may issue a new license in the new name and shall charge the established fee for duplicate licenses.

32-1263. Grounds for disciplinary action; definition

A. The board may invoke disciplinary action against any person who is licensed under this chapter for any of the following reasons:

1. Unprofessional conduct as defined in section 32-1201.01.

2. Conviction of a felony or of a misdemeanor involving moral turpitude, in which case the record of conviction or a certified copy is conclusive evidence.

3. Physical or mental incompetence to practice pursuant to this chapter.

4. Committing or aiding, directly or indirectly, a violation of or noncompliance with any provision of this chapter or of any rules adopted by the board pursuant to this chapter.

5. Dental incompetence as defined in section 32-1201.

B. This section does not establish a cause of action against a licensee or a registered business entity that makes a report of unprofessional conduct or unethical conduct in good faith.

C. The board may take disciplinary action against a business entity that is registered pursuant to this chapter for unethical conduct.
D. For the purposes of this section, "unethical conduct" means the following acts occurring in this state or elsewhere:

1. Failing to report in writing to the board any evidence that a dentist, dental therapist, denturist or dental hygienist is or may be professionally incompetent, is or may be guilty of unprofessional conduct, is or may be impaired by drugs or alcohol or is or may be mentally or physically unable to safely engage in the permissible activities of a dentist, dental therapist, denturist or dental hygienist.

2. Falsely reporting to the board that a dentist, dental therapist, denturist or dental hygienist is or may be guilty of unprofessional conduct, is or may be impaired by drugs or alcohol or is or may be mentally or physically unable to safely engage in the permissible activities of a dentist, dental therapist, denturist or dental hygienist.

3. Obtaining or attempting to obtain a registration or registration renewal by fraud or by misrepresentation.

4. Knowingly filing with the board any application, renewal or other document that contains false information.

5. Failing to register or failing to submit a renewal registration with the board pursuant to section 32-1213.

6. Failing to provide the following persons with access to any place for which a registration has been issued or for which an application for a registration has been submitted in order to conduct a site investigation, inspection or audit:
   (a) The board or its employees or agents.
   (b) An authorized federal or state official.

7. Failing to notify the board of a change in officers and directors, a change of address or a change in the dentists providing services pursuant to section 32-1213, subsection E.

8. Failing to provide patient records pursuant to section 32-1264.

9. Obtaining a fee by fraud or misrepresentation or wilfully or intentionally filing a fraudulent claim with a third party for services rendered or to be rendered to a patient.

10. Engaging in repeated irregularities in billing.

11. Engaging in the following advertising practices:
   (a) Publishing or circulating, directly or indirectly, any false or fraudulent or misleading statements concerning the skill, methods or practices of a registered business entity, a licensee or any other person.
   (b) Advertising in any manner that tends to deceive or defraud the public.

12. Failing to comply with a board subpoena in a timely manner.
13. Failing to comply with a final board order, including a decree of censure, a period or term of probation, a consent agreement or a stipulation.

14. Employing or aiding and abetting unlicensed persons to perform work that must be done by a person licensed pursuant to this chapter.

15. Engaging in any conduct or practice that constitutes a danger to the health, welfare or safety of the patient or the public.

16. Engaging in a policy or practice that interferes with the clinical judgment of a licensee providing dental services for a business entity or compromising a licensee's ability to comply with this chapter.

17. Engaging in a practice by which a dental hygienist, dental therapist or dental assistant exceeds the scope of practice or restrictions included in a written collaborative practice agreement.

32-1263.01. Types of disciplinary action; letter of concern; judicial review; notice; removal of notice; violation; classification

A. The board may take any one or a combination of the following disciplinary actions against any person licensed under this chapter:

1. Revocation of license to practice.

2. Suspension of license to practice.

3. Entering a decree of censure, which may require that restitution be made to an aggrieved party.

4. Issuance of an order fixing a period and terms of probation best adapted to protect the public health and safety and to rehabilitate the licensed person. The order fixing a period and terms of probation may require that restitution be made to the aggrieved party.

5. Imposition of an administrative penalty in an amount not to exceed two thousand dollars for each violation of this chapter or rules adopted under this chapter.

6. Imposition of a requirement for restitution of fees to the aggrieved party.

7. Imposition of restrictions on the scope of practice.

8. Imposition of peer review and professional education requirements.

9. Imposition of community service.

B. The board may issue a letter of concern if a licensee's continuing practices may cause the board to take disciplinary action. The board may also issue a nondisciplinary order requiring the licensee to complete a prescribed number of hours of continuing education in an area or areas prescribed by the board to provide the licensee with the necessary understanding of current developments, skills, procedures or treatment.
C. Failure to comply with any order of the board, including an order of censure or probation, is cause for suspension or revocation of a license.

D. All disciplinary and final nondisciplinary actions or orders, not including letters of concern or advisory letters, issued by the board against a licensee or certificate holder shall be posted to that licensee's or certificate holder's profile on the board's website. For the purposes of this subsection, only final nondisciplinary actions and orders that are issued after January 1, 2018 shall be posted.

E. Except as provided in section 41-1092.08, subsection H, final decisions of the board are subject to judicial review pursuant to title 12, chapter 7, article 6.

F. If the state board of dental examiners acts to modify any dentist's prescription-writing privileges, it shall immediately notify the Arizona state board of pharmacy of the modification.

G. The board may post a notice of its suspension or revocation of a license at the licensee's place of business. This notice shall remain posted for sixty days. A person who removes this notice without board or court authority before that time is guilty of a class 3 misdemeanor.

H. A licensee or certificate holder shall respond in writing to the board within twenty days after a notice of hearing is served. A licensee who fails to answer the charges in a complaint and notice of hearing issued pursuant to this article and title 41, chapter 6, article 10 is deemed to admit the acts charged in the complaint, and the board may revoke or suspend the license without a hearing.

32-1263.02. Investigation and adjudication of complaints; disciplinary action; civil penalty; immunity; subpoena authority; definitions

A. The board on its motion, or the executive director if delegated by the board, may investigate any evidence that appears to show the existence of any of the causes or grounds for disciplinary action as provided in section 32-1263. The board may investigate any complaint that alleges the existence of any of the causes or grounds for disciplinary action as provided in section 32-1263. The board shall not act on its own motion or on a complaint received by the board if the allegation of unprofessional conduct, unethical conduct or any other violation of this chapter against a professional who holds an Arizona license occurred more than four years before the complaint is received by the board. The four-year time limitation does not apply to:

1. Medical malpractice settlements or judgments, allegations of sexual misconduct or an incident or occurrence that involved a felony, diversion of a controlled substance or impairment while practicing by the licensee.

2. The board's consideration of the specific unprofessional conduct related to the licensee's failure to disclose conduct or a violation as required by law.

B. At the request of the complainant, the board shall not disclose to the respondent the complainant name unless the information is essential to proceedings conducted pursuant to this article.

C. The board or its designees shall conduct necessary investigations, including interviews between representatives of the board and the licensee with respect to any information obtained by or filed with the board under subsection A of this section. The results of the investigation conducted by a designee shall be forwarded to the board for its review.
D. If, based on the information it receives under subsection A of this section, the board finds that the public health, safety or welfare imperatively requires emergency action and incorporates a finding to that effect in its order, the board may order a summary suspension of the respondent's license pursuant to section 41-1092.11 pending proceedings for revocation or other action.

E. If a complaint refers to quality of care, the patient may be referred for a clinical evaluation at the discretion of the board.

F. If, after completing its investigation, the board finds that the information provided pursuant to subsection A of this section is insufficient to merit disciplinary action against the licensee, the board may take any of the following actions:

1. Dismiss the complaint.

2. Issue a nondisciplinary letter of concern to the licensee.

3. Issue a nondisciplinary order requiring the licensee to complete a prescribed number of hours of continuing education in an area or areas prescribed by the board to provide the licensee with the necessary understanding of current developments, skills, procedures or treatment.

4. Assess a nondisciplinary civil penalty in an amount not to exceed five hundred dollars if the complaint involves the licensee's failure to respond to a board subpoena.

G. If, after completing its investigation, the board finds that the information provided pursuant to subsection A of this section is sufficient to merit disciplinary action against the licensee, the board may request that the licensee participate in a formal interview before the board. If the licensee refuses or accepts the invitation for a formal interview and the results indicate that grounds may exist for revocation or suspension, the board shall issue a formal complaint and order that a hearing be held pursuant to title 41, chapter 6, article 10. If, after completing a formal interview, the board finds that the protection of the public requires emergency action, it may order a summary suspension of the license pursuant to section 41-1092.11 pending formal revocation proceedings or other action authorized by this section.

H. If, after completing a formal interview, the board finds that the information provided under subsection A of this section is insufficient to merit suspension or revocation of the license, it may take any of the following actions:

1. Dismiss the complaint.

2. Order disciplinary action pursuant to section 32-1263.01, subsection A.

3. Enter into a consent agreement with the licensee for disciplinary action.

4. Order nondisciplinary continuing education pursuant to section 32-1263.01, subsection B.

5. Issue a nondisciplinary letter of concern to the licensee.

I. A copy of the board's order issued pursuant to this section shall be given to the complainant and to the licensee. Pursuant to title 41, chapter 6, article 10, the licensee may petition for rehearing or review.
J. Any person who in good faith makes a report or complaint as provided in this section to the board or to any person or committee acting on behalf of the board is not subject to liability for civil damages as a result of the report.

K. The board, through its president or the president's designee, may issue subpoenas to compel the attendance of witnesses and the production of documents and may administer oaths, take testimony and receive exhibits in evidence in connection with an investigation initiated by the board or a complaint filed with the board. In case of disobedience to a subpoena, the board may invoke the aid of any court of this state in requiring the attendance and testimony of witnesses and the production of documentary evidence.

L. Patient records, including clinical records, medical reports, laboratory statements and reports, files, films, reports or oral statements relating to diagnostic findings or treatment of patients, any information from which a patient or a patient's family may be identified or information received and records kept by the board as a result of the investigation procedures taken pursuant to this chapter, are not available to the public.

M. The board may charge the costs of formal hearings conducted pursuant to title 41, chapter 6, article 10 to a licensee it finds to be in violation of this chapter.

N. The board may accept the surrender of an active license from a licensee who is subject to a board investigation and who admits in writing to any of the following:

1. Being unable to safely engage in the practice of dentistry.

2. Having committed an act of unprofessional conduct.

3. Having violated this chapter or a board rule.

O. In determining the appropriate disciplinary action under this section, the board may consider any previous nondisciplinary and disciplinary actions against a licensee.

P. If a licensee who is currently providing dental services for a registered business entity believes that the registered business entity has engaged in unethical conduct as defined pursuant to section 32-1263, subsection D, paragraph 16, the licensee must do both of the following before filing a complaint with the board:

1. Notify the registered business entity in writing that the licensee believes that the registered business entity has engaged in a policy or practice that interferes with the clinical judgment of the licensee or that compromises the licensee’s ability to comply with the requirements of this chapter. The licensee shall specify in the notice the reasons for this belief.

2. Provide the registered business entity with at least ten calendar days to respond in writing to the assertions made pursuant to paragraph 1 of this subsection.

Q. A licensee who files a complaint pursuant to subsection P of this section shall provide the board with a copy of the licensee's notification and the registered business entity's response, if any.

R. A registered business entity may not take any adverse employment action against a licensee because the licensee complies with the requirements of subsection P of this section.
S. For the purposes of this section:

1. "License" includes a certificate issued pursuant to this chapter.

2. "Licensee" means a dentist, dental therapist, dental hygienist, denturist, dental consultant, restricted permit holder or business entity regulated pursuant to this chapter.

32-1263.03. Executive director; complaints; termination; review

A. If delegated by the board, the executive director, with the concurrence of the board's investigative staff, may terminate a complaint if the investigative staff's review indicates the complaint is without merit and that termination is appropriate.

B. The executive director may not terminate a complaint if a court has entered a medical malpractice judgment against a person licensed under this chapter.

C. At each regularly scheduled board meeting, the executive director shall provide to the board a list of each complaint the executive director terminated pursuant to subsection A since the preceding board meeting.

D. A person who is aggrieved by an action taken by the executive director pursuant to subsection A may file a written request that the board review that action. The request must be filed within thirty days after that person is notified of the executive director's action by personal delivery or, if the notification is mailed to that person's last known residence or place of business, within thirty-five days after the date on the notification. At the next regular board meeting, the board shall review the executive director's action. On review, the board shall approve, modify or reject the executive director's action.

32-1264. Maintenance of records

A. A person who is licensed or certified pursuant to this chapter shall make and maintain legible written records concerning all diagnoses, evaluations and treatments of each patient of record. A licensee or certificate holder shall maintain records that are stored or produced electronically in retrievable paper form. These records shall include:

1. All treatment notes, including current health history and clinical examinations.

2. Prescription and dispensing information, including all drugs, medicaments and dental materials used for patient care.

3. Diagnosis and treatment planning.

4. Dental and periodontal charting. Specialist charting must include areas of requested care and notation of visual oral examination describing any areas of potential pathology or radiographic irregularities.

5. All radiographs.

B. Records are available for review and for treatment purposes to the dentist, dental therapist, dental hygienist or denturist providing care.
C. On request, the licensee or certificate holder shall allow properly authorized board personnel to have access to the licensee's or certificate holder's place of practice to conduct an inspection and must make the licensee's or certificate holder's records, books and documents available to the board as part of an investigation process.

D. Within fifteen business days after a patient's written request, that patient's dentist, dental therapist, dental hygienist or denturist or a registered business entity shall transfer legible and diagnostic quality copies of that patient's records to another licensee or certificate holder or that patient. The patient may be charged for the reasonable costs of copying and forwarding these records. A dentist, dental therapist, dental hygienist, denturist or registered business entity may require that payment of reproduction costs be made in advance, unless the records are necessary for continuity of care, in which case the records shall not be withheld. Copies of records shall not be withheld because of an unpaid balance for dental services.

E. Unless otherwise required by law, a person who is licensed or certified pursuant to this chapter or a business entity that is registered pursuant to this chapter must retain the original or a copy of a patient's dental records as follows:

1. If the patient is an adult, for at least six years after the last date the adult patient received dental services from that provider.

2. If the patient is a child, for at least three years after the child's eighteenth birthday or for at least six years after the last date the child received dental services from the provider, whichever occurs later.

32-1265. Interpretation of chapter

Nothing in this chapter shall be construed to abridge a license issued under laws of this state relating to medicine or surgery.

32-1266. Prosecution of violations

The attorney general shall act for the board in all matters requiring legal assistance, but the board may employ other or additional counsel in its own behalf. The board shall assist prosecuting officers in enforcement of this chapter, and in so doing may engage suitable persons to assist in investigations and in the procurement and presentation of evidence. Subpoenas or other orders issued by the board may be served by any officer empowered to serve processes, who shall receive the fees prescribed by law. Expenditures made in carrying out provisions of this section shall be paid from the dental board fund.

32-1267. Use of fraudulent instruments; classification

A person is guilty of a class 5 felony who:

1. Knowingly presents to or files with the board as his own a diploma, degree, license, certificate or identification belonging to another, or which is forged or fraudulent.

2. Exhibits or displays any instrument described in paragraph 1 with intent that it be used as evidence of the right of such person to practice dentistry in this state.
3. With fraudulent intent alters any instrument described in paragraph 1 or uses or attempts to use it when so altered.

4. Sells, transfers or offers to sell or transfer, or who purchases, procures or offers to purchase or procure a diploma, license, certificate or identification, with intent that it be used as evidence of the right to practice dentistry in this state by a person other than the one to whom it belongs or is issued.

32-1268. Violations; classification; required proof

A. A person is guilty of a class 2 misdemeanor who:

1. Employs, contracts with, or by any means procures the assistance of, or association with, for the purpose of practicing dentistry, a person not having a valid license therefor.

2. Fails to obey a summons or other order regularly and properly issued by the board.

3. Violates any provision of this chapter for which the penalty is not specifically prescribed.

B. In a prosecution or hearing under this chapter, it is necessary to prove only a single act of violation and not a general course of conduct, and where the violation is continued over a period of one or more days each day constitutes a separate violation subject to the penalties prescribed in this chapter.

32-1269. Violation; classification; injunctive relief

A. A person convicted under this chapter is guilty of a class 2 misdemeanor unless another classification is specifically prescribed in this chapter. Violations shall be prosecuted by the county attorney and tried before the superior court in the county in which the violation occurs.

B. In addition to penalties provided in this chapter, the courts of the state are vested with jurisdiction to prevent and restrain violations of this chapter as nuisances per se, and the county attorneys shall, and the board may, institute proceedings in equity to prevent and restrain violations. A person damaged, or threatened with loss or injury, by reason of a violation of this chapter is entitled to obtain injunctive relief in any court of competent jurisdiction against any damage or threatened loss or injury by reason of a violation of this chapter.

32-1270. Deceased or incapacitated dentists; notification

A. An administrator or executor of the estate of a deceased dentist, or a person who is legally authorized to act for a dentist who has been adjudicated to be mentally incompetent, must notify the board within sixty days after the dentist's death or incapacitation. The administrator or executor may employ a licensed dentist for a period of not more than one year to:

1. Continue the deceased or incapacitated dentist's practice.

2. Conclude the affairs of the deceased or incapacitated dentist, including the sale of any assets.

B. An administrator or executor operating a practice pursuant to this section for more than one year must register as a business entity pursuant to section 32-1213.
32-1271. **Marking of dentures for identification; retention and release of information**

A. Every complete upper or lower denture fabricated by a licensed dentist, or fabricated pursuant to the dentist's work order, must be marked with the patient's name unless the patient objects. The marking must be done during fabrication and must be permanent, legible and cosmetically acceptable. The dentist or the dental laboratory shall determine the location of the marking and the methods used to implant or apply it. The dentist must inform the patient that the marking is used only to identify the patient, and the patient may choose which marking is to appear on the dentures.

B. The dentist must retain the records of marked dentures and may not release the records to any person except to law enforcement officers in any emergency that requires personal identification by means of dental records or to anyone authorized by the patient to receive this information.

**Article 3.1 – Licensing and Regulation of Dental Therapists**

32-1276. **Definitions**

In this article, unless the context otherwise requires:

1. "Applicant" means a person who is applying for licensure to practice dental therapy in this state.

2. "Direct supervision" means that a licensed dentist is present in the office and available to provide treatment or care to a patient and observe a dental therapist's work.

3. "Licensee" means a person who holds a license to practice dental therapy in this state.

32-1276.01. **Application for licensure; requirements; fingerprint clearance card; denial or suspension of application**

A. An applicant for licensure as a dental therapist in this state shall do all of the following:

1. Apply to the board on a form prescribed by the board.

2. Verify under oath that all statements in the application are true to the applicant's knowledge.

3. Enclose with the application:
   
   (a) A recent photograph of the applicant.

   (b) The application fee established by the board by rule.

B. The board may grant a license to practice dental therapy to an applicant who meets all of the following requirements:

1. Is licensed as a dental hygienist pursuant to article 4 of this chapter.

2. Graduates from a dental therapy education program that is accredited by or holds an initial accreditation from the American dental association commission on dental accreditation and that is offered through an accredited higher education institution recognized by the United States department of education.
3. Successfully passes both of the following:

(a) Within five years before filing the application, a clinical examination that is either:

(i) The western regional examining board examination.

(ii) An examination in dental therapy administered by another state or testing agency that is substantially equivalent to the western regional examining board examination, as determined by the state board of dental examiners.

(b) The Arizona dental jurisprudence examination.

4. Is not subject to any grounds for denial of the application under this chapter.

5. Obtains a valid fingerprint clearance card issued pursuant to title 41, chapter 12, article 3.1.

6. Meets all requirements for licensure established by the board by rule.

C. The board may deny an application for licensure or license renewal if the applicant:

1. Has committed an act that would be cause for censure, probation or suspension or revocation of a license under this chapter.

2. While unlicensed, committed or aided and abetted the commission of an act for which a license is required by this chapter.

3. Knowingly made any false statement in the application.

4. Has had a license to practice dental therapy revoked by a regulatory board in another jurisdiction in the United States for an act that occurred in that jurisdiction and that constitutes unprofessional conduct pursuant to this chapter.

5. Is currently suspended or restricted by a regulatory board in another jurisdiction in the United States for an act that occurred in that jurisdiction and that constitutes unprofessional conduct pursuant to this chapter.

6. Has surrendered, relinquished or given up a license to practice dental therapy instead of having disciplinary action taken against the applicant by a regulatory board in another jurisdiction in the United States for an act that occurred in that jurisdiction and that constitutes unprofessional conduct pursuant to this chapter.

D. The board shall suspend an application for licensure if the applicant is currently under investigation by a dental regulatory board in another jurisdiction. The board shall not issue a license or deny an application for licensure until the investigation is completed.
A. Except as provided in section 32-4301, a license issued under this article expires thirty days after the licensee's birthday every third year. On or before the licensee's birthday every third year, each licensed dental therapist shall submit to the board a complete renewal application and pay a license renewal fee established by a formal vote of the board. At least once every three years, before establishing the fee, the board shall review the amount of the fee in a public meeting. Any change in the amount of the fee shall be applied prospectively to a licensee at the time of licensure renewal. The fee prescribed by this subsection does not apply to a retired dental therapist or to a dental therapist with a disability.

B. A licensee shall include a written affidavit with the renewal application that affirms that the licensee complies with board rules relating to continuing education requirements. A licensee is not required to complete the written affidavit if the licensee received an initial license within the year immediately preceding the expiration date of the license or the licensee is in disabled status. If the licensee is not in compliance with board rules relating to continuing education, the board may grant an extension of time to complete these requirements if the licensee includes a written request for an extension with the renewal application instead of the written affidavit and the renewal application is received on or before the licensee's birthday of the expiration year. The board shall consider the extension request based on criteria prescribed by the board by rule. If the board denies an extension request, the license expires thirty days after the licensee's birthday of the expiration year.

C. An applicant for a dental therapy license for the first time in this state shall pay a prorated fee for the period remaining until the licensee's next birthday. This fee may not exceed one-third of the fee prescribed pursuant to subsection A of this section. Subsequent applications shall be conducted pursuant to this section.

D. An expired license may be reinstated by submitting a complete renewal application within the twenty-four-month period immediately following the expiration of the license with payment of the renewal fee and a $100 penalty. When the license is issued, reinstatement is as of the date of application and entitles the applicant to licensure only for the remainder of the applicable three-year period. If a person does not reinstate a license pursuant to this subsection, the person must reapply for licensure pursuant to this article.

E. A licensee shall notify the board in writing within ten days after the licensee changes the primary mailing address listed with the board. The board shall impose a civil penalty of $50 if a licensee fails to notify the board of the change within that time. The board shall increase the civil penalty to $100 if a licensee fails to notify the board of the change within thirty days.

F. A licensee who is at least sixty-five years of age and who is fully retired and a licensee who has a permanent disability may contribute services to a recognized charitable institution and still retain that classification for triennial registration purposes by paying a reduced renewal fee as prescribed by the board by rule.

G. A licensee is not required to maintain a dental hygienist license.
A. A person is deemed to be a practicing dental therapist if the person does any of the acts or performs any operations included in the general practice of dental therapists or dental therapy or any related and associated duties.

B. Either under the direct supervision of a dentist or pursuant to a written collaborative practice agreement, a licensed dental therapist may do any of the following:

1. Perform oral evaluations and assessments of dental disease and formulate individualized treatment plans.

2. Perform comprehensive charting of the oral cavity.

3. Provide oral health instruction and disease prevention education, including motivational interviewing, nutritional counseling and dietary analysis.

4. Expose and process dental radiographic images.

5. Perform dental prophylaxis, scaling, root planing and polishing procedures.

6. Dispense and administer oral and topical nonnarcotic analgesics and anti-inflammatory and antibiotic medications as prescribed by a licensed health care provider.

7. Apply topical preventive and prophylactic agents, including fluoride varnishes, antimicrobial agents, silver diamine fluoride and pit and fissure sealants.

8. Perform pulp vitality testing.

9. Apply desensitizing medicaments or resins.

10. Fabricate athletic mouth guards and soft occlusal guards.


12. Administer nitrous oxide analgesics and local anesthetics.

13. Perform simple extraction of erupted primary teeth.

14. Perform nonsurgical extractions of periodontally diseased permanent teeth that exhibit plus three or grade three mobility and that are not impacted, fractured, unerupted or in need of sectioning for removal.

15. Perform emergency palliative treatments of dental pain that is related to care or a service described in this section.

16. Prepare and place direct restorations in primary and permanent teeth.
17. Fabricate and place single-tooth temporary crowns.

18. Prepare and place preformed crowns on primary teeth.

19. Perform indirect and direct pulp capping on permanent teeth.

20. Perform indirect pulp capping on primary teeth.


22. Provide minor adjustments and repairs on removable prostheses.

23. Place and remove space maintainers.

24. Perform all functions of a dental assistant and expanded function dental assistant.

25. Perform other related services and functions that are authorized by the supervising dentist within the dental therapist's scope of practice and for which the dental therapist is trained.


27. Perform any other duties of a dental therapist that are authorized by the board by rule.

C. A dental therapist may not:

1. Dispense or administer a narcotic drug.

2. Independently bill for services to any individual or third-party payor.

D. A person may not claim to be a dental therapist unless that person is licensed as a dental therapist under this article.

32-1276.04. Dental therapists; clinical practice; supervising dentists; written collaborative practice agreements

A. A dental therapist may practice only in the following practice settings or locations, including mobile dental units, that are operated or served by any of the following:

1. A federally qualified community health center.

2. A health center program that has received a federal look-alike designation.

3. A community health center.

4. A nonprofit dental practice or a nonprofit organization that provides dental care to low-income and underserved individuals.
5. A private dental practice that provides dental care for community health center patients of record who are referred by the community health center.

B. A dental therapist may practice in this state either under the direct supervision of a dentist or pursuant to a written collaborative practice agreement. Before a dental therapist may enter into a written collaborative practice agreement, the dental therapist shall complete one thousand hours of dental therapy clinical practice under the direct supervision of a dentist who is licensed in this state and shall provide documentation satisfactory to the board of having completed this requirement.

C. A practicing dentist who holds an active license pursuant to this chapter and a licensed dental therapist who holds an active license pursuant to this article may enter into a written collaborative practice agreement for the delivery of dental therapy services. The supervising dentist shall provide or arrange for another dentist or specialist to provide any service needed by the dental therapist's patient that exceeds the dental therapist's authorized scope of practice.

D. A dentist may not enter into more than four separate written collaborative practice agreements for the delivery of dental therapy services.

E. A written collaborative practice agreement between a dentist and a dental therapist shall do all of the following:

1. Address any limit on services and procedures to be performed by the dental therapist, including types of populations and any age-specific or procedure-specific practice protocol, including case selection criteria, assessment guidelines and imaging frequency.

2. Address any limit on practice settings established by the supervising dentist and the level of supervision required for various services or treatment settings.

3. Establish practice protocols, including protocols for informed consent, recordkeeping, managing medical emergencies and providing care to patients with complex medical conditions, including requirements for consultation before initiating care.

4. Establish protocols for quality assurance, administering and dispensing medications and supervising dental assistants.

5. Include specific protocols to govern situations in which the dental therapist encounters a patient requiring treatment that exceeds the dental therapist's authorized scope of practice or the limits imposed by the collaborative practice agreement.

6. Specify that the extraction of permanent teeth may be performed only under the direct supervision of a dentist and consistent with section 32-1276.03, subsection B, paragraph 14.

F. Except as provided in section 32-1276.03, subsection B, paragraph 14, to the extent authorized by the supervising dentist in the written collaborative practice agreement, a dental therapist may practice dental therapy procedures authorized under this article in a practice setting in which the supervising dentist is not on-site and has not previously examined the patient or rendered a diagnosis.

G. The written collaborative practice agreement must be signed and maintained by both the supervising dentist and the dental therapist and may be updated and amended as necessary by both
the supervising dentist and dental therapist. The supervising dentist and dental therapist shall submit a copy of the agreement and any amendment to the agreement to the board.

32-1276.05. Dental therapists; supervising dentists; collaborative practice relationships

A. A dentist who holds an active license pursuant to this chapter and a dental therapist who holds an active license pursuant to this article may enter into a collaborative practice relationship through a written collaborative practice agreement for the delivery of dental therapy services.

B. Each dental practice shall disclose to a patient whether the patient is scheduled to see the dentist or dental therapist.

C. Each dentist in a collaborative practice relationship shall:

1. Be available to provide appropriate contact, communication and consultation with the dental therapist.

2. Adopt procedures to provide timely referral of patients whom the dental therapist refers to a licensed dentist for examination. The dentist to whom the patient is referred shall be geographically available to see the patient.

D. Each dental therapist in a collaborative practice relationship shall:

1. Perform only those duties within the terms of the written collaborative practice agreement.

2. Maintain an appropriate level of contact with the supervising dentist.

E. The dental therapist and the supervising dentist shall notify the board of the beginning of the collaborative practice relationship and provide the board with a copy of the written collaborative practice agreement and any amendments to the agreement within thirty days after the effective date of the agreement or amendment. The dental therapist and supervising dentist shall also notify the board within thirty days after the termination date of the written collaborative practice agreement if the date is different than the termination date provided in the agreement.

F. Subject to the terms of the written collaborative practice agreement, a dental therapist may perform all dental therapy procedures authorized in section 32-1276.03. The dentist's presence, examination, diagnosis and treatment plan are not required unless specified by the written collaborative practice agreement.

32-1276.06. Practicing without a license; violation; classification

It is a class 6 felony for a person to practice dental therapy in this state unless the person has obtained a license from the board as provided in this article.

32-1276.07. Licensure by credential; examination waiver; fee

A. The board by rule may waive the examination requirements of this article on receipt of evidence satisfactory to the board that the applicant has passed the clinical examination of another state or testing agency more than five years before submitting the application for licensure pursuant to this article and the other state or testing agency maintains a standard of licensure or certification that is
substantially equivalent to that of this state as determined by the board. The board by rule shall require:

1. A minimum number of active practice hours within a specific time period before the applicant submits the application. The board shall prescribe what constitutes active practice.

2. An affirmation that the applicant has completed the continuing education requirements of the jurisdiction where the applicant is licensed or certified.

B. The applicant shall pay a licensure by credential fee as established by the board in rule.

C. An applicant under this section is not required to obtain a dental hygienist license in this state if the board determines that the applicant otherwise meets the requirements for dental therapist licensure.

32-1276.08. Dental therapy schools; credit for prior experience or coursework

Notwithstanding any other law, a recognized dental therapy school may grant advanced standing or credit for prior learning to a student who has prior experience or has completed coursework that the school determines is equivalent to didactic and clinical education in its accredited program.

Article 4 – Licensing and Regulation of Dental Hygienists

32-1281. Practicing as dental hygienist; supervision requirements; definitions

A. A person is deemed to be practicing as a dental hygienist if the person does any of the acts or performs any of the operations included in the general practice of dental hygienists, dental hygiene and all related and associated duties.

B. A licensed dental hygienist may perform the following:

1. Prophylaxis.

2. Scaling.

3. Closed subgingival curettage.

4. Root planing.

5. Administering local anesthetics and nitrous oxide.

6. Inspecting the oral cavity and surrounding structures for the purposes of gathering clinical data to facilitate a diagnosis.

7. Periodontal screening or assessment.

8. Recording clinical findings.

9. Compiling case histories.
10. Exposing and processing dental radiographs.

11. All functions authorized and deemed appropriate for dental assistants.

12. Except as provided in paragraph 13 of this subsection, those restorative functions permissible for an expanded function dental assistant if qualified pursuant to section 32-1291.01.

13. Placing interim therapeutic restorations after successfully completing a course at an institution accredited by the commission on dental accreditation of the American dental association.

C. The board by rule shall prescribe the circumstances under which a licensed dental hygienist may:

1. Apply preventive and therapeutic agents to the hard and soft tissues.

2. Use emerging scientific technology and prescribe the necessary training, experience and supervision to operate newly developed scientific technology. A dentist who supervises a dental hygienist whose duties include the use of emerging scientific technology must have training on using the emerging technology that is equal to or greater than the training the dental hygienist is required to obtain.

3. Perform other procedures not specifically authorized by this section.

D. Except as provided in subsections E, F and I of this section, a dental hygienist shall practice under the general supervision of a dentist who is licensed pursuant to this chapter.

E. A dental hygienist may practice under the general supervision of a physician who is licensed pursuant to chapter 13 or 17 of this title in an inpatient hospital setting.

F. A dental hygienist may perform the following procedures on meeting the following criteria and under the following conditions:

1. Administering local anesthetics under the direct supervision of a dentist who is licensed pursuant to this chapter after:

   (a) The dental hygienist successfully completes a course in administering local anesthetics that includes didactic and clinical components in both block and infiltration techniques offered by a dental or dental hygiene program accredited by the commission on dental accreditation of the American dental association.

   (b) The dental hygienist successfully completes an examination in local anesthesia given by the western regional examining board or a written and clinical examination of another state or regional examination that is substantially equivalent to the requirements of this state, as determined by the board.

   (c) The board issues to the dental hygienist a local anesthesia certificate on receipt of proof that the requirements of subdivisions (a) and (b) of this paragraph have been met.

2. Administering local anesthetics under general supervision to a patient of record if all of the following are true:
(a) The dental hygienist holds a local anesthesia certificate issued by the board.

(b) The patient is at least eighteen years of age.

(c) The patient has been examined by a dentist who is licensed pursuant to this chapter within the previous twelve months.

(d) There has been no change in the patient's medical history since the last examination. If there has been a change in the patient's medical history within that time, the dental hygienist must consult with the dentist before administering local anesthetics.

(e) The supervising dentist who performed the examination has approved the patient for being administered local anesthetics by the dental hygienist under general supervision and has documented this approval in the patient's record.

3. Administering nitrous oxide analgesia under the direct supervision of a dentist who is licensed pursuant to this chapter after:

(a) The dental hygienist successfully completes a course in administering nitrous oxide analgesia that includes didactic and clinical components offered by a dental or dental hygiene program accredited by the commission on dental accreditation of the American dental association.

(b) The board issues to the dental hygienist a nitrous oxide analgesia certificate on receipt of proof that the requirements of subdivision (a) of this paragraph have been met.

G. The board may issue local anesthesia and nitrous oxide analgesia certificates to a licensed dental hygienist on receipt of evidence satisfactory to the board that the dental hygienist holds a valid certificate or credential in good standing in the respective procedure issued by a licensing board of another jurisdiction of the United States.

H. A dental hygienist may perform dental hygiene procedures in the following settings:

1. On a patient of record of a dentist within that dentist's office.

2. Except as prescribed in section 32-1289.01, in a health care facility, long-term care facility, public health agency or institution, public or private school or homebound setting on patients who have been examined by a dentist within the previous year.

3. In an inpatient hospital setting pursuant to subsection E of this section.

I. A dental hygienist may provide dental hygiene services under an affiliated practice relationship with a dentist as prescribed in section 32-1289.01.

J. For the purposes of this article:

1. "Assessment" means a limited, clinical inspection that is performed to identify possible signs of oral or systemic disease, malformation or injury and the potential need for referral for diagnosis and treatment, and may include collecting clinical information to facilitate an examination, diagnosis and treatment plan by a dentist.
2. "Direct supervision" means that the dentist is present in the office while the dental hygienist is treating a patient and is available for consultation regarding procedures that the dentist authorizes and for which the dentist is responsible.

3. "General supervision" means:

(a) That the dentist is available for consultation, whether or not the dentist is in the dentist's office, over procedures that the dentist has authorized and for which the dentist remains responsible.

(b) With respect to an inpatient hospital setting, that a physician who is licensed pursuant to chapter 13 or 17 of this title is available for consultation, whether or not the physician is physically present at the hospital.

4. "Interim therapeutic restoration" means a provisional restoration that is placed to stabilize a primary or permanent tooth and that consists of removing soft material from the tooth using only hand instrumentation, without using rotary instrumentation, and subsequently placing an adhesive restorative material.

5. "Screening" means determining an individual's need to be seen by a dentist for diagnosis and does not include an examination, diagnosis or treatment planning.

32-1282. Administration and enforcement

A. So far as applicable, the board shall have the same powers and duties in administering and enforcing this article that it has under section 32-1207 in administering and enforcing articles 1, 2 and 3 of this chapter.

B. The board shall adopt rules that provide a method for the board to receive the assistance and advice of dental hygienists licensed pursuant to this chapter in all matters relating to the regulation of dental hygienists.

32-1283. Disposition of revenues

The provisions of section 32-1212 shall apply to all fees, fines and other revenues received by the board under this article.

32-1284. Qualifications of applicant; application; fee; fingerprint clearance card; rules; denial or suspension of application

A. An applicant for licensure as a dental hygienist shall be at least eighteen years of age, shall be of good moral character, shall meet the requirements of section 32-1285 and shall present to the board evidence of graduation or a certificate of satisfactory completion in a course or curriculum in dental hygiene from a recognized dental hygiene school. A candidate shall make written application to the board accompanied by a nonrefundable Arizona dental jurisprudence examination fee of one hundred dollars. The board shall waive this fee for candidates who are holders of valid restricted permits. Each candidate shall also obtain a valid fingerprint clearance card issued pursuant to section 41-1758.03.

B. The board shall adopt rules that govern the practice of dental hygienists and that are not inconsistent with this chapter.
C. The board may deny an application for licensure or an application for license renewal if the applicant:

1. Has committed an act that would be cause for censure, probation or suspension or revocation of a license under this chapter.

2. While unlicensed, committed or aided and abetted the commission of an act for which a license is required by this chapter.

3. Knowingly made any false statement in the application.

4. Has had a license to practice dental hygiene revoked by a regulatory board in another jurisdiction in the United States for an act that occurred in that jurisdiction and that constitutes unprofessional conduct pursuant to this chapter.

5. Is currently under suspension or restriction by a regulatory board in another jurisdiction in the United States for an act that occurred in that jurisdiction and that constitutes unprofessional conduct pursuant to this chapter.

6. Has surrendered, relinquished or given up a license to practice dental hygiene instead of disciplinary action by a regulatory board in another jurisdiction in the United States for an act that occurred in that jurisdiction and that constitutes unprofessional conduct pursuant to this chapter.

D. The board shall suspend an application for a license if the applicant is currently under investigation by a dental regulatory board in another jurisdiction. The board shall not issue or deny a license to the applicant until the investigation is resolved.

32-1285. Applicants for licensure; examination requirements

An applicant for licensure shall have passed all of the following:

1. The national dental hygiene board examination.

2. A clinical examination that is completed within five years preceding filing the application and that is either of the following:

   (a) The western regional examining board examination.

   (b) An examination administered by another state or testing agency that is substantially equivalent to the requirements of this state, as determined by the board.

3. The Arizona dental jurisprudence examination.

32-1286. Recognized dental hygiene schools; credit for prior learning

Notwithstanding any law to the contrary, a recognized dental hygiene school may grant advanced standing or credit for prior learning to a student who has prior experience or course work that the school determines is equivalent to didactic and clinical education in its accredited program.
32-1287. Dental hygienist triennial licensure; continuing education; license reinstatement; notice of change of address; penalties; retired and disabled license status

A. Except as provided in section 32-4301, a license expires thirty days after the licensee's birthday every third year. On or before the licensee's birthday every third year, every licensed dental hygienist shall submit to the board a complete renewal application and pay a license renewal fee of not more than $325, established by a formal vote of the board. At least once every three years, before establishing the fee, the board shall review the amount of the fee in a public meeting. Any change in the amount of the fee shall be applied prospectively to a licensee at the time of licensure renewal. The fee prescribed by this section does not apply to a retired hygienist or a hygienist with a disability.

B. A licensee shall include a written affidavit with the renewal application that affirms that the licensee complies with board rules relating to continuing education requirements. A licensee is not required to complete the written affidavit if the licensee received an initial license within the year immediately preceding the expiration date of the license or the licensee is in disabled status. If the licensee is not in compliance with board rules relating to continuing education, the board may grant an extension of time to complete these requirements if the licensee includes a written request for an extension with the renewal application instead of the written affidavit and the renewal application is received on or before the licensee's birthday of the expiration year. The board shall consider the extension request based on criteria prescribed by the board by rule. If the board denies an extension request, the license expires thirty days after the licensee's birthday of the expiration year.

C. A person applying for a license for the first time in this state shall pay a prorated fee for the period remaining until the licensee's next birthday. This fee shall not exceed one-third of the fee established pursuant to subsection A of this section. Subsequent registrations shall be conducted pursuant to this section.

D. An expired license may be reinstated by submitting a complete renewal application within the twenty-four-month period immediately following the expiration of the license with payment of the renewal fee and a $100 penalty. Whenever issued, reinstatement is as of the date of application and entitles the applicant to licensure only for the remainder of the applicable three-year period. If a person does not reinstate a license pursuant to this subsection, the person must reapply for licensure pursuant to this chapter.

E. A licensee shall notify the board in writing within ten days after the licensee changes the primary mailing address listed with the board. The board shall impose a penalty of $50 if a licensee fails to notify the board of the change within that time. The board shall increase the penalty imposed to $100 if a licensee fails to notify it of the change within thirty days.

F. A licensee who is over sixty-five years of age and who is fully retired and a licensee who has a permanent disability may contribute services to a recognized charitable institution and still retain that classification for triennial registration purposes on payment of a reduced renewal fee as prescribed by the board by rule.

32-1288. Practicing without license; classification

It is a class 1 misdemeanor for a person to practice dental hygiene in this state unless the person has obtained a license from the board as provided in this article.
32-1289. **Employment of dental hygienist by public agency, institution or school**

A. A public health agency or institution or a public or private school authority may employ dental hygienists to perform necessary dental hygiene procedures under either direct or general supervision pursuant to section 32-1281.

B. A dental hygienist employed by or working under contract or as a volunteer for a public health agency or institution or a public or private school authority before an examination by a dentist may perform a screening or assessment and apply sealants and topical fluoride.

32-1289.01. **Dental hygienists; affiliated practice relationships; rules; definition**

A. A dentist who holds an active license pursuant to this chapter and a dental hygienist who holds an active license pursuant to this article may enter into an affiliated practice relationship to deliver dental hygiene services.

B. A dental hygienist shall satisfy all of the following to be eligible to enter into an affiliated practice relationship with a dentist pursuant to this section to deliver dental hygiene services in an affiliated practice relationship:

1. Hold an active license in good standing pursuant to this article.

2. Enter into an affiliated practice relationship with a dentist who holds an active license pursuant to this chapter.

3. Be actively engaged in dental hygiene practice for at least five hundred hours in each of the two years immediately preceding the affiliated practice relationship.

C. An affiliated practice agreement between a dental hygienist and a dentist shall be in writing and:

1. Shall identify at least the following:

   (a) The affiliated practice settings in which the dental hygienist may deliver services pursuant to the affiliated practice relationship.

   (b) The services to be provided and any procedures and standing orders the dental hygienist must follow. The standing orders shall include the circumstances in which a patient may be seen by the dental hygienist.

   (c) The conditions under which the dental hygienist may administer local anesthesia and provide root planing.

   (d) Circumstances under which the affiliated practice dental hygienist must consult with the affiliated practice dentist before initiating further treatment on patients who have not been seen by a dentist within twelve months after the initial treatment by the affiliated practice dental hygienist.

2. May include protocols for supervising dental assistants.
D. The following requirements apply to all dental hygiene services provided through an affiliated practice relationship:

1. Patients who have been assessed by the affiliated practice dental hygienist shall be directed to the affiliated practice dentist for diagnosis, treatment or planning that is outside the dental hygienist's scope of practice, and the affiliated practice dentist may make any necessary referrals to other dentists.

2. The affiliated practice dental hygienist shall consult with the affiliated practice dentist if the proposed treatment is outside the scope of the agreement.

3. The affiliated practice dental hygienist shall consult with the affiliated practice dentist before initiating treatment on patients presenting with a complex medical history or medication regimen.

4. The patient shall be informed in writing that the dental hygienist providing the care is a licensed dental hygienist and that the care does not take the place of a diagnosis or treatment plan by a dentist.

E. A contract for dental hygiene services with licensees who have entered into an affiliated practice relationship pursuant to this section may be entered into only by:

1. A health care organization or facility.

2. A long-term care facility.

3. A public health agency or institution.

4. A public or private school authority.

5. A government-sponsored program.

6. A private nonprofit or charitable organization.

7. A social service organization or program.

F. An affiliated practice dental hygienist may not provide dental hygiene services in a setting that is not listed in subsection E of this section.

G. Each dentist in an affiliated practice relationship shall:

1. Be available to provide an appropriate level of contact, communication and consultation with the affiliated practice dental hygienist during the business hours of the affiliated practice dental hygienist.

2. Adopt standing orders applicable to dental hygiene procedures that may be performed and populations that may be treated by the affiliated practice dental hygienist under the terms of the applicable affiliated practice agreement and to be followed by the affiliated practice dental hygienist in each affiliated practice setting in which the affiliated practice dental hygienist performs dental hygiene services under the affiliated practice relationship.
3. Adopt procedures to provide timely referral of patients referred by the affiliated practice dental hygienist to a licensed dentist for examination and treatment planning. If the examination and treatment planning is to be provided by the dentist, that treatment shall be scheduled in an appropriate time frame. The affiliated practice dentist or the dentist to whom the patient is referred shall be geographically available to see the patient.

4. Not permit the provision of dental hygiene services by more than six affiliated practice dental hygienists at any one time.

H. Each affiliated practice dental hygienist, when practicing under an affiliated practice relationship:

1. May perform only those duties within the terms of the affiliated practice relationship.

2. Shall maintain an appropriate level of contact, communication and consultation with the affiliated practice dentist.

3. Is responsible and liable for all services rendered by the affiliated practice dental hygienist under the affiliated practice relationship.

I. The affiliated practice dental hygienist and the affiliated practice dentist shall notify the board of the beginning of the affiliated practice relationship and provide the board with a copy of the agreement and any amendments to the agreement within thirty days after the effective date of the agreement or amendment. The affiliated practice dental hygienist and the affiliated practice dentist shall also notify the board within thirty days after the termination date of the affiliated practice relationship if this date is different than the agreement termination date.

J. Subject to the terms of the written affiliated practice agreement entered into between a dentist and a dental hygienist, a dental hygienist may:

1. Perform all dental hygiene procedures authorized by this chapter, except for performing any diagnostic procedures that are required to be performed by a dentist and administering nitrous oxide. The dentist’s presence and an examination, diagnosis and treatment plan are not required unless specified by the affiliated practice agreement.

2. Supervise dental assistants, including dental assistants who are certified to perform functions pursuant to section 32-1291.

K. The board shall adopt rules regarding participation in affiliated practice relationships by dentists and dental hygienists that specify the following:

1. Additional continuing education requirements that must be satisfied by a dental hygienist.

2. Additional standards and conditions that may apply to affiliated practice relationships.

3. Compliance with the dental practice act and rules adopted by the board.

L. For the purposes of this section, "affiliated practice relationship" means the delivery of dental hygiene services, pursuant to an agreement, by a dental hygienist who is licensed pursuant to this article and who refers the patient to a dentist who is licensed pursuant to this chapter for any necessary further diagnosis, treatment and restorative care.
32-1290. **Grounds for censure, probation, suspension or revocation of license; procedure**

After a hearing pursuant to title 41, chapter 6, article 10, the board may suspend or revoke the license issued to a person under this article or censure or place on probation any such person for any of the causes set forth as grounds for censure, probation, suspension or revocation in section 32-1263.

32-1291. **Dental assistants; regulation; duties**

A. A dental assistant may expose radiographs for dental diagnostic purposes under either the general supervision of a dentist or the direct supervision of an affiliated practice dental hygienist licensed pursuant to this chapter if the assistant has passed an examination approved by the board.

B. A dental assistant may polish the natural and restored surfaces of the teeth under either the general supervision of a dentist or the direct supervision of an affiliated practice dental hygienist licensed pursuant to this chapter if the assistant has passed an examination approved by the board.

32-1291.01. **Expanded function dental assistants; training and examination requirements; duties**

A. A dental assistant may perform expanded functions after meeting one of the following:

1. Successfully completing a board-approved expanded function dental assistant training program at an institution accredited by the American dental association commission on dental accreditation and on successfully completing examinations in dental assistant expanded functions approved by the board.

2. Providing both:

   (a) Evidence of currently holding or having held within the preceding ten years a license, registration, permit or certificate in expanded functions in restorative procedures issued by another state or jurisdiction in the United States.

   (b) Proof acceptable to the board of clinical experience in the expanded functions listed in subsection B of this section.

B. Expanded functions include the placement, contouring and finishing of direct restorations or the placement and cementation of prefabricated crowns following the preparation of the tooth by a licensed dentist. The restorative materials used shall be determined by the dentist.

C. An expanded function dental assistant may place interim therapeutic restorations under the general supervision and direction of a licensed dentist following a consultation conducted through teledentistry.

D. An expanded function dental assistant may apply sealants and fluoride varnish under the general supervision and direction of a licensed dentist.

E. A licensed dental hygienist may engage in expanded functions pursuant to section 32-1281, subsection B, paragraph 12 following a course of study and examination equivalent to that required for an expanded function dental assistant as specified by the board.
32-1292. Restricted permits; suspension; expiration; renewal

A. The board may issue a restricted permit to practice dental hygiene to an applicant who:

1. Has a pending contract with a recognized charitable dental clinic or organization that offers dental hygiene services without compensation or at a rate that reimburses the clinic only for dental supplies and overhead costs and the applicant will not receive compensation for dental hygiene services provided at the clinic or organization.

2. Has a license to practice dental hygiene issued by a regulatory jurisdiction in the United States.

3. Has been actively engaged in the practice of dental hygiene for three years immediately preceding the application.

4. Is, to the board's satisfaction, competent to practice dental hygiene.

5. Meets the requirements of section 32-1284, subsection A that do not relate to examination.

B. A person who holds a restricted permit issued by the board may practice dental hygiene only in the course of the person's employment by a recognized charitable dental clinic or organization approved by the board.

C. The applicant for a restricted permit must file a copy of the person's employment contract with the board that includes a statement signed by the applicant that the applicant:

1. Understands that if that person's employment is terminated before the restricted permit expires, the permit is automatically revoked and that person must voluntarily surrender the permit to the board and is no longer eligible to practice unless that person meets the requirements of sections 32-1284 and 32-1285 or passes the examination required in this article.

2. Must be employed without compensation by a dental clinic or organization that is operated for a charitable purpose.

3. Is subject to the provisions of this chapter that apply to the regulation of dental hygienists.

D. The board may deny an application for a restricted permit if the applicant:

1. Has committed an act that is a cause for disciplinary action pursuant to this chapter.

2. While unlicensed, committed or aided and abetted the commission of any act for which a license is required pursuant to this chapter.

3. Knowingly made a false statement in the application.

4. Has had a license to practice dental hygiene revoked by a dental regulatory board in another jurisdiction in the United States for an act that occurred in that jurisdiction and that constitutes unprofessional conduct pursuant to this chapter.
5. Is currently under suspension or restriction by a dental regulatory board in another jurisdiction in the United States for an act that occurred in that jurisdiction and that constitutes unprofessional conduct pursuant to this chapter.

6. Has surrendered, relinquished or given up a license to practice dental hygiene instead of disciplinary action by a dental regulatory board in another jurisdiction in the United States for an act that occurred in that jurisdiction and that constitutes unprofessional conduct pursuant to this chapter.

E. The board shall suspend an application for a restricted permit or an application for restricted permit renewal if the applicant is currently under investigation by a dental regulatory board in another jurisdiction. The board shall not issue or deny a restricted permit to the applicant until the investigation is resolved.

F. A restricted permit expires either one year after the date of issue or June 30, whichever date first occurs. The board may renew a restricted permit for terms that do not exceed one year.

32-1292.01. Licensure by credential; examinations; waiver; fee

A. The board by rule may waive the examination requirements of this article on receipt of evidence satisfactory to the board that the applicant has passed the clinical examination of another state or testing agency more than five years before submitting an application for licensure pursuant to this chapter and the other state or testing agency maintains a standard of licensure that is substantially equivalent to that of this state as determined by the board. The board by rule shall require:

1. A minimum number of active practice hours within a specific time period before the applicant submits the application. The board shall define what constitutes active practice.

2. An affirmation that the applicant has completed the continuing education requirements of the jurisdiction where the applicant is licensed.

B. The applicant shall pay a licensure by credential fee of not more than one thousand dollars as prescribed by the board.

Article 5 – Certification and Regulation of Denturists

32-1293. Practicing as denturist; denture technology; dental laboratory technician

A. Notwithstanding the provisions of section 32-1202, nothing in this chapter shall be construed to prohibit a denturist certified pursuant to the provisions of this article from practicing denture technology.

B. A person is deemed to be practicing denture technology who:

1. Takes impressions and bite registrations for the purpose of or with a view to the making, producing, reproducing, construction, finishing, supplying, altering or repairing of complete upper or lower prosthetic dentures, or both, or removable partial dentures for the replacement of missing teeth.

2. Fits or advertises, offers, agrees, or attempts to fit any complete upper or lower prosthetic denture, or both, or adjusts or alters the fit of any full prosthetic denture, or fits or adjusts or alters the fit of removable partial dentures for the replacement of missing teeth.
C. In addition to the practices described in subsection B of this section, a person certified to practice denture technology may also construct, repair, reline, reproduce or duplicate full or partial prosthetic dentures or otherwise engage in the activities of a dental laboratory technician.

D. No person may perform an act described in subsection B of this section except a licensed dentist, a holder of a restricted permit pursuant to section 32-1238, a certified denturist or auxiliary personnel authorized to perform any such act by rule or regulation of the board pursuant to section 32-1207, subsection A, paragraph 1.

32-1294. Supervision by dentist; definitions; mouth preparation by dentist; liability; business association

A. A denturist may practice only in the office of a licensed dentist, denominated as such.

B. All work by a denturist shall be performed under the general supervision of a licensed dentist. For the purposes of this section, "general supervision" means the dentist is available for consultation in person or by phone during the performance of the procedures by a denturist pursuant to section 32-1293, subsection B. The dentist shall examine the patient initially, check the completed denture as to fit, form and function and perform such other procedures as the board may specify by rule or regulation. For the purposes of this section "completed denture" means a relined, rebased, duplicated or repaired denture or a new denture. Both the dentist and the denturist shall certify that the dentist has performed the initial examination and the final fitting as required in this subsection, and retain the certification in the patient's file.

C. When taking impressions or bite registrations for the purpose of constructing removable partial dentures or when checking the fit of a partial denture, all mouth preparation must be done by the dentist. The denturist is specifically prohibited from performing any cutting or surgery on hard or soft tissue in the mouth. By rule and regulation the board may further regulate the practice of the denturist in regard to removable partial dentures.

D. No more than two denturists may perform their professional duties under a dentist's general supervision at any one time.

E. A licensed dentist supervising a denturist shall be personally liable for any consequences arising from the performance of the denturist's duties.

F. A certified denturist and the dentist supervising his work may make any lawful agreement between themselves regarding fees, compensation and business association.

G. Any sign, advertisement or other notice displaying the name of the office must include the name of the responsible dentist.

32-1295. Board of dental examiners; additional powers and duties

A. In addition to other powers and duties prescribed by this chapter, the board shall:

1. As far as applicable, exercise the same powers and duties in administering and enforcing this article as it exercises under section 32-1207 in administering and enforcing other articles of this chapter.
2. Determine the eligibility of applicants for certification and issue certificates to applicants who it
determines are qualified for certification.

3. Investigate charges of misconduct on the part of certified denturists.

4. Issue decrees of censure, fix periods and terms of probation, suspend or revoke certificates as the
facts may warrant and reinstate certificates in proper cases.

B. The board may:

1. Adopt rules prescribing requirements for continuing education for renewal of all certificates issued
pursuant to this article.

2. Hire consultants to assist the board in the performance of its duties.

C. In all matters relating to discipline and certifying of denturists and the approval of examinations,
the board, by rule, shall provide for receiving the assistance and advice of denturists who have been
previously certified pursuant to this chapter.

32-1296. Qualifications of applicant

A. To be eligible for certification to practice denture technology an applicant shall:

1. Be of good moral character.

2. Hold a high school diploma or its equivalent.

3. Present to the board evidence of graduation from a recognized denturist school or a certificate of
satisfactory completion of a course or curriculum in denture technology from a recognized denturist
school.

4. Pass a board approved examination.

B. A candidate for certification shall submit a written application to the board that includes a
nonrefundable Arizona dental jurisprudence examination fee as prescribed by the board.

32-1297.01. Application for certification; fingerprint clearance card; denial; suspension

A. Each applicant for certification shall submit a written application to the board accompanied by a
nonrefundable jurisprudence examination fee and obtain a valid fingerprint clearance card issued
pursuant to section 41-1758.03.

B. The board may deny an application for certification or for certification renewal if the applicant:

1. Has committed any act that would be cause for censure, probation, suspension or revocation of a
certificate under this chapter.

2. Has knowingly made any false statement in the application.
3. While uncertified, has committed or aided and abetted the commission of any act for which a certificate is required under this chapter.

4. Has had a certificate to practice denture technology revoked by a regulatory board in another jurisdiction in the United States or Canada for an act that occurred in that jurisdiction and that constitutes unprofessional conduct pursuant to this chapter.

5. Is currently under investigation, suspension or restriction by a regulatory board in another jurisdiction in the United States or Canada for an act that occurred in that jurisdiction and that constitutes unprofessional conduct pursuant to this chapter.

6. Has surrendered, relinquished or given up a certificate to practice denture technology in lieu of disciplinary action by a regulatory board in another jurisdiction in the United States or Canada for an act that occurred in that jurisdiction and that constitutes unprofessional conduct pursuant to this chapter.

C. The board shall suspend an application for certification if the applicant is currently under investigation by a denturist regulatory board in another jurisdiction. The board shall not issue or deny certification to the applicant until the investigation is resolved.

32-1297.03. Qualification for reexamination

An applicant for examination who has previously failed two or more examinations, as a condition of eligibility to take any further examination, shall furnish to the board satisfactory evidence of having successfully completed additional training in a recognized denturist school or refresher courses approved by the board or the board's testing agency.

32-1297.04. Fees

The board shall establish and collect fees, not to exceed the following amounts:

1. For an examination in jurisprudence, two hundred fifty dollars.

2. For each replacement or duplicate certificate, twenty-five dollars.

32-1297.05. Disposition of revenues

The provisions of section 32-1212 shall apply to all fees, penalties and other revenues received by the board under this article.

32-1297.06. Denturist certification; continuing education; certificate reinstatement; certificate for each place of practice; notice of change of address or place of practice; penalties

A. Except as provided in section 32-4301, a certification expires thirty days after the certificate holder's birthday every third year. On or before the certificate holder's birthday every third year, every certified denturist shall submit to the board a complete renewal application and shall pay a certificate renewal fee of not more than $300, established by a formal vote of the board. At least once every three years, before establishing the fee, the board shall review the amount of the fee in a public meeting. Any change in the amount of the fee shall be applied prospectively to a certificate.
holder at the time of certification renewal. This requirement does not apply to a retired denturist or to a denturist with a disability.

B. A certificate holder shall include a written affidavit with the renewal application that affirms that the certificate holder complies with board rules relating to continuing education requirements. A certificate holder is not required to complete the written affidavit if the certificate holder received an initial certification within the year immediately preceding the expiration date of the certificate or the certificate holder is in disabled status. If the certificate holder is not in compliance with board rules relating to continuing education, the board may grant an extension of time to complete these requirements if the certificate holder includes a written request for an extension with the renewal application instead of the written affidavit and the renewal application is received on or before the certificate holder's birthday of the expiration year. The board shall consider the extension request based on criteria prescribed by the board by rule. If the board denies an extension request, the certificate expires thirty days after the certificate holder's birthday of the expiration year.

C. A person applying for a certificate for the first time in this state shall pay a prorated fee for the period remaining until the certificate holder's next birthday. This fee shall not exceed one-third of the fee established pursuant to subsection A of this section. Subsequent certifications shall be conducted pursuant to this section.

D. An expired certificate may be reinstated by submitting a complete renewal application within the twenty-four-month period immediately following the expiration of the certificate with payment of the renewal fee and a $100 penalty. Whenever issued, reinstatement is as of the date of application and entitles the applicant to certification only for the remainder of the applicable three-year period. If a person does not reinstate a certificate pursuant to this subsection, the person must reapply for certification pursuant to this chapter.

E. Each certificate holder must provide to the board in writing both of the following:

1. A primary mailing address.
2. The address for each place of practice.

F. A certificate holder maintaining more than one place of practice shall obtain from the board a duplicate certificate for each office. The board shall set and charge a fee for each duplicate certificate. A certificate holder shall notify the board in writing within ten days after opening an additional place of practice.

G. A certificate holder shall notify the board in writing within ten days after changing a primary mailing address or place of practice address listed with the board. The board shall impose a $50 penalty if a certificate holder fails to notify the board of the change within that time. The board shall increase the penalty imposed to $100 if a certificate holder fails to notify it of the change within thirty days.

32-1297.07. Discipline; procedure

A. After a hearing pursuant to title 41, chapter 6, article 10, the board may suspend or revoke the license issued to a person under this article or censure or place on probation any person for any of the causes set forth as grounds for censure, probation, suspension or revocation in section 32-1263.
B. The board on its own motion may investigate any evidence which appears to show the existence of any of the causes set forth in section 32-1263. The board shall investigate the report under oath of any person which appears to show the existence of any of the causes set forth in section 32-1263. Any person reporting pursuant to this section who provides the information in good faith shall not be subject to liability for civil damages as a result.

C. Except as provided in section 41-1092.08, subsection H, final decisions of the board are subject to judicial review pursuant to title 12, chapter 7, article 6.

32-1297.08. Injunction

A. An injunction shall issue to enjoin the practice of denture technology by any of the following:

1. One neither certified to practice as a denturist nor licensed to practice as a dentist.

2. One certified as a denturist from practicing without proper supervision by a dentist as required by this article.

3. A denturist whose continued practice will or might cause irreparable damage to the public health and safety prior to the time proceedings pursuant to section 32-1297.07 could be instituted and completed.

B. A petition for injunction shall be filed by the board in the superior court for Maricopa county or in the county where the defendant resides or is found. Any citizen is also entitled to obtain injunctive relief in any court of competent jurisdiction because of the threat of injury to the public health and welfare.

C. Issuance of an injunction shall not relieve the respondent from being subject to any other proceedings provided for by law.

32-1297.09. Violations; classification

A person is guilty of a class 2 misdemeanor who:

1. Not licensed as a dentist, practices denture technology without certification as provided by this article.

2. Exhibits or displays a certificate, diploma, degree or identification of another or a forged or fraudulent certificate, diploma, degree or identification with the intent that it be used as evidence of the right of such person to practice as a denturist in this state.

3. Fails to obey a summons or other order regularly and properly issued by the board.

4. Is a licensed dentist responsible for a denturist under this article who fails to personally supervise the work of the denturist.
A. A dentist may dispense drugs, except schedule II controlled substances that are opioids, and devices kept by the dentist if:

1. All drugs are dispensed in packages labeled with the following information:

   (a) The dispensing dentist's name, address and telephone number.

   (b) The date the drug is dispensed.

   (c) The patient's name.

   (d) The name and strength of the drug, directions for its use and any cautionary statements.

2. The dispensing dentist enters into the patient's dental record the name and strength of the drug dispensed, the date the drug is dispensed and the therapeutic reason.

3. The dispensing dentist keeps all drugs in a locked cabinet or room, controls access to the cabinet or room by a written procedure and maintains an ongoing inventory of its contents.

B. Except in an emergency situation, a dentist who dispenses drugs for a profit without being registered by the board to do so is subject to a civil penalty by the board of not less than three hundred dollars and not more than one thousand dollars for each transaction and is prohibited from further dispensing for a period of time as prescribed by the board.

C. Before dispensing a drug pursuant to this section, the patient shall be given a written prescription on which appears the following statement in bold type: "This prescription may be filled by the prescribing dentist or by a pharmacy of your choice."

D. A dentist shall dispense for profit only to the dentist's own patient and only for conditions being treated by that dentist. The dentist shall provide direct supervision of an attendant involved in the dispensing process. For the purposes of this subsection, "direct supervision" means that a dentist is present and makes the determination as to the legitimacy or advisability of the drugs or devices to be dispensed.

E. This section shall be enforced by the board, which shall establish rules regarding labeling, recordkeeping, storage and packaging of drugs that are consistent with the requirements of chapter 18 of this title. The board may conduct periodic inspections of dispensing practices to ensure compliance with this section and applicable rules.

F. For the purposes of this section, "dispense" means the delivery by a dentist of a prescription drug or device to a patient, except for samples packaged for individual use by licensed manufacturers or repackagers of drugs, and includes the prescribing, administering, packaging, labeling and security necessary to prepare and safeguard the drug or device for delivery.
Article 7 – Rehabilitation

32-1299. Substance abuse treatment and rehabilitation program; private contract; funding; confidential stipulation agreement

A. The board may establish a confidential program for the treatment and rehabilitation of dentists, dental therapists, denturists and dental hygienists who are impaired by alcohol or drug abuse. This program shall include education, intervention, therapeutic treatment and posttreatment monitoring and support.

B. The board may contract with other organizations to operate the program established pursuant to this section. A contract with a private organization shall include the following requirements:

1. Periodic reports to the board regarding treatment program activity.

2. Release to the board on demand of all treatment records.

3. Periodic reports to the board regarding each dentist's, dental therapist's, denturist's or dental hygienist's diagnosis and prognosis and recommendations for continuing care, treatment and supervision.

4. Immediate reporting to the board of the name of an impaired practitioner whom the treating organization believes to be a danger to self or others.

5. Immediate reporting to the board of the name of a practitioner who refuses to submit to treatment or whose impairment is not substantially alleviated through treatment.

C. The board may allocate an amount of not more than twenty dollars annually or sixty dollars triennially from each fee it collects from the renewal of active licenses for the operation of the program established by this section.

D. A dentist, dental therapist, denturist or hygienist who, in the opinion of the board, is impaired by alcohol or drug abuse shall agree to enter into a confidential nondisciplinary stipulation agreement with the board. The board shall place a licensee or certificate holder on probation if the licensee or certificate holder refuses to enter into a stipulation agreement with the board and may take other action as provided by law. The board may also refuse to issue a license or certificate to an applicant if the applicant refuses to enter into a stipulation agreement with the board.

E. In the case of a licensee or certificate holder who is impaired by alcohol or drug abuse after completing a second monitoring program pursuant to a stipulation agreement under subsection D of this section, the board shall determine whether:

1. To refer the matter for a formal hearing for the purpose of suspending or revoking the license or certificate.

2. The licensee or certificate holder should be placed on probation for a minimum of one year with restrictions necessary to ensure public safety.

3. To enter into another stipulation agreement under subsection D of this section with the licensee or certificate holder.
Article 8 – Mobile Dental Facilities and Portable Dental Units

32-1299.21. Definitions

In this article, unless the context otherwise requires:

1. "Mobile dental facility" means a facility in which dentistry is practiced and that is routinely towed, moved or transported from one location to another.

2. "Permit holder" means a dentist, dental hygienist, denturist or registered business entity that is authorized by this chapter to offer dental services in this state or a nonprofit organization, school district or school or institution of higher education that may employ a licensee to provide dental services and that is authorized by this article to operate a mobile dental facility or portable dental unit.

3. "Portable dental unit" means a nonfacility in which dental equipment used in the practice of dentistry is transported to and used on a temporary basis at an out-of-office location.

32-1299.22. Mobile dental facilities; portable dental units; permits; exceptions

A. Beginning January 1, 2012, every mobile dental facility and, except as provided in subsection B, every provider, program or entity using portable dental units in this state must obtain a permit pursuant to this article.

B. A licensee who does not hold a permit for a mobile dental facility or portable dental unit may provide dental services if:

1. Occasional services are provided to a patient of record of a fixed dental office who is treated outside of the dental office.

2. Services are provided by a federal, state or local government agency.

3. Occasional services are performed outside of the licensee's office without charge to a patient or a third party.

4. Services are provided to a patient by an accredited dental or dental hygiene school.

5. The licensee holds a valid permit to provide mobile dental anesthesia services.

6. The licensee is an affiliated practice dental hygienist.

32-1299.23. Permit application; fees; renewal; notification of changes

A. An individual or entity that seeks a permit to operate a mobile dental facility or portable dental unit must submit an application on a form provided by the board and pay an annual registration fee prescribed by the board by rule. The permit must be renewed annually not later than the last day of the month in which the permit was issued. Permits not renewed by the expiration date are subject to a late fee as prescribed by the board by rule.
B. A permit holder shall notify the board of any change in address or contact person within ten days after that change. The board shall impose a penalty as prescribed by the board by rule if the permit holder fails to notify the board of that change within that time.

C. If ownership of the mobile dental facility or portable dental unit changes, the prior permit is invalid and a new permit application must be submitted.

32-1299.24. Standards of operation and practice

A. A permit holder must:

1. Comply with all applicable federal, state and local laws, regulations and ordinances dealing with radiographic equipment, flammability, sanitation, zoning and construction standards, including construction standards relating to required access for persons with disabilities.

2. Establish written protocols for follow-up care for patients who are treated in a mobile dental facility or through a portable dental unit. The protocols must include referrals for treatment in a dental office that is permanently established within a reasonable geographic area and may include follow-up care by the mobile dental facility or portable dental unit.

3. Ensure that each mobile dental facility or portable dental unit has access to communication equipment that will enable dental personnel to contact appropriate assistance in an emergency.

4. Identify a person who is licensed pursuant to this chapter, who is responsible to supervise treatment and who, if required by law, will be present when dental services are rendered. This paragraph does not prevent supervision by a dentist providing services or supervision pursuant to the exceptions prescribed in section 32-1231.

5. Display in or on the mobile dental facility or portable dental unit a current valid permit issued pursuant to this article in a manner that is readily observable by patients or visitors.

6. Provide a means of communication during and after business hours to enable the patient or the parent or guardian of a patient to contact the permit holder of the mobile dental facility or portable dental unit for emergency care, follow-up care or information about treatment received.

7. Comply with all requirements for maintenance of records pursuant to section 32-1264 and all other statutory requirements applicable to health care providers and patient records. All records, whether in paper or electronic form, if not in transit, must be maintained in a permanent, secure facility. Records of prior treatment must be readily available during subsequent treatment visits whenever practicable.

8. Ensure that all dentists, dental hygienists and denturists working in the mobile dental facility or portable dental unit hold a valid, current license issued by the board and that all delegated duties are within their respective scopes of practice as prescribed by the applicable laws of this state.

9. Maintain a written or electronic record detailing each location where services are provided, including:

   (a) The street address of the service location.
(b) The dates of each session.

(c) The number of patients served.

(d) The types of dental services provided and the quantity of each service provided.

10. Provide to the board or its representative within ten days after a request for a record the written or electronic record required pursuant to paragraph 9 of this subsection.

11. Comply with current recommended infection control practices for dentistry as published by the national centers for disease control and prevention and as adopted by the board.

B. A mobile dental facility or portable dental unit must:

1. Contain equipment and supplies that are appropriate to the scope and level of treatment provided.

2. Have ready access to an adequate supply of potable water.

C. A permit holder or licensee who fails to comply with applicable statutes and rules governing the practice of dentistry, dental hygiene and denturism, the requirements for registered business entities or the requirements of this article is subject to disciplinary action for unethical or unprofessional conduct, as applicable.

32-1299.25. Informed consent; information for patients

A. The permit holder of a mobile dental facility or portable dental unit must obtain appropriate informed consent, in writing or by verbal communication, that is recorded by an electronic or digital device from the patient or the parent or guardian of the patient authorizing specific treatment before it is performed. The signed consent form or verbal communication shall be maintained as part of the patient's record as required in section 32-1264.

B. If services are provided to a minor, the signed consent form or verbal communication must inform the parent or guardian that the treatment of the minor by the mobile dental facility or portable dental unit may affect future benefits the minor may receive under private insurance, the Arizona health care cost containment system or the children's health insurance program.

C. At the conclusion of each patient's visit, the permit holder of a mobile dental facility or portable dental unit shall provide each patient with an information sheet that must contain:

1. Pertinent contact information as required by this section.

2. The name of the dentist or dental hygienist, or both, who provided services.

3. A description of the treatment rendered, including billed service codes, fees associated with treatment and tooth numbers if appropriate.

4. If necessary, referral information to another dentist as required by this article.
D. If the patient or the minor patient's parent or guardian has provided written consent to an institutional facility to access the patient's dental health records, the permit holder shall provide the institution with a copy of the information sheet provided in subsection C.

32-1299.26. Disciplinary actions; cessation of operation

A. A permit holder for a mobile dental facility or portable dental unit that provides dental services to a patient shall refer the patient for follow-up treatment with a licensed dentist or the permit holder if treatment is clinically indicated. A permit holder or licensee who fails to comply with this subsection commits an act of unprofessional conduct or unethical conduct and is subject to disciplinary action pursuant to section 32-1263, subsection A, paragraph 1 or subsection C.

B. The board may do any of the following pursuant to its disciplinary procedures if a mobile dental facility or portable dental unit violates any statute or board rule:

1. Refuse to issue a permit.

2. Suspend or revoke a permit.

3. Impose a civil penalty of not more than two thousand dollars for each violation.

C. If a mobile dental facility or portable dental unit ceases operations, the permit holder must notify the board within thirty days after the last day of operation and must report on the disposition of patient records and charts. In accordance with applicable laws and rules, the permit holder must also notify all active patients of the disposition of records and make reasonable arrangements for the transfer of patient records, including copies of radiographs, to a succeeding practitioner or, if requested, to the patient. For the purposes of this subsection, "active patient" means any person whom the permit holder has examined, treated, cared for or consulted with during the two year period before the discontinuation of practice.
GAME AND FISH COMMISSION
Title 12, Chapter 4, Article 3
This Five-Year-Review Report (5YRR) from the Arizona Game & Fish Commission relates to rules in Title 12, Chapter 4, Article 3 regarding the taking and handling of live wildlife.

In the last 5YRR of these rules, the Commission proposed to amend its rules. The Commission completed a rulemaking addressing the proposed changes in 2018. The Council approved the NFR on February 9, 2019.

**Proposed Action**

The Commission is proposing to amend several of its rules to improve their overall clarity, consistency, effectiveness and consistency with other rules and statutes. The Commission indicates it plans to submit a Notice of Final Rulemaking to the Council by September 2022.

1. **Has the agency analyzed whether the rules are authorized by statute?**

   Yes, the Commission cites to both general and specific statutory authority.
2. **Summary of the agency’s economic impact comparison and identification of stakeholders:**

   According to the Department, overall, the rulemaking resulted in the estimated economic, small business, and consumer impacts as stated in the last making of the rule except as indicated:

   - **R12-4-310. Fishing Permits:** The Commission anticipated the rulemaking would benefit persons regulated by the rule by reducing regulatory ambiguity and providing greater opportunities for fishing. However, by expanding the applicant eligibility criteria and not placing a limit on the number of permits an applicant may apply for in any given time-frame, the rule has resulted in a large increase in the number of applicants and permits being issued, with some entities applying almost monthly. The Department will continue to review and streamline processes and seek assistance from other work units in order to keep up with the demand for these permits.

   - **R12-4-313. Lawful Methods of Taking Aquatic Wildlife:** The rule was recently amended to establish a limited-entry season for fishing events. The Commission envisioned these events occurring at high demand locations owned by the Department. The Department has not held a limited-entry angling event and is unable to assess the economic impact of the rule.

   - **R12-4-318. Seasons for Lawfully Taking Wild Mammals, Birds, and Reptiles:** The rule was amended to establish a limited-entry season for hunting events. The Commission envisioned these events occurring at high demand locations or for high demand hunts. The Department has not held a limited-entry angling event and is unable to assess the economic impact of the rule.

3. **Has the agency analyzed the costs and benefits of the rulemaking and determined that the rules impose the least burden and costs to those who are regulated?**

   The Commission believes the majority of the rules benefit persons regulated by the rule and Department by increasing consistency between Commission Order and rule, reducing regulatory ambiguity to ease compliance, providing greater opportunities for hunting and fishing, reducing the burden on persons regulated by the rules where practical, allowing the Department additional oversight to handle advances in hunting and angling technology, and protecting the spirit of fair chase.
The Department has determined that once the following amendments are made, the probable benefits of the rules within this state outweigh the probably costs of the rule and the rules impose the least burden and costs to persons regulated by the rule.

R12-4-302. Use of Tags: Currently, the rule prohibits any person from possessing another person’s tag or allowing another person to possess your tag. The Department recognizes that a parent or guardian will often hold their minor child’s tag for safekeeping and believes this practice does not violate the intent of the law. The commission is currently pursuing rulemaking to establish that a person may possess a tag issued to another person who is under 18 years of age to reduce burdens and costs to persons regulated by the rule.

4. **Has the agency received any written criticisms of the rules over the last five years?**

   Yes, the Commission indicates they received written criticisms to the rules. The Commission properly responded to the comments.

5. **Has the agency analyzed the rules’ clarity, conciseness, and understandability?**

   Yes, for the reasons mentioned in the report, the Commission indicates the following rules are not clear, concise, and understandable:

   - R12-4-302 - Use of Tags
   - R12-4-305 - Possessing, Transporting, Importing, Exporting and Selling Carcasses or Parts of Wildlife
   - R12-4-306 - Bison Hunt Requirements
   - R12-4-319 - Use of Aircraft to Take Wildlife

6. **Has the agency analyzed the rules’ consistency with other rules and statutes?**

   Yes, for the reasons mentioned in the report the Commission indicates the following rules are not consistent with other rules and statutes:

   - R12-4-303 - Unlawful Devices, Methods and Ammunition
   - R12-4-305 - Possessing, Transporting, Importing, Exporting and Selling Carcasses or Parts of Wildlife
   - R12-4-322 - Pickup and Possession of Wildlife Carcasses or Parts

7. **Has the agency analyzed the rules’ effectiveness in achieving its objectives?**

   Yes, for the reasons mentioned in the report, the Commission indicates the following rules are not effective in achieving their objectives:

   - R12-4-301 - Definitions
R12-4-305 - Possessing, Transporting, Importing, Exporting and Selling Carcasses or Parts of Wildlife
R12-4-306 - Bison Hunt Requirements
R12-4-308 - Wildlife Inspections, Check Stations, and Roadblocks
R12-4-311 - Exemptions from Requirement to Possess an Arizona Fishing License or Hunting License While Taking Wildlife
R12-4-314 - Possession, Transportation, or Importation of Aquatic Wildlife
R12-4-318 - Seasons for Lawfully Taking Wild Mammals, Birds, and Reptiles

8. **Has the agency analyzed the current enforcement status of the rules?**

   Yes, for the reasons mentioned in the report the Commission indicates the following rules are not enforced as written:

   - R12-4-302 - Use of Tags
   - R12-4-305 - Possessing, Transporting, Importing, Exporting and Selling Carcasses or Parts of Wildlife

9. **Are the rules more stringent than corresponding federal law and, if so, is there statutory authority to exceed the requirements of federal law?**

   No, the Commission indicates the rules are not more stringent than corresponding federal laws; 50 C.F.R. 20.21 and 50 C.F.R. 19

10. **For rules adopted after July 29, 2010, do the rules require a permit or license and, if so, does the agency comply with A.R.S. § 41-1037?**

    Yes, the Commission indicates two rules (R12-4-309 & R12-4-310) require the issuance of a general permit and are in compliance with A.R.S. § 41-1037.

11. **Conclusion**

    As mentioned above, the Commission is proposing to amend several of its rules to make them more clear, concise, understandable, effective, and consistent with other rules and statutes. The Commission plans to submit a Notice of Final Rulemaking to the Council by September 2022.

    Council staff recommends approval of this report.
March 8, 2022

**VIA EMAIL: grrc@azdoa.gov**
Nicole Sornsin, Madam Chair  
The Governor's Regulatory Review Council  
100 North 15th Avenue, Suite 305  
Phoenix, AZ 85007

**RE:** Five-year-Review Report: 12 A.A.C. 4, Article 3. Taking and Handling of Wildlife

Dear Ms Sornsin:

Please find enclosed the Five Year Review Report of the Arizona Game and Fish Commission for 12 A.A.C. 4, Article 3. Taking and Handling of Wildlife which is due on March 31, 2022.

The Arizona Game and Fish Commission hereby certifies compliance with A.R.S. 41-1091.

For questions about this report, please contact Celeste Cook at (623) 236-7390 or at CCook@azgfd.gov.

Sincerely,

Ty E. Gray  
Director

For T Finley as Acting Deputy Director
# TITLE 12. NATURAL RESOURCES  
## CHAPTER 4. GAME AND FISH COMMISSION  
### ARTICLE 3 TAKING AND HANDLING OF LIVE WILDLIFE  
#### FIVE-YEAR REVIEW REPORT

1. General and specific statutes authorizing the rule, including any statute that authorizes the agency to make rules.

For all rules within Article 3, the authorizing statute is A.R.S. § 17-231.

For each rule within Article 3, the implementing statutes are as follows:

<table>
<thead>
<tr>
<th>Rule</th>
<th>Description</th>
</tr>
</thead>
<tbody>
<tr>
<td>R12-4-301</td>
<td>Definitions</td>
</tr>
<tr>
<td>R12-4-303</td>
<td>Unlawful Devices, Methods, and Ammunition</td>
</tr>
<tr>
<td>R12-4-306</td>
<td>Bison Hunt Requirements</td>
</tr>
<tr>
<td>R12-4-310</td>
<td>Fishing Permits</td>
</tr>
<tr>
<td>R12-4-311</td>
<td>Exemptions from Requirement to Possess an Arizona Fishing or Hunting License While Taking Wildlife</td>
</tr>
<tr>
<td>R12-4-313</td>
<td>Lawful Methods of Take and Season for Aquatic Wildlife</td>
</tr>
<tr>
<td>R12-4-314</td>
<td>Possession, Transportation, or Importation of Aquatic Wildlife</td>
</tr>
</tbody>
</table>
| but would | Use of Aircraft to Take Wildlife | A.R.S. §§ 17-102, 17-231(A)(2), 17-231(A)(3), 17-


2. Objective of the rule, including the purpose for the existence of the rule.

R12-4-301. Definitions. The objective of the rule is to establish definitions that assist members of the public understand the unique terms that are used throughout Article 3. The rule was adopted to facilitate consistent interpretation of Article 3 rules and to prevent persons regulated by the rule from misinterpreting the intent of Commission rules.

R12-4-302. Use of Tags. The objective of the rule is to establish requirements for the possession and lawful use of tags issued by the Department. A.R.S. § 17-332 authorizes the Commission to prescribe the manner in which a hunter must attach a tag to a big game animal. The rule was adopted to establish the manner and method in which a person must attach a tag to wildlife and ensure consistent interpretation of and compliance with A.R.S. § 17-332.

R12-4-303. Unlawful Devices, Methods, and Ammunition. The objective of the rule is to establish those devices, methods, and ammunition that are unlawful for taking of any wildlife in Arizona. A.R.S. § 17-231(A) requires the Commission to adopt rules prescribing the manner and methods that may be used in taking wildlife. The rule was adopted to establish methods and devices that are unlawful for the take of wildlife.

R12-4-304. Lawful Methods for Taking Wild Mammals, Birds, and Reptiles. The objective of the rule is to establish lawful devices and methods a person may use to take wild mammals, birds, and reptiles during seasons established by Commission Order. A.R.S. § 17-231(A) requires the Commission to adopt rules prescribing the manner and methods that may be used in taking wildlife. A.R.S. § 17-301(D)(2) authorizes the Commission to adopt rules establishing the taking of wildlife with firearms, archery equipment, or other implements in hand as may be defined. The rule was adopted to establish methods and devices that may be used for the take of specific wildlife.

R12-4-305. Possessing, Transporting, Importing, Exporting, and Selling Carcasses or Parts of Wildlife. The
objective of the rule is to conserve wildlife resources by establishing requirements for the lawful possession, transport, import, export, or sale of carcasses or parts of wildlife. The Commission’s rule protects wildlife by discouraging illegal trade of native wildlife. The rule was adopted to prevent the unlawful possession, transport, import, export, or sale of wildlife and allow for lawful possession by establishing the methods for complying with governing statutes.

R12-4-306. Bison Hunt Requirements. The objective of the rule is to establish rules of practice governing bison hunts, which are conducted by the Department to harvest bison appropriate to management objectives and land carrying capacity. In Arizona, bison are found on or adjacent to two wildlife areas operated solely by the Department: Raymond, located east of Flagstaff, and House Rock, located east of the North Kaibab National Forest. Both wildlife areas are managed to provide viewing opportunities as well as hunting opportunity. The rule was adopted to ensure the Department manages these herds on a sustainable basis.

R12-4-307. Trapping Regulations, Licensing; Methods; Tagging of Bobcat Pelts. The objective of the rule is to establish requirements and restrictions necessary to regulate trapping in a fair and humane manner with the utmost regard for wildlife management principles and public safety. In addition, the rule establishes trapping reporting requirements as required under A.R.S. § 17-361(D). Trapping is the use of a device to remotely catch an animal. Fur-bearing and predatory animals may be trapped for a variety of purposes, including food, the fur trade, pest control, and wildlife management. Under A.R.S. § 17-301, it is unlawful to take wildlife with any leghold trap, instant kill body gripping design trap, or by a poison or a snare on any public land. The rule was adopted to establish requirements and restrictions to ensure responsible trapping and safeguard the future of trapping and ensure consistent interpretation of and compliance with A.R.S. § 17-301.

R12-4-308. Wildlife Inspections, Check Stations, and Roadblocks. The objective of the rule is to establish requirements for wildlife check stations and wildlife inspections, as authorized by the Director. Wildlife check stations and inspections enable the Department to obtain biological data and verify evidence of legality. Under A.R.S. § 17-211(E), game rangers and wildlife managers may inspect all wildlife taken or transported and seize all wildlife taken or possessed in violation of law, or showing evidence of illegal taking. The rule was adopted to ensure consistent interpretation of and compliance with A.R.S. § 17-211(E) and other applicable laws and rules.

R12-4-309. Authorization for Use of Drugs on Wildlife. The objective of the rule is to establish the restrictions, application, reporting, and exemption from requirements for the authorization for use of drugs on wildlife, including but not limited to, fertility drugs, growth hormones, and tranquilizers. Such drugs are used in research and population management for fertility control, disease prevention or treatment, immobilization, or growth stimulation. The rule was adopted to proactively provide the Department with measures designed to ensure the necessary regulatory measures are in place for the use of drugs on wildlife.

R12-4-310. Fishing Permits. The objective of the rule is to establish requirements for the fishing permit available
to governmental agencies and nonprofit organizations that provide rehabilitation and treatment services for persons with disabilities. The Commission recognizes fishing and hunting as a fundamental requirement of wildlife conservation in Arizona and introductory fishing or hunting events actively promote participation in a variety of recreational opportunities. The rule was adopted to permit these agencies to provide outdoor fishing opportunities to persons with physical, developmental, or mental disabilities, without requiring them to obtain a fishing license.

R12-4-311. Exemptions from Requirement to Possess an Arizona Fishing License or Hunting License While Taking Wildlife. The objective of the rule is to establish the circumstances under which a person is not required to possess a fishing or hunting license while taking wildlife. A.R.S. § 17-331 states, “Except as provided by this title, rules prescribed by the Commission or Commission Order, a person shall not take any wildlife in this state without a valid license or a Commission approved proof of purchase.” The rule was adopted to identify the circumstances under which a fishing or hunting license is not required due to statutory exemptions or when determined necessary by the Commission. The Commission recognizes fishing or hunting as a fundamental requirement of wildlife conservation in Arizona and introductory fishing or hunting events actively promote participation in a variety of recreational opportunities.

R12-4-313. Lawful Methods of Take and Season for Aquatic Wildlife. The objective of the rule is to establish lawful devices and methods a person may use to take aquatic wildlife during seasons established by Commission Order; and the special restrictions and requirements for various seasons to allow the Department to achieve management plans and goals for the preservation and harvest of aquatic wildlife, while providing maximum fishing opportunities for the public. A.R.S. § 17-301 authorizes the Commission to determine lawful methods for the taking of fish; and A.R.S. § 17-301(D)(2) authorizes the Commission to adopt rules establishing the taking of wildlife with firearms, fishing equipment, archery equipment, or other implements in hand as may be defined. The rule was adopted to establish additional devices and methods by which a person may lawfully take aquatic wildlife and ensure consistent interpretation of and compliance with A.R.S. § 17-301.

R12-4-314. Possession, Transportation, or Importation of Aquatic Wildlife. The objective of the rule is to establish requirements for the temporary possession of live fish and restrictions necessary to control the introduction of undesirable species and to reduce the likelihood that baitfish, crayfish, and waterdogs (larval salamanders) may be released in waters where they could establish populations that compete with existing and native aquatic wildlife. All freshwater game fish are listed as restricted live wildlife. Under R12-4-406, a person must possess a valid special license and any required federal authorization or have a lawful exemption in order to lawfully possess restricted live wildlife. The rule was adopted to provide a lawful mechanism by which a person can temporarily hold certain aquatic wildlife to be used as bait to capture freshwater game fish while protecting and preserving the State's native aquatic wildlife and habitat.

R12-4-318. Seasons for Lawfully Taking Wild Mammals, Birds, and Reptiles. The objective of the rule is to
establish special restrictions and requirements for various hunt structures in order to allow the Department to achieve management goals for the preservation and harvest of wildlife, while at the same time providing maximum wildlife-oriented recreational opportunities for the public. Under A.R.S. § 17-301(D)(2), the Commission has the authority to adopt rules establishing the taking of wildlife with firearms, with fishing equipment, with archery equipment, or other implements in hand as may be defined. The rule was adopted to ensure consistent interpretation of and compliance with A.R.S. § 17-301(D)(2).

R12-4-319. Use of Aircraft to Take Wildlife. The objective of the rule is to prohibit the use of aircraft for the purpose of hunting or harassing wildlife to provide for fair chase and pursuit of game animals. A.R.S. § 17-301(B) states, “A person shall not take wildlife, except aquatic wildlife, or discharge a firearm or shoot any other device from a motor vehicle, including an automobile, aircraft, train or powerboat, or from a sailboat, boat under sail, or a floating object towed by powerboat or sailboat except as expressly permitted by the commission.” The rule was adopted to ensure consistent interpretation of and compliance with A.R.S. § 17-301(B).

R12-4-320. Harassment of Wildlife. The objective of the rule is to prohibit the use of vehicles for the purpose of hunting or harassing wildlife to provide for fair chase and pursuit of game animals. A.R.S. § 17-301(B) states, “A person shall not take wildlife, except aquatic wildlife, or discharge a firearm or shoot any other device from a motor vehicle, including an automobile, aircraft, train or powerboat, or from a sailboat, boat under sail, or a floating object towed by powerboat or sailboat except as expressly permitted by the commission.” The rule was adopted to ensure consistent interpretation of and compliance with A.R.S. § 17-301(B).

R12-4-321. Restrictions for Taking Wildlife in City, County, or Town Parks and Preserves. The objective of the rule is to establish restrictions for hunting in city, county, or town parks and preserves. The Maricopa County Parks and Recreation Commission and the Arizona Game and Fish Commission entered into an agreement in 1976 with the following stated objective: “To recognize hunting, fishing and trapping as practical methods for harvesting wildlife resources and to limit restrictions on such methods of harvest to recreational facilities and other developments where people are congregated and require safety precautions.” The agreement further specifies restrictions necessary to meet the objectives of the agreement. Because the restrictions affect the public and are more restrictive than methods commonly prescribed under R12-4-304, R12-4-313, R12-4-317, and R12-4-318, they are appropriately established within this rule as well as within the agreement. The agreement remains in effect to date without change.

R12-4-322. Pickup and Possession of Wildlife Carcasses or Parts. The objective of the rule is to allow persons to pick up and possess naturally shed antlers, horns, or other wildlife parts that are not fresh without a permit or Department inspection when it can be determined the animal died of natural causes and prohibit the pickup and possession of any threatened or endangered species carcass or its parts. Prior to adopting this rule, law and rule did not adequately address the legality of picking up fresh wildlife parts.
3. Effectiveness of the rule in achieving the objective, including a summary of any available data supporting the conclusion reached.

At the beginning of each rule review, Department employees are asked to provide comments and suggested rule changes. In addition, comments received since the last rule review was conducted are reviewed. Comments indicate the rules are understandable and applicable. The Department believes this data indicates the following rules are effective in achieving the objectives stated above:

R12-4-302. Use of Tags
R12-4-307. Trapping Regulations, Licensing; Methods; Tagging of Bobcat Pelts
R12-4-310. Fishing Permits.
R12-4-313. Lawful Methods of Take and Season for Aquatic Wildlife
R12-4-319. Use of Aircraft to Take Wildlife
R12-4-320. Harassment of Wildlife
R12-4-321. Restrictions for Taking Wildlife in City, County, or Town Parks and Preserves
R12-4-322. Pickup and Possession of Wildlife Carcasses or Parts

The Department recommends amending the following rules as indicated to increase their effectiveness:

R12-4-301. Definitions. The development of pre-manufactured powder charges to be used in newly developed muzzleloading firearms allows the charges to be safely loaded and unloaded while the projectile must still be loaded through the muzzle. These new devices are not currently a lawful method for muzzleloader seasons. The Department believes the merits of this new technology, namely increases in safety, outweigh concerns over it being allow during muzzleloader seasons. The Department recommends the definition for muzzleloaders be updated to allow this new technology while still requiring a muzzleloading rifle to be limited to a single barrel that requires reloading of the projectile between shots.

The Department also recommends adding definitions for “traditional muzzleloader” and “traditional archery” to accommodate public input for creating opportunity via more traditional seasons when listed in Commission Order.

The Department also recommends defining “lure” and/or “umbrella rig” (also known as an “Alabama rig”) to clarify the lawful use of multiple lure/hook devices.

R12-4-305. Possessing, Transporting, Importing, Exporting, and Selling Carcasses or Parts of Wildlife. In an effort to prevent the spread of Chronic Wasting Disease (CWD), the rule places restrictions on the import of a cervid taken in another state. This has been problematic for some hunters who wish to bring the cervid carcass to a taxidermist or meat processor in Arizona. The Department recommends easing transport and possession requirements while maintaining appropriate CVWD measures.
R12-4-306. Bison Hunt Requirements. The Department recommends amending the rule to allow a person to check out using the Department's online check out system instead of telephoning a Department office and require the Department employee accompanying the hunter to conduct the check-out at the end of the hunt to simplify the bison hunt check out processes and make them more effective.

R12-4-308. Wildlife Inspections, Check Stations, and Roadblocks. The rule currently requires the submission of a biological sample (such as teeth) for bear, bison, and mountain lion. Biological samples and other data are collected to analyze wildlife health, population trends, demographics, and more. These samples assist Department biologists in the planning stages of their developments, identify critical habitats, and make better decisions to protect, restore, and manage game populations. To better manage Arizona's game populations, the Department recommends amending the rule to require the submission of biological samples when required by Commission Order.

R12-4-311. Exemptions from Requirement to Possess an Arizona Fishing License or Hunting License While Taking Wildlife. The Department recommends correcting the reference to decolatte snails, including their scientific name \((\text{Rumina decollata})\), and adding two species of crustacean, \(\text{Armadillidium vulgare}\) and \(\text{A.nasatum}\).

R12-4-314. Possession, Transportation, or Importation of Aquatic Wildlife. The Department believes this rule exists to establish requirements for the temporary possession of live fish and restrictions necessary to control the introduction of undesirable species and to reduce the likelihood that baitfish, crayfish, and waterdogs (larval salamanders) may be released in waters where they could establish populations that compete with existing and native aquatic wildlife. The Department recommends amending the rule to prohibit the transport of waterdogs for their use as live bait except their use will remain lawful only on those waters where they are taken.

R12-4-318. Seasons for Lawfully Taking Wild Mammals, Birds, and Reptiles. The Commission offers Handgun, Archery, and Muzzleloader (HAM) hunts to provide a challenging hunt opportunity for weapons with shorter effective ranges. The Department is aware that some persons participating in a HAM hunt are using a handgun with a brace, which functions similarly to a rifle stock and provides the hunter with additional stability. The most commonly encountered firearm used in this manner is the A.R. pistol, chambered with a .223 or 300 rifle cartridge. These rifle cartridges when combined with the increased stability of a brace are believed to provide a significant advantage over the traditional handgun and handgun cartridge combination. In addition, there is some confusion as to whether to whether the use of a brace is lawful during a HAM season. The Department recommends amending the rule to clarify the use of a handgun with a brace is prohibited during a HAM season. This recommendation is a result of customer comments received by the Department.

The Commission also offers HAM and limited weapon-muzzleloader hunts to provide additional opportunities for hunters to use a muzzleloader in harvesting big game. The intent of these hunts is to provide a challenging hunt opportunity for weapons with shorter effective ranges. The Department is aware that some persons
participating in a HAM or limited weapon-muzzleloader hunt are using magnifying optics that can extend the effective range of a muzzleloader from 200 to 500 yards or more in some cases, thus circumventing the original intent of the HAM and muzzleloader hunt. While muzzleloaders with magnifying optics may continue to be a legal device in a general hunt, the Department recommends amending the rule to state that only open sights, iron sights or a 1x optic may be used during a HAM or limited weapon-muzzleloader hunt. This recommendation is a result of customer comments received by the Department.

4. Consistency of the rule with state and federal statutes and other rules made by the agency, and a listing of the statutes or rules used in determining the consistency.

Statutes and rules used in determining consistency include A.R.S. Title 17 and A.A.C. Title 12, Chapter 4. The following rules are consistent with state and federal statutes and other rules made by the agency and are not in conflict:

R12-4-301. Definitions
R12-4-302. Use of Tags
R12-4-304. Lawful Methods for Taking Wild Mammals, Birds, and Reptiles
R12-4-306. Bison Hunt Requirements
R12-4-307. Trapping Regulations, Licensing; Methods; Tagging of Bobcat Pelts
R12-4-308. Wildlife Inspections, Check Stations, and Roadblocks
R12-4-309. Authorization for Use of Drugs on Wildlife
R12-4-310. Fishing Permits.
R12-4-311. Exemptions from Requirement to Possess an Arizona Fishing License or Hunting License While Taking Wildlife
R12-4-313. Lawful Methods of Take and Season for Aquatic Wildlife
R12-4-314. Possession, Transportation, or Importation of Aquatic Wildlife
R12-4-318. Seasons for Lawfully Taking Wild Mammals, Birds, and Reptiles
R12-4-319. Use of Aircraft to Take Wildlife
R12-4-320. Harassment of Wildlife
R12-4-321. Restrictions for Taking Wildlife in City, County, or Town Parks and Preserves

The Department recommends amending the following rules to increase their consistency with statutes and rules as indicated:

R12-4-303. Unlawful Devices, Methods, and Ammunition. Subsection A of this rule references a special license issued under Article 4 that was renamed from "Scientific Collecting License" to "Scientific Activity License." The Department recommends amending the rule to replace references to "Scientific Collecting License" with "Scientific Activity License." to increase consistency between Commission rules.
R12-4-305. Possessing, Transporting, Importing, Exporting, and Selling Carcasses or Parts of Wildlife. Subsection N of this rule regulates the transportation of live crayfish from the site where taken. An exemption is provided as permitted under R12-4-316. R12-4-316 was repealed by final rulemaking, see 25 A.A.R. 1047, effective June 1, 2019. The Department recommends amending the rule to replace references to R12-4-316 with R12-4-314 to increase consistency between rules within Article 3.

In addition, the Department is developing an electronic tagging system that would require a hunter who harvests an animal to immediately attach an electronic tag to a lawfully harvested big game animal. The Department recommends amending the rule to further clarify how the hunter attaches an electronic tag to a big game animal.

R12-4-322. Pickup and Possession of Wildlife Carcasses or Parts. During the 2021 First Regular Session, the Fifty-fifth Legislature amended A.R.S. § 17-319 to expand the conditions under which the Department may issue a big game salvage permit. While it has been determined the rule is not in conflict with the amended statute, the Department recommends amending the rule to reference A.R.S. § 17-319 and clarify the requirements established under the statute are separate from the requirements of the rule.

5. **Agency enforcement policy, including whether the rule is currently being enforced and, if so, whether there are any problems with enforcement.**

The rules are currently being enforced. All peace officers of the state (including city and county) are charged with enforcement. Officers can check for rule compliance during routine patrols. Officers may issue a warning or a citation. To the extent that the Department is aware, there have been no problems with the enforcement of the following rules:
R12-4-301. Definitions
R12-4-303. Unlawful Devices, Methods, and Ammunition
R12-4-304. Lawful Methods for Taking Wild Mammals, Birds, and Reptiles
R12-4-306. Bison Hunt Requirements
R12-4-307. Trapping Regulations, Licensing; Methods; Tagging of Bobcat Pelts
R12-4-309. Authorization for Use of Drugs on Wildlife
R12-4-310. Fishing Permits.
R12-4-311. Exemptions from Requirement to Possess an Arizona Fishing License or Hunting License While Taking Wildlife
R12-4-313. Lawful Methods of Take and Season for Aquatic Wildlife
R12-4-314. Possession, Transportation, or Importation of Aquatic Wildlife.
R12-4-318. Seasons for Lawfully Taking Wild Mammals, Birds, and Reptiles
R12-4-319. Use of Aircraft to Take Wildlife
R12-4-320. Harassment of Wildlife
R12-4-321. Restrictions for Taking Wildlife in City, County, or Town Parks and Preserves
R12-4-322. Pickup and Possession of Wildlife Carcasses or Parts

The Department recommends amending the following rules to increase their enforceability as indicated:

R12-4-302. Use of Tags. Currently, the rule prohibits any person from possessing another person's tag or allowing another person to possess your tag. The Department recognizes that a parent or guardian will often hold their minor child's tag for safekeeping and believes this practice does not violate the intent of the law. The Commission is currently pursuing rulemaking to establish that a person may possess a tag issued to another person who is under 18 years of age to increase consistency in how the rule is enforced.

R12-4-305. Possessing, Transporting, Importing, Exporting, and Selling Carcasses or Parts of Wildlife. The current rule establishes the requirements for evidence of legality for a person possessing or transporting certain wildlife. The Department issues permit-tags according to the rules of supply and demand. The number of animals that can be removed from a population without harming the resource establishes the number of permit-tags available for any given species. The Department pays close attention to population trends and hunter success rates in order to determine how permit-tags are distributed to the public. Hunters must comply with established bag and possession limits. Subsection (B)(1) states a person shall ensure the tag is attached to a pheasant. Because the Department no longer issues permit-tags for the take of pheasant, the Department recommends amending the rule to remove the reference to pheasant tag requirements.

In addition, subsection (B)(3) states the requirement for quail to have a fully feathered head, or a fully feathered wing, or a leg with foot attached, when the current Commission Order has established separate bag or possession limits for any species of quail. The Department recommends amending the rule to remove, “when the current Commission Order has established separate bag or possession limits for any species of quail” to clarify that regardless of the overlapping quail seasons for various species, all harvested quail must retain evidence of legality while possessed or transported.

6. Clarity, conciseness, and understandability of the rule.

Except as noted below, the following rules are clear, concise, understandable, are logically organized, and generally written in the active voice:
R12-4-301. Definitions
R12-4-303. Unlawful Devices, Methods, and Ammunition
R12-4-304. Lawful Methods for Taking Wild Mammals, Birds, and Reptiles
R12-4-307. Trapping Regulations, Licensing; Methods; Tagging of Bobcat Pelts
R12-4-308. Wildlife Inspections, Check Stations, and Roadblocks
R12-4-309. Authorization for Use of Drugs on Wildlife
R12-4-310. Fishing Permits
R12-4-311. Exemptions from Requirement to Possess an Arizona Fishing License or Hunting License While Taking Wildlife
R12-4-313. Lawful Methods of Take and Season for Aquatic Wildlife
R12-4-314. Possession, Transportation, or Importation of Aquatic Wildlife
R12-4-318. Seasons for Lawfully Taking Wild Mammals, Birds, and Reptiles
R12-4-320. Harassment of Wildlife
R12-4-321. Restrictions for Taking Wildlife in City, County, or Town Parks and Preserves
R12-4-322. Pickup and Possession of Wildlife Carcasses or Parts

The Department recommends amending the following rules to make them more concise as indicated:

R12-4-302. Use of Tags. In the past, a hunter was required to cut or notch their tag when they harvested the animal. Over time, tag features have changed and it is no longer necessary to cut or notch the tag. In addition, the wording of subsection (G), which relates to transportation and shipping permits, can be confusing. The Commission is currently pursuing rulemaking to repeal language referencing the requirement to cut or notch a tag and reword subsection (G) to make the rule more concise.

R12-4-305. Possessing, Transporting, Importing, Exporting, and Selling Carcasses or Parts of Wildlife. The wording of subsection (C), which relates to transportation and shipping permits, can be confusing. The Department recommends pursuing rulemaking to reword subsection (C) to make the rule more concise.

R12-4-306. Bison Hunt Requirements. Under subsection (D), the Department may invalidate a bison hunt permit-tag or nonpermit-tag if the hunter fails to comply with the requirements of subsection (B). The Department recommends amending the rule to reformat the rule to place requirements in chronological order to make the rule more concise.

R12-4-319. Use of Aircraft to Take Wildlife. The Department recommends amending the rule to clarify the use of an aircraft/drone is prohibited in a hunt unit with any open big game season. There is confusion as to whether the prohibition on the use of aircraft/drones applies to a hunt unit for which a person has a tag or any hunt unit with any open big game season.

7. Summary of the written criticisms of the rule received by the agency within the five years immediately preceding the Five-year Review Report, including letters, memoranda, reports, written analyses submitted to the agency questioning whether the rules is based on scientific or reliable principles, or methods, and written allegations made in litigation and administrative proceedings in which the agency was a party that the rule is discriminatory, unfair, unclear, inconsistent with statute, or beyond the authority of the agency to enact, and the conclusion of the litigation and administrative proceedings.
The Department did not receive any written comments for the following rules:

R12-4-301. Definitions
R12-4-302. Use of Tags
R12-4-305. Possessing, Transporting, Importing, Exporting, and Selling Carcasses or Parts of Wildlife
R12-4-306. Bison Hunt Requirements
R12-4-307. Trapping Regulations, Licensing; Methods; Tagging of Bobcat Pelts
R12-4-309. Authorization for Use of Drugs on Wildlife
R12-4-310. Fishing Permits
R12-4-311. Exemptions from Requirement to Possess an Arizona Fishing License or Hunting License While Taking Wildlife
R12-4-313. Lawful Methods of Take and Season for Aquatic Wildlife
R12-4-314. Possession, Transportation, or Importation of Aquatic Wildlife
R12-4-319. Use of Aircraft to Take Wildlife
R12-4-320. Harassment of Wildlife
R12-4-321. Restrictions for Taking Wildlife in City, County, or Town Parks and Preserves
R12-4-322. Pickup and Possession of Wildlife Carcasses or Parts

The Department received the following comments:

**R12-4-303. Unlawful Devices, Methods, and Ammunition:**

Comments suggest the Commission should prohibit the use of dogs to pursue wildlife (especially black bears) so that an inexperienced hunter cannot simply follow their dogs to a treed bear and shoot it without actually having any hunting skills.

**Agency Response:** The sport of using dogs to take wildlife has existed in North America since Colonial days and is a traditional and acceptable method of take in Arizona. Dogs have long been prized partners of waterfowl and upland bird hunters. The use of dogs for these pursuits remains non-controversial and greatly enhances game retrieval. However, there's a common misconception that hunting with dogs ensures an animal will be harvested, every time. In reality, the dogs track an animal and run it up a tree or otherwise provide the hunter with an opportunity to take that animal with a firearm. In addition, wildlife are familiar with their surrounding habitat and know the best ways to elude and escape from predators. Even the strongest-nosed dog can be duped by a 'backtrack.' Currently, the use of dogs for pursuit is lawful for furbearing and predatory animals, mountain lion, nongame mammals, and small game; the use of dogs for these pursuits greatly enhances game retrieval. The use of dogs for the pursuit or take of black bear is lawful August 1 through December 31. Arizona's black bear populations are robust and healthy and can sustain current harvest levels. Harvest levels are evaluated annually; if it becomes necessary to further restrict harvest the Department will recommend changes to methods of take and harvest limits. As to hunting for black bear with dogs, this activity has been shown to allow for selection against
female harvest, thus further protecting the female segment of the black bear population in Arizona.

*Comments suggest the Commission should prohibit camping and hunting over water and the use of water as bait to increase consistency between rules because the use of trail cameras for the purpose of hunting is prohibited near water.*

**Agency Response:** A.R.S. § 17-308 prohibits camping within one-fourth mile of a natural water hole containing water or a man-made watering facility containing water in such a place that wildlife or domestic stock will be denied access to the only reasonably available water. In addition, feedback from wildlife managers in the Department suggests that baiting with water is not a widespread practice. Certainly hunters take advantage of waters while hunting for animals, but there have been few public comments voicing this concern. The Department coordinates with land management agencies to regulate the placement or installation of artificial waters, and the land management agencies have their own statements regarding any artificial structures placed or installed on the landscape. For example, US Forest Service policy in 36 CFR 261.10 (Occupancy and use) states that “the following are prohibited: Constructing, placing, or maintaining any kind of road, trail, structure, fence, enclosure, communication equipment, significant surface disturbance, or other improvement on National Forest System lands or facilities without a special-use authorization, contract, or approved operating plan when such authorization is required.” Given the Department also maintains over 3000 waters across Arizona and hauled more than 2.5 million gallons of water in 2020 to keep water on the landscape, at this time, the Department recommends no action on defining water as an illegal ingestible substance to bait wildlife. The Fair Chase Committee has also determined hunting over water is not a fair chase issue.

*Comments suggest the Commission should prohibit the use of trail cameras for the take of wildlife for many reasons such as, but not limited to, they violate fair chase ethics, they prevent wildlife from accessing water, they destroy habitat, etc.*

**Agency Response:** After a lengthy public process, the Commission recently approved a final rulemaking prohibiting the use of trail cameras for the purpose of taking or aiding in the take of wildlife, or locating wildlife for the purpose of taking or aiding in the take of wildlife. The proposed rule would be in place on all lands in the state of Arizona with the exception of tribal reservation lands, and is intended to address the divisive and social aspects of trail cameras used for the purpose of hunting. The prohibition on the use of trail cameras for the purpose of hunting becomes effective January 1, 2022.

*Comments suggest the Commission should prohibit the use of remote listening devices for the take of wildlife because their use for hunting violates fair chase ethics.*

**Agency Response:** The Department considers listening and georeferencing technology to be in the prototype phase. To be effective, this technology will require a structured network grid of ‘listening’ or ‘acoustic stations’
to be installed on the ground and synced to GPS satellites for proper functioning. While acoustic location and GPS devices are available to the public, the ability to locate animals with the suggested technology still requires that the acoustic devices be physically retrieved from the field, audio files downloaded, cleaned, and then analyzed through manual or partially automated processes. The retrieval and analytical processes are not evolved to the state where files can be uplinked via satellites or through fully automated steps, though the technology is advancing in that direction. While the current technology does not allow for real-time or near-real-time transmission and analysis to locate an animal on the landscape, the Department recommends amending language in R12-4-303, Unlawful Devices, Methods, and Ammunition, to prohibit the use of audio/acoustic location devices for taking or aiding in the take of wildlife or locating wildlife for the purpose of taking or aiding in the take of wildlife.

Comments suggest the Commission should prohibit predator hunting contests because they violate fair chase ethics.

Agency Response: After a lengthy public process, the Commission approved a final rulemaking establishing that a person shall not by any means participate in, organize, promote, sponsor, or solicit participation in a contest where a participant uses or intends to use any device or implement to capture or kill predatory animals or fur-bearing animals as defined under A.R.S. § 17-101. The rule is in place on all lands in the state of Arizona with the exception of tribal reservation lands, and is intended to address the divisive and social aspects of predator hunting contests. The prohibition on participating in a predator hunting contest became effective November 3, 2019.

R12-4-304. Lawful Methods for Taking Wild Mammals, Birds, and Reptiles

Comments suggest the Commission should allow the use of trained dogs to aid in the recovery of wounded big game because they aid in the recovery of wounded game and assist in preventing game meat from going to waste.

Agency Response: The Department is reviewing the potential addition of blood trailing/tracking dogs as a legal method for aiding big game recovery due to the potential benefits of reducing lost game and wasted meat.

Comments suggest the Commission should allow the use of an atlatl for the take of wildlife because it would provide additional opportunities for persons who wish to use them and the efficacy of hunting and fishing with spears and spear throwers have been evaluated by other states and were found to be effective methods for harvesting big game, small game, and rough fish.

Agency Response: The Department is reviewing the potential addition of additional hand held implements (e.g., atlatl, spear, etc.) as a lawful method of take. The Department will evaluate kinetic energy and momentum data for these implements and benchmark with other states as potential new opportunities for hand-held implements.
Comments suggest the Commission should allow the use of a high-powered triggered slingshot for the take of predators because they are capable of taking coyotes, fox, bobcats, etc.

Agency Response: The Commission currently allows multiple small game species to be taken with a slingshot. In evaluating the triggered slingshot, the 8-10mm ball bearing that is loaded as the projectile is a solid piece of metal that does not expand or fragment, which greatly limits the killing effectiveness of the projectile. Video demonstrations of triggered high-powered slingshots demonstrated the bearings were unable to penetrate the side of a thin metal bucket, consequently casting significant doubt on the effective ability and ethical use of this weapon to take, rather than just wound, a larger animal like a coyote or bobcat. The Commission already restricts the use of other non-expanding or non-fragmenting projectiles on big game species because they do not represent humane methods of take, resulting in wounded animals and wasted meat. For these reasons, the Department does not recommend allowing the use of triggered slingshots as a legal method of take for predators, furbearers, or big game.

R12-4-308. Wildlife Inspections, Check Stations, and Roadblocks

Comments suggest the Commission should require harvest reporting for all big game species to allow for more responsive game management.

Agency Response: Mandatory harvest reporting has been evaluated in the past but has not been implemented because the Department believes the harvest data currently being collected is statistically sufficient to aid in developing hunt recommendations. In addition, because mandatory reporting doesn't provide better data (just different data), the Department would lose the ability to compare the current year harvest data with historical harvest trend data to identify changes in populations. In addition, the Department would have to gather harvest data for five to ten years before any of the trend data would have value. However, the Department recommends including mandatory reporting and submission of biological samples (teeth, hair, tissue, etc.) in this section as a tool that can be implemented via Commission Order for seasons where additional data may be useful. This may include developing a definition for "harvest objective" to make the rule more concise. Additionally, the Department is developing an electronic tagging system that would require a hunter who harvests an animal to enter harvest data into the Department's system in order to obtain their tagging details. The Department recognizes this method will not gather participation information from hunters who did not harvest and does not intend to rely solely on the information provided through the electronic tagging system.

R12-4-313. Lawful Methods of Take and Season for Aquatic Wildlife.

Comments suggest the Commission should allow the use of a spear or spear gun for the take of bass.
Agency Response: The Department is reviewing the potential addition of allowing the use of spear guns for the take of bass species in an effort to expand opportunity for anglers who choose to use this method of take.

R12-4-318. Seasons for Lawfully Taking Wild Mammals, Birds, and Reptiles

Comments suggest the Commission should prohibit the ability to use a pre-charged pneumatic device shooting darts or arrows during an archery-only hunt and HAM hunts because they provide an unfair advantage to those who use them.

Agency Response: A pre-charged pneumatic device that discharges a dart or arrow is defined as a hybrid device and is considered a lawful method of take during general hunts. It does not meet the definition of a bow or crossbow and is therefore not legal for use in an archery-only hunt.

Comments suggest the Commission should prohibit the use of muzzleloaders with scopes, handguns with braces, and pneumatic weapons that discharge a bolt or arrow during Handgun, Archery, Muzzleloader (HAM) and Limited Weapon-Muzzleloader hunts because they provide an unfair advantage to those who use them.

Agency Response: The Commission offers Handgun, Archery, and Muzzleloader (HAM) hunts to provide a challenging hunt opportunity for weapons with shorter effective ranges. The Department agrees that eliminating the use of magnifying optics on muzzleloaders during these hunts will help to preserve the original intent of HAM and limited weapon-muzzleloader hunts by offering more challenging hunts with primitive weapons. Benchmarking with 13 western states revealed 8 of those states prohibit the use of magnifying optics for muzzleloader hunts. The Department recommends amending the rule to state that only open or iron sights or a 1x optic (i.e. red dot or acog) may be used during HAM or limited weapon-muzzleloader hunts, when established by Commission Order.

The Department is aware that some persons are using a handgun with a brace during the HAM hunts. The brace functions similarly to a rifle stock and provides the hunter with additional stability. The most commonly encountered firearm used in this manner is the A.R. pistol, chambered with a .223 or 300 Blackout cartridge. When combined with the increased stability of a brace, these rifle cartridges are believed to provide a significant advantage over the traditional combination of a handgun and handgun cartridge. The Department recommends amending the rule to prohibit the use of a handgun with a brace during the HAM hunt.

Commission rule defines a hybrid device as a device with a combination of components from two or more lawful devices and is used for the take of wildlife. A pneumatic weapon that discharges a bolt or arrow is a hybrid device and is considered a lawful method of take during a general hunt. The Department recommends clarifying that hybrid devices are not legal for archery-only hunts but would be legal for HAM hunts when they combine...
components of two or more lawful devices (e.g. Airbow). However, the Department recommends clarifying that crossbows and hybrid devices are limited to a single drawstring and that bolts or broadheads used on hybrid devices should be equivalent to legal broadhead sizes (i.e. \( \frac{3}{8} \)" on legal archery arrows).

*Comments suggest the Commission should prohibit the use of all night spotlighting and heat sensing equipment during any big game hunting season because their use for hunting violates fair chase ethics.*

**Agency Response:** Commission laws and rules address the use of spotlighting and heat sensing equipment. Current statute does not allow for harassment of wildlife or the use of thermal imagery in the taking of wildlife. A.R.S. 17-101 (A20) defines ‘take’ as “pursuing, shooting, hunting, fishing, trapping, killing, capturing, snaring or netting wildlife or placing or using any net or other device or trap in a manner that may result in capturing or killing wildlife.” R12-4-303(A)(3)(d) states that “a person shall not use or possess any of the following while taking wildlife: electronic night vision equipment, electronically enhanced light-gathering devices, thermal imaging devices or laser sights projecting a visible light, except for devices such as laser range finders projecting a non-visible light, scopes with self-illuminating reticles, and fiber optic sights with self-illuminating sights or pins that do not project a visible light onto an animal.”

*Comments suggest the Commission offer primitive archery (e.g., longbow, self-bow, or recurve) and muzzleloader hunts (black powder, side hammer, flintlock, or percussion rifles with loose black powder and iron sights) to provide a more challenging hunt.*

**Agency Response:** The Department carefully balances demand among archery, muzzleloader, and general seasons. It is the Department’s goal to establish seasons that provide desirable hunt structures or more opportunity for hunters. The Department is reviewing the potential addition of additional primitive seasons for archery and muzzleloaders.

*Comments suggest the Commission should allow devices using new technologies to be used in muzzleloader seasons to increase opportunity for muzzleloader hunters.*

**Agency Response:** The Department is currently benchmarking with other states and evaluating new muzzleloader technology as well as potential options for modifying the type of muzzleloaders that can be used during the muzzleloader season, while still requiring that the projectile be loaded from the muzzle. Hunters who choose to use new technology may experience a simpler loading and unloading process and greater reliability during inclement weather.

*Comments suggest the Commission should prohibit the use of crossbows during an archery-only hunt or establish a crossbow season because they provide an unfair advantage to those who use them.*
Agency Response: The Crossbow Permit under R12-4-216 allows a person who cannot physically draw and hold a bow to use a crossbow during an archery-only hunt and was created to provide a mechanism that afforded persons with a disability the opportunity to participate in hunting. The Department does not want to further stratify the season hunt structure by recommending the addition of a crossbow season.

Comments suggest the Commission should allow the use of crossbows during an archery-only hunt season to increase opportunity for crossbow hunters.

Agency Response: The Department disagrees. In general, crossbows discharge an arrow or bolt with higher levels of kinetic energy, more speed, and greater accuracy, which provides an advantage to a hunter who uses a crossbow over one who uses a bow and arrow. At this time, crossbows may be used during general season for the take of big game, small game, predators, furbearers, nongame, and the handgun, archery and during HAM season for the take of javelina. In addition, Commission rule already permits the use of a crossbow during an archery-only hunt when the hunter possesses a Crossbow Permit issued under R12-4-216.

Comments suggest the Commission should allow youth ages 10-14 to use of crossbows during an Archery-only hunt season so they can hunt until they are strong enough to hunt with a bow and arrow.

Agency Response: The Department acknowledges that some youth may not be strong enough to draw back a bow. However, the Department also believes these young hunters can learn much about the hunting process and techniques by participating in an archery hunt as an observer until they are strong enough to use a bow themselves.

Comments suggest the Commission should eliminate youth hunts because the odds of drawing a tag are higher and this gives the next generation the false impression of how easy it is to be drawn for other hunts.

Agency Response: The Commission disagrees. The Commission believes providing youth with hunting opportunities is not only designed to recruit new hunters, but also to retain them.

Comments suggest the Commission should establish a seniors-only season because they deserve recognition for having supported the Department for a long time, it is customary to offer a discount or special service to seniors, and they do not have many hunting years left.

Agency Response: The Department believes the random draw process provides an equitable allocation of hunt permit-tags to all persons, regardless of age. Creating additional methods for issuing big game hunt permit-tags would not only be discriminatory, it is inconsistent with the Department’s hunter retention efforts. The Department strives to encourage participation in a greater diversity of wildlife opportunities outside of big game hunting.
8. A comparison of the estimated economic, small business, and consumer impact of the rule with the economic, small business, and consumer impact statement prepared on the last making of the rule or, if no economic, small business, and consumer impact statement was prepared on the last making of the rule, an assessment of the actual economic, small business, and consumer impact of the rule.

Overall, the rulemaking resulted in the estimated economic, small business, and consumer impacts as stated in the last making of the rule except as indicated:

R12-4-310. Fishing Permits. The Commission anticipated the rulemaking would benefit persons regulated by the rule by reducing regulatory ambiguity and providing greater opportunities for fishing. However, by expanding the applicant eligibility criteria and not placing a limit on the number of permits an applicant may apply for in any given time-frame, the rule has resulted in a large increase in the number of applicants and permits being issued, with some entities applying almost monthly. The Department will continue to review and streamline processes and seek assistance from other work units in order to keep up with the demand for these permits.

R12-4-313. Lawful Methods of Taking Aquatic Wildlife. The rule was recently amended to establish a limited-entry season for fishing events, see 27 A.A.R 283 February 26, 2021. The Commission envisions these events occurring at high demand locations owned by the Department, such as Becker Lake or for high demand species. The rule was approved by G.R.R.C. on February 2, 2021 and became effective July 1, 2021. The Department has not held a limited-entry angling event and is unable to assess the economic impact of the rule.

R12-4-318. Seasons for Lawfully Taking Wild Mammals, Birds, and Reptiles. The rule was recently amended to establish a limited-entry season for hunting events, see 27 A.A.R 283 February 26, 2021. The Commission envisions these events occurring at high demand locations or for high demand hunts. The rule was approved by G.R.R.C. on February 2, 2021 and became effective July 1, 2021. The Department has not held a limited-entry angling event and is unable to assess the economic impact of the rule.

9. Any analysis submitted to the agency by another person regarding the rule’s impact on the competitiveness of businesses in this state as compared to the competitiveness of businesses in other states.

The Department did not receive any analyses.

10. If applicable, how the agency completed the course of action indicated in the agency’s previous five-year review report.

The Department completed the course of action indicated in the previous five-year review report as follows:

11. A determination after analysis that the probable benefits of the rule within this state outweigh the probable costs of the rule and the rule imposes the least burden and costs to persons regulated by the rule, including paperwork and other compliance costs necessary to achieve the underlying regulatory objective.

Arizona's great abundance and diversity of native wildlife can be attributed to careful management and the important role of the conservation programs the Arizona Game and Fish Department has developed. The Department’s management of both game and nongame species as a public resource depends on sound science and active management. As trustee, the state has no power to delegate its trust duties and no freedom to transfer trust ownership or management of assets to private establishments. Without strict agency oversight and management, the fate of many of our native species would be in jeopardy. Wildlife can be owned by no individual and is held by the state in trust for all the people. As areas within Arizona become increasingly urbanized, more people are now living isolated from nature and outdoor activities such as hunting. As hunters represent a smaller percentage of the overall population, growing segments of society are questioning the validity of hunting including its benefits, how it is conducted, and if it should continue as a legal activity. Regulated hunting fundamentally supports wildlife conservation efforts in North America. The loss of hunting would equate to a measurable loss in conservation efforts. Hunting and angling are the cornerstones of the North American Model of Wildlife Conservation and continue to be the primary source of funding for conservation efforts in Arizona. Hunters and anglers support 18,220 jobs in Arizona; this especially benefits rural communities. Spending by sportsmen and women in Arizona generated $132 million in State and local taxes in 2011; enough to support the average salaries of 2,311 police and sheriff's patrol officers. The economic stimulus of hunting and fishing equates to $3.4 million a day being pumped into Arizona’s economy. ~ Congressional Sportsmen’s Foundation: 2013 Sportsman’s Economic Report - Arizona. The Article 3 rules address the ethical taking and handling of wildlife, increase hunter opportunity, and encourage hunter recruitment and retention. These areas include the use of tags, lawful and unlawful methods of taking and possessing wildlife and wildlife parts, seasons, check-in/check-out requirements, and reporting requirements. The Commission believes the majority of the rules benefit persons regulated by the rule and the Department by increasing consistency between Commission Order and rule, reducing regulatory ambiguity to ease compliance, providing greater opportunities for hunting and fishing, reducing the burden on persons regulated by the rules where practical, allowing the Department additional oversight to handle advances in hunting and angling technology and protecting the spirit of fair chase. Fair Chase issues can erode public support of hunting and angling and threaten the funding that drives Arizona’s conservation mission and the
economic benefit of those activities to our State. In addition, there exists a general expectation that hunting be conducted under appropriate conditions; animals are taken for legitimate purposes such as food, to accomplish wildlife agency management goals, and to mitigate property damage. It is also expected that the hunting is done sustainably and legally, and that hunters show respect for the land and animals they hunt. In the broadest sense, hunters are guided by a conservation ethic, but the most common term used to describe the actual ethical pursuit of an animal is “fair chase.” “Fair Chase” means the ethical and lawful pursuit and take of free-range wildlife in a manner that does not give the hunter or angler improper or unfair advantage over such wildlife. The following criteria are used to evaluate whether a new technology or practice violates the Fair Chase ethic; does the technology or practice allow a hunter or angler to: locate or take wildlife without acquiring necessary hunting and angling skills or competency; pursue or take wildlife without being physically present and pursuing wildlife in the field; or almost guarantee the harvest of wildlife when the technology or practice prevents wildlife from eluding take.

The Department has determined that once the following amendments are made, the probable benefits of the rules within this state outweigh the probable costs of the rule and the rules impose the least burden and costs to persons regulated by the rule.

R12-4-302. Use of Tags. Currently, the rule prohibits any person from possessing another person's tag or allowing another person to possess your tag. The Department recognizes that a parent or guardian will often hold their minor child's tag for safekeeping and believes this practice does not violate the intent of the law. The Commission is currently pursuing rulemaking to establish that a person may possess a tag issued to another person who is under 18 years of age to reduce burdens and costs to persons regulated by the rule.

12. A determination after analysis that the rule is not more stringent than a corresponding federal law unless there is statutory authority to exceed the requirements of that federal law.

The following rules are based on state law and federal law is not directly applicable to the rule:
   R12-4-301. Definitions
   R12-4-302. Use of Tags
   R12-4-305. Possessing, Transporting, Importing, Exporting, and Selling Carcasses or Parts of Wildlife
   R12-4-306. Bison Hunt Requirements
   R12-4-307. Trapping Regulations, Licensing; Methods; Tagging of Bobcat Pelts
   R12-4-308. Wildlife Inspections, Check Stations, and Roadblocks
   R12-4-309. Authorization for Use of Drugs on Wildlife
   R12-4-310. Fishing Permits
   R12-4-311. Exemptions from Requirement to Possess an Arizona Fishing License or Hunting License While Taking Wildlife
   R12-4-313. Lawful Methods of Take and Season for Aquatic Wildlife

R12-4-314. Possession, Transportation, or Importation of Aquatic Wildlife
R12-4-318. Seasons for Lawfully Taking Wild Mammals, Birds, and Reptiles
R12-4-320. Harassment of Wildlife
R12-4-321. Restrictions for Taking Wildlife in City, County, or Town Parks and Preserves
R12-4-322. Pickup and Possession of Wildlife Carcasses or Parts

The Department has determined the following rules are not more stringent than their corresponding federal law(s):

R12-4-303. Unlawful Devices, Methods, and Ammunition. Federal regulation 50 C.F.R. 20.21 is applicable to the subject of the rule. 50 C.F.R. 20.21 establishes general requirements, exceptions, and specific provisions for migratory bird hunting.

R12-4-304. Lawful Methods for Taking Wild Mammals, Birds, and Reptiles. Federal regulation 50 C.F.R. 20.21 is applicable to the subject of the rule. 50 C.F.R. 20.21 establishes general requirements, exceptions, and specific provisions for migratory bird hunting. The Department has determined the rule is not more stringent than the corresponding federal law.

R12-4-319. Use of Aircraft to Take Wildlife. Federal regulation 50 C.F.R. 19 is applicable to the subject of the rule. The Department has determined the rule is not more stringent than the corresponding federal law. 50 C.F.R. 19 establishes general prohibitions and exceptions for the use of aircraft for the taking of wildlife, requirements for the contents and filing of annual reports by the States regarding permits issued for such shooting or harassing, and regulations necessary for effective enforcement of the Fish and Wildlife Act of 1956 as amended.

13. For a rule adopted after July 29, 2010, that require the issuance of a regulatory permit, license, or agency authorization, whether the rule complies with A.R.S. § 41-1037.

The following rules require the issuance of a "general permit" as defined under A.R.S. § 41-1001(11) and are in compliance with A.R.S. § 41-1037:
R12-4-309. Authorization for Use of Drugs on Wildlife
R12-4-310. Fishing Permits

The following rules do not require the issuance of a regulatory permit, license, or agency authorization:
R12-4-301. Definitions
R12-4-302. Use of Tags
R12-4-303. Unlawful Devices, Methods, and Ammunition
R12-4-304. Lawful Methods for Taking Wild Mammals, Birds, and Reptiles
R12-4-305. Possessing, Transporting, Importing, Exporting, and Selling Carcasses or Parts of Wildlife
R12-4-306. Bison Hunt Requirements
The Department proposes no action for the following rules:

R12-4-301. Definitions
R12-4-307. Trapping Regulations, Licensing; Methods; Tagging of Bobcat Pelts
R12-4-309. Authorization for Use of Drugs on Wildlife.
R12-4-310. Fishing Permits
R12-4-319. Use of Aircraft to Take Wildlife
R12-4-320. Harassment of Wildlife
R12-4-321. Restrictions for Taking Wildlife in City, County, or Town Parks and Preserves

The Department proposes to amend the following rules as indicated in this report:

R12-4-303. Unlawful Devices, Methods, and Ammunition
R12-4-304. Lawful Methods for Taking Wild Mammals, Birds, and Reptiles
R12-4-305. Possessing, Transporting, Importing, Exporting, and Selling Carcasses or Parts of Wildlife
R12-4-306. Bison Hunt Requirements
R12-4-308. Wildlife Inspections, Check Stations, and Roadblocks
R12-4-311. Exemptions from Requirement to Possess an Arizona Fishing License or Hunting License While Taking Wildlife
R12-4-313. Lawful Methods of Take and Season for Aquatic Wildlife
R12-4-314. Possession, Transportation, or Importation of Aquatic Wildlife
R12-4-318. Seasons for Lawfully Taking Wild Mammals, Birds, and Reptiles
R12-4-322. Pickup and Possession of Wildlife Carcasses or Parts
The Department anticipates requesting an exception to the rulemaking moratorium by August 2021 and submitting the Notice of Final Rulemaking for actions proposed in this report to the Council by September 2022, provided the Commission is granted permission to pursue rulemaking.
12 A.A.C. 4

TITLE 12. NATURAL RESOURCES

CHAPTER 4. GAME AND FISH COMMISSION

The table of contents on page one contains links to the referenced page numbers in this Chapter. Refer to the notes at the end of a Section to learn about the history of a rule as it was published in the Arizona Administrative Register.

This Chapter contains rules that were filed to be codified in the Arizona Administrative Code between the dates of October 1, 2021 through December 31, 2021

TITLE 12. NATURAL RESOURCES
CHAPTER 4. GAME AND FISH COMMISSION
Authority: A.R.S. § 17-201 et seq.

Supp. 21-4

Editor’s Note: The Office of the Secretary of State publishes all Chapters on white paper (Supp. 01-2).

Editor’s Note: This Chapter contains rules which were adopted or amended under an exemption from the Arizona Administrative Procedure Act (A.R.S. Title 41, Chapter 6), pursuant to A.R.S. § 41-1005(A)(1). Exemption from A.R.S. Title 41, Chapter 6 means that the Game and Fish Commission did not submit notice of this rulemaking to the Secretary of State’s Office for publication in the Arizona Administrative Register; the Governor’s Regulatory Review Council did not review these rules; the Commission was not required to hold public hearings on these rules; and the Attorney General did not certify these rules. Because this Chapter contains rules which are exempt from the regular rulemaking process, the Chapter is printed on blue paper.

CHAPTER TABLE OF CONTENTS
ARTICLE 3. TAKING AND HANDLING OF WILDLIFE

Section
R12-4-301. Definitions 2
R12-4-302. Use of Tags 4
R12-4-303. Unlawful Devices, Methods, and Ammunition 5
R12-4-304. Lawful Methods for Taking Wild Mammals, Birds, and Reptiles 6
R12-4-305. Possessing, Transporting, Importing, Exporting, and Selling Carcasses or Parts of Wildlife 12
R12-4-306. Bison Hunt Requirements 14
R12-4-307. Trapping Regulations, Licensing; Methods; Tagging of Bobcat Pelts 14
R12-4-308. Wildlife Inspections, Check Stations, and Roadblocks 17
R12-4-309. Authorization for Use of Drugs on Wildlife 19
R12-4-310. Fishing Permits 20
R12-4-311. Exemptions from Requirement to Possess an Arizona Fishing License or Hunting License While Taking Wildlife 22
R12-4-312. Repealed 22

Please note that the Chapter you are about to replace may have rules still in effect after the publication date of this supplement. Therefore, all superseded material should be retained in a separate binder and archived for future reference.
ARTICLE 3. TAKING AND HANDLING OF WILDLIFE

**R12-4-301. Definitions**

In addition to the definitions provided under A.R.S. § 17-101 and R12-4-101, the following definitions apply to this Article unless otherwise specified:

- “Administer” means to apply a drug directly to wildlife by injection, inhalation, ingestion, or any other means.
- “Aircraft” means any contrivance used for flight in the air or any lighter-than-air contrivance, including unmanned aircraft systems also known as drones.
- “Artificial flies and lures” means man-made devices intended as visual attractants to catch fish. Artificial flies and lures do not include living or dead organisms or edible parts of those organisms, natural or prepared food stuffs, or chemicals or organic materials intended to create a scent, flavor, or chemical stimulant to the device regardless of whether it is added or applied during or after the manufacturing process.
- “Barbless hook” means any fish hook manufactured without barbs or on which the barbs have been completely closed or removed.
- “Body-gripping trap” means a device designed to capture an animal by gripping the animal’s body.
- “Confinement trap” means a device designed to capture wildlife alive and hold it without harm.
- “Crayfish net” means a net that does not exceed 36 inches on a side or in diameter and is retrieved by means of a hand-held line.
- “Deadly weapon” has the same meaning as provided under A.R.S. § 13-3101.
- “Device” has the same meaning as provided under A.R.S. § 17-101.
- “Dip net” means any net, excluding the handle, that is no greater than three feet in the greatest dimension, that is hand-held, non-motorized, and the motion of the net is caused by the physical effort of the person.
- “Drug” means any chemical substance, other than food or mineral supplements, that affects the structure or biological function of wildlife.
- “Edible portions of game meat” means, for:
  - Upland game birds, migratory game birds and wild turkey: breast.
  - Bear, bighorn sheep, bison, deer, elk, javelina, mountain lion, and pronghorn antelope: front quarters, hind quarters, loins (backstraps), neck meat, and tenderloins.
  - Game fish: fillets of the fish.
- “Evidence of legality” means the wildlife is accompanied by the applicable license, tag, stamp, or permit required by law and is identifiable as the “legal wildlife” prescribed by Commission Order, which may include evidence of species, gender, antler or horn growth, maturity, and size.
- “Foothold trap” means a device designed to capture an animal by the leg or foot.
- “Hybrid device” means a device with a combination of components from two or more lawful devices and is used for the take of wildlife, such as but not limited to a firearm, pneumatic weapon, or slingshot that shoots arrows or bolts.
“Instant kill trap” means a device designed to render an animal unconscious and insensitive to pain quickly with inevitable subsidence into death without recovery of consciousness.

“Land set” means any trap used on land rather than in water.

“Minnow trap” means a trap with dimensions that do not exceed 12 inches in depth, 12 inches in width, and 24 inches in length.

“Muzzleloading handgun” means a firearm intended to be fired from the hand, incapable of firing fixed ammunition, and loaded with black powder or synthetic black powder and a single projectile.

“Muzzleloading rifle” means a firearm intended to be fired from the shoulder, incapable of firing fixed ammunition, having a single barrel, and loaded through the muzzle with black powder or synthetic black powder and a single projectile.

“Muzzleloading shotgun” means a firearm intended to be fired from the shoulder, incapable of firing fixed ammunition, having a single or double smooth barrel and loaded through the muzzle with black powder or synthetic black powder and using ball shot as a projectile.

“Paste-type bait” means a partially liquefied substance used as a lure for animals.

“Pneumatic weapon” means a device that fires a projectile by means of air pressure or compressed gas. This does not include tools that are common in the construction and art trade such as, but not limited to, nail and rivet guns.

“Pre-charged pneumatic weapon” means an air gun or pneumatic weapon that is charged from a high compression source such as an air compressor, air tank, or internal or external hand pump.

“Prohibited possessor” has the same meaning as provided under A.R.S. § 13-3101.

“Prohibited weapon” has the same meaning as provided under A.R.S. § 13-3101.

“Rifle” means a firearm intended to be fired from the shoulder that uses the energy from an explosive in a fixed cartridge to fire a single projectile through a rifled bore for each single pull of the trigger. This does not include a pre-charged pneumatic weapon.

“Shotgun” means a firearm intended to be fired from the shoulder and that uses the energy from an explosive in a fixed shotgun shell to fire either ball shot or a single projectile through a smooth bore or rifled barrel for each pull of the trigger.

“Sight-exposed bait” means a carcass, or parts of a carcass, lying openly on the ground or suspended in a manner so that it can be seen from above by a bird. This does not include a trap flag, dried or bleached bone with no attached tissue, or less than two ounces of paste-type bait.

“Simultaneous fishing” means taking fish by using only two lines at one time and not more than two hooks or two artificial flies or lures per line.

“Single-point barbless hook” means a fishhook with a single point, manufactured without barbs, or on which the barbs have been completely closed or removed. This does not include a treble fishhook.

“Sinkbox” means a low-floating device with a depression that affords a hunter a means of concealment beneath the surface of the water.

“Smart device” means any device equipped with a target-tracking system or an electronically-controlled, electronically-assisted, or computer-linked trigger or release. This includes but is not limited to smart rifles.

“Trail Camera” means any device that is not held or manually operated by a person and is used to capture images, video, or location, time, or date data of wildlife.

“Trap flag” means an attractant made from materials other than animal parts that is suspended at least three feet above the ground.

“Water set” means any trap used and anchored in water rather than on land.

**Historical Note**

CHAPTER 4. GAME AND FISH COMMISSION

R12-4-302. Use of Tags

A. In addition to meeting requirements prescribed under A.R.S. § 17-331, a person who takes wildlife shall have in possession any tag required for the particular season or hunt area.

B. A tag obtained in violation of statute or rule is invalid and shall not be used to take, transport, or possess wildlife.

C. A person who lawfully possesses both a nonpermit-tag and a hunt permit-tag shall not take a genus or species in excess of the bag limit established by Commission Order for that genus or species.

D. A person shall:
   1. Take and tag only the wildlife identified on the tag.
   2. Use a tag only in the season and hunt for which the tag is valid as specified by Commission Order.

E. Except as permitted under R12-4-217, a person shall not:
   1. Allow their tag to be attached to wildlife killed by another person,
   2. Allow their tag to be possessed by another person while taking wildlife,
   3. Allow wildlife killed by that person to be tagged with another person’s tag,
   4. Attach their tag to wildlife killed by another person, or
   5. Possess a tag issued to another person while taking wildlife.
   6. Subsections (E)(2) and (5) do not apply to a tag issued to a person under 18 years of age.

F. Except as permitted under R12-4-217, immediately after a person kills wildlife, the person shall attach:
   1. The tag to the wildlife carcass in the manner indicated on the tag, or
   2. The validation code to the wildlife carcass in the manner indicated by the Department through the person’s electronic device.

G. A person who authorizes another person to possess, transport, or ship a portion of their lawfully taken animal shall complete the transportation and shipping portion of the tag in the manner indicated on the tag or by the Department through the person’s electronic device, as applicable.

H. A tag is no longer valid for the take of wildlife if:
   1. The tag is mutilated or the Transportation and Shipping Permit portion of the tag is signed or filled out, or
   2. The validation code is attached to a carcass.

Historical Note

R12-4-303. Unlawful Devices, Methods, and Ammunition

A. In addition to the prohibitions prescribed under A.R.S. §§ 17-301 and 17-309, the following devices, methods, and ammunition are unlawful for taking wildlife in this state:

1. A person shall not use any of the following to take wildlife:
   a. Fully automatic firearms, including firearms capable of selective automatic fire.
   b. Tracer or armor-piercing ammunition designed for military use.
   c. Any smart device as defined under R12-4-301.
   d. Any self-guided projectiles.

2. A person shall not take big game using full-jacketed or total-jacketed bullets that are not designed to expand upon impact,

3. A person shall not use or possess any of the following while taking wildlife:
   a. Poisoned projectiles or projectiles that contain explosives or a secondary propellant.
   b. Pitfalls of greater than 5-gallon size, explosives, poisons, or stupefying substances, except as permitted under A.R.S. § 17-239 or as allowed by a scientific collecting permit issued under A.R.S. § 17-238.
   c. Any lure, attractant, or cover scent containing any cervid urine.
   d. Electronic night vision equipment, electronically enhanced light-gathering devices, thermal imaging devices or laser sights projecting a visible light; except for devices such as laser range finders projecting a non-visible light, scopes with self-illuminating reticles, and fiber optic sights with self-illuminating sights or pins that do not project a visible light onto an animal.

4. A person shall not by any means:
   a. Hold wildlife at bay other than during daylight hours, unless authorized by Commission Order.
   b. Injure, confine, place, or use a tracking device in or on wildlife for the purpose of taking or aiding in the take of wildlife.
   c. Place any substance, device, or object in, on, or by any water source to prevent wildlife from using that water source.
   d. Place any substance in a manner intended to attract bears.
   e. Use a manual or powered jacking or prying device to take reptiles or amphibians.
   f. Use dogs to pursue, tree, corner or hold at bay any wildlife for a hunter, unless that hunter is present for the entire hunt.
   g. Take migratory game birds, except Eurasian collared-doves:
      i. Using a shotgun larger than 10 gauge, a shotgun of any description capable of holding more than three shells unless it is plugged with a one-piece filler that cannot be removed without disassembling the shotgun so that its total capacity does not exceed three shells.
      ii. Using electronically amplified bird calls or baits.
      iii. By means or aid of any motor-driven land, water, or air conveyance, or any sailboat used for the purpose of or resulting in the concentrating, driving, rallying, or stirring up of any migratory bird.
      iv. Activities described under subsections (A)(4)(g)(i) through (A)(4)(g)(iii) are prohibited under 50 C.F.R. 20.21, revised October 1, 2015. The material incorporated by reference in this Section does not include any later amendments or editions. The incorporated material is available at any Department office, online from the Government Printing Office website www.gpoaccess.gov, or may be ordered from the Superintendent of Documents, P.O. Box 979050, St. Louis, MO 63197-9000.
   h. Discharge any of the following devices while taking wildlife within one-fourth mile (440 yards) of an occupied farmhouse or other residence, cabin, lodge or building without permission of the owner or resident:
      i. Arrow or bolt,
      ii. Hybrid device, or
      iii. Pneumatic weapon .35 caliber or larger.
i. Participate in, organize, promote, sponsor, or solicit participation in a contest where a participant uses or intends to use any device or implement to capture or kill predatory animals or fur-bearing animals as defined under A.R.S. § 17-101. For the purposes of this subsection, “contest” means a competition among participants where participants must register or record entry and pay a fee, and prizes or cash are awarded to winning or successful participants.

5. A person shall not place, maintain, or use a trail camera, or images, video, to include location, time, or data from a trail camera, for the purpose of taking or aiding in the take of wildlife or locating wildlife for the purpose of taking or aiding in the take of wildlife.

6. A person shall not use images of wildlife produced or transmitted from a satellite or other device that orbits the earth for the purpose of:
   a. Taking or aiding in the take of wildlife, or
   b. Locating wildlife for the purpose of taking or aiding in the take of wildlife.
   c. This subsection does not prohibit the use of mapping systems or programs.

7. A person shall not use edible or ingestible substances to aid in taking big game. The use of edible or ingestible substances to aid in taking big game is unlawful when:
   a. A person places edible or ingestible substances for the purpose of attracting or taking big game, or
   b. A person knowingly takes big game with the aid of edible or ingestible substances placed for the purpose of attracting wildlife to a specific location.

8. Subsection (A)(7) does not limit Department employees or Department agents in the performance of their official duties.

9. For the purposes of subsection (A)(7), edible or ingestible substances do not include any of the following:
   a. Water.
   b. Salt.
   c. Salt-based materials produced and manufactured for the livestock industry.
   d. Nutritional supplements produced and manufactured for the livestock industry and placed during the course of livestock or agricultural operations.

B. It is unlawful for a person who is a prohibited possessor to take wildlife with a deadly weapon or prohibited weapon.

C. Wildlife taken in violation of this Section is unlawfully taken.

D. This Section does not apply to any activity allowed under A.R.S. § 17-302, to a person acting within the scope of their official duties as an employee of the state or United States, or as authorized by the Department.

Historical Note


R12-4-304. Lawful Methods for Taking Wild Mammals, Birds, and Reptiles

A. A hybrid device is lawful for the take of wildlife provided all components of the device are authorized for the take of that species under this Section.

B. A person may only use the following methods to take big game when authorized by Commission Order and subject to the restrictions under R12-4-303 and R12-4-318.

1. To take bear:
a. Centerfire rifles;
b. Muzzleloading rifles;
c. All other rifles using black powder or synthetic black powder;
d. Centerfire handguns;
e. Muzzleloading handguns;
f. Shotguns shooting slugs, only;
g. Pre-charged pneumatic weapons .35 caliber or larger;
h. Pre-charged pneumatic weapons using arrows or bolts with broadheads no less than 7/8 inch in width with metal, ceramic-coated metal, or ceramic cutting edges and capable of firing a minimum of 250 feet per second;
i. Bows with a standard pull of 30 or more pounds, using arrows with broadheads no less than 7/8 inch in width with metal, ceramic-coated metal, or ceramic cutting edges; and
j. Crossbows with a minimum draw weight of 125 pounds, using bolts with a minimum length of 16 inches and broadheads no less than 7/8 inch in width with metal, ceramic-coated metal, or ceramic cutting edges or bows as described in subsection (B)(1)(i) to be drawn and held with an assisting device; and
k. Pursuit with dogs only between August 1 and December 31, provided the person shall immediately kill or release the bear after it is treed, cornered, or held at bay. For the purpose of this subsection, “release” means the person removes the dogs from the area so the bear can escape on its own after it is treed, cornered, or held at bay.

2. To take bighorn sheep:
   a. Centerfire rifles;
   b. Muzzleloading rifles;
   c. All other rifles using black powder or synthetic black powder;
   d. Centerfire handguns;
   e. Muzzleloading handguns;
   f. Shotguns shooting slugs, only;
   g. Pre-charged pneumatic weapons .35 caliber or larger;
   h. Pre-charged pneumatic weapons using arrows or bolts with broadheads no less than 7/8 inch in width with metal, ceramic-coated metal, or ceramic cutting edges and capable of firing a minimum of 250 feet per second;
   i. Bows with a standard pull of 30 or more pounds, using arrows with broadheads no less than 7/8 inch in width with metal, ceramic-coated metal, or ceramic cutting edges; and
   j. Crossbows with a minimum draw weight of 125 pounds, using bolts with a minimum length of 16 inches and broadheads no less than 7/8 inch in width with metal, ceramic-coated metal, or ceramic cutting edges or bows as described in subsection (B)(2)(i) to be drawn and held with an assisting device.

3. To take bison:
   a. Statewide, except for the management units identified under subsection (B)(3)(b):
      i. Centerfire rifles;
      ii. Muzzleloading rifles;
      iii. All other rifles using black powder or synthetic black powder;
      iv. Centerfire handguns no less than .41 Magnum or centerfire handguns with an overall cartridge length of no less than two inches;
      v. Pre-charged pneumatic weapons 40 caliber or larger a minimum of 500 foot pounds of energy;
      vi. Pre-charged pneumatic weapons using arrows or bolts with broadheads no less than 7/8 inch in width with metal, ceramic-coated metal, or ceramic cutting edges and capable of firing a minimum of 250 feet per second; and
vii. Bows with a standard pull of 40 or more pounds, using arrows with broadheads of no less than 7/8 inch in width with metal, ceramic-coated metal, or ceramic cutting edges;

viii. Crossbows with a minimum draw weight of 125 pounds, using bolts with a minimum length of 16 inches and broadheads no less than 7/8 inch in width with metal, ceramic-coated metal, or ceramic cutting edges or bows as described in subsection (B)(3)(a)(vi) to be drawn and held with an assisting device.

b. In Management Units 5A and 5B:
   i. Centerfire rifles,
   ii. Muzzleloading rifles, and
   iii. All other rifles using black powder or synthetic black powder.

4. To take deer:
   a. Centerfire rifles;
   b. Muzzleloading rifles;
   c. All other rifles using black powder or synthetic black powder;
   d. Centerfire handguns;
   e. Muzzleloading handguns;
   f. Shotguns shooting slugs, only;
   g. Pre-charged pneumatic weapons .35 caliber or larger;
   h. Pre-charged pneumatic weapons using arrows or bolts with broadheads no less than 7/8 inch in width with metal, ceramic-coated metal, or ceramic cutting edges and capable of firing a minimum of 250 feet per second;
   i. Bows with a standard pull of 30 or more pounds, using arrows with broadheads no less than 7/8 inch in width with metal, ceramic-coated metal, or ceramic cutting edges; and
   j. Crossbows with a minimum draw weight of 125 pounds, using bolts with a minimum length of 16 inches and broadheads no less than 7/8 inch in width with metal, ceramic-coated metal, or ceramic cutting edges or bows as described in subsection (B)(4)(i) to be drawn and held with an assisting device.

5. To take elk:
   a. Centerfire rifles;
   b. Muzzleloading rifles;
   c. All other rifles using black powder or synthetic black powder;
   d. Centerfire handguns;
   e. Muzzleloading handguns;
   f. Shotguns shooting slugs, only;
   g. Pre-charged pneumatic weapons 40 caliber or larger and capable of firing a minimum of 500 foot pounds of energy;
   h. Pre-charged pneumatic weapons using arrows or bolts with broadheads no less than 7/8 inch in width with metal, ceramic-coated metal, or ceramic cutting edges and capable of firing a minimum of 250 feet per second;
   i. Bows with a standard pull of 30 or more pounds, using arrows with broadheads no less than 7/8 inch in width with metal, ceramic-coated metal, or ceramic cutting edges; and
   j. Crossbows with a minimum draw weight of 125 pounds, using bolts with a minimum length of 16 inches and broadheads no less than 7/8 inch in width with metal, ceramic-coated metal, or ceramic cutting edges or bows as described in subsection (B)(5)(h) to be drawn and held with an assisting device.

6. To take javelina:
   a. Centerfire rifles;
   b. Muzzleloading rifles;
   c. All other rifles using black powder or synthetic black powder;
d. Centerfire handguns;
e. Muzzleloading handguns;
f. Shotguns shooting slugs, only;
g. Pre-charged pneumatic weapons .35 caliber or larger;
h. Pre-charged pneumatic weapons using arrows or bolts with broadheads no less than 7/8 inch in width with metal, ceramic-coated metal, or ceramic cutting edges and capable of firing a minimum of 250 feet per second;
i. Bows with a standard pull of 30 or more pounds, using arrows with broadheads no less than 7/8 inch in width with metal, ceramic-coated metal, or ceramic cutting edges;
j. Crossbows with a minimum draw weight of 125 pounds, using bolts with a minimum length of 16 inches and broadheads no less than 7/8 inch in width with metal, ceramic-coated metal, or ceramic cutting edges or bows as described in subsection (B)(6)(i) to be drawn and held with an assisting device;
k. .22 rimfire magnum rifles; and
l. 5 mm rimfire magnum rifles.

7. To take mountain lion:
a. Centerfire rifles;
b. Muzzleloading rifles;
c. All other rifles using black powder or synthetic black powder;
d. Centerfire handguns;
e. Muzzleloading handguns;
f. Shotguns shooting slugs or shot;
g. Pre-charged pneumatic weapons .35 caliber or larger;
h. Pre-charged pneumatic weapons using arrows or bolts with broadheads no less than 7/8 inch in width with metal, ceramic-coated metal, or ceramic cutting edges and capable of firing a minimum of 250 feet per second;
i. Bows with a standard pull of 30 or more pounds, using arrows with broadheads no less than 7/8 inch in width with metal, ceramic-coated metal, or ceramic cutting edges;
j. Crossbows with a minimum draw weight of 125 pounds, using bolts with a minimum length of 16 inches and broadheads no less than 7/8 inch in width with metal, ceramic-coated metal, or ceramic cutting edges or bows as described in subsection (B)(7)(i) to be drawn and held with an assisting device;
k. Artificial light, during seasons with day-long hours, provided the light is not attached to or operated from a motor vehicle, motorized watercraft, watercraft under sail, or floating object towed by a motorized watercraft or a watercraft under sail; and
l. Pursuit with dogs, provided the person shall immediately kill or release the mountain lion after it is treed, cornered, or held at bay. For the purpose of this subsection, “release” means the person removes the dogs from the area so the mountain lion can escape on its own after it is treed, cornered, or held at bay.

8. To take pronghorn antelope:
a. Centerfire rifles;
b. Muzzleloading rifles;
c. All other rifles using black powder or synthetic black powder;
d. Centerfire handguns;
e. Muzzleloading handguns;
f. Shotguns shooting slugs, only;
g. Pre-charged pneumatic weapons .35 caliber or larger;
h. Pre-charged pneumatic weapons using arrows or bolts with broadheads no less than 7/8 inch in width with metal, ceramic-coated metal, or ceramic cutting edges and capable of firing a minimum of 250 feet per second;
i. Bows with a standard pull of 30 or more pounds, using arrows with broadheads no less than 7/8 inch in width with metal, ceramic-coated metal, or ceramic cutting edges; and

j. Crossbows with a minimum draw weight of 125 pounds, using bolts with a minimum length of 16 inches and broadheads no less than 7/8 inch in width with metal, ceramic-coated metal, or ceramic cutting edges or bows as described in subsection (B)(8)(i) to be drawn and held with an assisting device.

9. To take turkey:
   a. Shotguns shooting shot;
   b. Bows with a standard pull of 30 or more pounds, using arrows with broadheads no less than 7/8 inch in width with metal, ceramic-coated metal, or ceramic cutting edges; and
   c. Crossbows with a minimum draw weight of 125 pounds, using bolts with a minimum length of 16 inches and broadheads no less than 7/8 inch in width with metal, ceramic-coated metal, or ceramic cutting edges or bows as described in subsection (B)(9)(b) to be drawn and held with an assisting device.
   d. Pre-charged pneumatic weapons using arrows or bolts with broadheads no less than 7/8 inch in width with metal, ceramic-coated metal, or ceramic cutting edges and capable of firing a minimum of 250 feet per second;

C. A person may only use the following methods to take small game, when authorized by Commission Order and subject to the restrictions under R12-4-303, R12-4-318, and R12-4-422.

1. To take cottontail rabbits and tree squirrels:
   a. Firearms,
   b. Bow and arrow,
   c. Crossbow,
   d. Pneumatic weapons,
   e. Slingshots,
   f. Hand-held projectiles,
   g. Falconry, and
   h. Dogs.

2. To take all upland game birds and Eurasian collared-dove:
   a. Bow and arrow;
   b. Falconry;
   c. Pneumatic weapons;
   d. Shotguns shooting shot, only;
   e. Handguns shooting shot, only;
   f. Crossbow;
   g. Slingshot;
   h. Hand-held projectiles; and
   i. Dogs.

3. To take migratory game birds, except Eurasian collared-dove:
   a. Bow and arrow;
   b. Crossbow;
   c. Falconry;
   d. Dogs;
   e. Shotguns shooting shot:
      i. Ten gauge or smaller, except that lead shot shall not be used or possessed while taking ducks, geese, swans, mergansers, common moorhens, or coots; and
ii. Incapable of holding more than a total of three shells as prescribed under 50 C.F.R. 20.21, published October 1, 2015. The material incorporated by reference in this subsection does not include any later amendments or editions. The material is available at any Department office, online from the Government Printing Office website www.gpoaccess.gov, or may be ordered from the Superintendent of Documents, P.O. Box 979050, St. Louis, MO 63197-9000.

D. A person may take waterfowl from any watercraft, except a sinkbox, subject to the following conditions:
   1. The motor is shut off, the sail is furled, as applicable, and any progress from a motor or sail has ceased;
   2. The watercraft may be:
      a. Adrift as a result of current or wind action;
      b. Beached;
      c. Moored;
      d. Resting at anchor; or
      e. Propelled by paddle, oars, or pole; and
   3. The person may only use the watercraft under power to retrieve dead or crippled waterfowl; shooting is prohibited while the watercraft is under power.

E. A person may take predatory and fur-bearing animals by using the following methods, when authorized by Commission Order and subject to the restrictions under R12-4-303 and R12-4-318:
   1. Firearms;
   2. Pre-charged pneumatic weapons .22 caliber or larger;
   3. Bow and arrow;
   4. Crossbow;
   5. Traps not prohibited under R12-4-307;
   6. Artificial light while taking raccoon provided the light is not attached to or operated from a motor vehicle, motorized watercraft, watercraft under sail, or floating object towed by a motorized watercraft or a watercraft under sail;
   7. Artificial light while taking coyote during seasons with day-long hours, provided the light is not attached to or operated from a motor vehicle, motorized watercraft, watercraft under sail, or floating object towed by a motorized watercraft or a watercraft under sail; and
   8. Dogs.

F. A person may take nongame mammals and birds by any method authorized by Commission Order and not prohibited under R12-4-303, R12-4-318, and R12-4-422, subject to the following restrictions. A person:
   1. Shall not take nongame mammals and birds using foothold traps;
   2. Shall check pitfall traps of any size daily, release non-target species, remove pitfalls when no longer in use, and fill any holes;
   3. Shall not use firearms at night; and
   4. May use artificial light while taking nongame mammals and birds, if the light is not attached to or operated from a motor vehicle, motorized watercraft, watercraft under sail, or floating object towed by a motorized watercraft or a watercraft under sail.

G. A person may take reptiles by any method not prohibited under R12-4-303 or R12-4-318 subject to the following restrictions. A person:
   1. Shall check pitfall traps of any size daily, release non-target species, remove pitfalls when no longer in use, and fill any holes;
   2. Shall not use firearms at night; and
   3. May use artificial light while taking reptiles provided the light is not attached to or operated from a motor vehicle, motorized watercraft, watercraft under sail, or floating object towed by a motorized watercraft or a watercraft under sail.
CHAPTER 4. GAME AND FISH COMMISSION

R12-4-305. Possessing, Transporting, Importing, Exporting, and Selling Carcasses or Parts of Wildlife

A. A person shall ensure that evidence of legality remains with the carcass or parts of a carcass of any wildlife that the person possesses, transports, or imports until arrival at the person’s permanent abode, a commercial processing plant, or the place where the wildlife is to be consumed.

B. In addition to the requirement under subsection (A), a person possessing or transporting the following wildlife shall ensure each:

1. Big game animal, sandhill crane, and pheasant has the required valid tag attached in the manner indicated on the tag or as indicated by the Department through the person’s electronic device, as applicable;
2. Migratory game bird, except sandhill cranes, has one fully feathered wing attached;
3. Sandhill crane and Eurasian-collared dove has either the fully feathered head or one fully feathered wing attached;
4. Quail has attached a fully feathered head, or a fully feathered wing, or a leg with foot attached, when the current Commission Order has established separate bag or possession limits for any species of quail; and
5. Freshwater fish has the head, tail, or skin attached so the species can be identified and the total number and required length determined.

C. A person who has lawfully taken wildlife that requires a valid tag when prescribed by the Commission may authorize its transportation or shipment by completing and signing the Transportation and Shipping Permit portion of the valid tag or as indicated by the Department through the person’s electronic device, as applicable, for that animal. A separate Transportation and Shipping Permit issued by the Department is necessary to transport or ship to another state or country any big game taken with a resident license. Under A.R.S. § 17-372(B), a person may ship other lawfully taken wildlife by common carrier after obtaining a valid Transportation and Shipping Permit issued by the Department. The person shall provide the following information:

1. Number and description of the wildlife to be transported or shipped;
2. Name, address, license number, and license class of the person who took the wildlife;
3. Tag number;
4. Name and address of the person receiving a portion of the carcass of the wildlife as authorized under subsection (D), if applicable;
5. Address of destination where the wildlife is to be transported or shipped; and
6. Name and address of transporter or shipper.

D. A person who lawfully takes wildlife under a tag may authorize another individual to possess the head or carcass of the wildlife as prescribed under R12-4-302.

E. A person who receives a portion of the wildlife shall provide the identity of the person who took and gave the portion of the wildlife upon request to any peace officer, wildlife manager, or game ranger.
F. A person shall not possess the horns of a bighorn sheep, taken by a hunter in this state, unless the horns are marked or sealed as established under R12-4-308.

G. Except as provided under R12-4-307, before a person may sell, offer for sale, or export the raw pelt or unskinned carcass of a bobcat taken in this state, the person shall:
   1. Present the bobcat for inspection at any Department office, and
   2. Purchase a bobcat seal by paying the fee established under R12-4-102 at any Department office or other location as determined and published by the Department. Department personnel or an authorized agent shall attach and lock the bobcat seal only to a pelt or unskinned carcass presented with a validated transportation tag.

H. A person who takes bear or mountain lion under A.R.S. § 17-302 may retain the carcass of the wildlife if the person has a valid hunting license and the carcass is immediately tagged with a nonpermit-tag or a valid hunt permit-tag as required under R12-4-114 and R12-4-302, provided the person has not reached the applicable bag limit for that big game animal. An animal retained under this subsection shall count toward the applicable bag limit for bear or mountain lion as authorized by Commission Order. The person shall comply with inspection and reporting requirements established under R12-4-308.

I. A person may possess, transport, or import only the following portions of a cervid lawfully taken in another state or country:
   1. Boneless portions of meat, or meat that has been cut and packaged either personally or commercially;
   2. Clean hides and capes with no skull or soft tissue attached, except as required for proof of legality;
   3. Clean skulls with antlers, clean skull plates, or antlers with no meat or soft tissue attached, this includes velvet antlers;
   4. Finished taxidermy mounts or products; and
   5. Upper canine teeth with no meat or tissue attached.

J. A private game farm license holder may transport a cervid lawfully killed or slaughtered at the license holder’s game farm to a licensed meat processor.

K. A person may possess or transport only the following portions of a cervid lawfully killed or slaughtered at a private game farm authorized under R12-4-413:
   1. Boneless portions of meat, or meat that has been cut and packaged either personally or commercially;
   2. Clean hides and capes with no skull or soft tissue attached;
   3. Clean skulls with antlers, clean skull plates, or antlers with no meat or soft tissue attached, this includes velvet antlers;
   4. Finished taxidermy mounts or products; and
   5. Upper canine teeth with no meat or tissue attached.

L. A person who obtains bison meat as authorized under R12-4-306 may sell the meat.

M. Except for cervids, which are subject to requirements established under subsections (I), (J), and (K), a person may import into this state the carcasses or parts of wildlife, including aquatic wildlife, lawfully taken in another state or country if transported and exported in accordance with the laws of the state or country of origin.

N. A person shall not transport live crayfish from the site where taken, except as permitted under R12-4-316.

O. A person in possession of a common carp (Cyprinus carpio), buffalofish (Ictiobus spp.), or crayfish (families Astacidae, Cambaridae, and Parastacidae) carcass taken under Commission Order may sell the carcass.

Historical Note
R12-4-306. Bison Hunt Requirements

A. When authorized by Commission Order, the Department shall conduct a hunt to harvest bison from the state’s bison herds.

B. A hunter with a bison permit-tag or nonpermit-tag shall, when required:
   1. Provide a signed written acknowledgment that the hunter received, read, understands, and agrees to comply with the requirements of this Section.
   2. Hunt in the order scheduled.
   3. Be accompanied by an authorized Department employee who:
      a. Shall designate the bison to be harvested, and
      b. May assist in taking the bison if the hunter fails to dispatch a wounded bison within a reasonable period of time.
   4. Take only the bison designated by the Department employee.

C. A hunter issued a bison permit-tag or nonpermit-tag shall check out no more than three days after the end of the hunt, regardless of whether the hunter harvested a bison, did not harvest a bison, or did not participate in the bison hunt.
   1. House Rock Herd (Units 12A, 12B, and 13A): a hunter may check out either in person, electronically, or by telephone with the Department’s Flagstaff regional office or Jacob Lake Check station, when open during deer season.
   2. Raymond Herd (Units 5A and 5B):
      a. A hunter may check out either in person, electronically, or by telephone with the Department’s Flagstaff regional office, or when required, with the Raymond Wildlife Area headquarters.
      b. A hunter may be required to present the harvested bison to the Department for the purpose of gathering biological data when the bison was taken in Units 5A or 5B and a Department employee did not accompany the hunter during the bison hunt.
   3. At the time of check out, the hunter shall provide all of the following information:
      a. Hunter’s name,
      b. Hunter’s contact number,
      c. Tag number,
      d. Sex of bison taken,
      e. Age of the bison taken: adult or yearling,
      f. Number of days hunted, and
      g. Number of bison seen while hunting.
   4. An authorized Department employee who accompanies the hunter, shall conduct the check out at the end of the hunt.

D. Failure to comply with the requirements of this Section shall result in the invalidation of the hunter’s permit-tag or nonpermit-tag, consistent with the written acknowledgment signed and agreed to by the hunter.

Historical Note
Former Section R12-4-55 renumbered as Section R12-4-306 without change effective August 13, 1981 (Supp. 81-4). Amended subsections (A), (B), and (D) effective May 12, 1982 (Supp. 82-3). Amended effective December 30, 1988 (Supp. 88-4). Correction, former Historical Note should read “Amended effective January 1, 1989, filed December 30, 1988” (Supp. 89-2). Amended by final rulemaking at 10 A.A.R. 850, effective April 3, 2004 (Supp. 04-1). Amended by final rulemaking at 19 A.A.R. 826, effective July 1, 2013 (Supp. 13-2). Amended by final rulemaking at 25 A.A.R. 1047, effective June 1, 2019 (Supp. 19-2). The spelling of Bison was corrected in the Section heading (Supp. 21-4).

R12-4-307. Trapping Regulations, Licensing; Methods; Tagging of Bobcat Pelts

A. An Arizona trapping license permits a person to trap predatory and fur-bearing animals.
CHAPTER 4. GAME AND FISH COMMISSION

B. A trapping license is required for any person 10 years of age and older. A person under the age of 10 is not required to purchase a trapping license, but shall apply for and obtain a registration number. The trapper registration number is not transferable.

C. A person born on or after January 1, 1967 shall successfully complete a Department-approved trapping education course before applying for a trapping license.

D. A person applying for a trapping registration number or trapping license shall pay the applicable fees established under R12-4-102.

E. A person applying for a trapping registration number or trapping license shall apply using a form furnished by the Department. The form is available at any Department office and online at www.azgfd.gov. The person shall provide all of the following information on the form:

1. The applicant’s personal information:
   a. Name;
   b. Date of birth;
   c. Physical description, to include the applicant’s eye color, hair color, height, and weight;
   d. Department identification number;
   e. Residency status and number of years of residency immediately preceding application, when applicable;
   f. Mailing address, when applicable;
   g. Physical address;
   h. Telephone number, when available; and
   i. E-mail address, when available;

2. Category of license:
   a. Resident,
   b. Nonresident, or
   c. Youth, and

3. The applicant’s signature and date.

F. A trapper may only trap predatory and fur-bearing animals during trapping seasons established by Commission Order.

G. A trapper shall:

1. Inspect traps daily;
2. Kill or release all predatory and fur-bearing animals;
3. Possess a choke restraint device that enables the trapper to release a javelina from a trap when trapping in a javelina hunt unit as designated by Commission Order;
4. Possess a device that is designed or manufactured to restrain a trapped animal while it is being removed from a trap when its release is required under this Section; and
5. Release, without additional injury, all animals that cannot lawfully be taken by trap.
6. Subsections (G)(3) and (G)(4) do not apply when the trapper is using a confinement trap.

H. A trapper shall not:

1. Bait a confinement trap with:
   a. A live animal;
   b. Any edible parts of small game, big game, or game fish; or
   c. Any part of any game bird or nongame bird.
2. Set any trap within:
   a. One-half mile (880 yards) of any of the following areas developed for public use:
      i. Boat ramp or launching area,
ii. Camping area,
iii. Picnic area,
iv. Roadside rest area, or
v. Developed wildlife viewing platform.

b. One-half mile of any occupied farmhouse or other residence, cabin, lodge or building without permission of the owner or resident.

c. One-hundred yards of an interstate highway or any other highway maintained by the Arizona Department of Transportation.

d. Fifty feet of any trail maintained for public use by a government agency.

e. Seventy-five feet of any other road as defined under A.R.S. § 17-101.

f. Subsections (H)(2)(b), (H)(2)(c), (H)(2)(d), and (H)(2)(e) do not apply when the trapper is using a confinement trap.

3. Set a foothold trap within 30 feet of sight-exposed bait.

4. Use any:
   a. Body-gripping or other instant kill trap with an open jaw spread that exceeds 5 inches for any land set or 10 inches for any water set;
   b. Foothold trap with an open jaw spread that exceeds 7 1/2 inches for any water set;
   c. Snare, unless authorized under subsection (I);
   d. Trap with an open jaw spread that exceeds 6 1/2 inches for any land set; or
   e. Trap with teeth.

I. A trapper who uses a foothold trap to take wildlife with a land set shall use commercially manufactured traps that meet the following specifications:
   1. A padded or rubber-jawed trap or an unpadded trap with jaws permanently offset to a minimum of 3/16 inch and a device that allows for pan tension adjustment;
   2. A foothold trap that captures wildlife by means of an enclosed bar or spring designed to prevent the capture of non-targeted wildlife or domestic animals; or
   3. A powered cable device with an inside frame hinge width no wider than 6 inches, a cable loop stop size of at least 2 inches in diameter to prevent capture of small non-target species, and a device that allows for a pan tension adjustment.

J. A trapper who uses a foothold trap to take wildlife with a land set shall ensure that the trap has an anchor chain equipped with at least two swivels as follows:
   1. An anchor chain 12 inches or less in length shall have a swivel attached at each end.
   2. An anchor chain greater than 12 inches in length shall have one swivel attached at the trap and one swivel attached within 12 inches of the trap. The anchor chain shall be equipped with a shock-absorbing spring that requires less than 40 pounds of force to extend or open the spring.

K. A trapper shall ensure that each trap has either the name and address or the registration number of the trapper marked on a metal tag attached to the trap. The registration number assigned by the Department is the only acceptable registration number.

L. A trapper shall immediately attach a valid bobcat transportation tag to the pelt or unskinned carcass of a bobcat taken in this state. The trapper shall validate the transportation tag by providing all of the following information on the bobcat transportation tag:
   1. Current trapping license number,
   2. Management unit where the bobcat was taken,
   3. Sex of the bobcat, and
   4. Method by which the bobcat was taken.
M. The Department shall provide transportation tags with each trapping license. Additional transportation tags are available at any Department office at no charge.

N. A trapper shall ensure that all bobcats taken in this state have a bobcat seal attached and locked either through the mouth and an eye opening or through both eye openings no later than April 1 of each year.
   1. When available, bobcat seals are issued on a first-come, first-served basis at Department offices and other locations at those times and places as determined and published by the Department.
   2. The trapper shall pay the bobcat seal fee established under R12-4-102.
   3. Department personnel or an authorized agent shall attach and lock a bobcat seal only to a pelt or unskinned carcass presented with a validated transportation tag and a complete lower jaw identified with labels provided with the transportation tag. Department personnel or authorized agents shall collect the transportation tags and jaws before attaching the bobcat seal.

O. Department personnel shall attach a bobcat seal to a bobcat pelt seized under A.R.S. § 17-211(E)(4) before disposal by the Department to the public.

P. A licensed trapper shall file the annual report prescribed under A.R.S. § 17-361(D). The report form is available at any Department office and online at www.azgfd.gov.
   1. The trapper shall submit the report to Arizona Game and Fish Department, Terrestrial Wildlife Branch, 5000 W. Carefree Highway, Phoenix, AZ 85086 by April 1 of each year.
   2. A report is required even when trapping activities were not conducted.
   3. The Department shall deny a trapping license to any trapper who fails to submit an annual report until the trapper complies with reporting requirements.

Q. Persons suffering property loss or damage due to wildlife and who take responsive measures as permitted under A.R.S. §§ 17-239 and 17-302 are exempt from this Section. This exemption does not authorize any form of trapping prohibited under A.R.S. § 17-301.

Historical Note

R12-4-308. Wildlife Inspections, Check Stations, and Roadblocks
A. The Department has the authority to establish mandatory wildlife check stations.
   1. The Department shall publish in the Commission Order establishing the season the:
      a. Location,  
      b. Check in requirements, and  
      c. Check out requirements for that specific season.
   2. The Department shall ensure a wildlife check station with a published:
      a. Check in requirement is open:
CHAPTER 4. GAME AND FISH COMMISSION

i. 8:00 a.m. the day before the season until 8:00 p.m. the first day of the season, and

ii. 8:00 a.m. to 8:00 p.m. during each day of the season.

b. Check out requirement is open:

i. 8:00 a.m. to 8:00 p.m. during each day of the season, and

ii. Until 12:00 p.m. on the day after the close of the season.

3. A hunter shall:

a. Check in at a wildlife check station in person before hunting when the Department includes a check in require-

ment in the Commission Order for that season;

b. Check out at a wildlife check station in person after hunting when the Department includes a check out re-

quirement in the Commission Order for that season and shall:

i. Present for inspection any wildlife taken; and

ii. Display any license, tag, or permit required for taking or transporting wildlife.

B. The Department may conduct inspections of lawfully taken wildlife at the Department’s Phoenix and regional offices or

designated locations during the posted business hours.

1. A bighorn sheep hunter shall check out either in person or by designee within three days after the close of the sea-

on. The hunter or designee shall submit the intact horns and skull for inspection and photographing. A Department

representative shall affix a mark or seal to one horn of each bighorn sheep lawfully taken under Commission Order.

It is unlawful for any person to remove, alter, or obliterate the mark or seal.

2. A hunter who harvests a bear or mountain lion shall:

a. Report information about the kill to the Department either in person or by telephone within 48 hours of taking

the wildlife. The report shall include the:

i. Name of the hunter,

ii. Hunter’s hunting license number,

iii. Sex of the wildlife taken,

iv. Management unit where the wildlife was taken,

v. Telephone number where the hunter can be reached for additional information, and

vi. Any additional information required by the Department.

b. Present either in person or by designee the skull, hide, and attached proof of sex for inspection within 10 days of

taking the wildlife. If a hunter freezes the skull or hide before presenting it for inspection, the hunter shall prop

the jaw open to allow access to the teeth and ensure that the attached proof of sex is identifiable and accessible.

3. For seasons other than bear, bighorn sheep, or mountain lion, a hunter who harvests wildlife for which a harvest ob-

jective is established, shall report information about the kill either in person or by telephone within 48 hours of tak-

ing the wildlife. The report shall include the information required under subsection (B)(2)(a).

C. The Director may establish vehicle roadblocks at specific locations when necessary to ensure compliance with applicable

wildlife laws. Any occupant of a vehicle at a roadblock shall, upon request, present for inspection all wildlife in posses-

sion, and provide evidence of legality as defined under R12-4-301.

D. This Section does not limit the game ranger or wildlife manager’s authority to conduct stops, searches, and inspections

authorized under A.R.S. §§ 17-211(E), 17-250(A)(4), and 17-331, or to establish voluntary wildlife survey stations to

gather biological information.

Historical Note

Amended effective June 29, 1978 (Supp. 78-3). Former Section R12-4-57 renumbered as Section R12-4-308 without

change effective August 13, 1981 (Supp. 81-4). Former Section R12-4-308 repealed, new Section R12-4-308 adopted effective May 12, 1982 (Supp. 82-3). Amended subsections (B), (D), and (F), and added subsection (G) ef-
fective July 3, 1984 (Supp. 84-4). Former Section R12-4-308 repealed, new Section R12-4-308 adopted effective December 30, 1988 (Supp. 88-4). Correction, former Historical Note should read “Former Section R12-4-308 re-
pealed, new Section R12-4-308 adopted effective January 1, 1989, filed December 30, 1988” (Supp. 89-2). Amend-

R12-4-309. Authorization for Use of Drugs on Wildlife

A. A person shall not administer any drug to any wildlife under the jurisdiction of the state, including but not limited to drugs used for fertility control, disease prevention or treatment, immobilization, or growth stimulation without written authorization from the Department or as otherwise provided under subsection (E). This authorization does not:

1. Exempt a person from any state or federal statute, rule, or regulation, or any municipal or county code or ordinance; or
2. Authorize a person to engage in any activity using federally protected wildlife.

B. A person requesting written authorization for the use of drugs on wildlife shall submit the request in writing to the Department at 5000 W. Carefree Highway, Phoenix, AZ 85086 and at least 120 days before the anticipated start date of the activity. The written request shall include all of the following:

1. A plan that includes:
   a. The purpose and need for the proposed activity;
   b. A clear statement of the objectives; for fertility control the statement shall include the target wildlife population goals or densities and the anticipated time-frame for meeting these objectives;
   c. A description of the agent, drug, or method and any mandated labeling restrictions or limitations designed to reduce or minimize detrimental effects to wildlife and humans;
   d. Citations of published scientific literature documenting field studies on the efficacy and safety for both target and non-target species, including predators, scavengers, and humans;
   e. A description of the activity area;
   f. A description of the target species population and current status;
   g. A description of the field methodology for delivery that includes the following, as applicable:
      i. Timing,
      ii. Sex and number of animals to be treated,
      iii. Percentage of the population to be treated,
      iv. Calculated population effect, and
      v. Short and long term monitoring and evaluation procedures.
2. Documentation regarding the experience and credentials of the applicant or the applicant’s agents as it applies to the requested activity;
3. Written permission from landowners or lessees in all locations where the drug will be administered; and
4. Written endorsement from the agency or institution; required when the applicant is a government agency, university, or other institution. The person signing the written endorsement shall have the authority to execute the written endorsement on behalf of the agency or institution.

C. The Department shall notify the applicant of the Department’s decision to grant or deny the request within 90 days. The Department has the authority to place conditions on the written authorization regarding:

1. Locations and time-frames,
2. Drugs and methodology,
3. Limitations,
4. Reporting requirements, and
5. Any other conditions deemed necessary by the Department.

D. A person with authorization shall:
CHAPTER 4. GAME AND FISH COMMISSION

1. Carry written authorization while engaged in the activity and exhibit it upon request to any peace officer, wildlife manager, or game ranger;
2. Allow Department personnel to be present to monitor activities for compliance, public safety, and proper treatment of animals;
3. Adhere to all drug label restrictions and precautions;
4. Provide an annual and final report:
   a. The annual report shall include the number of animals treated, the level of treatment effect obtained to date, and any problems including mortalities or morbidities of target animals. The person shall submit the annual report to the Department by January 31 of each year or as otherwise specified in the written authorization.
   b. The final report shall include the end results, including the number of wildlife treated and treatment effects on target and non-target wildlife, including mortalities, morbidities, and reproductive rate changes. The person shall submit the final report to the Department no later than 90 days after the completion of the project for which the permit was issued.
5. Comply with all conditions and requirements set forth in the written authorization.

E. This Section does not prohibit the treatment of wildlife by a licensed veterinarian or holder of a special license in accordance with R12-4-407(B)(2) and (8), R12-4-413(K)(5), R12-4-420(J)(3), activities as authorized under R12-4-418, R12-4-420, R12-4-421, and R12-4-423, a person exempt from special licensing under R12-4-407(A)(4) and (5), or reasonable lethal removal activities for wildlife control as authorized under A.R.S. § 17-239(A).

F. This Section does not limit:
1. Department employees or Department agents in the performance of their official duties related to wildlife management,
2. The practices of aquaculture facilities administered by the U.S. Fish and Wildlife Service, and commercial aquaculture facilities operating under a valid license from the Arizona Department of Agriculture, or
3. The use of supplements or drugs as a part of conventional livestock operations where those supplements may incidentally be consumed by wildlife.

G. The Department shall take possession of and dispose of any remaining wildlife drugs administered in violation of this Section and any devices and paraphernalia used to administer those drugs as authorized under A.R.S. §§ 17-211(E), 17-231(A), and 17-240(B).

H. Require the person with authorization to indemnify the Department against any injury or damage resulting from the use of animal drugs.

Historical Note

R12-4-310. Fishing Permits
A. The Department may issue a fishing permit to state, county, or municipal agencies or departments and to nonprofit organizations whose primary purpose is to provide treatment and care for persons with physical, developmental, or mental disabilities.
B. The permit:
1. Is valid for any two days within a 30 day period;
2. Authorizes persons with physical, developmental, or mental disabilities to fish without a fishing license upon any public waters except that fishing in the waters of the Colorado River is restricted to fishing from the Arizona shoreline only, unless the persons fishing under the authority of the permit also possess a valid Colorado River stamp from the adjacent state; and
3. Does not exempt persons fishing under the authority of the permit from compliance with other statutes, Commission Orders, and rules not contained in this Section.

C. An applicant for a fishing permit shall submit a properly completed application to the Department. The application is furnished by the Department and is available from any Department office and online at www.azgfd.gov.

1. The applicant shall provide all of the following information:
   a. The name, address, and telephone number of the agency, department, or nonprofit organization requesting the permit;
   b. The name, position title, and telephone number of the persons responsible for supervising the persons fishing under the authority of the permit;
   c. The total number of persons who will be fishing under the authority of the permit;
   d. The dates for which the permit will be used; and
   e. The location for which the permit will be valid.
2. In addition to the information required under subsection (C)(1), nonprofit organizations shall also submit:
   a. A copy of the organization’s articles of incorporation and evidence that the organization has tax-exempt status under Section 501(c) of the Internal Revenue Code, unless a current and correct copy is already on file with the Department; and
   b. Document identifying the organization’s mission.

D. The Department shall either grant or deny the fishing permit within the applicable overall time-frame established under R12-4-106.

E. The fishing permit holder shall provide instruction on fish identification, fishing ethics, safety, and techniques to the persons who will be fishing under authority of the permit curriculum outline provided by the Department.

F. Each person fishing under the sole authority of the fishing permit may take only one-half the regular bag limit established by Commission Order for any species, unless the regular bag limit is one, in which case the permit authorizes the regular bag limit.

G. The permit holder shall submit a report to the Department no later than 30 days after the end of the authorized fishing dates. The report form is furnished by the Department and is available at any Department office. The permit holder shall report all of the following information on the form:
   1. The fishing permit number and the information contained in the permit;
   2. The total number of persons who fished and total hours fished;
   3. The total number of fish caught, kept, and released, by species.

H. The Department may deny future fishing permits to a permit holder who failed to submit the report required under subsection (G) until the permit holder complies with reporting requirements.

Historical Note
R12-4-311. Exemptions from Requirement to Possess an Arizona Fishing License or Hunting License While Taking Wildlife

In addition to the exemptions prescribed under A.R.S. § 17-335, R12-4-206(E), R12-4-207(E), and R12-4-209(E) and provided the person’s fishing, hunting, or trapping license privileges are not currently revoked by the Commission:

1. A fishing license is not required when a person is:
   a. Fishing from artificial ponds, tanks, and lakes contained entirely on private lands that are not:
      i. Open to the public, and
      ii. Managed by the Department.
   b. Taking from private property nonnative terrestrial mollusks, such as but not limited to brown garden snails (Helix aspersa) and decollata snails (Rumina decollata), or crustaceans, such as crayfish.
   c. Fishing in Arizona on any designated Saturday occurring during National Fishing and Boating Week, except in waters of the Colorado River forming the common boundaries between Arizona and California, Nevada, or Utah where fishing without a license is limited to the shoreline, unless the state with concurrent jurisdiction removes licensing requirements on the same day.
   d. Participating in an introductory fishing education program sanctioned by the Department, during scheduled program hours, only. A sanctioned program shall have a Department employee, or authorized volunteer instructor present during scheduled program hours. For the purposes of this subsection, “authorized volunteer instructor” means a person who has successfully passed the Department’s required background check, or provided documentation of the person’s application for a fingerprint clearance card, and sport fishing education workshop.

2. A hunting license is not required when a person is participating in an introductory hunting event organized, sanctioned, or sponsored by the Department. The person may hunt small game, fur-bearing, predator, and designated mammals during scheduled event hours, only. To hunt migratory game birds, the person shall have any stamps required by federal regulation. The introductory hunting event shall have a Department employee, certified hunter education instructor, or authorized volunteer present during scheduled hunting hours. For the purposes of this subsection, “authorized volunteer” means a person who has successfully passed the Department’s required background check, or provided documentation of the person’s application for a fingerprint clearance card, and Department event best practices training. This subsection does not apply to any event that requires a participant to obtain a permit-tag or nonpermit-tag.

Historical Note
Amended as an emergency effective April 10, 1975 (Supp. 75-1). Amended effective May 3, 1976 (Supp. 76-3). Amended effective May 26, 1978 (Supp. 78-3). Amended effective May 31, 1979. Amended effective June 4, 1979 (Supp. 79-3). Amended effective April 22, 1980 (Supp. 80-2). Former Section R12-4-60 renumbered as Section R12-4-311 without change effective August 13, 1981 (Supp. 81-4). Amended subsections (A), (B), and (D) and added subsections (F) and (G) effective December 17, 1981 (Supp. 81-6). Amended as an emergency effective May 12, 1982, pursuant to A.R.S. § 41-1003, valid for 90 days (Supp. 82-3). Emergency certification expired. Amended subsections (A) through (E) effective December 7, 1982 (Supp. 82-6). Amended subsections (C) and (D) effective February 9, 1984 (Supp. 84-1). Amended effective December 13, 1985 (Supp. 85-6). Amended subsections (A) and (D) effective December 16, 1986 (Supp. 86-6). Former Section R12-4-311 repealed, new Section R12-4-311 adopted effective December 30, 1988 (Supp. 88-4). Correction, former Historical Note should read “Former Section R12-4-322 repealed, new Section R12-4-311 adopted effective January 1, 1989, filed effective December 30, 1988” (Supp. 89-2). Amended by final rulemaking at 10 A.A.R. 850, effective April 3, 2004 (Supp. 04-1). Amended by final rulemaking at 19 A.A.R. 826, effective July 1, 2013 (Supp. 13-2). Amended by final rulemaking at 19 A.A.R. 3225, effective January 1, 2014 (Supp. 13-3). Amended by final rulemaking at 25 A.A.R. 1047, effective June 1, 2019 (Supp. 19-2).

R12-4-312. Repealed

Historical Note
Amended effective June 4, 1979 (Supp. 79-3). Amended effective April 22, 1980 (Supp. 80-2). Former Section R12-4-61 renumbered as Section R12-4-312 without change effective August 13, 1981 (Supp. 81-4). Amended subsections (B), (E) and (F) effective December 17, 1981 (Supp. 81-6). Amended subsections (A), (C), (D), (E), and
R12-4-313. Lawful Methods of Take and Season for Aquatic Wildlife

A. Subject to the restrictions of this Section, a person may take aquatic wildlife during the day or night using artificial light as prescribed under A.R.S. § 17-301. When a fish die-off is imminent or when otherwise deemed appropriate, the Commission may designate a special season by Commission Order to allow fish to be taken by hand or by any hand-held, non-motorized implement that does not discharge a projectile.

B. A person who possesses a valid Arizona fishing license may take aquatic wildlife by angling or simultaneous fishing as defined under R12-4-301 with any bait, artificial fly, or lure subject to the following restrictions:
   1. Except for sunfish of the genus *Lepomis*, the flesh of game fish may not be used as bait.
   2. Live baitfish, as defined under R12-4-101, may only be used in designated areas prescribed by Commission Order and designated areas may subsequently be closed or restricted by Commission Order.
   3. Waterdogs may not be used as live bait in that portion of Santa Cruz County lying east and south of State Highway 82 or that portion of Cochise County lying west of the San Pedro River and south of State Highway 82.
   4. Shall not use more than two lines at any one time.
   5. The Commission may further restrict the lawful methods of take on particular waters by designating one or more of the following special seasons by Commission Order:
      a. An “artificial flies and lures” season in which only artificial flies and lures may be used in designated areas,
      b. A “barbless hooks” season in which only the use of barbless or single-point barbless hooks may be used in designated areas,
      c. An “immediate kill or release” season in which a person must kill and retain the designated species as part of the person’s bag limit or immediately release the wildlife,
      d. A “catch and immediate release” in which a person must immediately release the designated species,
      e. An “immediate kill” season in which a person must immediately kill and retain the designated species as part of the person’s bag limit, or
      f. A “limited-entry” season in which a limited number of permits is made available to the public for a designated species, a particular water, or both.

C. In addition to angling, a person who possesses a valid Arizona fishing license may also take the following aquatic wildlife using the following methods:
   1. A hybrid device is lawful for the take of aquatic wildlife provided all components of the device are authorized for the take of that species under this subsection.
   2. Carp (*Cyprinus carpio*), buffalo fish, mullet, tilapia, goldfish, and shad may be taken by:
      a. Bow and arrow,
      b. Crossbow,
      c. Snare,
      d. Gig,
      e. Spear or spear gun, or
      f. Snagging.
   3. A person shall not use any of the methods of take listed under subsection (C)(2) within 200 yards of a designated swimming area as indicated by way of posted signs or notices.
   4. Except for snagging, a person shall not use any of the methods of take listed under subsection (C)(2) within 200 yards of any boat dock or fishing pier.
5. Striped bass may be taken by spear or spear gun in waters designated by Commission Order.
6. Catfish may be taken by bow and arrow or crossbow in waters designated by Commission Order.
7. Amphibians, soft-shelled turtles, mollusks, and crustaceans may be taken by minnow trap, crayfish net, hand, or with any hand-held, non-motorized implement that does not discharge a projectile, unless otherwise permitted under this Section.
8. In addition to the methods described under subsection (C)(7), bullfrogs may be taken by:
   a. Bow and arrow,
   b. Crossbow,
   c. Pneumatic weapon, or
   d. Slingshot.
9. Live baitfish may be taken for personal use as bait by:
   a. A cast net not to exceed a radius of 4 feet measured from the horn to the leadline;
   b. A minnow trap, as defined under R12-4-301;
   c. A seine net not to exceed 10 feet in length and 4 feet in width; or
   d. A dip net.
10. In addition to the methods described under subsection (C)(7), crayfish may be taken with the following devices:
    a. A trap not more than 3 feet in the greatest dimension,
    b. A dip net as defined under R12-4-301, or
    c. A seine net not larger than 10 feet in length and 4 feet in width.
11. The Commission may further restrict the lawful methods of take on particular waters by designating one or more of the following special seasons by Commission Order:
    a. A “snagging” season in which a person may use this method only at times and locations designated by Commission Order,
    b. A “spear or spear gun” season in which a person may use this method only at times and locations designated by Commission Order.

D. Aquatic wildlife taken in violation of this Section is unlawfully taken.

**Historical Note**
2. A person may transport live waterdogs except in the portion of Santa Cruz County lying east and south of State Highway 82 or the portion of Cochise County lying west of the San Pedro River and south of State Highway 82; and

3. Any crayfish taken on waters within Yuma or La Paz Counties may be transported alive for use as live bait in that portion of La Paz County west of Highway 95 and south of Interstate 10, Yuma County, and on the Colorado River from the Palo Verde Diversion Dam downstream to the Southern international boundary with Mexico.

C. A person who possesses a valid Arizona fishing license may import, transport, or possess live baitfish, crayfish, or waterdogs for personal use as live bait only as follows:

1. A person may possess or transport only the following live baitfish for personal use as live bait:
   a. Fathead minnow (*Pimephales promelas*),
   b. Golden shiners (*Notemigonus crysoleucas*),
   c. Goldfish (*Carassius auratus*),
   d. Longfin Dace (*Agosia chrysogaster*),
   e. Sonora Sucker (*Catostomus insignis*),
   f. Speckled Dace (*Rhynicthys osculus*), and
   g. Desert Sucker (*Catostomus clarki*).

2. A person may import for personal use live baitfish listed in subsection (C)(1) from:
   a. California or Nevada, or
   b. From any other state with accompanying documentation certifying that the fish are free of Furunculosis.

3. A person may import, transport, or possess live waterdogs for personal use as bait, except in the portion of Santa Cruz County lying east and south of State Highway 82 or the portion of Cochise County lying west of the San Pedro River and south of State Highway 82.

4. A person shall not import, transport, or move live crayfish between waters for personal use as live bait except as allowed in 12 A.A.C. 4, Article 4, or except as allowed in subsection (B)(3).

D. A person shall attach water-resistant identification to any unattended live boxes or stringers holding fish and ensure the identification bears the person’s:

1. Name,
2. Address, and
3. Fishing license number.

E. A person who uses a crayfish net or a minnow trap shall raise and empty the trap daily and shall attach water-resistant identification to any unattended traps and ensure the identification bears the person’s:

1. Name,
2. Address, and
3. Fishing license number.

F. A person shall not knowingly disturb the crayfish net, live box, minnow trap, or stringer of another unless authorized to do so by the owner.

**Historical Note**


R12-4-315. Repealed
CHAPTER 4. GAME AND FISH COMMISSION

Historical Note

R12-4-316. Repealed

Historical Note
Amended effective May 3, 1976 (Supp. 76-3). Amended effective June 4, 1979 (Supp. 79-3). Amended subsections (A), (B), (C), and (D) effective December 29, 1980 (Supp. 80-6). Former Section R12-4-65 renumbered as Section R12-4-316 without change effective August 13, 1981 (Supp. 81-4). Amended subsections (B), (C) and (F) effective February 9, 1984 (Supp. 84-1). Amended effective December 31, 1984 (Supp. 84-6). Former Section R12-4-316 repealed, new Section R12-4-316 adopted effective December 30, 1988 (Supp. 88-4). Correction, former Historical Note should read “Former Section R12-4-316 repealed, new Section R12-4-316 adopted effective January 1, 1989, filed December 30, 1988” (Supp. 89-2). Amended by final rulemaking at 7 A.A.R. 2147, effective May 25, 2001 (Supp. 01-2). Amended by final rulemaking at 10 A.A.R. 850, effective April 3, 2004 (Supp. 04-1). Amended by final rulemaking at 19 A.A.R. 826, effective July 1, 2013 (Supp. 13-2). Repealed by final rulemaking at 25 A.A.R. 1047, effective June 1, 2019 (Supp. 19-2).

R12-4-317. Repealed

Historical Note
Renumbered, then repealed and readopted as Section R12-4-43 effective February 20, 1981 (Supp. 81-1). Former Section R12-4-66 renumbered as Section R12-4-317 without change effective August 13, 1981 (Supp. 81-4). Correction, Section R12-4-317 formerly shown as repealed should have read reserved. Former Historical Note erroneous, see R12-4-202. Section R12-4-317 adopted effective June 20, 1984 (Supp. 84-3). Repealed effective December 30, 1988 (Supp. 88-4). Correction, former Historical Note should read “Repealed effective January 1, 1989, filed December 30, 1988” (Supp. 89-2). New Section made by final rulemaking at 10 A.A.R. 850, effective April 3, 2004 (Supp. 04-1). Amended by final rulemaking at 19 A.A.R. 826, effective July 1, 2013 (Supp. 13-2). Repealed by final rulemaking at 25 A.A.R. 1047, effective June 1, 2019 (Supp. 19-2).

R12-4-318. Seasons for Lawfully Taking Wild Mammals, Birds, and Reptiles

A. Methods of lawfully taking wild mammals, birds, and reptiles during seasons designated by Commission Order as “general” seasons are designated under R12-4-304.
   1. Lawful devices are defined under R12-4-101 and R12-4-301.
   2. Lawful devices are listed under this Section by the range of effectiveness, from greatest range to least range.
   3. A hybrid device may be used in a general season, provided:
      a. All components of the hybrid device are designated as lawful for a given species under R12-4-304, and
      b. No components are prohibited under R12-4-303.

B. Methods of lawfully taking big game during seasons designated by Commission Order as “special” are designated under R12-4-304. “Special” seasons are open only to a person who possesses a special big game license tag authorized under A.R.S. § 17-346 and R12-4-120.

C. When designated by Commission Order, the following seasons have specific requirements and lawful methods of take more restrictive than those for general and special seasons, as established under this Section. While taking the species authorized by the season, a person participating in:
   1. A “CHAMP” season shall be a challenged hunter access/mobility permit holder as established under R12-4-217.
   2. A “youth-only hunt” shall be under the age of 18. A youth hunter whose 18th birthday occurs during a “youth-only hunt” for which the youth hunter has a valid permit or tag may continue to participate for the duration of that “youth-only hunt.”
   3. A “pursuit-only” season may use dogs to pursue bears, mountain lions, or raccoons as designated by Commission Order, but shall not kill or capture the quarry.
a. A person participating in a “pursuit-only” season shall possess and, at the request of Department personnel, produce an appropriate and valid hunting license and any required tag or pursuit-only permit for the wildlife pursued, even though there shall be no kill.

b. Pursuit is allowed regardless of whether a person has met the bag limit established under R12-4-104(J) for that genus.

c. A person does not commit an offense under A.R.S. § 17-309 where the person causes or allows a dog to pursue a bear, mountain lion, or raccoon when all of the following apply:
   i. A pursuit-only season for the wildlife pursued is authorized by Commission Order;
   ii. The person possesses a valid hunting license and tag;
   iii. The bear, mountain lion, or raccoon is not injured or killed in the course of the pursuit.

4. A “restricted season” may use any lawful method authorized for a specific species under R12-4-304, except dogs may not be used to pursue the wildlife for which the season was established.

5. An “archery-only” season shall not use any other weapons, including crossbows or bows with a device that holds the bow in a drawn position except as authorized under R12-4-216. A person participating in an “archery-only” season may use one or more of the following methods or devices if authorized under R12-4-304 as lawful for the species hunted:
   a. Bows and arrows, and
   b. Falconry.

6. A “handgun, archery, and muzzleloader (HAM)” season may use one or more of the following methods or devices if authorized under R12-4-304 as lawful for the species hunted:
   a. Muzzleloading rifles,
   b. Handguns,
   c. Muzzleloading handguns,
   d. Bows and arrows,
   e. Crossbows or bows to be drawn and held with an assisting device, and
   f. Pre-charged pneumatic weapons capable of holding and discharging a single projectile .35 caliber or larger.

7. A “muzzleloader” season may use one or more of the following methods or devices if authorized under R12-4-304 as lawful for the species hunted:
   a. Muzzleloading rifles or muzzleloading handguns,
   b. Bows and arrows, and
   c. Crossbows or bows to be drawn and held with an assisting device.

8. A “limited weapon” season may use one or more of the following methods or devices for taking wildlife, if authorized under R12-4-304 as lawful for the species hunted:
   a. Bows and arrows,
   b. Crossbows or bows to be drawn and held with an assisting device,
   c. Pneumatic weapons capable of holding and discharging a single projectile .25 caliber or smaller,
   d. Hand-propelled projectiles,
   e. Any trap except foothold traps,
   f. Slingshots,
   g. Dogs,
   h. Falconry,
   i. Nets, or
   j. Capture by hand.
9. A “limited weapon hand or hand-held implement” season may use one or more of the following methods or devices for taking wildlife, if authorized under R12-4-304 as lawful for the species hunted:
   a. Catch-pole,
   b. Hand,
   c. Snake hook, or
   d. Snake tongs.

10. A “limited weapon-pneumatic” season may use one or more of the following methods or devices for taking wildlife, if authorized under R12-4-304 as lawful for the species hunted:
   a. Pneumatic weapons discharging a single projectile .25 caliber or smaller,
   b. Hand-propelled projectiles,
   c. Slingshots,
   d. Dogs,
   e. Falconry,
   f. Nets, or
   g. Capture by hand.

11. A “limited weapon-rimfire” season may use one or more of the following methods or devices for taking wildlife, if authorized under R12-4-304 as lawful for the species hunted:
   a. Rifled firearms using rimfire cartridges,
   b. Shotgun shooting shot or slug,
   c. Bows and arrows,
   d. Crossbows or bows to be drawn and held with an assisting device,
   e. Pneumatic weapons,
   f. Hand-propelled projectiles,
   g. Any trap except foothold traps,
   h. Slingshots,
   i. Dogs,
   j. Falconry,
   k. Nets, or
   l. Capture by hand.

12. A “limited weapon-shotgun” season may use one or more of the following methods or devices for taking wildlife, if authorized under R12-4-304 as lawful for the species hunted:
   a. Shotgun shooting shot or slug,
   b. Muzzleloading shotgun,
   c. Bows and arrows,
   d. Crossbows or bows to be drawn and held with an assisting device,
   e. Pneumatic weapons,
   f. Hand-propelled projectiles,
   g. Any trap except foothold traps,
   h. Slingshots,
   i. Dogs,
   j. Falconry,
   k. Nets, or
1. Capture by hand.

13. A “limited weapon-shotgun shooting shot” season may use one or more of the following methods or devices for taking wildlife, if authorized under R12-4-304 as lawful for the species hunted:
   a. Shotgun shooting shot,
   b. Muzzleloading shotgun shooting shot,
   c. Bows and arrows,
   d. Crossbows or bows to be drawn and held with an assisting device,
   e. Pneumatic weapons,
   f. Hand-propelled projectiles,
   g. Any trap except foothold traps,
   h. Slingshots,
   i. Dogs,
   j. Falconry,
   k. Nets, or
   l. Capture by hand.

14. A “falconry-only” season shall be a falconer licensed under R12-4-422 unless exempt under A.R.S. § 17-236(C) or R12-4-407. A falconer participating in a “falconry-only” season shall use no other method of take except falconry.

15. A “raptor capture” season shall be a falconer licensed under R12-4-422 unless exempt under R12-4-407.

16. A “limited-entry” season means any hunting opportunity for which a limited number of permits is made available to the public.

Historical Note

R12-4-319. Use of Aircraft to Take Wildlife
A. A person shall not take or assist in taking wildlife from or with the aid of aircraft, including drones.

B. Except in hunt units with Commission-ordered special seasons under R12-4-115 and R12-4-120 and hunt units with seasons only for mountain lion and no other concurrent big game season, a person shall not locate or assist in locating wildlife from or with the aid of an aircraft, including drones, in a hunt unit with an open big game season. This restriction begins 48 hours before the opening of a big game season in a hunt unit and extends until the close of the big game season for that hunt unit.

C. A person who possesses a special big game license tag for a special season under R12-4-115 or R12-4-120 or a person who assists or will assist such a licensee shall not use an aircraft, including drones, to locate wildlife beginning 48 hours before and during a Commission-ordered special season.

D. This Section does not apply to any person acting within the scope of official duties as an employee or authorized agent of the state or the United States to manage or protect or aid in the management or protection of land, water, wildlife, livestock, domesticated animals, human life, or crops.
E. For the purposes of this Section, “locate” means any act or activity that does not take or harass wildlife and is directed at locating or finding wildlife in a hunt area.

**Historical Note**

R12-4-320. Harassment of Wildlife

A. In addition to the provisions established under A.R.S. § 17-301, it is unlawful to harass, molest, chase, rally, concentrate, herd, intercept, torment, or drive wildlife with or from any aircraft, including drones, as defined under R12-4-301, or with or from any motorized terrestrial or aquatic vehicle.

B. This Section does not apply to person’s acting:
   1. In accordance with the provisions established under A.R.S. § 17-239; or
   2. Within the scope of official duties as an employee or authorized agent of the state or the United States to manage or protect or aid in the management or protection of land, water, wildlife, livestock, domesticated animals, human life, or crops.

**Historical Note**

R12-4-321. Restrictions for Taking Wildlife in City, County, or Town Parks and Preserves

A. All city, county, and town parks and preserves are closed to hunting and trapping, unless open by Commission Order.

B. Unless otherwise provided under Commission Order or rule, a city, county, or town may:
   1. Limit or prohibit any person from hunting within one-fourth mile (440 yards) or trapping within one half mile (880 yards) of any:
      a. Developed picnic area,
      b. Developed campground,
      c. Developed trailhead,
      d. Developed wildlife viewing platform,
      e. Boat ramp,
      f. Shooting range,
      g. Occupied structure, or
      h. Golf course.
   2. Require a person entering a city, county, or town park or preserve, for the purpose of hunting, to declare the person’s intent to hunt within the park or preserve, if the park or preserve has a check in process established.
   3. Allow a person to take wildlife in a city, county, or town park or preserve only during the posted park or preserve hours.

C. The requirements of subsection (B)(1) do not apply to a reptile and amphibian limited weapon hand or hand-held implement season established by Commission Order.

**Historical Note**
New Section R12-4-321 renumbered from R12-4-301 and amended by final rulemaking at 18 A.A.R. 1458, effective January 1, 2013 (Supp. 12-2). Amended by final rulemaking at 25 A.A.R. 1047, effective June 1, 2019 (Supp. 19-2).
R12-4-322. Pickup and Possession of Wildlife Carcasses or Parts

A. For the purposes of this Section, the following definitions apply:
   1. “Fresh” means the majority of the wildlife carcass or part is not exposed dry bone and is comprised mainly of hair, hide, or flesh.
   2. “Not fresh” means the majority of the wildlife carcass or part is exposed dry bone due to natural processes such as scavenging, decomposition, or weathering.

B. If not contrary to federal law or regulation, a person may pick up and possess naturally shed antlers or horns or other wildlife parts that are not fresh without a permit or inspection by a Department law enforcement officer.

C. If not contrary to federal law or regulation, a person may only pick up and possess a fresh wildlife carcass or its parts under this Section if the person notifies the Department prior to pick up and possession and:
   1. The Department’s first report or knowledge of the carcass or its parts is voluntarily provided by the person wanting to possess the carcass or its parts;
   2. A Department law enforcement officer or an authorized Department employee or agent is able to observe the carcass or its parts at the site where the animal was found in the same condition and location as when the animal was originally found by the person wanting to possess the carcass or its parts; and
   3. A Department law enforcement officer, using the officer’s education, training, and experience, determines the animal died from natural causes. The Department may require the person to take the officer to the site where the animal carcass or parts were found when an adequate description or location cannot be provided to the officer.

D. If a Department law enforcement officer determines that the person wanting to possess the carcass or its parts is authorized to do so under subsection (C), the officer may authorize possession of the carcass or its parts.

E. Wildlife parts picked up and possessed from areas under control of jurisdictions that prohibit such activity, such as other states, reservations, or national parks, are illegal to possess in this state.

F. This Section does not authorize the pickup and possession of a threatened or endangered species carcass or its parts.

Historical Note
New Section made by final rulemaking at 19 A.A.R. 826, effective July 1, 2013 (Supp. 13-2). Amended by final rulemaking at 25 A.A.R. 1047, effective June 1, 2019 (Supp. 19-2).
17-102. **Wildlife as state property; exceptions**

Wildlife, both resident and migratory, native or introduced, found in this state, except fish and bullfrogs impounded in private ponds or tanks or wildlife and birds reared or held in captivity under permit or license from the commission, are property of the state and may be taken at such times, in such places, in such manner and with such devices as provided by law or rule of the commission.
17-231. General powers and duties of the commission

A. The commission shall:

1. Adopt rules and establish services it deems necessary to carry out the provisions and purposes of this title.

2. Establish broad policies and long-range programs for the management, preservation and harvest of wildlife.

3. Establish hunting, trapping and fishing rules and prescribe the manner and methods that may be used in taking wildlife, but the commission shall not limit or restrict the magazine capacity of any authorized firearm.

4. Be responsible for the enforcement of laws for the protection of wildlife.

5. Provide for the assembling and distribution of information to the public relating to wildlife and activities of the department.

6. Prescribe rules for the expenditure, by or under the control of the director, of all funds arising from appropriation, licenses, gifts or other sources.

7. Exercise such powers and duties necessary to carry out fully the provisions of this title and in general exercise powers and duties that relate to adopting and carrying out policies of the department and control of its financial affairs.

8. Prescribe procedures for use of department personnel, facilities, equipment, supplies and other resources in assisting search or rescue operations on request of the director of the division of emergency management.

9. Cooperate with the Arizona-Mexico commission in the governor's office and with researchers at universities in this state to collect data and conduct projects in the United States and Mexico on issues that are within the scope of the department's duties and that relate to quality of life, trade and economic development in this state in a manner that will help the Arizona-Mexico commission to assess and enhance the economic competitiveness of this state and of the Arizona-Mexico region.

B. The commission may:

1. Conduct investigations, inquiries or hearings in the performance of its powers and duties.

2. Establish game management units or refuges for the preservation and management of wildlife.

3. Construct and operate game farms, fish hatcheries, fishing lakes or other facilities for or relating to the preservation or propagation of wildlife.

4. Expend funds to provide training in the safe handling and use of firearms and safe hunting practices.

5. Remove or permit to be removed from public or private waters fish which hinder or prevent propagation of game or food fish and dispose of such fish in such manner as it may designate.

6. Purchase, sell or barter wildlife for the purpose of stocking public or private lands and waters and take at any time in any manner wildlife for research, propagation and restocking purposes or for use at a game farm or fish hatchery and declare wildlife salable when in the public interest or the interest of conservation.

7. Enter into agreements with the federal government, with other states or political subdivisions of the state and with private organizations for the construction and operation of facilities and for management studies, measures or procedures for or relating to the preservation and propagation of wildlife and expend funds for carrying out such agreements.

8. Prescribe rules for the sale, trade, importation, exportation or possession of wildlife.
9. Expend monies for the purpose of producing publications relating to wildlife and activities of the department for sale to the public and establish the price to be paid for annual subscriptions and single copies of such publications. All monies received from the sale of such publications shall be deposited in the game and fish publications revolving fund.

10. Contract with any person or entity to design and produce artwork on terms that, in the commission's judgment, will produce an original and valuable work of art relating to wildlife or wildlife habitat.

11. Sell or distribute the artwork authorized under paragraph 10 of this subsection on such terms and for such price as it deems acceptable.

12. Consider the adverse and beneficial short-term and long-term economic impacts on resource dependent communities, small businesses and the state of Arizona, of policies and programs for the management, preservation and harvest of wildlife by holding a public hearing to receive and consider written comments and public testimony from interested persons.

13. Adopt rules relating to range operations at public shooting ranges operated by and under the jurisdiction of the commission, including the hours of operation, the fees for the use of the range, the regulation of groups and events, the operation of related range facilities, the type of firearms and ammunition that may be used at the range, the safe handling of firearms at the range, the required safety equipment for a person using the range, the sale of firearms, ammunition and shooting supplies at the range, and the authority of range officers to enforce these rules, to remove violators from the premises and to refuse entry for repeat violations.

14. Solicit and accept grants, gifts or donations of money or other property from any source, which may be used for any purpose consistent with this title.

C. The commission shall confer and coordinate with the director of water resources with respect to the commission's activities, plans and negotiations relating to water development and use, restoration projects under the restoration acts pursuant to chapter 4, article 1 of this title, where water development and use are involved, the abatement of pollution injurious to wildlife and in the formulation of fish and wildlife aspects of the director of water resources' plans to develop and utilize water resources of the state and shall have jurisdiction over fish and wildlife resources and fish and wildlife activities of projects constructed for the state under or pursuant to the jurisdiction of the director of water resources.

D. The commission may enter into one or more agreements with a multi-county water conservation district and other parties for participation in the lower Colorado river multispecies conservation program under section 48-3713.03, including the collection and payment of any monies authorized by law for the purposes of the lower Colorado river multispecies conservation program.
17-251. Possession or use of a firearm silencer or muffler while hunting; definition

A. The commission shall not adopt or enforce any rule that prohibits the lawful possession or use of a firearm silencer or muffler, including for the taking of wildlife or while hunting.

B. This section does not limit the authority of the commission to prescribe the type and caliber of firearm or ammunition that may be used for taking wildlife.

C. For the purposes of this section, "firearm silencer or muffler" means any device that is designed, made or adapted to muffle the report of a firearm.
17-301. *Times when wildlife may be taken; exceptions; methods of taking*

A. A person may take wildlife, except aquatic wildlife, only during daylight hours unless otherwise prescribed by the commission. A person shall not take any species of wildlife by the aid or with the use of a jacklight, other artificial light, or illegal device, except as provided by the commission.

B. A person shall not take wildlife, except aquatic wildlife, or discharge a firearm or shoot any other device from a motor vehicle, including an automobile, aircraft, train or powerboat, or from a sailboat, boat under sail, or a floating object towed by powerboat or sailboat except as expressly permitted by the commission. No person may knowingly discharge any firearm or shoot any other device upon, from, across or into a road or railway.

C. Fish may be taken only by angling unless otherwise provided by the commission. The line shall be constantly attended. In every case the hook, fly or lure shall be used in such manner that the fish voluntarily take or attempt to take it in their mouths.

D. It shall be unlawful to take wildlife with any leghold trap, any instant kill body gripping design trap, or by a poison or a snare on any public land, including state owned or state leased land, lands administered by the United States forest service, the federal bureau of land management, the national park service, the United States department of defense, the state parks board and any county or municipality. This subsection shall not prohibit:

1. The use of the devices prescribed in this subsection by federal, state, county, city, or other local departments of health which have jurisdiction in the geographic area of such use, for the purpose of protection from or surveillance for threats to human health or safety.

2. The taking of wildlife with firearms, with fishing equipment, with archery equipment, or other implements in hand as may be defined or regulated by the Arizona game and fish commission, including but not limited to the taking of wildlife pursuant to a hunting or fishing license issued by the Arizona game and fish department.

3. The use of snares, traps not designed to kill, or nets to take wildlife for scientific research projects, sport falconry, or for relocation of the wildlife as may be defined or regulated by the Arizona game and fish commission or the government of the United States or both.

4. The use of poisons or nets by the Arizona game and fish department to take or manage aquatic wildlife as determined and regulated by the Arizona game and fish commission.

5. The use of traps for rodent control or poisons for rodent control for the purpose of controlling wild and domestic rodents as otherwise allowed by the laws of the state of Arizona, excluding any fur-bearing animals as defined in section 17-101.
17-331. License or proof of purchase required; violation of child support order

A. Except as provided by this title, rules prescribed by the commission or commission order, a person shall not take any wildlife in this state without a valid license or a commission approved proof of purchase. The person shall carry the license or proof of purchase and produce it on request to any game ranger, wildlife manager or peace officer.

B. A certificate of noncompliance with a child support order issued pursuant to section 25-518 invalidates any license or proof of purchase issued to the support obligor for taking wildlife in this state and prohibits the support obligor from applying for any additional licenses issued by an automated drawing system under this title.

C. On receipt of a certificate of compliance with a child support order from the court pursuant to section 25-518 and without further action:

1. Any license or proof of purchase issued to the support obligor for taking wildlife that was previously invalidated by a certificate of noncompliance and that has not otherwise expired shall be reinstated.

2. Any ineligibility to apply for any license issued by an automated drawing system shall be removed.
BOARD OF MANUFACTURED HOUSING
Title 4, Chapter 34
This Five-Year-Review Report (5YRR) from the Board of Manufactured Housing relates to rules in Title 3, Chapter 34.

In the last 5YRR of these rules the Board proposed to amend all of its existing rules. The Board completed the proposed changes in a rulemaking approved by the Council in 2018. The rulemaking also addressed the legislative decision to move the Office from the Department of Fire, Building and Life Safety to the Department of Housing. Since the 2018 Rulemaking, the Board has completed two separate rulemakings in 2020 and 2021.

**Proposed Action**

The Board is not proposing any changes to the rules.

1. **Has the agency analyzed whether the rules are authorized by statute?**

   Yes, the Board cites to both the general and statutory authority.
2. **Summary of the agency’s economic impact comparison and identification of stakeholders:**

   The Office of Manufactured Housing, which is located within the Department of Housing, is required to maintain and enforce certain standards of quality and safety for mobile/manufactured homes and factory-built buildings. In addition, they are required to conduct business consistent with the minimum standards of the U.S. Department of Housing and Urban Development. The Board of Manufactured Housing is responsible for making rules regarding quality and safety standards for mobile/manufactured and factory-built buildings. The Department issues four kinds of licenses: manufacturer, dealer, installer, and salesperson. The Department indicates that during FY2021, they issued 1,130 new or renewed licenses. They state that fifty-six percent of the licenses were to salespersons. The Department goes on to state that there are currently three manufactured-housing companies operating four factories in Arizona and employing approximately 800 individuals. Each year, approximately 3,050 new manufactured homes are constructed in Arizona. During FY 2021, the Department collected $1,037,513 in licensing, inspecting, and permitting fees. The Department receives no appropriation for this activity because fees collected are required by statute to cover at least 95 percent of costs.

3. **Has the agency analyzed the costs and benefits of the rulemaking and determined that the rules impose the least burden and costs to those who are regulated?**

   The Board of Manufactured Housing has determined that the benefits of the rules, protecting public safety, outweigh the costs of the rules and impose the least burden and costs on the manufacturers, installers, and retailers required to comply with the rules.

4. **Has the agency received any written criticisms of the rules over the last five years?**

   No, the Board indicates they did not receive any written criticisms to the rules.

5. **Has the agency analyzed the rules’ clarity, conciseness, and understandability?**

   Yes, the Board indicates the rules are overall clear, concise, and understandable.

6. **Has the agency analyzed the rules’ consistency with other rules and statutes?**

   Yes, the Board indicates the rules are consistent with other rules and statutes.

7. **Has the agency analyzed the rules’ effectiveness in achieving its objectives?**

   Yes, the Board indicates the rules are effective in achieving their objectives.

8. **Has the agency analyzed the current enforcement status of the rules?**
Yes, the Board indicates the rules are enforced as written.

9. **Are the rules more stringent than corresponding federal law and, if so, is there statutory authority to exceed the requirements of federal law?**

   No, the Board indicates the rules are not more stringent than the corresponding federal laws 24 C.F.R. § 3280.1.

10. **For rules adopted after July 29, 2010, do the rules require a permit or license and, if so, does the agency comply with A.R.S. § 41-1037?**

    Not applicable. The rules do not require the issuance of a general permit.

11. **Conclusion**

    The Board is not proposing any changes to the rules.

    Council staff finds the rules to be overall clear, concise, understandable, and effective. Council staff recommends approval of this report.
March 28, 2022

VIA EMAIL: grrc@azdoa.gov
Nicole Sornsin, Chair
Governor’s Regulatory Review Council
100 North 15th Avenue, Suite 305
Phoenix, Arizona 85007

RE: Board of Manufactured Housing
Five-year-review Report
4 A.A.C. 34

Dear Ms Sornsin:

The Board submits the referenced report for the Council’s review and approval. The report is due on June 28, 2022, under an extension.

The Board certifies compliance with A.R.S. § 41-1091.

For questions about this report, please contact Tara Brunetti at 602-771-1000 or tara.brunetti@azhousing.gov.

Sincerely,

Tara Brunetti
Tara Brunetti
Assistant Deputy Director
INTRODUCTION

Under A.R.S. § 41-4002, the Office of Manufactured Housing (“Office”), which is located within the Arizona Department of Housing, is required to maintain and enforce certain standards of quality and safety for mobile/manufactured homes and factory-built buildings. Additionally, the Office is required to conduct its business consistently with the minimum standards of the U.S. Department of Housing and Urban Development (“HUD”) so the Office can be designated the “state inspector” for manufactured homes and related industries. The Board of Manufactured Housing (Board) is responsible for making rules regarding quality and safety standards for mobile/manufactured homes and factory-built buildings.

Since the Board’s last 5YRR was approved by the Council on July 6, 2017, the Board completed four rulemakings and recodified two rules.

- In 2018, the Board amended or repealed all of its rules in response to the legislative decision to move the Office from the Department of Fire, Building and Life Safety to the Department of Housing, the previously referenced 5YRR, and a review conducted at the direction of the Governor’s office.
- In 2020, the Board amended rules in response to legislative change giving the Office regulatory authority over commercial FBBs, components, assemblies, and systems manufactured using closed panelized construction.
- In 2021, the Board updated materials incorporated by reference.
- Also in 2021, in response to recently identified statutory inconsistencies, the Board updated the scope of work for individuals licensed to install commercial FBBs and accessory structures to ensure all the work of installers is covered by the rules.
Statute that generally authorizes the agency to make rules: A.R.S. § 41-4010(A)

1. Specific statute authorizing the rule:
   R4-34-101. Definitions: A.R.S. §§ 41-4001 through 41-4010
   R4-34-102. Materials Incorporated by Reference: A.R.S. § 41-4010(A)(1), (2), (3), (11), and (14)
   R4-34-103. Exceptions: A.R.S. § 41-4010(A)(1), (2), (3), (10), (11), and (14)
   R4-34-201. General: A.R.S. §§ 41-4010(A)(6) through (9) and (13) and 41-1073
   R4-34-202. Manufacturers: A.R.S. § 41-4010(A)(6) and (13)
   R4-34-203. Retailers: A.R.S. § 41-4010(A)(7) and (13)
   R4-34-204. Installers: A.R.S. § 41-4010(A)(8) and (13)
   R4-34-301. Transaction Copies: A.R.S. § 41-4030
   R4-34-302. Advertising: A.R.S. § 41-4039(10) and (14)
   R4-34-303. Brokered Transactions: A.R.S. §§ 41-4030(L) and 41-4039(14)
   R4-34-401. Surety Bond Forms: A.R.S. § 41-4010(A)(6) through (8)
   R4-34-402. Cash Deposits: A.R.S. § 41-4010(A)(6) through (8)
   R4-34-403. License Bond Amounts: A.R.S. § 41-4010(A)(6) through (8)
   R4-34-501. General: A.R.S. § 41-4010(A)(4), (12), (13), and (16)
   R4-34-505. Plans and Supplements: A.R.S. §§ 41-1005, 41-4010(A)(3) and (13)
   R4-34-603. FBBs: A.R.S. §§ 41-4001(17), 41-4005, and 41-4010(A)(1), (5), and (13)
   R4-34-605. Reconstruction of FBBs: A.R.S. §§ 41-4005(B) and 41-4010(A)(3) and (13)
   R4-34-606. Rehabilitation of Mobile Homes: A.R.S. § 41-4010(A)(3) and (13)
   R4-34-607. Manufacturing Inspection and Certification: A.R.S. §§ 41-4004(A)(4), 41-4005, and 41-4010(A)(1) and (13)
   R4-34-701. General: A.R.S. §§ 41-1005 and 41-4010(A)(3) and (13)
   R4-34-703. Drawings and Specifications: A.R.S. §§ 41-4005(A) through (C) and 41-4010(A)(3) and (17)
   R4-34-704. Reconstruction Plans: A.R.S. §§ 41-4001(32), 41-4005(B) and 41-4010(A)(3)
   R4-34-705. Accessory Structures: A.R.S. §§ 41-4001(1), 41-4005(B) and 41-4010(A)(3), (5), (14), and (16)
2. **Objective of the rules:**

   R4-34-101. Definitions: The objective of the rule is to define terms used in the rules in a manner that is not explained adequately by a dictionary definition.

   R4-34-102. Materials Incorporated by Reference: The objective of this rule is to list materials the Board has incorporated by reference into the rules and with which licensees must comply.

   R4-34-103. Exceptions: The objective of this rule is to list exceptions to the materials incorporated under R4-34-102 and provide a procedure for a local jurisdiction to petition for an exception to the materials.

   R4-34-201. General: The objective of this rule is to establish general application requirements, including an administrative review of an application upon receipt by the Department.

   R4-34-202. Manufacturers: The objective of this rule is to provide descriptions of manufacturers’ license classifications and the activities that define the scope of each license class.

   R4-34-203. Retailers: The objective of this rule is to provide descriptions of retailers’ license classifications and the activities that define the scope of each license class.
R4-34-204. Installers: The objective of this rule is to provide descriptions of installers’ license classifications and the activities that define the scope of each license class. The rule also specifies license requirements specific to an installer.

R4-34-301. Transaction Copies: The objective of this rule is to establish requirements for records of sales transactions pertaining to the purchase of manufactured/mobile homes and FBBs.

R4-34-302. Advertising: The objective of this rule is to establish advertising requirements for the sale of manufactured/mobile homes and FBBs.

R4-34-303. Brokered Transactions: The objective of this rule is to establish requirements for brokered transactions pertaining to the purchase of manufactured/mobile homes and FBBs.

R4-34-401. Surety Bond Forms: The objective of this rule is to specify an applicant for a manufacturer, installer, or dealer license is required to submit a surety bond with a surety bond form.

R4-34-402. Cash Deposits: The objective of this rule is to provide applicants for a license or renewal of a license with an option to post cash or other payment methods in place of a commercial surety bond.

R4-34-403. License Bond Amounts: The objective of this rule is to establish bond amounts for each applicable license class.

R4-34-501. General: The objective of this rule is to provide information regarding a schedule of fees in accordance with A.R.S. §§ 41-4010(A)(4), and ensure services provided to the industry by the Office generate fees to cover the Office’s expenses within the margin defined by statute.
R4-34-505. Plans and Supplements: The objective of this rule is to establish a timeline for submitting corrections to plans or supplements.

R4-34-603. FBBs: The objective of this rule is to specify requirements for manufacturers of FBBs and require that FBBs be built according standards in R4-34-102.

R4-34-605. Reconstruction of FBBs: The objective of this rule is to specify a manufacturer is required to perform reconstruction in a manner consistent with applicable standards and codes.

R4-34-606. Rehabilitation of Mobile Homes: The objective of this rule is to establish requirements for rehabilitation of a mobile home, the issuance of a rehabilitation permit, and through inspection, ensure the appropriate certificate of compliance is issued.

R4-34-607. Manufacturing Inspection and Certification: The objective of this rule is to ensure manufactured-home plant certification is conducted according to HUD requirements, and regular inspections of retailer lots are conducted to ensure compliance with approved plans, standards, and A.R.S. § 41-4048.

R4-34-701. General: The objective of this rule is to establish requirements with which a manufacturer, retailer, or installer must comply regarding plans, drawings, and specifications that must be submitted for approval by the Office.

R4-34-702. Compliance Assurance Manuals: The objective of this rule is to specify a manufacturer of manufactured homes is required to prepare a compliance assurance manual that includes appropriate charts detailing compliance personnel, in-plant inspection requirements, descriptions of tests performed and test equipment, and other compliance assurance materials. The rule also contains similar requirements for manufacturers of FBBs.

R4-34-703. Drawings and Specifications: The objective of this rule is to specify a manufacturer of manufactured homes is required to submit drawings and specifications, and
a manufacturer of factory-built buildings and FBB subassemblies is required to submit plans that comply with applicable requirements and standards in accordance with R4-34-102.

R4-34-704. Reconstruction Plans: The objective of this rule is to establish procedures for sending notification of an alteration of a unit and ensure manufactured home plans comply with construction and safety standards specified in R4-34-102.

R4-34-705. Accessory Structures: The objective of this rule is to require installers to comply with applicable building codes when preparing accessory structure plans or have an alternative design developed by an appropriate Arizona registered professional.

R4-34-706. FBB Installation: The objective of this rule is to require installers to complete and submit an application form obtained from the Department and include in installation plans, site and foundation plans and electrical and plumbing drawings.

R4-34-707. Designated Flood-prone Area Installation: The objective of this rule is to specify the information installers must include in a plan submitted to the Department for approval before installing in a designated flood-prone area.

R4-34-801. Permits: The objective of this rule is to require a licensee or consumer to obtain a permit for the installation of a manufactured/mobile home, FBB, accessory structure, or rehabilitation of a mobile home before beginning work and to display the permit in a conspicuous place onsite.

R4-34-802. General Installation: The objective of this rule is to establish procedures for affixing the appropriate approval insignia to each unit in the approved location and to require installers and contractors to check with local jurisdictions regarding frost line requirements and to join the sections of a multi-sectional manufactured home according to manufacturer’s instructions.
R4-34-805. Accessory Structures: The objective of this rule is to require an installer or contractor to comply with applicable standards incorporated by reference in R4-34-102(3) when installing, assembling, or constructing accessory structures.

R4-34-1001. Rehearing or Review: The objective of this rule is to specify the procedures for requesting a rehearing or review of a decision by the Director.

3. Are the rules effective in achieving their objectives? Yes
   The rules are up-to-date and consistent with statute and industry standards. All identified issues have been addressed so there are no remaining negative or conflicting requirements. The Office is able to apply the required HUD regulations and building codes to protect public safety.

4. Are the rules consistent with other rules and statutes? Yes

5. Are the rules enforced as written? Yes

6. Are the rules clear, concise, and understandable? Yes

7. Has the agency received written criticisms of the rules within the last five years? No

8. Economic, small business, and consumer impact comparison:
   2018 rulemaking (24A.A.R. 1499)
   The rules that have not been amended since this rulemaking are: R4-34-103, R4-34-201, R4-34-202, R4-34-301 through R4-34-303, R4-34-401 through R4-34-403 (R4-34-401 and R4-34-403 recodified in 2021), R4-34-501, R4-34-505, R4-34-605, R4-34-707, and R4-34-1001.

   The Department issues four kinds of licenses: manufacturer, dealer, installer, and salesperson. During FY2021, the Department issued 1,130 new or renewed licenses. Fifty-six percent of the licenses were to salespersons. The Department issues a new license in an average of two days. There are currently three manufactured-housing companies operating four factories in Arizona. They employ approximately 800 individuals. Cavco employs 40 to 50 individuals at its corporate headquarters in
Phoenix. Each year, approximately 3,050 new manufactured homes are constructed in Arizona. Approximately 371,000 Arizona families live in manufactured homes.

During 2021, the Department received 41 complaints regarding licensees. Most of the consumer complaints alleged that manufacturers, dealers, or installers failed to provide all goods or services or failed to manufacture or install in a workmanlike manner. None of the complaints went to hearing. The Department issued three cease and desist orders regarding unlicensed activity. During FY2021, the Department issued 64 citations against licensees. Most of the citations were for failure to file a sales report.

During FY2021, the Department collected $1,037,513 in licensing, inspecting, and permitting fees. It receives no appropriation because fees collected are required by statute to cover at least 95 percent of costs. The Office of Manufactured Housing within the Department of Housing has 18 FTE employees.

2020 rulemaking (26 A.A.R. 1509)
The rules that have not been amended since this rulemaking are: R4-34-101, R4-34-203, R4-34-603, R4-34-606, R4-34-702, R4-34-704, R4-34-706, and R4-34-801.

This rulemaking was done in response to legislative change giving the Office regulatory authority over FBBs, components, assemblies, and systems manufactured using panelized closed construction. The Department currently has one licensee producing, selling, or installing closed panel products.

2021 rulemaking (26 A.A.R. 3327)
The only rule in this rulemaking was R4-34-102.

In this rulemaking, the Department updated the building codes incorporated by reference. Manufacturers and installers must comply with the building codes. The Department currently licenses 99 manufacturers and 127 installers. Updating the materials incorporated by reference benefited manufacturers and installers who no longer have to adjust their work to using an out-of-date code that is inconsistent with that used for other projects.
The rules that have not been amended since this rulemaking are: R4-34-204, R4-34-607, R4-34-701, R4-34-703, R4-34-705, R4-34-802, and R4-34-805.

In this rulemaking, the Department expanded the scope of work for various classes of installers. The Department currently licenses 88 category I-10C general installers; 15 category I-10D accessory structure installers, and 24 category I-10G master installers. When installation of commercial FBBs was added to the scope of work for a master installer, 25 licensed master installers were qualified to perform the new scope of work. The 65 master installers not qualified to install commercial FBBs became general installers. The rulemaking also expanded the scope of work for licensed general installers to include installation of accessory structures. During the last year, the Department provided 30 training courses regarding installation of accessory structures.

To protect the public, the Department reviews and approves engineered plans for the construction and installation of manufactured homes and FBBs. The Department enters Installation Service Agreements with local jurisdictions to support the volume of installation inspections that must be conducted. During FY2021, the Department approved 737 plans and supplements and conducted 11,606 inspections. After approving plans, the Department issued 1,798 permits. The Department generally completes a plan review and approval within 40 days. It issues permits within 10 days.

9. **Has the agency received any business competitiveness analyses of the rules?** No

10. **Has the agency completed the course of action indicated in the agency’s previous 5YRR?** Yes

   In the 5YRR approved by the Council on July 6, 2017, the Board indicated it would amend or repeal all of the existing rules. This was accomplished in a rulemaking that went into effect on June 30, 2018 (See 24 A.A.R. 1499).

11. **A determination after analysis that the probable benefits of the rule outweigh within this state the probable costs of the rule and the rule imposes the least burden and costs to persons regulated by the rule, including paperwork and other compliance costs necessary to achieve the underlying regulatory objective:**
The Board determined the benefits of the rules, protecting public safety, outweigh the costs of the rules and impose the least burden and costs on the manufacturers, installers, and retailers required to comply with the rules.

- **Article 1**: This Article specifies the various building codes with which a manufactured/mobile home, FBB, or accessory structure must conform. The codes are industry standards. Complying with the codes is necessary to protect the public. Updated codes minimize regulatory burdens for licensees required to comply with them.

- **Article 2**: Statute requires that manufacturers, installers, and retailers be licensed. This Article specifies the scope of work for various classes of licenses within each category and provides guidance regarding a license application. Completing a license application, posting a surety bond, and paying a licensing fee are costs of becoming licensed. The minimal costs are outweighed by the benefits of being able to work in the industry.

- **Article 3**: This Article establishes recordkeeping and advertising requirements for retailers and disclosure requirements regarding brokered transactions. These minor paperwork requirements are necessary to protect to interests of the purchaser of a manufactured/mobile home, FBB, or accessory structure.

- **Article 4**: Statute requires that licensees maintain a bond. This Article establishes the form and amount of the required surety bond and the alternative of maintaining a cash deposit rather than a bond. There is a minimal cost associated with obtaining and maintaining a surety bond. However, the bonds are necessary to mitigate any harm caused to consumers of manufactured/mobile homes, FBBs, or accessory structures.

- **Article 5**: Statute requires the Board to establish fees that cover at least 95 percent of the cost to operate the Office. This Article informs licensees and applicants that the Board charges a fee for a license, inspection, plan review, permit, and administrative functions. The fees established are minimal for each licensee or applicant, a necessary cost of doing business, and required by statute. Paying the fee and becoming licensed has the benefit of enabling an individual to work in the industry.

- **Article 6**: This Article establishes requirements for a manufacturer of an FBB or reconstruction of an FBB. The requirements include submitting drawings and specifications and affixing numbers and certificates. The Article also addresses the
standards for rehabilitating a mobile home. The cost of these administrative requirements is minimal compared to the benefits for consumers of FBBs and mobile homes.

- Article 7: This Article addresses multiple administrative and paperwork requirements regarding construction, installation, and reconstruction of manufactured/mobile homes, FBBs, and accessory structures. There are costs associated with developing plans, drawings, and specifications, obtaining plan approval, hiring a properly licensed entity, and complying with building codes. These costs are outweighed by the benefit of safe housing for the public.

- Article 8: Statute requires that a permit be obtained before a manufactured/mobile home or FBB is installed. This Article provides guidance for obtaining a required permit and preliminary matters regarding installation of a manufactured/mobile home or FBB. There are costs associated with obtaining a permit and an installation certificate, filing a monthly report, conducting a site assessment, and employing a properly licensed entity. These costs are outweighed by the benefit to public safety.

- Article 10: This Article provides guidance regarding a motion for rehearing or review and the Department’s response to a motion. There are minimal costs associated with completing and filing a motion. The benefits include the possibility of obtaining a new rehearing or review and exhausting administrative remedies.

12. Are the rules more stringent than corresponding federal laws? No

Under A.R.S. § 41-4002, the Office of Manufactured Housing is to implement all existing laws and regulations mandated by the federal government. Under 24 CFR § 3280.1, the federal government mandates 24 CFR, Subtitle B, Chapter XX.

Under agreement with HUD, Arizona has a state-qualifying installation program. The Department enforces the installation program in jurisdictions with which the Department does not have an agreement. In jurisdictions with which the Department has an agreement, the jurisdiction is required under the agreement to comply with 24 CFR, Subtitle B, Chapter XX.

13. For a rule made after July 29, 2010, that require issuance of a regulatory permit, license, or agency authorization, whether the rule complies with A.R.S. § 41-1037:
All the reviewed rules were made after July 29, 2010. The Board does not issue general permits. Rather, the Board issues individual licenses, certificates, and approvals as required by the Board’s statutes to each person that is qualified by statute (See A.R.S. § 41-4010(A)(3) and (A)(6) through (A)(9) and rule.

14. Proposed course of action:

The Board has no plan to conduct rulemaking in the near future.
Chapter 34. Board of Manufactured Housing

Authority: A.R.S. § 41-4010(A)(13)

Supp. 21-3

CHAPTER TABLE OF CONTENTS

ARTICLE 1. GENERAL

Article 1, consisting of Sections R4-34-101 through R4-34-104, adopted by final rulemaking at 6 A.A.R. 145, effective December 8, 1999 (Supp. 99-4).

Article 1, consisting of Sections R4-34-101 through R4-34-107, repealed by final rulemaking at 6 A.A.R. 47, effective December 8, 1999 (Supp. 99-4).

Section
R4-34-101. Definitions ...................................................... 3
R4-34-102. Materials Incorporated by Reference .................. 3
R4-34-103. Exceptions ....................................................... 4
R4-34-104. Repealed ......................................................... 4
R4-34-105. Repealed ......................................................... 4
R4-34-106. Repealed ......................................................... 4
R4-34-107. Repealed ......................................................... 4

ARTICLE 2. LICENSING

Article 2, consisting of Sections R4-34-201 through R4-34-204, adopted by final rulemaking at 6 A.A.R. 145, effective December 8, 1999 (Supp. 99-4).

Article 2, consisting of Sections R4-34-201 through R4-34-205, repealed by final rulemaking at 6 A.A.R. 47, effective December 8, 1999 (Supp. 99-4).

Section
R4-34-201. General ......................................................... 5
R4-34-202. Manufacturers ................................................. 5
R4-34-203. Retailers ......................................................... 5
R4-34-204. Installers ......................................................... 6
R4-34-205. Repealed ......................................................... 6

ARTICLE 3. SALES TRANSACTIONS AND TRUST OR ESCRROW ACCOUNT

Article 3, consisting of Sections R4-34-301 through R4-34-303, adopted by final rulemaking at 6 A.A.R. 145, effective December 8, 1999 (Supp. 99-4).

Article 3, consisting of Sections R4-34-301 through R4-34-309, repealed by final rulemaking at 6 A.A.R. 47, effective December 8, 1999 (Supp. 99-4).

Former Article 3, consisting of Sections R4-34-301 through R4-34-304, renumbered to Article 7, Sections R4-34-701 through R4-34-704, effective July 3, 1991 (Supp. 91-3).

New Article 3, consisting of Sections R4-34-301 through R4-34-306, renumbered from Article 7, Sections R4-34-701 through R4-34-706, effective July 3, 1991 (Supp. 91-3).

Section
R4-34-301. Transaction Copies ........................................... 7
R4-34-302. Advertising ..................................................... 7
R4-34-303. Brokered Transactions ....................................... 7
R4-34-304. Repealed ......................................................... 7

Please note that the Chapter you are about to replace may have rules still in effect after the publication date of this supplement. Therefore, all superseded material should be retained in a separate binder and archived for future reference.
CHAPTER 34. BOARD OF MANUFACTURED HOUSING

<table>
<thead>
<tr>
<th>Section</th>
<th>Description</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>R4-34-305</td>
<td>Repealed</td>
<td>7</td>
</tr>
<tr>
<td>R4-34-306</td>
<td>Repealed</td>
<td>7</td>
</tr>
<tr>
<td>R4-34-307</td>
<td>Repealed</td>
<td>7</td>
</tr>
<tr>
<td>R4-34-308</td>
<td>Repealed</td>
<td>8</td>
</tr>
<tr>
<td>R4-34-309</td>
<td>Repealed</td>
<td>8</td>
</tr>
</tbody>
</table>

ARTICLE 4. SURETY BONDS

Article 4, consisting of Sections R4-34-401 and R4-34-402, adopted by final rulemaking at 6 A.A.R. 145, effective December 8, 1999 (Supp. 99-4).

Article 4, consisting of Sections R4-34-401 through R4-34-404, repealed by final rulemaking at 6 A.A.R. 47, effective December 8, 1999 (Supp. 99-4).

Former Article 4, consisting of Sections R4-34-401 through R4-34-403, renumbered to Article 5, Sections R4-34-501 through R4-34-503, effective July 3, 1991 (Supp. 91-3).

New Article 4, consisting of Sections R4-34-401 through R4-34-404, renumbered from Article 9, Sections R4-34-901 through R4-34-904, effective July 3, 1991 (Supp. 91-3).

Section

<table>
<thead>
<tr>
<th>Section</th>
<th>Description</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>R4-34-401</td>
<td>Surety Bond Forms</td>
<td>8</td>
</tr>
<tr>
<td>R4-34-402</td>
<td>Cash Deposits</td>
<td>8</td>
</tr>
<tr>
<td>R4-34-403</td>
<td>License Bond Amounts</td>
<td>8</td>
</tr>
<tr>
<td>R4-34-404</td>
<td>Repealed</td>
<td>8</td>
</tr>
</tbody>
</table>

ARTICLE 5. FEES

Article 5, consisting of Sections R4-34-501 through R4-34-506, adopted by final rulemaking at 6 A.A.R. 145, effective December 8, 1999 (Supp. 99-4).

Article 5, consisting of Sections R4-34-501 through R4-34-503, repealed by final rulemaking at 6 A.A.R. 47, effective December 8, 1999 (Supp. 99-4).

Former Article 5, consisting of Sections R4-34-501 and R4-34-502, renumbered to Article 8, Sections R4-34-801 and R4-34-802, effective July 3, 1991 (Supp. 91-3).

New Article 5, consisting of Sections R4-34-501 through R4-34-503, renumbered from Article 4, Sections R4-34-401 through R4-34-403, effective July 3, 1991 (Supp. 91-3).

Section

<table>
<thead>
<tr>
<th>Section</th>
<th>Description</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>R4-34-501</td>
<td>General</td>
<td>8</td>
</tr>
<tr>
<td>R4-34-502</td>
<td>Recodified</td>
<td>9</td>
</tr>
<tr>
<td>R4-34-503</td>
<td>Repealed</td>
<td>9</td>
</tr>
<tr>
<td>R4-34-504</td>
<td>Repealed</td>
<td>9</td>
</tr>
<tr>
<td>R4-34-505</td>
<td>Plans and Supplements</td>
<td>9</td>
</tr>
<tr>
<td>R4-34-506</td>
<td>Repealed</td>
<td>9</td>
</tr>
</tbody>
</table>

ARTICLE 6. MANUFACTURING, CONSTRUCTION, AND INSPECTION

Article 6, consisting of Sections R4-34-601 through R4-34-607, adopted by final rulemaking at 6 A.A.R. 145, effective December 8, 1999 (Supp. 99-4).

Article 6, consisting of Sections R4-34-601 through R4-34-610, repealed by final rulemaking at 6 A.A.R. 47, effective December 8, 1999 (Supp. 99-4).

Section

<table>
<thead>
<tr>
<th>Section</th>
<th>Description</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>R4-34-601</td>
<td>Repealed</td>
<td>9</td>
</tr>
<tr>
<td>R4-34-602</td>
<td>Repealed</td>
<td>9</td>
</tr>
<tr>
<td>R4-34-603</td>
<td>FBBs</td>
<td>9</td>
</tr>
<tr>
<td>R4-34-604</td>
<td>Repealed</td>
<td>10</td>
</tr>
<tr>
<td>R4-34-605</td>
<td>Reconstruction of FBBs</td>
<td>10</td>
</tr>
<tr>
<td>R4-34-606</td>
<td>Rehabilitation of Mobile Homes</td>
<td>10</td>
</tr>
<tr>
<td>R4-34-607</td>
<td>Manufacturing Inspection and Certification</td>
<td>11</td>
</tr>
<tr>
<td>R4-34-608</td>
<td>Repealed</td>
<td>11</td>
</tr>
<tr>
<td>R4-34-609</td>
<td>Repealed</td>
<td>11</td>
</tr>
<tr>
<td>R4-34-610</td>
<td>Repealed</td>
<td>11</td>
</tr>
</tbody>
</table>
ARTICLE 7. PLAN APPROvals

Article 7, consisting of Sections R4-34-701 through R4-34-706, adopted by final rulemaking at 6 A.A.R. 145, effective December 8, 1999 (Supp. 99-4).

Article 7, consisting of Sections R4-34-701 through R4-34-704, repealed by final rulemaking at 6 A.A.R. 47, effective December 8, 1999 (Supp. 99-4).

Former Article 7, consisting of Sections R4-34-701 through R4-34-706, renumbered to Article 3, Sections R4-34-301 through R4-34-306, effective July 3, 1991 (Supp. 91-3).

New Article 7, consisting of Sections R4-34-701 through R4-34-704, renumbered from Article 3, Sections R4-34-301 through R4-34-304, effective July 3, 1991 (Supp. 91-3).

Section
R4-34-701. General ............................................................. 11
R4-34-702. Compliance Assurance Manuals ............................ 12
R4-34-703. Drawings and Specifications ............................... 12
R4-34-704. Reconstruction Plans ......................................... 13
R4-34-705. Accessory Structures ......................................... 13
R4-34-706. FBB Installation ............................................... 13
R4-34-707. Designated Flood-prone Area Installation ............... 14

ARTICLE 8. PERMITS AND INSTALLATION

Article 8, consisting of Sections R4-34-801 through R4-34-805, adopted by final rulemaking at 6 A.A.R. 145, effective December 8, 1999 (Supp. 99-4).

Article 8, consisting of Sections R4-34-801 and R4-34-802, repealed by final rulemaking at 6 A.A.R. 47, effective December 8, 1999 (Supp. 99-4).

Former Article 8, consisting of Sections R4-34-801 through R4-34-804, repealed effective July 3, 1991 (Supp. 91-3).

New Article 8, consisting of Sections R4-34-801 and R4-34-802, renumbered from Article 5, Sections R4-34-501 and R4-34-502, effective July 3, 1991 (Supp. 91-3).

Section
R4-34-801. Permits ............................................................. 14
R4-34-802. General Installation ............................................ 14
R4-34-803. Repealed .......................................................... 15
R4-34-804. Repealed .......................................................... 15
R4-34-805. Accessory Structures ........................................... 15
Exhibit 1. Repealed .......................................................... 15

ARTICLE 9. REPEALED

Article 9, consisting of Section R4-34-901, repealed by final rulemaking at 6 A.A.R. 47, effective December 8, 1999 (Supp. 99-4).

Former Article 9, consisting of Sections R4-34-901 through R4-34-904, renumbered to Article 4, Sections R4-34-401 through R4-34-404, effective July 3, 1991 (Supp. 91-3).

New Article 9, consisting of Section R4-34-901, renumbered from Article 10, Section R4-34-1001, effective July 3, 1991 (Supp. 91-3).

Section
R4-34-901. Repealed ............................................................. 15

ARTICLE 10. ADMINISTRATIVE PROCEDURES

Article 10, consisting of Section R4-34-1001, adopted by final rulemaking at 6 A.A.R. 145, effective December 8, 1999 (Supp. 99-4).

Former Article 10, consisting of Section R4-34-1001, renumbered to Article 9, Section R4-34-901, effective July 3, 1991 (Supp. 91-3).

Article 10, consisting of Section R4-34-1001, adopted effective April 4, 1985.

Section
R4-34-1001. Rehearing or Review ......................................... 15
ARTICLE 11. RENUMBERED

Article 11, consisting of Section R4-34-1101, renumbered to 4 A.A.C. 36, R4-36-201 (Supp. 95-4).

Article 11, consisting of Section R4-34-1101, adopted as a permanent rule effective November 16, 1988.

Article 11, consisting of Section R4-34-1101, adopted as an emergency effective March 14, 1988 pursuant to A.R.S. § 41-1026, valid for only 90 days. Emergency expired.

Section
R4-34-1101. Renumbered ...................................................... 15
R4-34-101. Definitions
The definitions in A.R.S. §§ 41-4001, and 41-4008 apply to this Chapter. Additionally, in this Chapter:

2. “Agency” means the seller or purchaser of a used home has given a licensed salesperson written legal authority to act on behalf of the seller or purchaser when dealing with a third party. The written legal authority is also binding on the salesperson’s licensed and employing retailer.
3. “Agency disclosure” means a document that specifies the person a licensed salesperson or licensed retailer represents in a brokered transaction.
4. “Agent” means a licensed retailer authorized to act on behalf of a seller, purchaser, or both the seller and purchaser of a used home.
5. “Attached” means an accessory is fastened or affixed to a regulated structure in a manner that imposes a load on the structure.
6. “Branch location” means a satellite office, in addition to the principal office, where business may be transacted.
7. “Brokered transaction” means a transaction in which a licensed broker acts as an agent for the seller, purchaser, or both.
8. “Certificate” means an Arizona Insignia with which a licensee certifies all work performed complies with applicable law, including this Chapter, relating to modular manufacture and reconstruction, installation of modular, manufactured, and mobile homes, or rehabilitation work and construction.
9. “Co-brokered transaction” means a transaction in which the listing retailer and the selling retailer are not the same person.
10. “Consummation of sale, as defined at A.R.S. § 41-1001, includes filing an Affidavit of Affixture, if applicable.
12. “Field installed” means components, equipment, and/or construction that is to be completed or installed at the site. Field installed does not include reconstruction.
13. “HVAC” means heating, ventilation, and air conditioning.
14. “Modular” means a type of FBB built in a factory and transported in three-dimensional sections to an installation site.
15. “New” means a unit not previously sold, bargained, exchanged, or given away to a purchaser.
16. “Panelized” means a type of commercial FBB built in a factory using closed construction, including partly or fully finished walls, floors, or roof panels, and transported in two-dimensional condition to an assembly site.
17. “Permanent foundation” means a system of support and perimeter enclosure, with or without crawl space, that is:
   a. Constructed of durable materials;
   b. Developed in accordance with the manufacturer’s installation instructions or designed by an Arizona registered engineer;
   c. Attached in a manner that effectively transfers all vertical and horizontal design loads that could be imposed on the structure by wind, snow, frost, seismic, or flood conditions, as applicable, to the underlying soil or rock; and
   d. Designed to exclude unwanted elements and varmints, ensure sufficient ventilation, and provide adequate access to the building.
18. “Repair” means work performed on a manufactured home, mobile home, or FBB to restore the building to a habitable condition but does not impact the original structure, electrical, plumbing, HVAC, mechanical, use occupancy, or energy design.
19. “Retailer” means a broker or dealer as prescribed at A.R.S. § 41-4001(5) and (10).
20. “Site” means a parcel of land bounded by a property line or a designated portion of a public right-of-way.
21. “Site work” means soil preparation including soil analysis, grading, drainage, utility trenches, and foundation systems preparation, and field-installed work including terminal and connections, on-site utility connections, accessibility structures, egress paths, parking, lighting, landscaping, and similar work.
22. “Standards” means the materials referenced in R4-34-102.
23. “Supplement” means a submittal noting change of a floor plan design, system, component, or configuration, and is incorporated as part of an originally approved plan.
24. “Temporary” means an accessory that is not permanent.
25. “Used home” means a previously titled manufactured home, mobile home, or FBB designed for use as a residential dwelling.

Historical Note
R4-34-103. Exceptions

A. The Board makes the following exceptions to the materials incorporated by reference in R4-34-102:

1. International Building Code and International Residential Code. A water or gas connection may be a flexible connector if the flexible connector:
   a. Is not more than 6 feet long,
   b. Is of the rated size necessary to supply the total demand of the unit, and
   c. Made of materials that comply with the International Plumbing Code and International Fuel Gas Code; and


B. Under A.R.S. § 41-4010(D), a local jurisdiction may petition the Board for an exception to a standard. If the Board grants a local jurisdiction an exception to a standard, the local jurisdiction shall be bound by any conditions in the exception order issued by the Board. The local jurisdiction shall ensure the petition for an exception:

1. Specifies the standard sections affected;
2. Justifies the requested exception with documented evidence of the local conditions that support the requested exception;
3. Specifies the boundaries of the area affected by the local conditions;
4. States why the exception is necessary to protect the health and safety of the public; and
5. Provides an estimate of the economic impact the requested exception will have on the petitioning jurisdiction, other affected governmental entities, the public, unit owners, and licensees, and the facts upon which the estimate is based.

C. An exception ordered by the Board applies only within the jurisdiction that petitioned for the exception.

D. An exception order is effective on the date specified in the order, which will be at least 60 days after a Departmental Substantive Policy Statement has been issued to all licensed installers describing the exception, the area within which it applies, and any provisions applicable to its use.

Historical Note

R4-34-104. Repealed

Historical Note
CHAPTER 34. BOARD OF MANUFACTURED HOUSING

R4-34-105. Repealed

Historical Note
Adopted effective January 31, 1979 (Supp. 79-1). Former Section R4-34-105 renumbered to R4-34-106, new Section R4-34-105 renumbered from R4-34-104 and amended effective July 3, 1991 (Supp. 91-3). Section repealed by final rulemaking at 6 A.A.R. 47, effective December 8, 1999 (Supp. 99-4).

R4-34-106. Repealed

Historical Note

R4-34-107. Repealed

Historical Note

ARTICLE 2. LICENSING

R4-34-201. General
A. Within five business days following receipt, the Department shall perform an administrative review of an application. If the Department determines the application is incomplete, the applicant will be provided an opportunity to complete the application. Within 14 business days following receipt of a completed application and after the applicant has passed any required license examination, the Department shall issue a conditional license.

B. Corporate applicants shall submit a copy of their organizational documents, including articles of incorporation or organization, with all amendments, filed with the state, as applicable, and a certificate of good standing to transact business in this state.

C. An exemption from any applicable examination requirement may be granted if a new license application identifies the same license classification and the same qualifying party listed on a previously held license, provided the previous license was in good standing before it expired.

D. A licensee will be given notice that a conditional license is automatically effective as a permanent license to transact business within the scope of the license following review and approval by the Department of the licensee’s criminal background analysis.

E. Unless otherwise stated in the purchase contract, a retailer selling a mobile home, manufactured home, or FBB shall know the ordinances of the town, city, or county where the unit is to be installed regardless of whether the retailer is obligated to provide for the delivery or installation of the unit.

Historical Note

R4-34-202. Manufacturers
Manufacturers’ license applications fall into one of the following license classes:
1. M-9A Manufacturer of FBBs
   manufactures or reconstructs FBBs;
2. M-9C Manufacturer of manufactured homes
   manufactures or reconstructs manufactured homes; and

September 30, 2021 Supp. 21-3 Page 7
CHAPTER 34. BOARD OF MANUFACTURED HOUSING

3. M-9E Master Manufacturer performs work within the scope of classes M-9A and M-9C.

Historical Note

R4-34-203. Retailers
Retailers’ license applications fall into one of the following license classes:

1. D-8 Retailer of manufactured homes or mobile homes:
   a. Buys, sells, or exchanges new or used manufactured homes and used mobile homes;
   b. May sell new or used accessory structures included in a sales agreement;
   c. Acts as an agent for the sale or exchange of used manufactured homes or mobile homes including existing or new accessory structures included in a sales agreement;
   d. Makes alterations to new manufactured homes before a sale to a purchaser; or
   e. Contracts with licensed installers or contractors for the installation of manufactured homes, mobile homes, and existing or new accessory structures included in a sales agreement.

2. D-8B Broker of manufactured homes or mobile homes:
   a. Acts as an agent for the sale or exchange of used manufactured homes or mobile homes that may include existing or new accessory structures included in a sales agreement;
   b. Contracts with licensed installers or contractors for the installation of manufactured homes, mobile homes, and existing or new accessory structures included in a sales agreement.

3. D-10 Retailer of FBBs:
   a. Buys, sells, or exchanges new or used FBBs;
   b. Acts as an agent for the sale or exchange of new or used FBBs;
   c. Makes alterations to new FBBs before sale to a purchaser; or
   d. Contracts with licensed installers or contractors holding an appropriate license issued by the Registrar of Contractors for the installation of FBBs including any existing or new accessory structures included in a sales agreement.

4. D-12 Master Retailer: Performs work within the scope of classes D-8, D-8B, and D-10.

Historical Note

R4-34-204. Installers
Installers’ license applications fall into one of the following license classes:

1. I-10C General installer of manufactured homes, mobile homes, or residential FBBs:
   a. Installs manufactured homes, mobile homes, or residential FBBs on foundation systems;
   b. Installs ground anchors and tie-downs for manufactured homes or mobile homes;
   c. Connects water, sanitary waste, gas, and electrical systems of all amperages to the proper onsite utility terminals provided by others;
   d. Installs HVAC and evaporative cooler systems, including electrical wiring, gas connections, and ductwork on manufactured homes, mobile homes, or residential FBBs. Provides roof jack to cooler ducts, installs exterior duct work, provides electrical service and controls to cooler from nearest supply source, provides water to the cooler from nearest fresh water source, and performs cooler repair work. An I-10C installer does not provide service, maintenance, repair, discharging, adding, or re-claiming refrigerants, or other work that requires certification;

Historical Note
CHAPTER 34. BOARD OF MANUFACTURED HOUSING

A retailer shall maintain a record of all transaction documents. In every transaction:

1. The retailer shall provide the purchaser with a copy of all completed and signed documents;
2. If a purchaser is unrepresented, the listing retailer shall provide the purchaser with a copy of all completed and signed documents; and
3. If a transaction is co-brokered, the listing retailer shall provide a copy of the listing agreement to the selling retailer, and the selling retailer shall provide a copy of all completed and signed documents to the listing retailer.

Historical Note

R4-34-205. Repealed

Historical Note

ARTICLE 3. SALES TRANSACTIONS AND TRUST OR ESCROW ACCOUNT

R4-34-301. Transaction Copies
A retailer shall maintain a record of all transaction documents. In every transaction:

1. The retailer shall provide the purchaser with a copy of all completed and signed documents;
2. If a purchaser is unrepresented, the listing retailer shall provide the purchaser with a copy of all completed and signed documents; and
3. If a transaction is co-brokered, the listing retailer shall provide a copy of the listing agreement to the selling retailer, and the selling retailer shall provide a copy of all completed and signed documents to the listing retailer.

Historical Note
Adopted effective January 31, 1979 (Supp. 79-1). Amended subsections (A) and (C) effective October 20, 1981 (Supp. 81-5). Amended by adding subsection (D) effective April 20, 1982 (Supp. 82-2). Former Section R4-34-301 renumbered to R4-34-701, new Section R4-34-301 renumbered from R4-34-701 and amended effective July 3, 1991 (Supp. 91-3). Amended effective September 3, 1992 (Supp. 92-3). Section repealed by final rulemaking at 6 A.A.R. 47, effective December 8, 1999; new Section adopted by final rulemaking at 6 A.A.R. 145, effective December 8, 1999 (Supp. 99-4). Amended by final rulemaking at 24 A.A.R. 1499, effective June 30, 2018 (Supp. 18-2).

R4-34-302. Advertising
A. A retailer shall include the retailer’s licensed business name in all advertising.
B. A retailer shall not advertise or market a used home for more than the listed price.

**Historical Note**

R4-34-303. Brokered Transactions
A. A broker shall provide a copy of the agency disclosure to the party or parties the broker represents.
B. A seller’s retailer shall place all earnest money deposits received in connection with the sales transaction in the retailer’s trust or escrow account in accordance with A.R.S. § 41-4030 except as provided in the exception provision.
C. Upon consummation of a brokered transaction, the seller’s broker shall provide the seller with a closing statement that includes an accounting of all expenses charged to the seller, all pro rations, and all credits.
D. In a co-brokered transaction, the seller shall pay the commission shown on the listing agreement as the total commission.
E. The seller’s broker shall prepare an addendum to the listing agreement if any of the terms of the listing agreement change. The seller’s signature is required for the addendum to be valid. The addendum to the listing agreement shall reflect the date the seller signs the addendum to the listing agreement.
F. If the seller or broker elects to finance the unpaid balance reflected on the offer to purchase or purchase contract, the broker shall:
   1. Maintain evidence of the original portion of the purchase price being financed by the seller or broker, and
   2. Maintain evidence the title has been transferred into the name of the purchaser and the lienholder’s position has been secured on the title.

**Historical Note**

R4-34-304. Repealed

**Historical Note**

R4-34-305. Repealed

**Historical Note**

R4-34-306. Repealed

**Historical Note**

R4-34-307. Repealed

**Historical Note**

R4-34-308. Repealed

**Historical Note**
R4-34-309. Repealed

Historical Note
Adopted effective February 8, 1991 (Supp. 91-1). Section repealed by final rulemaking at 6 A.A.R. 47, effective December 8, 1999 (Supp. 99-4).

ARTICLE 4. SURETY BONDS

R4-34-401. Surety Bond Forms
A. Manufacturers, installers, and retailers (except those with a D-8B license classification), shall submit the applicable surety bond amount from the list in R4-34-403, with a form provided by the Office of Administration.
B. A rider to the bond is required for the following changes:
   1. Location of the licensee’s principal place of business,
   2. Business name,
   3. Branch address,
   4. License classification, or
   5. Bond amount.

Historical Note
Adopted effective January 31, 1979 (Supp. 79-1). Amended subsection (A) effective October 20, 1981 (Supp. 81-5). Amended subsection (B) effective April 30, 1982 (Supp. 82-2). Former Section R4-34-401 renumbered to R4-34-501, new Section R4-34-401 renumbered from R4-34-901 and amended effective July 3, 1991 (Supp. 91-3). Section repealed by final rulemaking at 6 A.A.R. 47, effective December 8, 1999; new Section adopted by final rulemaking at 6 A.A.R. 145, effective December 8, 1999 (Supp. 99-4). Amended by final rulemaking at 11 A.A.R. 464, effective March 5, 2005 (Supp. 05-1). Amended by final rulemaking at 14 A.A.R. 286, effective March 8, 2008 (Supp. 08-1). Amended by final rulemaking at 24 A.A.R. 1499, effective June 30, 2018 (Supp. 18-2). Section R4-34-502 referenced in subsection (A) has been changed to agree with the recodification of R4-34-502 to R4-34-403 under A.R.S. 41-1011(C) in Supp. 21-3.

R4-34-402. Cash Deposits
A. Unless exempt under R4-34-401, an applicant or licensee posting cash in lieu of a commercial surety bond shall pay by:
   1. Cash. A cash deposit is not transferable and shall be made in the name of the applicant or licensee as the name appears on the license application or issued license; or
   2. Certified or cashier’s check or bank or postal money order made payable to the Arizona State Treasurer.
B. Upon receipt of an order from a court of competent jurisdiction directing payment of funds on deposit, the Director shall make payment as directed and suspend the license under A.R.S. § 41-4029. To reinstate the license, the licensee shall return the cash deposit to the required balance or file a commercial surety bond for the full amount, and pay all applicable reinstatement fees.
C. A cash deposit may be withdrawn by the applicant, licensee, or someone having authority to act on behalf of the applicant or licensee, under the following circumstances:
   1. A license is not issued to the applicant;
   2. The license has been terminated, expired, revoked, or voluntary canceled for at least two years, and there are no outstanding claims; and
   3. Two years after the licensee files a commercial surety bond that replaces the cash deposit if there are no outstanding claims.

Historical Note

R4-34-403. License Bond Amounts
A. An applicant shall submit the license bond amount listed for each license class.

<table>
<thead>
<tr>
<th>License Class</th>
<th>Bond Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>M-9A</td>
<td>$10,000</td>
</tr>
<tr>
<td>M-9C</td>
<td>$65,000</td>
</tr>
<tr>
<td>M-9E</td>
<td>$100,000</td>
</tr>
<tr>
<td>D-8</td>
<td>$25,000</td>
</tr>
<tr>
<td>D-10</td>
<td>$25,000</td>
</tr>
<tr>
<td>D-12</td>
<td>$25,000</td>
</tr>
<tr>
<td>I-10C</td>
<td>$2,500</td>
</tr>
<tr>
<td>I-10D</td>
<td>$1,000</td>
</tr>
<tr>
<td>I-10G</td>
<td>$5,000</td>
</tr>
</tbody>
</table>
B. The Board shall not renew a license unless and until the licensee’s surety bond is in full force and effect or the full cash deposit is made or in place.

**Historical Note**
Adopted effective January 31, 1979 (Supp. 79-1). Amended effective October 20, 1981 (Supp. 81-5). Former Section R4-34-403 renumbered to R4-34-503, new Section R4-34-403 renumbered from R4-34-903 and amended effective July 3, 1991 (Supp. 91-3). Section repealed by final rulemaking at 6 A.A.R. 47, effective December 8, 1999 (Supp. 99-4). New Section R4-34-403 renumbered from R4-34-502 by recodification, at 27 A.A.R. 1440, with an immediate effective date of August 4, 2021 (Supp. 21-3).

**R4-34-404. Repealed**

**Historical Note**
R4-34-904 adopted effective January 31, 1979 (Supp. 79-1). Amended subsections (A) and (B) effective October 20, 1981 (Supp. 81-5). Editor’s correction, subsection (B)(2) (Supp. 85-2). Former Section R4-34-904 renumbered to R4-34-404 and amended effective July 3, 1991 (Supp. 91-3). Section repealed by final rulemaking at 6 A.A.R. 47, effective December 8, 1999 (Supp. 99-4).

**ARTICLE 5. FEES**

**R4-34-501. General**
A. The Board shall establish a fee schedule before May 15 for the coming fiscal year.
B. The Director shall notify all licensees of the established fee schedule before June 1 of each year and post the fee schedule on the Department’s website.
C. Licensees shall pay fees for the following services:
   1. Manufacturer license,
   2. Retailer license,
   3. Installer license,
   4. Salesperson license,
   5. Inspection and technical service,
   6. Plans and supplements,
   7. Installation permits and insignias, and
   8. Administrative functions.

**Historical Note**

**R4-34-502. Recodified**

**Historical Note**

**R4-34-503. Repealed**

**Historical Note**

**R4-32-504. Repealed**
CHAPTER 34. BOARD OF MANUFACTURED HOUSING

R4-34-505. Plans and Supplements
If a licensee submits a plan or supplement that is not complete and correct, the Department shall provide written notice the plan or supplement is not acceptable and provide 60 days from the date on the notice for the licensee to submit a complete and correct plan or supplement. If the licensee fails to submit a complete and correct plan or supplement within the time provided, the Department shall return the submitted plan or supplement and treat the submittal fee paid as forfeited. To resubmit a plan or supplement, the licensee shall pay a new submittal fee.

R4-34-506. Repealed

ARTICLE 6. MANUFACTURING, CONSTRUCTION, AND INSPECTION

R4-34-601. Repealed

R4-34-602. Repealed

R4-34-603. FBBs
A. A manufacturer shall construct an FBB according to the applicable standards in R4-34-102 and:
   1. Provide a complete set of drawings and specifications to the Department under R4-34-703(B);
   2. Affix a permanent serial or identification number to each module or panel during the first stage of manufacturing. If an FBB has multiple sections, the manufacturer shall ensure each module or panel is separately identified. The serial or identification number location and application method shall be shown in the plans required under R4-34-703; and
   3. Affix a Modular Manufacturer’s Certificate to each completed module of each modular building where indicated in the plan required under R4-34-703(B)(5). A Modular Manufacturer’s Certificate is not required for a panelized building.
B. The Department may require a manufacturer of an FBB that is produced and shipped before plan approval to remove the FBB from this state and remove the Modular Manufacturer’s Certificate based on the Department’s assessment of the following factors:
   1. Probable harm to public safety and welfare,
   2. Previous violations of a similar nature, and
   3. Manufacturer’s failure to comply with plan submittal and requirements.

R4-34-604. Repealed
R4-34-605. Reconstruction of FBBs
A manufacturer shall ensure reconstruction of an FBB is consistent with applicable standards prescribed in R4-34-102 and:

1. Existing construction, systems (electrical, plumbing, HVAC, energy, etc.), and components are structurally and otherwise sound and compliant with standards governing at the time of manufacture;
2. New construction, systems, and components comply with applicable standards in R4-34-102;
3. A permanent serial or identification number is affixed to each reconstructed FBB as required under R4-34-603(A);
4. An Arizona Reconstruction Certificate is affixed to each module;
5. The reconstructed FBB complies with R4-34-102.

Historical Note

R4-34-606. Rehabilitation of Mobile Homes
A. A rehabilitation permit shall be obtained from the Department before any modification of a mobile home.
B. The following requirements shall be met for a mobile home to be issued a certificate of compliance:

1. A smoke detector shall be installed in each sleeping room and outside each separate sleeping area in the immediate vicinity of the sleeping rooms. Each smoke detector shall be installed in accordance with its manufacturer’s instructions;
2. The walls, ceilings, and doors of each gas-fired furnace and water-heater compartment shall be lined with gypsum board that is a minimum of 5/16 inches except a door to the compartment that opens to the exterior of the mobile home and is of all metal construction. All exterior compartments shall seal to the interior of the mobile home;
3. Each room designated expressly for sleeping purposes shall have at least one outside egress window or an approved exit device. The window or exit shall have a minimum clear width dimension of 22 inches, a minimum clear opening of five square feet, and the bottom of the exit is not more than 36 inches above the floor;
4. The electrical system is tested for continuity to ensure metallic parts are properly bonded, tested for operation to demonstrate all equipment is connected and in working order, and given a polarity check to determine connections are proper. The electrical system shall have proper overcurrent protection for the required amperage load. If aluminum conductors are used, all receptacles and switches rated 20 amperes or less and directly connected to the aluminum conductors shall be marked CO/ALR. Conductors of dissimilar metals (Copper/Aluminum/or Copper Clad Aluminum) shall be connected in accordance with the National Electrical Code referenced at R4-36-102. Ground Fault Circuit Interrupter protection shall be provided in compliance with the National Electrical Code referenced in R4-36-102; and
5. Gas piping shall be tested with methods incorporated at R4-36-102. All gas furnaces and water heaters shall be installed in compliance with materials incorporated at R4-36-102. If a rehabilitated mobile home is to be relocated following rehabilitation, the gas tests required under this subsection may be performed and inspected at the time of installation at the new location.
C. The rehabilitated mobile home shall be inspected by the Department to ascertain compliance with subsection (B).
D. The Department shall issue a certificate of compliance for each rehabilitated mobile home in compliance with subsection (B), and affix an insignia of approval to the exterior wall nearest the point of entrance of the electrical service.
E. If the Department determines a rehabilitated mobile home does not comply with subsection (B), the Department shall serve a correction notice and require the person served to make corrections within the time specified in the notice. The Department shall determine the time for correction based on the severity of the hazard or violation and the time reasonably needed to make the correction. The Department shall allow at least 30 days for correction unless an imminent safety hazard is found or the correction has been unreasonably delayed, in which case, the Department shall serve an Order to Vacate to the person occupying the rehabilitated mobile home.
F. The Department shall serve an Order to Vacate on a person occupying a non-rehabilitated mobile home within five days after an inspection of the non-rehabilitated mobile home finds an imminent safety hazard.

Historical Note

R4-34-607. Manufacturing Inspection and Certification
A. The Department shall conduct manufactured home plant certification under applicable HUD requirements.
Before issuing Certificates, the Department shall certify that a manufacturing facility of FBBs is capable of manufacturing the FBBs to the specifications in the approved drawings and procedures in the approved compliance assurance manual required under R4-34-702.

C. A manufacturer of FBBs and reconstructed FBBs shall certify compliance with approved plans by affixing a Modular Manufacturer Certificate or Reconstruction Certificate, as appropriate, to each FBB before delivery to a retailer.

D. Records and reporting: By the 15th of each month:
1. A manufacturer of manufactured homes shall establish and maintain records and submit to the Department reports required under applicable HUD requirements; and
2. An FBB manufacturer shall report to the Department affixing Arizona Modular and Reconstruction Certificates during the previous month.

E. The Department may decertify a manufacturing facility if:
1. A serious defect exists in more than one FBB;
2. An inspector identifies three or more failures to comply with specifications in the approved plans, standards, or compliance assurance manual;
3. An in-state licensee fails to produce approved units for more than six consecutive months; or
4. An out-of-state licensee fails to file quarterly inspection reports for six consecutive months.

F. Before resuming production, a decertified manufacturing facility shall be recertified by the Department. When the manufacturer successfully completes the recertification process, the Department shall issue Certificates or Labels to the manufacturer.

G. The Department may conduct regular inspections of retailer lots to ensure compliance with approved plans, standards, and A.R.S. § 41-4048.

**Historical Note**

**R4-34-608.** Repealed

**Historical Note**

**R4-34-609.** Repealed

**Historical Note**

**R4-34-610.** Repealed

**Historical Note**

**ARTICLE 7. PLAN APPROVALS**

**R4-34-701.** General

A. Before construction of an FBB, a manufacturer shall submit to the office:
1. The compliance assurance manual required by R4-34-702, and
2. The drawings and specifications required by R4-34-703.

B. Before performing one of the following, a person shall obtain plan approval:
1. Under R4-34-704(A) for an alteration,
2. Under R4-34-704(B) for a reconstruction,
3. Under R4-34-705 to install an attached accessory structure, and
4. Under R4-34-706 to install an FBB.

C. Within 20 business days after receiving a plan submitted under subsection (B), the Department shall perform an administrative review of the plan submittal and if incomplete, require the licensee to provide a complete plan submittal. Within 20 business days after receiving a complete plan submittal, the Department shall approve or disapprove the plan submittal.

D. A person that submits a plan under subsection (B) shall ensure the plan conforms to the following standards:
1. Each page is at least 8 1/2 X 11 inches and printed to the scale referenced on the drawing;
2. The font is at least eight point;
CHAPTER 34. BOARD OF MANUFACTURED HOUSING

3. The cover page includes an index and provides a 3 X 5 inch blank space near the title block;
4. The plan and all details and calculations are sealed by an Arizona registered engineer; and
5. The plan is consistent with all applicable standards referenced at R4-34-102.

Historical Note

R4-34-702. Compliance Assurance Manuals
A manufacturer of FBBs shall prepare a compliance assurance manual that has all of the following:

1. An 8 1/2 X 11 inch format with page numbers and revision traceability;
2. The manufacturer’s name and address of the factory to which the manual applies;
3. A table of contents that identifies key elements in the quality and compliance control process;
4. An organizational chart that shows titles and functions of all positions responsible for any aspect of quality and compliance control;
5. A description of the design-document control process and procedures for ensuring the current approved design package or building plans are available to production, quality, and compliance personnel;
6. A description of procedures for handling materials, including treatment and disposal of rejected materials, in compliance with standards;
7. A description of the FBB-identification system including a unique identifier, such as a serial or identification number, that is permanently affixed to each module or panel of the FBB at the beginning of manufacturing and where the unique identifier is located on the FBB;
8. A drawing showing the layout of the factory and location of the work area for each step in the manufacturing sequence with a description of the scope of work performed at each work area, including off-line processes;
9. An inspection checklist, keyed to the drawing required in subsection (8), that identifies the inspections and tests to be performed at each step in the manufacturing sequence and title of the position responsible for ensuring inspections and tests are performed;
10. A list that includes step-by-step procedures for ensuring all required tests are performed, the equipment needed to perform each test, and procedures for maintaining test equipment;
11. A description of procedures for maintaining control of certificates, installing certificates on FBBs, and making the monthly report of certificates and title of the position responsible for ensuring these tasks are performed;
12. A description of the procedures for storing completed FBBs at the facility including the manner in which stored FBBs are protected from the elements and other sources of potential damage; and
13. A description of procedures for ensuring building documents are retained and title of the position responsible for ensuring document retention.

Historical Note

R4-34-703. Drawings and Specifications
A manufacturer of FBBs shall submit to the Department plans that comply with the applicable standards in R4-34-102. The manufacturer shall ensure the plans provide or have the following information or format attributes:

1. Dimensioned drawings and details identifying process descriptions, component specification lists, shop drawings, and other documents that specify and identify each component, process, assembly operation, and manufacturing step. Include electrical, plumbing, gas, and HVAC systems;
2. A traceable identification for each closed panel component listed;
CHAPTER 34. BOARD OF MANUFACTURED HOUSING

R4-34-704. Reconstruction Plans

A. A manufacturer shall comply with the standards in R4-34-102 when preparing a reconstruction plan.

B. A manufacturer preparing a reconstruction plan shall ensure the plan contains the following:
   1. A depiction of the configuration before reconstruction;
   2. The serial or identification number of the unit;
   3. Dimensioned drawings and details identifying all components and specification lists affected by the reconstruction. Electrical, plumbing, gas, and HVAC systems, as applicable, shall be addressed; and
   4. Design-analysis calculations for all loads and systems affected by the reconstruction.

C. A manufacturer shall include with a reconstruction plan a certification statement regarding existing components, construction, and systems indicating they are structurally sound, functional, and do not pose a life safety threat.

Historical Note

R4-34-705. Accessory Structures

A. For manufactured homes, mobile homes, and FBBs, a properly licensed entity or person shall comply with R4-34-102 and applicable HUD requirements when preparing attached accessory structure plans. The plans shall include the following:
   1. Dimensioned drawings and details identifying all applicable components and specification lists. Electrical, plumbing, gas, and HVAC systems, as applicable, shall be addressed;
   2. Method of attachment to the manufactured home, mobile home, or FBB.

B. The Department may approve a design that does not comply with subsection (A) based on a demonstration by an Arizona registered engineer that the design meets standards at least equivalent to those in subsection (A).

C. A properly licensed entity or person shall submit plans, which are sealed by an Arizona registered engineer, for all attached accessory structures except skirting systems that have manufacturer installation instructions and HVAC systems.

Historical Note

R4-34-706. FBB Installation

A properly licensed entity or person shall include the following in installation plans submitted to the Department:
   1. A site plan that includes the location of the building and all utility lines;
   2. A foundation plan that includes:
      a. A description of the soil class and the soil bearing pressure;
b. A description of footings and other foundation supports designed to meet the minimum bearing pressure at the depth required;
c. A complete set of drawings indicating dimensions and details of the foundation footing and anchoring; and a complete list of materials with a cross-identification of how materials will be used, in the appropriate view; and
d. Calculations, prepared by an Arizona registered engineer, for all load conditions including wind loads for horizontal loads, uplift loads, and overturning; and horizontal and torsional earthquake effects on foundations.
3. Electrical drawings, including the isometric one-line diagram required by R4-34-102, that contain the following information:
   a. Size and type of conductors, conduit materials for feeder wires, length of feeders, and all amperage;
   b. Dimensions of gutterways and raceways;
   c. Complete details of panelboards, switchboards, distribution centers with calculated loads, and fault current calculations; and
   d. All grounding and bonding connections.
4. Plumbing drawings, including one-line diagrams required by R4-34-102 that contain the following information:
   a. Location of sewer tap, water meter, and gas meter;
   b. Size, length, and all materials for sewer, water, and gas lines;
   c. Location of all cleanouts and grade of sewer line; and
   d. Fixture unit calculations for plumbing and gas fixtures.
5. Fastening and closure details for connection of multiple modules or panels.
6. Dimensional plans and details for all components and construction to be field installed.

Historical Note

R4-34-707. Designated Flood-prone Area Installation
Before installing a manufactured home, mobile home, or FBB in a designated flood-prone area, an installer shall submit and obtain Department approval of an installation plan that includes the following:
1. A site plan showing the location of the manufactured home, mobile home, or FBB;
2. A copy of the designated flood-use permit or flood design conditions issued by the local enforcement agency showing the flood zone type and regulatory and base flood elevations;
3. A site-specific foundation plan that is prepared by an Arizona registered engineer and includes:
   a. A complete set of drawings indicating dimensions and details of the foundation system and anchoring to prevent floatation, collapse, or lateral movement of the structure;
   b. A complete list of materials cross identified to the drawings in subsection (3)(a) showing how the materials will be used;
   c. An indication of how to place to the structure to ensure the bottom frame of the structure is at or above the regulatory flood elevation;
   d. An indication of where to place external utilities and equipment to ensure they are at or above the regulatory flood elevation;
   e. If the structure has an enclosed foundation, an indication of where to place flood vents or other openings; and
   f. All calculations used to determine all load conditions; and
4. Written approval of the information in subsections (1) through (3) from the local flood-district administrator having authority.

Historical Note
New Section made by final rulemaking at 24 A.A.R. 1499, effective June 30, 2018 (Supp. 18-2).

ARTICLE 8. PERMITS AND INSTALLATION

R4-34-801. Permits
A. A properly licensed entity or person shall obtain a permit for the installation of a manufactured home, mobile home, FBB, or attached accessory structure, or rehabilitation of a mobile home.
B. The Department shall issue or deny a permit within seven business days after the application is received. If a permit is denied, corrections to the application shall be submitted to the Department within 20 business days after the denial.
C. A properly licensed entity or person shall obtain all required permits, such as zoning, flood plain, and installation, from the Department or local jurisdiction before beginning any site work except the assessment required under R4-34-802(E). All permits shall be posted in a conspicuous location onsite. The properly licensed entity or person who contracts to perform the installation and a licensed installer who subcontracts to perform the installation shall verify that all required permits have been obtained from the Department and local jurisdiction before beginning the installation.
D. A local jurisdiction that has entered into agreement with the Department may issue installation permits and conduct inspections.
E. The Department or a local jurisdiction participating in the installation inspection program shall charge the permit fee expressly authorized under A.R.S. § 41-4010(A)(4). The fee charged by the local jurisdiction shall not exceed the amount established by the Board.
F. Every permit, except a special-use permit, expires six months after the permit is issued. The Department may extend the permit for good cause if a written request is made to the Department before the permit expires and the fee established by the Board under A.R.S. § 41-4010(A)(4) is paid again.

G. A licensee or consumer shall obtain a certificate of occupancy from the Department before occupying a manufactured home, mobile home, or FBB.

H. The permit holder, owner, contractor, or designated responsible party identified on the permit shall request all required inspections.

I. At the time of a scheduled inspection, the permit holder, owner, contractor, or designated responsible party identified on the permit shall ensure all work to be inspected is accessible (opened) and no work is performed beyond the point indicated for each successive inspection without first obtaining approval from the Department.

J. The permit holder, owner, contractor, or designated responsible party identified on the permit shall ensure approved plans and all applicable manuals are available onsite.

K. A special-use permit for an FBB used for an event of 45 days or less shall be obtained from the Department. The special-use permit expires 45 days from the date of issuance. The holder of a special-use permit shall remove the FBB from the site when the permit expires.

**Historical Note**

Adopted effective January 31, 1979 (Supp. 79-1). Amended effective October 20, 1981 (Supp. 81-5). Former Section R4-34-801 repealed, new Section R4-34-801 renumbered from R4-34-501 and amended effective July 3, 1991 (Supp. 91-1). Section repealed by final rulemaking at 6 A.A.R. 47, effective December 8, 1999; new Section adopted by final rulemaking at 6 A.A.R. 145, effective December 8, 1999 (Supp. 99-4). Amended by final rulemaking at 18 A.A.R. 944, effective June 4, 2012 (Supp. 12-2). Amended by final rulemaking at 24 A.A.R. 1499, effective June 30, 2018 (Supp. 18-2). Amended by final rulemaking at 26 A.A.R. 1509, effective September 6, 2020 (Supp. 20-3). Due to an error when codifying R4-34-801 in Supp. 20-3, subsection R4-34-801(G) was not published. This subsection was identified as “no change” at 26 A.A.R. 1509. Subsection (G) has been published as last amended at 24 A.A.R. 1499 (Supp. 21-1).

**R4-34-802. General Installation**

A. A properly licensed entity shall complete and affix an Arizona Installation Certificate to a manufactured home, mobile home, or FBB at the end of the unit opposite the hitch and adjacent to the manufacturer certificate or HUD label. The properly licensed entity shall affix the Arizona Installation Certificate before calling the Department for an inspection.

B. A properly licensed entity shall make a report by the 15th of each month regarding compliance with subsection (A).

C. Before beginning an installation, a properly licensed entity shall check with the local jurisdiction regarding frost-line requirements governing permanent foundations or utilities.

D. A properly licensed entity shall install all new manufactured homes, used manufactured homes, and mobile homes according to the applicable materials referenced in R4-34-102, HUD requirements, and manufacturer requirements.

E. Before installing a unit, a properly licensed entity shall perform or contract with a qualified party to assess the site and soil, ensure required permits are obtained, and make site preparations necessary to ensure the site is compatible with the manufactured home, mobile home, or FBB to be installed. The entity that actually prepares the site has primary responsibility for the work performed. The entity that contracts to have the site preparation done, if different, has secondary responsibility for the work performed.

F. Installation of a manufactured home, mobile home, or FBB shall be performed only by a properly licensed entity.

**Historical Note**


**R4-34-803. Repealed**

**Historical Note**


**R4-34-804. Repealed**

**Historical Note**

CHAPTER 34. BOARD OF MANUFACTURED HOUSING

R4-34-805. Accessory Structures
An installer or contractor shall install, assemble, or construct each accessory structure in compliance with applicable standards referenced in R4-34-102, HUD requirements, and manufacturer requirements.

Historical Note

Exhibit 1. Repealed

Historical Note
Exhibit 1 repealed by final rulemaking at 18 A.A.R. 944, effective June 4, 2012 (Supp. 12-2).

ARTICLE 9. REPEALED

R4-34-901. Repealed

Historical Note
Adopted effective April 4, 1985 (Supp. 85-2). Former Section R4-34-901 renumbered to R4-34-401, new Section R4-34-901 renumbered from R4-34-1001 and amended effective July 3, 1991 (Supp. 91-3). Section repealed by final rulemaking at 6 A.A.R. 47, effective December 8, 1999 (Supp. 99-4).

ARTICLE 10. ADMINISTRATIVE PROCEDURES

R4-34-1001. Rehearing or Review
A. A party may amend a motion for rehearing or review filed under A.R.S. § 41-4038 at any time before it is ruled on by the Director. The opposing party may file a response within 15 days after the date the motion or amended motion is filed. The Director may require the parties to file written briefs explaining the issues raised in the motion and provide for oral argument.

B. The Director may affirm or modify the decision or grant a rehearing to all or any of the parties on all or part of the issues for any of the reasons in A.R.S. § 41-4038(D). An order modifying the decision or granting a rehearing shall specify with particularity the grounds on which the modification or rehearing is granted, and any rehearing shall cover only those matters.

C. When a motion for rehearing or review is based upon affidavits, the affidavits shall be served with the motion. An opposing party or the Attorney General may, within 10 days after service, serve opposing affidavits.

D. Not later than 15 days after the date of the decision, the Director may grant a rehearing or review on the Director’s own initiative for any reason for which the Director might have granted relief on the motion of a party. The Director may grant a motion for rehearing or review, timely served, for a reason not stated in the motion.

Historical Note

ARTICLE 11. RENUMBERED

R4-34-1101. Renumbered

Historical Note
Adopted as an emergency effective March 24, 1982, pursuant to A.R.S. § 41-1003, valid for only 90 days (Supp. 82-2). Former Section R8-2-41 adopted as an emergency now adopted as a permanent rule effective June 24, 1982 (Supp. 82-3). Adopted as an emergency effective October 12, 1984, pursuant to A.R.S. § 41-1003, valid for only 90 days (Supp. 84-5). Emergency expired. Former Section R8-2-41 repealed, new Section R8-2-41 adopted effective April 2, 1985 (Supp. 85-2). Former Section R8-2-41 repealed, new Section R4-34-1101 adopted as an emergency effective March 14, 1988, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 88-1). Emergency expired. Former Section R8-2-41 repealed, new Section R4-34-1101 adopted as a permanent rule with editorial corrections effective November 16, 1988 (Supp. 88-4). Section R4-34-1101 repealed, new Section adopted effective July 20, 1990 (Supp. 90-3). Section R4-34-1101 renumbered to R4-36-201 (Supp. 95-4).
As of January 14, 2022

41-4001. Definitions

In this chapter, unless the context otherwise requires:

1. "Accessory structure" means the installation, assembly, connection or construction of any one-story habitable room, storage room, patio, porch, garage, carport, awning, skirting, retaining wall, evaporative cooler, refrigeration air conditioning system, solar system or wood decking attached to a new or used manufactured home, mobile home or residential single family factory-built building.


3. "Alteration" means the replacement, addition, modification or removal of any equipment or installation after the sale by a manufacturer to a dealer or distributor but before the sale by a dealer to a purchaser, which may affect compliance with the standards, construction, fire safety, occupancy, plumbing or heat-producing or electrical system. Alteration does not mean the repair or replacement of a component or appliance requiring plug-in to an electrical receptacle if the replaced item is of the same configuration and rating as the component or appliance being repaired or replaced. Alteration also does not mean the addition of an appliance requiring plug-in to an electrical receptacle if such appliance is not provided with the unit by the manufacturer and the rating of the appliance does not exceed the rating of the receptacle to which such appliance is connected.

4. "Board" means the board of manufactured housing.

5. "Broker" means any person who acts as an agent for the sale or exchange of a used manufactured home or mobile home except as exempted in section 41-4028.

6. "Certificate" means a numbered or serialized label or seal that is issued by the director as certification of compliance with this chapter.

7. "Closed construction" means any building, building component, assembly or system manufactured in such a manner that concealed parts or processes of manufacture cannot be inspected before installation at the building site without disassembly, damage or destruction.

8. "Commercial" means a building with a use-occupancy classification other than single-family dwelling.

9. "Component" means any part, material or appliance that is built-in as an integral part of the unit during the manufacturing process.

10. "Consumer" means either a purchaser or seller of a unit regulated by this chapter who utilizes the services of a person licensed by the department.

11. "Consummation of sale" means that a purchaser has received all goods and services that the dealer or broker agreed to provide at the time the contract was entered into, the transfer of title or the filing of an affidavit of affixture, if applicable, to the sale. Consummation of sale does not include warranties.
12. "Dealer" means any person who sells, exchanges, buys, offers or attempts to negotiate or acts as an agent for the sale or exchange of factory-built buildings, manufactured homes or mobile homes except as exempted in section 41-4028. A lease or rental agreement by which the user acquired ownership of the unit with or without additional remuneration is considered a sale under this chapter.

13. "Defect" means any defect in the performance, construction, components or material of a unit that renders the unit or any part of the unit unfit for the ordinary use for which it was intended.

14. "Department" means the Arizona department of housing.

15. "Director" means the director of the department.

16. "Earnest monies" means all monies given by a purchaser or a financial institution to a dealer or broker before consummation of the sale.

17. "Factory-built building":

(a) Means a residential or commercial building that is:

(i) Either wholly or in substantial part manufactured using closed construction at an off-site location and transported for installation or completion, or both, on-site.

(ii) Constructed in compliance with adopted codes, standards and procedures.

(iii) Installed temporarily or permanently.

(b) Does not include a manufactured home, recreational vehicle, panelized commercial building using open construction, panelized residential building using open or closed construction or domestic or light commercial storage building.

18. "HUD" means the United States department of housing and urban development.

19. "Imminent safety hazard" means an imminent and unreasonable risk of death or severe personal injury.

20. "Installation" means:

(a) Connecting new or used mobile homes, manufactured homes or factory-built buildings to on-site utility terminals or repairing these utility connections.

(b) Placing new or used mobile homes, manufactured homes, accessory structures or factory-built buildings on foundation systems or repairing these foundation systems.

(c) Providing ground anchoring for new or used mobile homes or manufactured homes or repairing the ground anchoring.

21. "Installer" means any person who engages in the business of performing installations of manufactured homes, mobile homes or residential single family factory-built buildings.
22. "Installer of accessory structures" means any person who engages in the business of installing accessory structures.

23. "Listing agreement" means a document that contains the name and address of the seller, the year, manufacturer and serial number of the listed unit, the beginning and ending dates of the time period that the agreement is in force, the name of the lender and lien amount, if applicable, the price the seller is requesting for the unit, the commission to be paid to the licensee and the signatures of the sellers and the licensee who obtains the listing.

24. "Local enforcement agency" means a zoning or building department of a city, town or county or its agents.

25. "Manufactured home" means a structure built in accordance with the act.

26. "Manufacturer" means any person engaged in manufacturing, assembling or reconstructing any unit regulated by this chapter.

27. "Mobile home" means a structure built before June 15, 1976, on a permanent chassis, capable of being transported in one or more sections and designed to be used with or without a permanent foundation as a dwelling when connected to on-site utilities. Mobile home does not include recreational vehicles and factory-built buildings.

28. "Office" means the office of manufactured housing within the department.

29. "Open construction" means any building, building component, assembly or system manufactured in such a manner that all portions can be readily inspected at the building site without disassembly, damage or destruction.

30. "Purchaser" means a person purchasing a unit in good faith from a licensed dealer or broker for purposes other than resale.

31. "Qualifying party" means a person who is an owner, employee, corporate officer or partner of the licensed business and who has active and direct supervision of and responsibility for all operations of that licensed business.

32. "Reconstruction" means construction work performed for the purpose of restoration or modification of a unit by changing or adding structural components or electrical, plumbing or heat or air producing systems.

33. "Recreational vehicle" means a vehicular type unit that is:

(a) A portable camping trailer mounted on wheels and constructed with collapsible partial sidewalls that fold for towing by another vehicle and unfold for camping.

(b) A motor home designed to provide temporary living quarters for recreational, camping or travel use and built on or permanently attached to a self-propelled motor vehicle chassis or on a chassis cab or van that is an integral part of the completed vehicle.
(c) A park trailer built on a single chassis, mounted on wheels and designed to be connected to utilities necessary for operation of installed fixtures and appliances and has a gross trailer area of not less than three hundred twenty square feet and not more than four hundred square feet when it is set up, except that it does not include fifth wheel trailers.

(d) A travel trailer mounted on wheels, designed to provide temporary living quarters for recreational, camping or travel use, of a size or weight that may or may not require special highway movement permits when towed by a motorized vehicle and has a trailer area of less than three hundred twenty square feet. This subdivision includes fifth wheel trailers. If a unit requires a size or weight permit, it shall be manufactured to the standards for park trailers in 119.5 of the American national standards institute code.

(e) A portable truck camper constructed to provide temporary living quarters for recreational, travel or camping use and consisting of a roof, floor and sides designed to be loaded onto and unloaded from the bed of a pickup truck.

34. "Residential" means a building with a use-occupancy classification of a single-family dwelling or as governed by the international residential code.

35. "Salesperson" means any person who, for a salary, commission or compensation of any kind, is employed by or acts on behalf of any dealer or broker of manufactured homes, mobile homes or factory-built buildings to sell, exchange, buy, offer or attempt to negotiate or act as an agent for the sale or exchange of an interest in a manufactured home, mobile home or factory-built building.

36. "Seller" means a natural person who enters into a listing agreement with a licensed dealer or broker for the purpose of resale.

37. "Site development" means the development of an area for the installation of the unit's or units' locations, parking, surface drainage, driveways, on-site utility terminals and property lines at a proposed construction site or area.

38. "Statutory agent" means a person who is on file with the corporation commission as the statutory agent.

39. "Title transfer" means a true copy of the application for title transfer that is stamped or validated by the appropriate government agency.

40. "Unit" means a manufactured home, mobile home, factory-built building or accessory structures.

41. "Used unit" means any unit that is regulated by this chapter and that has been sold, bargained, exchanged or given away from a purchaser who first acquired the unit that was titled in the name of such purchaser.

42. "Workmanship" means a minimum standard of construction or installation reflecting a journeyman quality of the work of the various trades.

41-4002. Office of manufactured housing; purpose
The purpose of the office of manufactured housing within the department is to maintain and enforce standards of quality and safety for manufactured homes, factory-built buildings, mobile homes and accessory structures and installation of manufactured and mobile homes, factory-built buildings and accessory structures. The affairs of the office of manufactured housing shall be conducted consistently with minimum standards of the United States department of housing and urban development so as to be designated the "state inspector" for manufactured homes and related industries. The office shall implement all existing laws and regulations mandated by the federal government, its agencies and this state for such purposes.

41-4004. Powers and duties of department; work by unlicensed person; inspection agreement; permit

A. The department shall:

1. Establish a state inspection and design approval bureau within the department.

2. Enter into reciprocity agreements and compacts with other states or private organizations that adopt and maintain standards of construction reasonably consistent with those adopted pursuant to this article on determining that such standards are being enforced. The director may void such agreements on determining such standards are not being maintained.

3. Issue a certificate to indicate compliance with the construction and installation requirements of this article.

4. Enter and inspect or investigate premises at reasonable times, after presentation of credentials by the director or personnel of the office or under contract with the office, where units regulated by this article are manufactured, sold or installed, to determine if any person has violated this chapter or the rules adopted pursuant to this chapter.

5. Enter into agreements with local enforcement agencies to enforce the installation standards in their jurisdiction provided the director is monitoring their performance to be consistent with the installation standards of the office.

6. If an inspection reveals that a mobile home entering this state for sale or installation is in violation of this chapter, order its use discontinued and the mobile home or any portion of the mobile home vacated. The order to vacate shall be served on the person occupying the mobile home and copies of the order shall be posted at or on each exit of the mobile home. The order to vacate shall include a reasonable period of time in which the violation can be corrected.

7. If an inspection of a new installation of any mobile home or manufactured home reveals that the natural gas or electrical connections of the installation do not conform to the installation standards promulgated pursuant to this chapter and the nonconformance constitutes an immediate danger to life and property, the inhabitants of the home shall be notified immediately and in their absence a notice citing the violations shall be posted in a conspicuous location. The director may order that the public service corporation, municipal corporation or other entity or individual supplying the service to the unit discontinue such service. If the danger is not immediate, the director shall allow at least twenty-four hours to correct the condition before ordering any discontinuation of service.

8. If construction, installation, rebuilding or any other work is performed in violation of this chapter or any rule adopted pursuant to this chapter, order the work stopped. The order to stop work shall be served
on the person doing the work or on the person causing the work to be done. The person served with the order shall immediately cease the work until authorized by the office to continue.

9. Verify written complaints filed with the office by purchasers within one year after the date of purchase or installation of units. Complaints shall be accepted from consumers that allege violations by any dealer, broker, salesperson, installer or manufacturer of this chapter or the rules adopted pursuant to this chapter.

10. On verification of a complaint pursuant to paragraph 9 of this subsection, serve notice to the dealer, broker, salesperson, installer or manufacturer that such verified complaint shall be satisfied as specified by the office.

11. Provide to the board every six months the year-to-date fund balance of and a listing of the year-to-date revenues and expenditures from the mobile home relocation fund established by section 33-1476.02. The information shall be updated and posted on the department's website.

B. Any dealer, broker, salesperson, installer or manufacturer licensed by the office shall respond within thirty days to a notice served pursuant to subsection A, paragraph 10 of this section. Failure to respond is grounds for disciplinary action pursuant to section 41-4039.

C. If an inspection or an investigation reveals that any work that is required to be performed by a licensee was performed by an unlicensed person required to be licensed pursuant to this chapter, the director, an employee or a person under contract with the office may cite the unlicensed person. The citation may be issued and served pursuant to section 13-3903. The action shall be filed in the justice court in the precinct where the unlicensed activity occurred.

D. The director may enter into agreements with acceptable qualified building inspection personnel or inspection organizations for enforcement of inspection requirements provided the director is monitoring their performance to be consistent with this chapter, rules adopted pursuant to this chapter and the established procedures of the office. If the director determines that the person's or organization's performance is not consistent with this chapter, rules adopted pursuant to this chapter and the established procedures of the office, the person or organization may not enforce the contract and the aggrieved person shall be entitled to a refund of the consideration paid under the agreement.

E. If a mobile or manufactured home or factory-built building is installed without first obtaining an installation permit, the director shall send a written notice to the purchaser specifying that a permit is required. If a permit is not obtained within thirty days after receipt of the written notice, the department shall issue and serve by personal service or certified mail a citation on the purchaser. Service of the citation by certified mail is complete after forty-eight hours after the time of deposit in the mail. On failure of the purchaser to comply with the citation within twenty days after its receipt, the director shall file an action in the justice court in the precinct where installation occurred for violation of this subsection.

41-4005. Submission of construction, reconstruction or alteration plans by manufacturers; approval; revocation

A. Before the construction of any new model of factory-built building, each manufacturer who intends to manufacture for delivery or sell such unit in this state shall submit to the director for approval detailed plans of each model and shall have obtained such approval.
B. Before reconstruction of any factory-built building, including those for which the director has not approved plans before construction, the licensee shall submit to the director for approval detailed plans of the factory-built building that indicate conformance with this state's adopted codes as certified by an engineer who is registered pursuant to title 32, chapter 1.

C. Before installation of a factory-built building or accessory structure, each licensee who intends to accomplish the construction shall submit to the director for approval detailed plans for each project and shall obtain the director's approval.

D. The office or a third-party inspector who is authorized by the director to verify compliance with the approved plans shall inspect the factory-built building.

E. A plan approval may be immediately suspended by the written notice of the director if the director has reasonable cause to believe that the licensee is not complying with the plan as approved or that the licensee has used inferior materials or workmanship in construction. This notice shall be served by personal service to an in-state licensee and by certified mail to an out-of-state licensee. Service of process by certified mail is complete after forty-eight hours from the time of deposit in the mail.

41-4006. Preemption of local building codes; responsibility for maintenance of utility connections

A. No building code or local enforcement agency or its adopted building codes may require, as a condition of entry into or sale in any county or municipality, that any unit that has been certified pursuant to this chapter be subjected to any local enforcement inspection to determine compliance with any standard covering any aspect of the unit that is inspected pursuant to this article.

B. Except where a local enforcement agency participates in the office permit and certificate issuance program for the installation of manufactured homes, mobile homes, factory-built buildings and accessory structures and inspection of such installations, no local enforcement agency shall subject any unit installed to any local inspections or charge a fee for any services provided pursuant to this article.

C. A local enforcement agency in any county or municipality shall recognize the minimum standards of the act as equal to any nationally accepted or locally adopted building code standard.

D. Nothing in subsection A, B or C of this section shall prevent the application of local codes and ordinances governing zoning requirements, fire zones, building setback, maximum area and fire separation requirements, site development and property line requirements and requirements for on-site utility terminals for factory-built buildings, manufactured homes and mobile homes.

E. Notwithstanding any other provision of this section, the owner of a manufactured home or mobile home located in a park subject to title 33, chapter 11 is responsible for the maintenance of utility connections from any outlets furnished by the landlord pursuant to section 33-1434 to the unit, except that the landlord is responsible for the maintenance of connections for any distance greater than twenty-five feet to the point at which the utility connections are the property of the providing utility company if the outlet is located outside the lot line of the owner's unit and is more than twenty-five feet from the unit. A local enforcement agency that determines that local code requirements are not being met or that maintenance or safety activities are needed for utility connections may not require anyone except the responsible party to perform or pay for such activities.

41-4007. Notification and correction of defects by manufacturer; notice to purchaser
A. Every manufacturer of units shall furnish notification of any defect in any unit produced by such manufacturer which he determines, in good faith, relates to a construction or safety standard adopted pursuant to this chapter or contains a defect which constitutes an imminent safety hazard to the purchaser of such unit, within sixty days after such manufacturer has discovered the defect. Every manufacturer of units shall maintain a record of the names and addresses of the purchaser of each unit for the purposes of this section. Such information shall be provided by the dealer or broker upon purchase of each unit and reported monthly to the manufacturer.

B. The notification required by subsection A shall contain a clear description of such defect or failure to comply with such construction or safety standards, an evaluation of the risk to the occupants’ safety reasonably related to such defect and a statement of the measures needed to repair the defect. The notification shall also inform the owner whether the defect will be corrected at no cost to the purchaser of the unit or at the expense of the purchaser.

41-4008. Costs of complying with standards; reimbursement from relocation fund; definition

A. The costs of bringing a mobile home into compliance with the requirements of this article may be reimbursed to the owner from the mobile home relocation fund established by section 33-1476.02 if all of the following are true:

1. The mobile home is moved from one mobile home park in this state to another mobile home park in this state.

2. The household income of the owner of the mobile home is at or below one hundred per cent of the current federal poverty level guidelines as published annually by the United States department of health and human services.

3. The mobile home is not being relocated as the result of a judgment in a forcible detainer or special detainer action requiring the owner to vacate the mobile home park in which the mobile home is located.

B. The amount of the reimbursement pursuant to this section shall not exceed one thousand five hundred dollars for the costs related to any mobile home.

C. The fund shall have a claim for reimbursement of sums received under this section by an individual who fails to reside in the mobile home for six months following its relocation, unless the failure was due to the death or disability of a resident.

D. For the purposes of this section, "owner" means an individual whose primary residence has been the mobile home continuously for the six-month period preceding an application for reimbursement, or an individual who has purchased the mobile home and who intends to reside in the mobile home as the individual's primary residence after the relocation.

41-4009. Board of manufactured housing; members; meetings

A. The board of manufactured housing is established. The board shall consist of nine members appointed by the governor pursuant to section 38-211. One member shall represent the manufacturers of manufactured homes, one shall represent the installer industry, one shall represent manufactured home park owners, one shall represent financial institutions, one shall represent the manufacturers of residential factory-built buildings, one shall represent the dealers and brokers and three members of the public, at least one of whom has as his residence a mobile or manufactured home and is a resident of a mobile home
park or manufactured home park, shall represent the consumers of this state. Each member shall be appointed for a term of three years. The governor may remove any member from the board for incompetency, improper conduct, disability or neglect of duty. Members are eligible to receive compensation pursuant to section 38-611 and are eligible for reimbursement for expenses incurred while attending meetings called by the board pursuant to title 38, chapter 4, article 2.

B. The board annually shall select from its membership a chairperson for the board.

C. The board shall meet on call of the chairperson or on the request of at least four members.

41-4010. **Powers and duties of board**

A. The board shall:

1. Adopt rules imposing minimum construction requirements for factory-built buildings and components thereof that are reasonably consistent with nationally recognized and accepted publications or generally accepted manufacturing practices pertinent to the construction and safety standards for such item to be manufactured. These standards shall include minimum requirements for the safety and welfare of the public.

2. Adopt rules imposing requirements for body and frame design and construction and installation of plumbing, heating and electrical systems for manufactured homes that are consistent with the rules and regulations for construction and safety standards adopted by the United States department of housing and urban development.

3. Adopt rules relating to plan approvals as to requirements for the design, construction, alteration, reconstruction and installation of units or accessory structures as deemed necessary by the board to carry out this chapter.

4. Establish a schedule of fees, payable by persons, licensees or owners of units regulated by this chapter, for inspections, licenses, permits, plan reviews, administrative functions and certificates so that the total annual income derived from such fees will not be less than ninety-five percent and not more than one hundred five percent of the anticipated expenditures for the administration of the activities described in this subsection.

5. Adopt rules relating to the inspection throughout the state by the department of the installation of manufactured homes, mobile homes, factory-built buildings and accessory structures included as part of a sales contract for a manufactured home, mobile home or factory-built building or included in an agreement to move a manufactured home, mobile home or factory-built building.

6. Establish and maintain licensing standards and bonding requirements for all manufacturers of manufactured homes and factory-built buildings regulated pursuant to this chapter.

7. Establish and maintain licensing standards and bonding requirements for all dealers and brokers of manufactured homes, mobile homes and factory-built buildings thereof who sell or arrange the sale of such products within this state.
8. Establish and maintain licensing standards and bonding requirements for all installers of manufactured homes, mobile homes and accessory structures and certified standards for all persons who repair these homes and structures under warranties and who are not employees of the manufacturer.

9. Establish and maintain licensing standards for all salespersons of manufactured homes, mobile homes and factory-built buildings. These standards shall not include educational requirements.

10. Adopt rules consistent with the United States department of housing and urban development procedural and enforcement regulations and enter into such contracts necessary to administer the federal manufactured home regulations.

11. Adopt rules imposing minimum fire and life safety requirements in the categories of fire detection equipment, flame spread for gas furnace and water heater compartments, egress windows, electrical system and gas system for mobile homes entering this state.

12. Adopt rules for inspections and permits for minimum fire and life safety requirements and establish fees for such inspections and permits for mobile homes entering this state.

13. Adopt such other rules as the board deems necessary for the department to carry out this chapter and, to the extent not authorized by other provisions of this section, adopt rules as necessary to interpret, clarify, administer or enforce this chapter.

14. Adopt rules relating to the installation of manufactured homes, mobile homes, factory-built buildings and accessory structures included as part of a sales contract for a used mobile home, new or used manufactured home or new or used factory-built building or part of an agreement to move a used mobile home, new or used manufactured home or new or used factory-built building. This paragraph does not apply to:

(a) Single wide factory-built buildings that are used for construction project office purposes and that are not used by the public.

(b) Storage buildings of less than one hundred sixty-eight square feet that are not used by the public.

(c) Equipment buildings that are not used by the public.

15. Adopt rules relating to acceptable workmanship standards.

16. Adopt rules relating to issuing permits to licensees, owners of units or other persons for the installation of manufactured homes, mobile homes, factory-built buildings and accessory structures.

17. Adopt rules including a requirement that a permit shall be obtained before the installation of a mobile or manufactured home.

18. Establish standards for the permanent foundation of a manufactured home, mobile home or factory-built building.

B. In adopting rules pursuant to subsection A, paragraph 3 of this section, the board shall consider for adoption any amendments to the codes and standards referred to in subsection A, paragraphs 1 and 2 of this section. If the board adopts the amendments to such codes and standards, the department shall notify
the manufacturers licensed pursuant to article 4 of this chapter ninety or more days before the effective
date of such amendments.

C. Chapter 6 of this title does not apply to the setting of fees under subsection A, paragraph 4 of this
section.

D. Rules adopted pursuant to subsection A, paragraph 14 of this section shall be standard throughout this
state and may be enforced by the local enforcement agencies on installation to ensure a standard of safety.
The board may make an exception to the standard if, on petition by a local jurisdiction participating in the
installation inspection program, local conditions justify the exemption or it is necessary to protect the
health and safety of the public. On its own motion, the board may revise or repeal any exception.

41-4030. Trust and escrow requirements for dealers that are not also owners of mobile home parks; rules;
exemptions

A. Each dealer licensed pursuant to this article shall establish an independent escrow account with an
independent financial institution or escrow agent authorized to handle such an account in this state as
prescribed by title 6, chapter 7 or 8 for each transaction involving:

1. A new manufactured home.

2. A new factory-built building designed for use as a residential dwelling.

3. A manufactured home, mobile home or factory-built building designed for use as a residential dwelling
that is previously owned and that has a purchase price of $50,000 or more.

B. For the purposes of subsection A of this section, a financial institution or escrow agent is independent
if the individual or entity is not controlled by the licensee, a family member of the licensee or a business
affiliated with the licensee and the licensee, family member or business affiliate does not have a majority
interest in the financial institution or escrow agent.

C. Each dealer that sells new manufactured homes or factory-built buildings designed for use as
residential dwellings or a manufactured home, mobile home or factory-built building designed for use as a
residential dwelling that is previously owned and that has a purchase price of less than $50,000 shall
maintain a licensee's trust account or open an escrow account with an independent financial institution or
escrow agent located in this state and shall deposit all earnest monies received for the sale of
manufactured homes, mobile homes or factory-built buildings designed for use as residential dwellings in
that account. The department shall conduct an audit of each dealer's trust or escrow account, including
any transactions with an independent escrow account, at least once every two years. A purchaser of a
mobile home, used manufactured home or used factory-built building designed for use as a residential
dwelling may request that the dealer establish an independent escrow account and if such a request is
made in writing not later than the time the purchase contract is signed, and the seller consents, the dealer
shall comply with this subsection by complying with subsection A of this section. A licensee that handles
a transaction under this subsection shall disclose to the purchaser, in writing and before or at the time the
purchaser signs the purchase contract, that the purchaser may request in writing the use of an independent
escrow account, and that the transaction will otherwise be handled through a trust account controlled by
the licensee.

D. All dealers shall notify the director in writing when the trust or escrow account has been established by
indicating the name and number of the account and the name and location of the financial institution used.
E. The dealer, in writing, shall authorize the depository to release any and all information relative to trust or escrow accounts to the director or the director’s agent, employee or deputy.

F. The dealer’s earnest monies receipt book shall reflect all earnest monies received and shall be at the minimum in duplicate and consecutively numbered.

G. All earnest monies shall be deposited in the escrow account or trust fund account not later than the close of the second banking business day after receipt.

H. The terms or instructions for any escrow account opened under subsection A or C of this section are deemed to be enforceable as part of the purchase contract. All parties to the purchase contract and the licensee shall sign the terms and instructions. If practicable, the escrow terms or instructions shall be included in the purchase contract or stated in an addendum to the purchase contract. The licensee shall provide a copy of the purchase contract to the escrow agent even if the escrow terms or instructions are contained in a separate document. The licensee shall promptly provide the escrow account information to all parties to the purchase contract once the account is opened.

I. At a minimum, the escrow terms or instructions shall contain:

1. Identification of the escrow agent with information containing at least the name, address and telephone number of the escrow agent.

2. All conditions or requirements that affect or pertain to closing the escrow account and disbursement of the monies in the escrow account.

3. Any conditions or requirements where monies are to be disbursed from the escrow account in advance of the escrow account being closed.

4. Any conditions or requirements where additional monies or documents must be deposited with an escrow agent after the escrow account is opened.

J. A dealer or broker may deposit and maintain up to $200 in the trust account to offset service charges that may be assessed by the financial institution.

K. Every deposit into a trust account shall be made with a deposit slip that identifies each transaction as follows:

1. The amount of deposit.

2. The names of all parties involved in the transaction. All receipts for monies deposited in escrow shall be made accountable by containing the same information.

L. A complete record shall be retained by the dealer’s or broker’s office of all earnest monies received. The record shall contain provisions for entering:

1. The amount received.

2. From whom the monies were received.
3. The date of receipt.

4. The place of deposit.

5. The date of deposit.

6. The daily balance of the trust fund account deposit of each transaction.

7. When the transaction has been completed.

8. The date and payment for all goods and services the dealer has contracted to provide.

M. All earnest monies deposited in the trust or escrow account shall be held in such account until one of the following is completed:

1. The consummation of sale.

2. The termination of sale, including a complete accounting of all monies.

N. On completion pursuant to subsection M of this section, the earnest monies deposit shall be conveyed to the lending institution or the dealer, purchaser, seller, manufacturer or lienholder, whichever is applicable.

O. The dealer shall retain true copies of the purchase agreements, earnest monies receipts, depository receipts, evidence of delivery documents and evidence of consummation of sale or termination of sale for a period of three years.

P. The deposits referred to in this section shall not be used for any purpose other than the transaction for which they were provided.

Q. Notwithstanding any other provision of this section and except that this subsection does not apply to an independent escrow account established pursuant to subsection A of this section, before an event listed under subsection M of this section is completed, a licensed dealer may release trust account earnest monies to pay for flooring or inventory for the unit that is the subject of the transaction for which the earnest monies were provided. A licensed dealer may release trust account earnest monies to pay other lawfully imposed interim loan amounts and charges imposed by a financial institution or other bona fide lender on the unit that is the subject of the transaction for which the earnest monies were provided. The dealer shall not make any payment out of trust account monies pursuant to this subsection unless done in compliance with all of the following:

1. The payment is made not more than ten business days before the completion date pursuant to subsection M of this section.

2. The payment is made directly to the financial institution or other bona fide lender.

3. The payment is recorded in the dealer's records under this section and documented by a receipt, a payment record or any other evidence from the financial institution or lender.
4. If the transaction is terminated, the dealer replaces the amount of the payment in the trust account within three business days after receiving written notification of the termination.

This subsection does not affect any other rights or obligations between the purchaser and the licensed dealer.

R. The board shall adopt separate rules for dealer trust and escrow accounts. At a minimum, these rules shall contain trust and escrow account requirements for the following:

1. Recordkeeping.
2. Administration.
3. Service fees or charges.
4. Deposits.
5. Advances or payments out of trust and escrow accounts.
6. Closing or termination of sales transactions.
7. Auditing or investigation of trust or escrow account complaints.

S. This section shall not apply to a real estate broker or salesperson licensed pursuant to section 32-2122 and pursuant to this article when the unit is sold in conjunction with real estate.

41-4039. Grounds for disciplinary action

The director may, on the director's own motion, and shall, on the complaint in writing of any person, cause to be investigated by the department the acts of any manufacturer, dealer, broker, salesperson or installer licensed with the department and may temporarily suspend or permanently revoke any license issued under this article, impose an administrative penalty or place on probation any licensee, if the holder of the license, while a licensee, is guilty of or commits any of the following acts or omissions:

1. Failure in any material respect to comply with this article or article 3 of this chapter.
2. Violation of any rule that is adopted by the board and that pertains to the construction of any unit or of any rule that is adopted by the board and that is necessary to effectively carry out the intent of this article, article 3 of this chapter or the laws of the United States or of this state.
3. Misrepresentation of a material fact by the applicant in obtaining a license.
4. Aiding or abetting an unlicensed person or knowingly combining or conspiring with an unlicensed person to evade this article or article 3 of this chapter, or allowing one's license to be used by an unlicensed person or acting as an agent, partner or associate of an unlicensed person with intent to evade this article or article 3 of this chapter.
5. Conviction of a felony.
6. The doing of a wrongful or fraudulent act by a licensee that relates to this article or article 3 of this chapter, including failure to comply with section 41-4030, subsection A, or the doing of any other wrongful or fraudulent act in conjunction with the sale, transfer or relocation of a mobile home in this state.

7. Departure from or disregard of any code or any rule adopted by the board.

8. Failure to disclose or subsequent discovery by the department of facts that, if known at the time of issuance of a license or the renewal of a license, would have been grounds to deny the issuance or renewal of a license.

9. Knowingly entering into a contract with a person not duly licensed in the required classification for work to be performed for which a license is required.

10. Acting in the capacity of a licensee under any license issued under this article in a name other than as set forth on the license.

11. Acting as a licensee while the license is under suspension or in any other invalid status.

12. Failure to respond relative to a verified complaint after notice of such complaint.


14. False, misleading or deceptive sales practices by a licensee in the sale or offer of sale of any unit regulated by this article or article 3 of this chapter.

15. Failure to remit the consumer recovery fund fee pursuant to section 41-4042.

16. Acting as a salesperson while not employed by a dealer.

17. As a salesperson, representing or attempting to represent a dealer other than by whom the salesperson is employed.

18. Acting beyond the scope of activity authorized by the salesperson's license classification of the employing dealer.

19. Failure by a salesperson to promptly place all cash, checks and other items of value and any related documents received in connection with a sales transaction in the care of the employing dealer.

20. Failure to provide all agreed on goods and services.

21. Failure to manufacture or install in a workmanlike manner all units and accessory structures that are suitable for their intended purpose.

22. Failure of the licensee to work only within the scope of the license held.

23. An action by a licensee, who is also a mobile home park owner, manager, agent or representative, that restricts a resident's or prospective resident's access to buyers, sellers or licensed dealers or brokers in
connection with the sale of a home or the rental of a space, that the department finds constitutes a violation of section 33-1434, subsection B or section 33-1452, subsection F or that violates any law or regulation relating to fair housing or credit practices.
Summary

This Five-Year-Review Report (5YRR) from the Department of Health Services relates to rules in Title 9, Chapter 8, Article 2, regarding Bottled Water. These rules specify requirements for sourcing, processing, labeling and selling bottled water.

In the previous 5YRR for these rules, which the Council approved in 2017, the Department planned to address the issues identified in a Notice of Final Rulemaking. The Department amended the rules to address the issues identified and filed a Notice of Final Expedited Rulemaking in January 2018.

Proposed Action

Subsequent to filing the 5YRR, the Department received a written Petition that stated the Bottled Water rules were more stringent than corresponding federal laws, because they allegedly excluded other viable sources of water that may be approved for bottling water. In response to the Petition, the Department initiated a rulemaking to clarify and potentially expand what is considered an approved “source” of water for bottled water. The Department indicated it has submitted a request for an exception from the 2022 Rulemaking Moratorium to conduct a rulemaking that the Governor’s office approved.
1. **Has the agency analyzed whether the rules are authorized by statute?**

   Yes, the Department cites both general and specific statutory authority for the rules.

2. **Summary of the agency’s economic impact comparison and identification of stakeholders:**

   The Department in its 2004 regular rulemaking, effective November 23, 2004, completed an EIS for regular rulemaking amending R9-8-201 through R9-8-2062. In summary of the 2004 EIS, the Department identified the rulemaking as providing rules for the inspection and certification of bottled drinking water sources, plants, processes and transportation. The purpose for amending the rules was to include quality standards for bottled water.

   The rulemaking identifies persons directly affected by the rules to be persons that process and sell bottled water, county health departments, and the Department. The cost to a person processing and selling bottled water was based on the number of quality testing the person completes on the bottled water produced and sold. A person producing bottled water products and not currently performing quality testing according to 21 CFR, the cost was moderate to substantial. The cost for county health departments to inspect the quality of the bottled water was expected to be moderate. The cost included the additional time needed to review the quality testing records maintained by a plant operator. The Department might incur minimal costs for making and enforcing the rules. The benefit of having the amended rules for persons that process and sell bottled water included having clarity in the approval of a source application process and confidence that the Department process for all applications is fair, consistent, and completed in a timely manner.

   The Department has no record of receiving an application for approval of a new water source since before these rules were last amended. The Department believes the costs and benefits identified in the 2004 EIS are generally consistent with the actual costs and benefits of the rules.

3. **Has the agency analyzed the costs and benefits of the rulemaking and determined that the rules impose the least burden and costs to those who are regulated?**

   The Department and county health departments use the rules as written without increased costs or burden since the promulgation of rules in the 2018 Notice of Expedited Rulemaking. The Department believes that the rules provide the least burden and cost to persons that process and sell bottled water and achieves the regulatory objective consistent with statutory requirements.

4. **Has the agency received any written criticisms of the rules over the last five years?**
No, the Department has not received any written criticisms of the rules over the last five years.

5. **Has the agency analyzed the rules’ clarity, conciseness, and understandability?**

   Yes. The Department indicates that the rules are clear, concise, and understandable; however, they claim that changing the citation in the definition of the rules to reflect the name change of the U.S. Government Printing Office to the U.S. Government “Publishing” Office would make these definitions more clear. The Department states that the office address remains the same, therefore only the name of the office would be changed.

6. **Has the agency analyzed the rules’ consistency with other rules and statutes?**

   Yes, the Department indicates the rules are consistent with other rules and statutes.

7. **Has the agency analyzed the rules’ effectiveness in achieving its objectives?**

   Yes, the Department indicates the rules are effective in achieving their objective.

8. **Has the agency analyzed the current enforcement status of the rules?**

   Yes, the Department states the rules are enforced as written.

9. **Are the rules more stringent than corresponding federal law and, if so, is there statutory authority to exceed the requirements of federal law?**

   The Department indicated that according to a Petition they received, the Bottled Water rules are more stringent than corresponding federal laws, because they allegedly exclude other viable sources of water that may be approved for bottled water.

10. **For rules adopted after July 29, 2010, do the rules require a permit or license and, if so, does the agency comply with A.R.S. § 41-1037?**

    Not applicable. The Department indicates that these rules were adopted in August 1990.

11. **Conclusion**

    This 5YRR from the Department of Health Services relates to rules in Title 9, Chapter 8, Article 2, regarding Bottled Water. The Department indicates the rules are clear, concise, and understandable. However, the Department claims that updating the name of the government office will make the rules more clear, concise and understandable, despite the address of the office not changing.

    The Department indicated they received a Petition that claimed the Bottled Water rules were more stringent than corresponding federal laws. In response to this Petition, the
Department has requested an exception from the 2022 Rulemaking Moratorium to conduct a rulemaking to address this issue, which has been submitted and approved by the Governor’s Office.

Council staff finds the Department submitted a report that meets the requirements of A.R.S.§ 41-1056. Council staff recommends approval of this report.
May 9, 2022

Nicole Sornsin, Chairperson
Governor’s Regulatory Review Council (GRRC)
Arizona Department of Administration
160 N. 15th Avenue, Suite 305
Phoenix, AZ 85007

RE: Amended Report for A.A.C. Title 9, Chapter 8, Article 2, Bottled Water

Dear Ms. Sornsin:

Please find enclosed the Amended Five Year Review Report (Report) of the Department of Health Services (Department) for Arizona Administrative Code (A.A.C.) Title 9, Chapter 8, Article 2, Bottled Water (Rules). The Department reviewed the Rules with the intention that they would not expire pursuant to Arizona Revised Statutes (A.R.S.) § 41-1056(f) and submitted the Report prior to the March 31, 2022 due date.

Subsequent to the submittal of the Report, the Department received a Petition for Rulemaking related to the Rules (Petition). See A.R.S. § 41-1033 and A.A.C. R9-1-203. The Petition alleges that the Rules are more stringent than corresponding federal laws and requests that the Department make a final rule to amend the definition of “source” found in A.A.C. R9-8-201. In response to the Petition, the Department is initiating a rulemaking to clarify and potentially expand what is considered an approved “source” of water for bottled water. In furtherance of this, a request for an exception from the 2022 Rulemaking Moratorium to conduct a rulemaking was submitted to and has been approved by the Governor’s Office.

Based on the foregoing, the Department believes it is necessary to amend the Report and respectfully requests that the Chairperson accept the enclosed Amended Report.

For questions about this report, please contact Teresa Kochler at (602) 542-0813 or Teresa.Kochler@azdhs.gov.

Sincerely,

Robert Lane
Director’s Designee

RL:tk

Enclosures
Arizona Department of Health Services

Amended¹ Five-Year-Review Report

Title 9. Health Services

Chapter 8. Department of Health Services – Food, Recreational, and Institutional Sanitation

Article 2. Bottled Water

March 2022

1. **Authorization of the rule by existing statutes**
   
   Authorizing statutes: A.R.S. §§ 36-136(A)(7) and 36-136(G)

   Implementing statutes: A.R.S. §§ 36-132(A)(13) and 36-136(I)(6)

2. **The objective of each rule:**

<table>
<thead>
<tr>
<th>Rule</th>
<th>Objective</th>
</tr>
</thead>
<tbody>
<tr>
<td>R9-1-201</td>
<td>The objective of the rule is to define terms and phrases used in the Article to enable the reader to clearly understand the requirements of the Article and allow for consistent interpretation</td>
</tr>
<tr>
<td>R9-1-202</td>
<td>The objective of the rule is to protect public health by ensuring that Arizona food establishments engaged in the processing and selling of bottled water use Department-approved water sources.</td>
</tr>
<tr>
<td>R9-1-203</td>
<td>The objective of the rule is to specify application requirements, which must be complied with before a new water source receives Departmental approval.</td>
</tr>
<tr>
<td>R9-1-204</td>
<td>The objective of the rule is to provide an applicant with notice of the steps and time-frames surrounding the water source application process.</td>
</tr>
<tr>
<td>R9-1-205</td>
<td>The objective of the rule is to specify requirements a plant operator must meet in order to maintain approval of its source, including testing the quality of the bottled water produced at the source and maintaining the results of such tests for inspection.</td>
</tr>
<tr>
<td>R9-1-206</td>
<td>The objective of the rule is to specify the labeling requirements for bottle water processed and sold in the state.</td>
</tr>
</tbody>
</table>

3. **Are the rules effective in achieving their objectives?**

   Yes _√_   No __

   If not, please identify the rule(s) that is not effective and provide an explanation for why the rule(s) is not effective.

¹ The amended language is underlined and located in sections 12 and 14 of this Five-Year-Review Report.
The rules were last amended in 2018 and are effective in achieving their objectives.

4. Are the rules consistent with other rules and statutes?  Yes √ No ___
If not, please identify the rule(s) that is not consistent. Also, provide an explanation and identify the provisions that are not consistent with the rule.

Rule  |  Explanation
--- | ---
 | The rules are consistent with other rules and statutes.

5. Are the rules enforced as written?  Yes √ No ___
If not, please identify the rule(s) that is not enforced as written and provide an explanation of the issues with enforcement. In addition, include the agency’s proposal for resolving the issue.

Rule  |  Explanation
--- | ---
 | The rules are enforced as written.

6. Are the rules clear, concise, and understandable?  Yes √ No ___
If not, please identify the rule(s) that is not clear, concise, or understandable and provide an explanation as to how the agency plans to amend the rule(s) to improve clarity, conciseness, and understandability.

Rule  |  Explanation
--- | ---
R9-8-201 | The rule is clear, concise, and understandable. However, definitions (4), (13), and (17) include a citation to the U.S. Government Printing Office. The U.S. Government Printing Office has changed its title to the U.S. Government “Publishing” Office. The definitions would be clear if title were changed to the U.S. Government Publishing Office. The office address is the same: 732 N. Capitol Street, N.W. Washington, D.C.
R9-8-203 | The rule in subsection (B) includes a citation to the U.S. Government Printing Office and has changed its title to the U.S. Government “Publishing” Office. The rule would be clear if title were changed to the U.S. Government Publishing Office.
Has the agency received written criticisms of the rules within the last five years?  Yes ___  No _√_

If yes, please fill out the table below:

<table>
<thead>
<tr>
<th>Commenter</th>
<th>Comment</th>
<th>Agency’s Response</th>
</tr>
</thead>
</table>

8. **Economic, small business, and consumer impact comparison (summary):**

The rules were first promulgated in August 1990 and amended in November 2004. In 2018, the Department amended R9-8-201, Definitions; R9-8-203, Application for an Approval of a Source; R9-8-205, Quality Testing Requirements, and R9-8-206, Labeling Requirements in an expedited rulemaking. In compliance with A.R.S. § 41-1055(D)(2), the Department did not complete an economic, small business, and consumer impact statement (EIS) as not required. The Department in its 2004 regular rulemaking, effective November 23, 2004, completed an EIS for regular rulemaking amending R9-8-201 through R9-8-206. In summary of the 2004 EIS, the Department identified the rulemaking as providing rules for the inspection and certification of bottled drinking water sources, plants, processes and transportation. R9-8-201 is amended to reflect the changes made to the definitions in the Article. R9-8-202 is amended to explain the general requirements necessary for an approval of a source. R9-8-203 is amended to include the application requirements for an approval of a source. R9-8-204 contains the time-frame requirements as authorized under A.R.S. §§ 41-1072 through 41-1079. R9-8-205 provides the quality testing requirements for bottled water, and R9-8-206, the labeling requirements for bottled water. The purpose for amending the rules was to include quality standards for bottled water. The U.S. Food and Drug Administration (FDA) is responsible for regulating bottled water that is sold into interstate commerce. The FDA has specific regulations for bottled water in Title 21 of the Code of Federal Regulations (21 CFR). The current [2004] rules cite 21 CFR provisions that no longer contain the quality standards. The proposed 2004 rules contain the cite to the 21 CFR that contains the quality standards for bottled water.

---

2 Note: The Department repealed R9-8-207, R9-8-208, and R9-8-209 by 2004 regular rulemaking at 10 A.A.R. 4178.
The annual cost and revenues are designated as minimal when less than $1,000, moderate when between $1,000 and $10,000, and substantial when greater than $10,000. And the rulemaking identifies persons directly affected by the rules to be persons that process and sell bottled water, county health departments, and the Department. The cost to a person processing and selling bottled water is based on the number of quality testing the person completes on the bottled water produced and sold. Note: A person already processing and selling bottled water to current quality testing according to the 21 CFR, the cost of the proposed rules is minimal. However, a person producing bottled water products and not currently performing quality testing according to 21 CFR, the cost is moderate to substantial. The cost for county health departments to inspect the quality of the bottled water is expected to be moderate. Under the proposed rules, the cost to the county health departments to inspect for quality purposes includes the additional time needed to review the quality testing records maintained by a plant operator. The Department may incur minimal costs for making and enforcing the rules. The costs include staff time to write, review, and direct the rules through the rulemaking process and to create an approval of source application form to reflect the amended rule. Additionally, the benefit of having the amended rules for person that processes and sells bottled water include having clarity in the approval of a source application process and confident the Department process for all applications is fair, consistent, and completed in a timely manner. The 2004 EIS also stated that the proposed rules will have no effect on state revenues and the methods selected are the least costly and least intrusive available to provide quality standards for bottled water processed and sold in Arizona.

During fiscal year 2021, there were 56 approved bottled water processing plants located in Cochise, La Paz, Maricopa, Mohave, and Pinal counties. Additionally, during 2021, county environmental staff completed 95 routine inspections, 3 complaint inspections, and no enforcement action. The Department clarifies that the Department delegates its authority to regulate bottled water processing to the county health departments and environmental health departments. See A.R.S. § 36-136(D). County sanitarians use these rules in conjunction with county codes to conduct inspections of bottled water processing plants. The Department has no record of receiving an application for approval of a new water source since before these rules were last amended. The Department believes the costs and benefits identified in the 2004 EIS are generally consistent with the actual costs and benefits of the rules.

9. **Has the agency received any business competitiveness analyses of the rules?**
   - Yes ___
   - No _✓_

10. **Has the agency completed the course of action indicated in the agency’s previous five-year-review report?**
    Please state what the previous course of action was and if the agency did not complete the action, please explain why not.
    In the 2017 5YRR course of action the Department indicated that although the rules are effective, the Department planned to address issues identified in the 5YRR in a Notice of Final Rulemaking. The Department also stated that it anticipated submitting the Notice of Final Rulemaking to the Governor’s Regulatory Review Council by June 2019. As stated in the 2017 5YRR, the Department amended rules in 9 A.A.C. 8, Article 2 to address the
issues identified and filed a Notice of Final Expedited Rulemaking on January 10, 2018 with the Arizona Secretary of State.

11. **A determination that the probable benefits of the rule outweigh within this state the probable costs of the rule, and the rule imposes the least burden and costs to regulated persons by the rule, including paperwork and other compliance costs, necessary to achieve the underlying regulatory objective:**

The Department and county health departments use the rules as written without increased costs or burden since the promulgation of rules in the 2018 Notice of Expedited Rulemaking. The Department excepts that the rules provide the least burden and cost to persons that process and sell bottled water and achieves the regulatory objective consistent with statutory requirements.

12. **Are the rules more stringent than corresponding federal laws?**

   Yes ___    No √

   *Please provide a citation for the federal law(s). And if the rule(s) is more stringent, is there statutory authority to exceed the requirements of federal law(s)?*

   No, the rules are not more stringent than federal laws and are consistent with the 21 CFR 165.110 and 21 CFR 129.80.

   Subsequent to filing the 9 A.A.C. 8, Article 2, Bottled Water, Five-Year-Review Report (Report), the Department received a written Petition for Rulemaking pursuant to A.R.S. § 41-1033(A)(1) (Petition). According to the Petition, the Bottled Water rules are more stringent than corresponding federal laws, because they allegedly exclude other viable sources of water that may be approved for bottling water. The Petition requests that the Department make a final rule to amend the definition of “source” found in A.A.C. R9-8-201.

   Based on the foregoing, the Department is amending the Report and is initiating a rulemaking.

13. **For rules adopted after July 29, 2010 that require the issuance of a regulatory permit, license, or agency authorization, whether the rules are in compliance with the general permit requirements of A.R.S. § 41-1037 or explain why the agency believes an exception applies:**

   The rules were adopted in August 1990.

14. **Proposed course of action:**

   The Department in its review of the Article 2 rules has determined that the rules are effective. In this five-year-review report, the Department identifies no substantive matters that prevent the rules from being effective, clear, and enforceable. In this proposed course of actions, the Department does not plan to amend the rules.

   Subsequent to filing of the Report, the Department received the Petition. In response to the Petition, the Department is initiating a rulemaking to clarify and potentially expand what is considered an approved “source” of water for bottled water. In furtherance of this, a request for an exception from the 2022 Rulemaking Moratorium to conduct a rulemaking was submitted to and has been approved by the Governor’s Office.
ARTICLE 2. BOTTLED WATER

R9-8-201. Definitions

In this Article, unless the context otherwise requires:

1. “Applicant” has the same meaning as in R9-8-101.
2. “Aquifer” means a layer of underground sand, gravel or porous rock where water collects.
3. “Artesian well” means a drilled well that accesses an aquifer with a water level that stands above the bottom of the confining bed of the aquifer.
5. “Bottled water plant” means a food establishment that processes and sells bottled water.
7. “Confining bed” means a layer of ground that resists water penetration.
8. “Department” means the Arizona Department of Health Services.
9. “Drilled well” means a hole bored into the ground to reach underground water.
10. “Food establishment” has the same meaning as in A.A.C. Title 9, Chapter 8, Article 1.
11. “Licensed laboratory” means a laboratory licensed by the Department under A.R.S. Title 36, Chapter 4.3, Article 1.
12. “Plant operator” means an individual designated by the applicant to operate a specific bottled water plant.
14. “Public water system” has the same meaning as in A.R.S. § 49-352(B)(1).
15. “Source” means an artesian well, drilled well, public water system, or spring.
16. “Source water” means water from an artesian well, drilled well, public water system, or spring.

R9-8-202. General Requirements

A food establishment that processes and sells bottled water in Arizona shall use a source approved by the Department.

R9-8-203. Application for an Approval of a Source

Please note that the Chapter you are about to replace may have rules still in effect after the publication date of this supplement. Therefore, all superseded material should be retained in a separate binder and archived for future reference.
CHAPTER 8. DEPARTMENT OF HEALTH SERVICES - FOOD, RECREATIONAL, AND INSTITUTIONAL SANITATION

A. An applicant shall complete and submit to the Department, an application for an approval of a source on a form provided by the Department that includes:
   1. The name, mailing address, and telephone number of the applicant;
   2. The name, street address, and telephone number of the bottled water plant;
   3. The location of the source used at the bottled water plant;
   4. The applicant’s signature; and
   5. The date the application is signed.

B. With the completed application, an applicant shall include test results from a licensed laboratory that has tested the bottled water according to the quality requirements for bottled water in 21 CFR 165.110(b) (2016), incorporated by reference, on file with the Department, including no future editions or amendments, and available from the U.S. Government Printing Office, 732 N. Capitol Street, N.W. Washington, D.C. 20401-001.

C. An applicant shall comply with subsections (A) and (B) for each source used at the bottled water plant.

R9-8-204. Time-frames

A. The overall time-frame described in A.R.S. § 41-1072 for the Department to act on an application for an approval of a source is 60 days. The applicant and the Department may agree in writing to extend the substantive review time-frame and the overall time-frame by no more than 25% of the overall time-frame.

B. The administrative completeness review time-frame described in A.R.S. § 41-1072 for an application for an approval of a source is 30 days and begins on the date the application is received.

1. The Department shall mail notice of administrative completeness or deficiencies to the applicant within the administrative completeness review time-frame.
   a. A notice of deficiencies shall list each deficiency and the information and documentation needed to complete the application.
   b. If the Department issues a notice of deficiencies within the administrative completeness review time-frame, the administrative completeness review time-frame and the overall time-frame are suspended from the date that the notice is issued until the date the Department receives the missing information from the applicant.
   c. If the applicant fails to submit to the Department all the information and documents listed in the notice of deficiencies within 60 days of the date the Department mailed the notice of deficiencies, the Department deems the application for approval of a source withdrawn.

2. If the Department issues an approval of a source to the applicant during the administrative completeness review time-frame, the Department does not issue a separate written notice of administrative completeness.
CHAPTER 8. DEPARTMENT OF HEALTH SERVICES - FOOD, RECREATIONAL, AND INSTITUTIONAL SANITATION

C. The substantive review time-frame described in A.R.S. § 41-1072 is 30 days and begins on the date the notice of administrative completeness is mailed to the applicant.
   1. The Department shall mail an approval of a source or a written notification of denial of approval to the applicant within the substantive review time-frame.
   2. If the Department issues a comprehensive written request or supplemental request for information, the substantive review time-frame and the overall time-frame are suspended from the date the Department issues the request until the date the Department receives all of the information.
   3. If the Department denies approval of a source, the Department shall send the applicant a written notice of disapproval that lists the reasons for disapproval and all other information required in A.R.S. § 41-1076.

D. If a time-frame’s last day is on a Saturday, Sunday, or legal holiday, the Department considers the next business day as the time-frame’s last day.

R9-8-205. Quality Testing Requirements

A. To maintain approval of its source, a plant operator shall have a licensed laboratory test the quality of the bottled water at the times stated in 21 CFR 129.80(g) (2016), incorporated by reference, on file with the Department, including no future editions or amendments, and available from the U.S. Government Printing Office, 732 N. Capitol Street, N.W. Washington, D.C. 20401-001.

B. A plant operator shall maintain records of the quality testing of the bottled water on the bottled water plant premises for two years from the date the bottled water is tested and ensure that the records are readily available for inspection by the Department.

R9-8-206. Labeling Requirements

In addition to the labeling requirements in 9 A.A.C. 8, Article 1, a plant operator shall ensure the bottled water processed and sold is labeled according to 21 CFR 129.80(e) (2016), incorporated by reference, on file with the Department, including no future editions or amendments, and available from the U.S. Government Printing Office, 732 N. Capitol Street, N.W. Washington, D.C. 20401-001.
ATTACHMENT B

36-132. Department of health services; functions; contracts

A. The department, in addition to other powers and duties vested in it by law, shall:

1. Protect the health of the people of the state.

2. Promote the development, maintenance, efficiency and effectiveness of local health departments or districts of sufficient population and area that they can be sustained with reasonable economy and efficient administration, provide technical consultation and assistance to local health departments or districts, provide financial assistance to local health departments or districts and services that meet minimum standards of personnel and performance and in accordance with a plan and budget submitted by the local health department or districts to the department for approval, and recommend the qualifications of all personnel.

3. Collect, preserve, tabulate and interpret all information required by law in reference to births, deaths and all vital facts, and obtain, collect and preserve information relating to the health of the people of this state and the prevention of diseases as may be useful in the discharge of functions of the department not in conflict with chapter 3 of this title and sections 36-693, 36-694 and 39-122.

4. Operate such sanitariums, hospitals or other facilities assigned to the department by law or by the governor.

5. Conduct a statewide program of health education relevant to the powers and duties of the department, prepare educational materials and disseminate information as to conditions affecting health, including basic information for the promotion of good health on the part of individuals and communities, and prepare and disseminate technical information concerning public health to the health professions, local health officials and hospitals. In cooperation with the department of education, the department of health services shall prepare and disseminate materials and give technical assistance for the purpose of education of children in hygiene, sanitation and personal and public health, and provide consultation and assistance in community organization to counties, communities and groups of people.

6. Administer or supervise a program of public health nursing, prescribe the minimum qualifications of all public health nurses engaged in official public health work, and encourage and aid in coordinating local public health nursing services.

7. Encourage and aid in coordinating local programs concerning control of preventable diseases in accordance with statewide plans that shall be formulated by the department.

8. Encourage and aid in coordinating local programs concerning maternal and child health, including midwifery, antepartum and postpartum care, infant and preschool health and the health of schoolchildren, including special fields such as the prevention of blindness and conservation of sight and hearing.

9. Encourage and aid in the coordination of local programs concerning nutrition of the people of this state.

10. Encourage, administer and provide dental health care services and aid in coordinating local programs concerning dental public health, in cooperation with the Arizona dental association. The department may bill and receive payment for costs associated with providing dental health care services and shall deposit the monies in the oral health fund established by section 36-138.
11. Establish and maintain adequate serological, bacteriological, parasitological, entomological and chemical laboratories with qualified assistants and facilities necessary for routine examinations and analyses and for investigations and research in matters affecting public health.

12. Supervise, inspect and enforce the rules concerning the operation of public bathing places and public and semipublic swimming pools adopted pursuant to section 36-136, subsection I, paragraph 10.

13. Take all actions necessary or appropriate to ensure that bottled water sold to the public and water used to process, store, handle, serve and transport food and drink are free from filth, disease-causing substances and organisms and unwholesome, poisonous, deleterious or other foreign substances. All state agencies and local health agencies involved with water quality shall provide to the department any assistance requested by the director to ensure that this paragraph is effectuated.

14. Enforce the state food, caustic alkali and acid laws in accordance with chapter 2, article 2 of this title, chapter 8, article 1 of this title and chapter 9, article 4 of this title, and collaborate in the enforcement of the federal food, drug, and cosmetic act (52 Stat. 1040; 21 United States Code sections 1 through 905).

15. Recruit and train personnel for state, local and district health departments.

16. Conduct continuing evaluations of state, local and district public health programs, study and appraise state health problems and develop broad plans for use by the department and for recommendation to other agencies, professions and local health departments for the best solution of these problems.

17. License and regulate health care institutions according to chapter 4 of this title.

18. Issue or direct the issuance of licenses and permits required by law.

19. Participate in the state civil defense program and develop the necessary organization and facilities to meet wartime or other disasters.

20. Subject to the availability of monies, develop and administer programs in perinatal health care, including:
   (a) Screening in early pregnancy for detecting high-risk conditions.
   (b) Comprehensive prenatal health care.
   (c) Maternity, delivery and postpartum care.
   (d) Perinatal consultation, including transportation of the pregnant woman to a perinatal care center when medically indicated.
   (e) Perinatal education oriented toward professionals and consumers, focusing on early detection and adequate intervention to avert premature labor and delivery.

21. License and regulate the health and safety of group homes for persons with developmental disabilities. The department shall issue a license to an accredited facility for a period of the accreditation, except that no licensing period shall be longer than three years. The department is authorized to conduct an inspection of an accredited facility to ensure that the facility meets health and safety licensure standards. The results of the accreditation survey shall be public information. A copy of the final accreditation report shall be filed with the department of
health services. For the purposes of this paragraph, "accredited" means accredited by a nationally recognized accreditation organization.

B. The department may accept from the state or federal government, or any agency of the state or federal government, and from private donors, trusts, foundations or eleemosynary corporations or organizations grants or donations for or in aid of the construction or maintenance of any program, project, research or facility authorized by this title, or in aid of the extension or enforcement of any program, project or facility authorized, regulated or prohibited by this title, and enter into contracts with the federal government, or an agency of the federal government, and with private donors, trusts, foundations or eleemosynary corporations or organizations, to carry out such purposes. All monies made available under this section are special project grants. The department may also expend these monies to further applicable scientific research within this state.

C. The department, in establishing fees authorized by this section, shall comply with title 41, chapter 6. The department shall not set a fee at more than the department's cost of providing the service for which the fee is charged. State agencies are exempt from all fees imposed pursuant to this section.

D. The department may enter into contracts with organizations that perform nonrenal organ transplant operations and organizations that primarily assist in the management of end-stage renal disease and related problems to provide, as payors of last resort, prescription medications necessary to supplement treatment and transportation to and from treatment facilities. The contracts may provide for department payment of administrative costs it specifically authorizes.

36-136. Powers and duties of director; compensation of personnel; rules; definitions

A. The director shall:

1. Be the executive officer of the department of health services and the state registrar of vital statistics but shall not receive compensation for services as registrar.
2. Perform all duties necessary to carry out the functions and responsibilities of the department.
3. Prescribe the organization of the department. The director shall appoint or remove personnel as necessary for the efficient work of the department and shall prescribe the duties of all personnel. The director may abolish any office or position in the department that the director believes is unnecessary.
4. Administer and enforce the laws relating to health and sanitation and the rules of the department.
5. Provide for the examination of any premises if the director has reasonable cause to believe that on the premises there exists a violation of any health law or rule of this state.
6. Exercise general supervision over all matters relating to sanitation and health throughout this state. When in the opinion of the director it is necessary or advisable, a sanitary survey of the whole or of any part of this state shall be made. The director may enter, examine and survey any source and means of water supply, sewage disposal plant, sewerage system, prison, public or private place of detention, asylum, hospital, school, public building, private institution, factory, workshop, tenement, public washroom, public restroom, public toilet and toilet facili-
ty, public eating room and restaurant, dairy, milk plant or food manufacturing or processing plant, and any premises in which the director has reason to believe there exists a violation of any health law or rule of this state that the director has the duty to administer.

7. Prepare sanitary and public health rules.

8. Perform other duties prescribed by law.

B. If the director has reasonable cause to believe that there exists a violation of any health law or rule of this state, the director may inspect any person or property in transportation through this state, and any car, boat, train, trailer, airplane or other vehicle in which that person or property is transported, and may enforce detention or disinfection as reasonably necessary for the public health if there exists a violation of any health law or rule.

C. The director, after consultation with the department of administration, may take all necessary steps to enhance the highest and best use of the state hospital property, including contracting with third parties to provide services, entering into short-term lease agreements with third parties to occupy or renovate existing buildings and entering into long-term lease agreements to develop the land and buildings. The director shall deposit any monies collected from contracts and lease agreements entered into pursuant to this subsection in the Arizona state hospital charitable trust fund established by section 36-218. At least thirty days before issuing a request for proposals pursuant to this subsection, the department of health services shall hold a public hearing to receive community and provider input regarding the highest and best use of the state hospital property related to the request for proposals. The department shall report to the joint committee on capital review on the terms, conditions and purpose of any lease or sublease agreement entered into pursuant to this subsection relating to state hospital lands or buildings or the disposition of real property pursuant to this subsection, including state hospital lands or buildings, and the fiscal impact on the department and any revenues generated by the agreement. Any lease or sublease agreement entered into pursuant to this subsection relating to state hospital lands or buildings or the disposition of real property pursuant to this subsection, including state hospital lands or buildings, must be reviewed by the joint committee on capital review.

D. The director may deputize, in writing, any qualified officer or employee in the department to do or perform on the director's behalf any act the director is by law empowered to do or charged with the responsibility of doing.

E. The director may delegate to a local health department, county environmental department or public health services district any functions, powers or duties that the director believes can be competently, efficiently and properly performed by the local health department, county environmental department or public health services district if:

1. The director or superintendent of the local health agency, environmental agency or public health services district is willing to accept the delegation and agrees to perform or exercise the functions, powers and duties conferred in accordance with the standards of performance established by the director of the department of health services.

2. Monies appropriated or otherwise made available to the department for distribution to or division among counties or public health services districts for local health work may be allocated or reallocated in a manner designed...
to ensure the accomplishment of recognized local public health activities and delegated functions, powers and
duties in accordance with applicable standards of performance. If in the director's opinion there is cause, the di-
rector may terminate all or a part of any delegation and may reallocate all or a part of any funds that may have
been conditioned on the further performance of the functions, powers or duties conferred.

F. The compensation of all personnel shall be as determined pursuant to section 38-611.

G. The director may make and amend rules necessary for the proper administration and enforcement of the laws
relating to the public health.

H. Notwithstanding subsection I, paragraph 1 of this section, the director may define and prescribe emergency
measures for detecting, reporting, preventing and controlling communicable or infectious diseases or conditions if
the director has reasonable cause to believe that a serious threat to public health and welfare exists. Emergency
measures are effective for not longer than eighteen months.

I. The director, by rule, shall:

1. Define and prescribe reasonably necessary measures for detecting, reporting, preventing and controlling com-
municable and preventable diseases. The rules shall declare certain diseases reportable. The rules shall prescribe
measures, including isolation or quarantine, that are reasonably required to prevent the occurrence of, or to seek
early detection and alleviation of, disability, insofar as possible, from communicable or preventable diseases. The
rules shall include reasonably necessary measures to control animal diseases transmittable to humans.

2. Define and prescribe reasonably necessary measures, in addition to those prescribed by law, regarding the
preparation, embalming, cremation, interment, disinterment and transportation of dead human bodies and the
conduct of funerals, relating to and restricted to communicable diseases and regarding the removal, transportation,
cremation, interment or disinterment of any dead human body.

3. Define and prescribe reasonably necessary procedures that are not inconsistent with law in regard to the use and
accessibility of vital records, delayed birth registration and the completion, change and amendment of vital rec-
ords.

4. Except as relating to the beneficial use of wildlife meat by public institutions and charitable organizations pur-
suant to title 17, prescribe reasonably necessary measures to ensure that all food or drink, including meat and
meat products and milk and milk products sold at the retail level, provided for human consumption is free from
unwholesome, poisonous or other foreign substances and filth, insects or disease-causing organisms. The rules
shall prescribe reasonably necessary measures governing the production, processing, labeling, storing, handling,
serving and transportation of these products. The rules shall prescribe minimum standards for the sanitary facili-
ties and conditions that shall be maintained in any warehouse, restaurant or other premises, except a meat packing
plant, slaughterhouse, wholesale meat processing plant, dairy product manufacturing plant or trade product man-
ufacturing plant. The rules shall prescribe minimum standards for any truck or other vehicle in which food or
drink is produced, processed, stored, handled, served or transported. The rules shall provide for the inspection and
licensing of premises and vehicles so used, and for abatement as public nuisances of any premises or vehicles that
do not comply with the rules and minimum standards. The rules shall provide an exemption relating to food or drink that is:

(a) Served at a noncommercial social event such as a potluck.
(b) Prepared at a cooking school that is conducted in an owner-occupied home.
(c) Not potentially hazardous and prepared in a kitchen of a private home for occasional sale or distribution for noncommercial purposes.
(d) Prepared or served at an employee-conducted function that lasts less than four hours and is not regularly scheduled, such as an employee recognition, an employee fundraising or an employee social event.
(e) Offered at a child care facility and limited to commercially prepackaged food that is not potentially hazardous and whole fruits and vegetables that are washed and cut on-site for immediate consumption.
(f) Offered at locations that sell only commercially prepackaged food or drink that is not potentially hazardous.
(g) A cottage food product that is not potentially hazardous or a time or temperature control for safety food and that is prepared in a kitchen of a private home for commercial purposes, including fruit jams and jellies, dry mixes made with ingredients from approved sources, honey, dry pasta and roasted nuts. Cottage food products must be packaged at home with an attached label that clearly states the name and registration number of the food preparer, lists all the ingredients in the product and the product's production date and includes the following statement: "This product was produced in a home kitchen that may process common food allergens and is not subject to public health inspection." If the product was made in a facility for individuals with developmental disabilities, the label must also disclose that fact. The person preparing the food or supervising the food preparation must complete a food handler training course from an accredited program and maintain active certification. The food preparer must register with an online registry established by the department pursuant to paragraph 13 of this subsection. The food preparer must display the preparer's certificate of registration when operating as a temporary food establishment. For the purposes of this subdivision, "not potentially hazardous" means cottage food products that meet the requirements of the food code published by the United States food and drug administration, as modified and incorporated by reference by the department by rule.
(h) A whole fruit or vegetable grown in a public school garden that is washed and cut on-site for immediate consumption.
(i) Produce in a packing or holding facility that is subject to the United States food and drug administration produce safety rule (21 Code of Federal Regulations part 112) as administered by the Arizona department of agriculture pursuant to title 3, chapter 3, article 4.1. For the purposes of this subdivision, "holding", "packing" and "produce" have the same meanings prescribed in section 3-525.
(j) Spirituous liquor produced on the premises licensed by the department of liquor licenses and control. This exemption includes both of the following:

(i) The area in which production and manufacturing of spirituous liquor occurs, as defined in an active basic permit on file with the United States alcohol and tobacco tax and trade bureau.
(ii) The area licensed by the department of liquor licenses and control as a microbrewery, farm winery or craft distiller that is open to the public and serves spirituous liquor and commercially prepackaged food, crackers or pretzels for consumption on the premises. A producer of spirituous liquor may not provide, allow or expose for common use any cup, glass or other receptacle used for drinking purposes. For the purposes of this item, "common use" means the use of a drinking receptacle for drinking purposes by or for more than one person without the receptacle being thoroughly cleansed and sanitized between consecutive uses by methods prescribed by or acceptable to the department.

5. Prescribe reasonably necessary measures to ensure that all meat and meat products for human consumption handled at the retail level are delivered in a manner and from sources approved by the Arizona department of agriculture and are free from unwholesome, poisonous or other foreign substances and filth, insects or disease-causing organisms. The rules shall prescribe standards for sanitary facilities to be used in identity, storage, handling and sale of all meat and meat products sold at the retail level.

6. Prescribe reasonably necessary measures regarding production, processing, labeling, handling, serving and transportation of bottled water to ensure that all bottled drinking water distributed for human consumption is free from unwholesome, poisonous, deleterious or other foreign substances and filth or disease-causing organisms. The rules shall prescribe minimum standards for the sanitary facilities and conditions that shall be maintained at any source of water, bottling plant and truck or vehicle in which bottled water is produced, processed, stored or transported and shall provide for inspection and certification of bottled drinking water sources, plants, processes and transportation and for abatement as a public nuisance of any water supply, label, premises, equipment, process or vehicle that does not comply with the minimum standards. The rules shall prescribe minimum standards for bacteriological, physical and chemical quality for bottled water and for the submission of samples at intervals prescribed in the standards.

7. Define and prescribe reasonably necessary measures governing ice production, handling, storing and distribution to ensure that all ice sold or distributed for human consumption or for preserving or storing food for human consumption is free from unwholesome, poisonous, deleterious or other foreign substances and filth or disease-causing organisms. The rules shall prescribe minimum standards for the sanitary facilities and conditions and the quality of ice that shall be maintained at any ice plant, storage and truck or vehicle in which ice is produced, stored, handled or transported and shall provide for inspection and licensing of the premises and vehicles, and for abatement as public nuisances of ice, premises, equipment, processes or vehicles that do not comply with the minimum standards.

8. Define and prescribe reasonably necessary measures concerning sewage and excreta disposal, garbage and trash collection, storage and disposal, and water supply for recreational and summer camps, campgrounds, motels, tourist courts, trailer coach parks and hotels. The rules shall prescribe minimum standards for preparing food in community kitchens, adequacy of excreta disposal, garbage and trash collection, storage and disposal and water supply for recreational and summer camps, campgrounds, motels, tourist courts, trailer coach parks and hotels and
shall provide for inspection of these premises and for abatement as public nuisances of any premises or facilities that do not comply with the rules. Primitive camp and picnic grounds offered by this state or a political subdivision of this state are exempt from rules adopted pursuant to this paragraph but are subject to approval by a county health department under sanitary regulations adopted pursuant to section 36-183.02. Rules adopted pursuant to this paragraph do not apply to two or fewer recreational vehicles as defined in section 33-2102 that are not park models or park trailers, that are parked on owner-occupied residential property for less than sixty days and for which no rent or other compensation is paid. For the purposes of this paragraph, "primitive camp and picnic grounds" means camp and picnic grounds that are remote in nature and without accessibility to public infrastructure such as water, electricity and sewer.

9. Define and prescribe reasonably necessary measures concerning the sewage and excreta disposal, garbage and trash collection, storage and disposal, water supply and food preparation of all public schools. The rules shall prescribe minimum standards for sanitary conditions that shall be maintained in any public school and shall provide for inspection of these premises and facilities and for abatement as public nuisances of any premises that do not comply with the minimum standards.

10. Prescribe reasonably necessary measures to prevent pollution of water used in public or semipublic swimming pools and bathing places and to prevent deleterious health conditions at these places. The rules shall prescribe minimum standards for sanitary conditions that shall be maintained at any public or semipublic swimming pool or bathing place and shall provide for inspection of these premises and for abatement as public nuisances of any premises and facilities that do not comply with the minimum standards. The rules shall be developed in cooperation with the director of the department of environmental quality and shall be consistent with the rules adopted by the director of the department of environmental quality pursuant to section 49-104, subsection B, paragraph 12.

11. Prescribe reasonably necessary measures to keep confidential information relating to diagnostic findings and treatment of patients, as well as information relating to contacts, suspects and associates of communicable disease patients. In no event shall confidential information be made available for political or commercial purposes.

12. Prescribe reasonably necessary measures regarding human immunodeficiency virus testing as a means to control the transmission of that virus, including the designation of anonymous test sites as dictated by current epidemiologic and scientific evidence.

13. Establish an online registry of food preparers that are authorized to prepare cottage food products for commercial purposes pursuant to paragraph 4 of this subsection. A registered food preparer shall renew the registration every three years and shall provide to the department updated registration information within thirty days after any change.

14. Prescribe an exclusion for fetal demise cases from the standardized survey known as "the hospital consumer assessment of healthcare providers and systems".

J. The rules adopted under the authority conferred by this section shall be observed throughout the state and shall be enforced by each local board of health or public health services district, but this section does not limit the right
of any local board of health or county board of supervisors to adopt ordinances and rules as authorized by law within its jurisdiction, provided that the ordinances and rules do not conflict with state law and are equal to or more restrictive than the rules of the director.

K. The powers and duties prescribed by this section do not apply in instances in which regulatory powers and duties relating to public health are vested by the legislature in any other state board, commission, agency or instrumentality, except that with regard to the regulation of meat and meat products, the department of health services and the Arizona department of agriculture within the area delegated to each shall adopt rules that are not in conflict.

L. The director, in establishing fees authorized by this section, shall comply with title 41, chapter 6. The department shall not set a fee at more than the department's cost of providing the service for which the fee is charged. State agencies are exempt from all fees imposed pursuant to this section.

M. After consultation with the state superintendent of public instruction, the director shall prescribe the criteria the department shall use in deciding whether or not to notify a local school district that a pupil in the district has tested positive for the human immunodeficiency virus antibody. The director shall prescribe the procedure by which the department shall notify a school district if, pursuant to these criteria, the department determines that notification is warranted in a particular situation. This procedure shall include a requirement that before notification the department shall determine to its satisfaction that the district has an appropriate policy relating to nondiscrimination of the infected pupil and confidentiality of test results and that proper educational counseling has been or will be provided to staff and pupils.

N. Until the department adopts exemptions by rule as required by subsection I, paragraph 4, subdivision (f) of this section, food and drink are exempt from the rules prescribed in subsection I of this section if offered at locations that sell only commercially prepackaged food or drink that is not potentially hazardous, without a limitation on its display area.

O. Until the department adopts exemptions by rule as required by subsection I, paragraph 4, subdivision (h) of this section, a whole fruit or vegetable grown in a public school garden that is washed and cut on-site for immediate consumption is exempt from the rules prescribed in subsection I of this section.

P. Until the department adopts an exclusion by rule as required by subsection I, paragraph 14 of this section, the standardized survey known as "the hospital consumer assessment of healthcare providers and systems" may not include patients who experience a fetal demise.

Q. Until the department adopts exemptions by rule as required by subsection I, paragraph 4, subdivision (j) of this section, spirituous liquor and commercially prepackaged food, crackers or pretzels that meet the requirements of subsection I, paragraph 4, subdivision (j) of this section are exempt from the rules prescribed in subsection I of this section.

R. For the purposes of this section:

1. "Cottage food product":
(a) Means a food that is not potentially hazardous or a time or temperature control for safety food as defined by the department in rule and that is prepared in a home kitchen by an individual who is registered with the department.

(b) Does not include foods that require refrigeration, perishable baked goods, salsas, sauces, fermented and pickled foods, meat, fish and shellfish products, beverages, acidified food products, nut butters or other reduced-oxygen packaged products.

2. "Fetal demise" means a fetal death that occurs or is confirmed in a licensed hospital. Fetal demise does not include an abortion as defined in section 36-2151.
GOVERNOR’S REGULATORY REVIEW COUNCIL
ATTORNEY MEMORANDUM - FIVE-YEAR REVIEW REPORT

MEETING DATE: July 6, 2022

TO: Members of the Governor’s Regulatory Review Council (Council)

FROM: Council Staff

DATE: June 20, 2022

SUBJECT: DEPARTMENT OF TRANSPORTATION
Title 17, Chapter 5, Article 8

Summary

This Five-Year-Review Report (5YRR) from the Department of Transportation relates to rules in Title 17, Chapter 5, Article 8 regarding reporting motor vehicle insurance and financial responsibility information.

ARS § 28-366 authorizes the Director of the Arizona Department of Transportation to establish rules deemed necessary for collecting fees, ensuring public safety, enforcing the transportation laws the Director administers, and preventing abuse and unauthorized use of state highways. The rules in Title 17, Chapter 5, Article 8 prescribe insurance company electronic reporting requirements for motor vehicle liability, insurance coverage, information that should be reported to the Department for each vehicle-specific and non-vehicle specific commercial policies, electronic data interchange reporting methods, Department responses to reporting errors, notification of company failure to submit insurance data, self-insurance applicant requirements, and use of a certificate of deposit as an alternate proof of financial responsibility.

The Department completed the course of action indicated in its previous 5YRR on these rules by an expedited rulemaking that was effective January 2018.

Proposed Action
The Department proposes to take no action regarding these rules.

1. **Has the agency analyzed whether the rules are authorized by statute?**

   Yes, the Department cites both general and specific authority for these rules.

2. **Summary of the agency’s economic impact comparison and identification of stakeholders:**

   According to the Department, the economic impact of these rules have remained as indicated in the Department’s last comprehensive rulemaking on this Article at 13 A.A.R. 858, effective March 6, 2007, and the expedited rulemaking at 24 A.A.R. 279, effective January 12, 2018.

   The Department has benefited from a significant reduction in the administrative costs previously expended to manually process and maintain the large number of SR22 and SR26 forms received from all insurance companies, which totaled 285,127 in 2006 and 153,038 in 2021.

   Stakeholders include the Department, persons and business entities seeking to self-insure, and insurance companies.

3. **Has the agency analyzed the costs and benefits of the rulemaking and determined that the rules impose the least burden and costs to those who are regulated?**

   The Department routinely adopts the least costly and least burdensome option for any process or procedure required of the regulated public or business. The Department believes that these rules impose the least burden and cost to persons regulated by the rules, including paperwork and other compliance costs necessary to achieve the underlying objectives. The Department continues to work closely with all affected companies and industry representatives to ensure every success in implementing these rules.

4. **Has the agency received any written criticisms of the rules over the last five years?**

   No, the Department indicates it has not received written criticisms of the rules in the last five years.

5. **Has the agency analyzed the rules’ clarity, conciseness, and understandability?**

   Yes, the Department indicates the rules are clear, concise, and understandable.

6. **Has the agency analyzed the rules’ consistency with other rules and statutes?**

   Yes, the Department indicates the rules are consistent with other rules and statutes.
7. **Has the agency analyzed the rules’ effectiveness in achieving its objectives?**

   Yes, the Department indicates the rules are effective in achieving their objectives.

8. **Has the agency analyzed the current enforcement status of the rules?**

   Yes, the Department indicates the rules are enforced as written.

9. **Are the rules more stringent than corresponding federal law and, if so, is there statutory authority to exceed the requirements of federal law?**

   Not applicable. The Department indicates there is no corresponding federal law.

10. **For rules adopted after July 29, 2010, do the rules require a permit or license and, if so, does the agency comply with A.R.S. § 41-1037?**

    Not applicable. The rules do not require a permit, license or agency authorization.

11. **Conclusion**

    This 5YRR relates to rules in Title 17, Chapter 5, Article 8 regarding reporting insurance and financial responsibility of motor vehicles. The Department indicates the rules are generally clear, concise, understandable, consistent, effective, and enforced as written. The Department does not intend to take any action regarding these rules.

    Council staff finds the Department submitted a report that meets the requirements of A.R.S.§ 41-1056. Council staff recommends approval of this report.
March 31, 2022

VIA EMAIL: grrc@azdoa.gov
Ms. Nicole Sornsin, Chair
Governor’s Regulatory Review Council
100 N 15th Avenue, Suite 305
Phoenix, Arizona 85007

RE: Arizona Department of Transportation, 17 A.A.C. Chapter 5, Article 8, Five-year Review Report

Dear Ms. Sornsin:

Please find enclosed the Arizona Department of Transportation’s Five-year Review Report covering all rules located under 17 A.A.C. Chapter 5, Article 8, which is due on March 31, 2022.

This document complies with all requirements under A.R.S. § 41-1056 and A.A.C. R1-6-301. The Department certifies that it is in full compliance with the requirements of A.R.S. § 41-1091.

For information regarding the report, please communicate directly with John Lindley, Senior Rules Analyst, at (480) 267-6543 or email JLindley@azdot.gov.

Sincerely,

John S. Halikowski
Director

Enclosure
Government Relations & Rules
Office of the Director

Five-Year Review Report

A.A.C. Title 17 – Transportation
Chapter 5. Department of Transportation
Commercial Programs

Douglas A. Ducey  Governor
John S. Halikowski  ADOT Director

Submitted to the Governor’s Regulatory Review Council March 2022
Arizona Department of Transportation

5-YEAR REVIEW REPORT

Title 17. Transportation

Chapter 5. Department of Transportation - Commercial Programs

Article 8. Mandatory Insurance and Financial Responsibility

March 31, 2022

1. **Authorization of the rule by existing statutes**

   General Statutory Authority: A.R.S. §§ 28-366 and 28-4002


2. **The objective of each rule:**

<table>
<thead>
<tr>
<th>Rule</th>
<th>Objective</th>
</tr>
</thead>
<tbody>
<tr>
<td>R17-5-801. Definitions</td>
<td>To clarify the Department’s intended meaning for certain terms and phrases used throughout the Article.</td>
</tr>
<tr>
<td>R17-5-802. Insurance Company Electronic Reporting Requirement; Applicability</td>
<td>To inform insurance companies and the public about the methods of reporting insurance information electronically and the applicability of this requirement to companies based on the number of their annual SR22 policy issuances.</td>
</tr>
<tr>
<td>R17-5-803. Insurance Company Reportable Activity</td>
<td>To specify the types of reportable activity that insurance companies should report to the Department and the timeframe for reporting.</td>
</tr>
<tr>
<td>R17-5-804. Record Matching Criteria for a Vehicle-specific Policy</td>
<td>To inform insurance companies about the information that must be reported to the Department for each vehicle-specific insurance policy to ensure that information can be identified and any appropriate action can be taken.</td>
</tr>
<tr>
<td>R17-5-805. Record Matching Criteria for a Non-vehicle-specific Commercial Policy</td>
<td>To inform the public and insurance companies about the specific information to report to the Department for a non-vehicle specific commercial insurance policy, and the reporting timeframe, to ensure that information can be identified and any appropriate action can be taken.</td>
</tr>
<tr>
<td>R17-5-806. Department-authorized EDI Reporting Methods; Reporting Schedule</td>
<td>To specify the electronic data interchange methods that must be used for an insurance company to submit reportable activity to the Department to ensure uniformity in reporting.</td>
</tr>
<tr>
<td>R17-5-807. X12 Data Format for Policy Receipt and Error Return</td>
<td>To inform the public and insurance companies that the format for insurance companies to submit reportable activity to the Department and...</td>
</tr>
</tbody>
</table>
the format used by the Department to return reporting errors is in the *Arizona Mandatory Insurance Reporting System Guide for Insurance Companies*.

<table>
<thead>
<tr>
<th>Rule</th>
<th>Explanation</th>
</tr>
</thead>
<tbody>
<tr>
<td>R17-5-808. Insurance Company Reporting Errors; Resolution; Noncompliance</td>
<td>To inform insurance companies about the Department’s format to return, correct, and notify the Department about reporting errors. Fulfilling these objectives ensures that mandatory insurance information reported will be accurate, information is properly identified, and appropriate action is taken.</td>
</tr>
<tr>
<td>R17-5-809. Insurance Company Failure to Submit Required Data; Request for Hearing</td>
<td>To inform insurance companies and the public regarding the Department’s process, a company’s right to a hearing, and the actions that will occur if an insurance company does not submit mandatory insurance information required in A.R.S. § 28-4148.</td>
</tr>
<tr>
<td>R17-5-810. Self-insurance as Alternate Proof of Financial Responsibility; Provisions; Applicability</td>
<td>To provide the qualifications and information required for a person or company that applies for self-insurance under A.R.S. § 28-4007.</td>
</tr>
<tr>
<td>R17-5-811. Certificate of Deposit as Alternate Proof of Financial Responsibility; Applicability</td>
<td>To cap the number of non-commercial vehicles that may be registered in the person’s name when a person uses a certificate of deposit or cash to meet proof of financial responsibility requirements.</td>
</tr>
</tbody>
</table>

3. **Are the rules effective in achieving their objectives?**
   
   Yes [X]  No ___
   
   *If not, please identify the rule(s) that is not effective and provide an explanation for why the rule(s) is not effective.*

   The rules are effective in achieving their objectives, and the Department does not recommend any rule changes.

4. **Are the rules consistent with other rules and statutes?**
   
   Yes [X]  No ___
   
   *If not, please identify the rule(s) not consistent. Also, provide an explanation and identify the provisions not consistent with the rule(s).*

   These rules are consistent with other rules and statutes.

<table>
<thead>
<tr>
<th>Rule</th>
<th>Explanation</th>
</tr>
</thead>
<tbody>
<tr>
<td>N/A</td>
<td>N/A</td>
</tr>
</tbody>
</table>

5. **Are the rules enforced as written?**
   
   Yes [X]  No ___
   
   *If not, please identify the rule(s) not enforced as written and provide an explanation of the issues with enforcement. In addition, include the agency’s proposal for resolving the issue.*

   The Department enforces these rules as written.

<table>
<thead>
<tr>
<th>Rule</th>
<th>Explanation</th>
</tr>
</thead>
</table>
6. **Are the rules clear, concise, and understandable?**

   Yes  X  No ____

   If not, please identify the rule(s) not clear, concise, or understandable and provide an explanation as to how the agency plans to amend the rule(s) to improve clarity, conciseness, and understandability.

   The rules are clear, concise, and understandable and the Department does not believe any rule changes are necessary.

7. **Has the agency received written criticisms of the rules within the last five years?**

   Yes ___  No  X __

   If yes, please fill out the table below:

   The Department has not received any written criticisms on the rules within the last five years.

<table>
<thead>
<tr>
<th>Commenter</th>
<th>Comment</th>
<th>Agency’s Response</th>
</tr>
</thead>
<tbody>
<tr>
<td>N/A</td>
<td>N/A</td>
<td>N/A</td>
</tr>
</tbody>
</table>

8. **Economic, small business, and consumer impact comparison:**

   The economic impact of these rules has remained the same as indicated in the Department’s last comprehensive rulemaking on this Article at 13 A.A.R. 858, effective March 6, 2007, and the expedited rulemaking at 24 A.A.R. 279, effective January 12, 2018. At that time the Department anticipated only a minimal economic impact to qualified persons and business entities seeking to self-insure under A.R.S. §§ 28-4007 and 28-4076, and costs were anticipated to include only the administrative expenses necessary for preparing an application and providing the Department with the required annual update documentation needed to maintain a current self-insurance certificate. The Department also anticipated a benefit of substantial savings for entities self-insuring standard financial responsibility coverage for fleet vehicles.

   The Department anticipated that insurance companies issuing 1000 or more SR22 policies per year may have experienced a moderate economic impact for the initial programming and implementation of the electronic SR22 and SR26 reporting requirement under R17-5-802. The Department continues to work closely with all affected insurance companies to ensure mutual satisfaction in the use of our electronic reporting system for reporting SR22 and SR26 information in a timely manner. This is the same electronic reporting system the insurance companies routinely use to report all other motor vehicle liability insurance policies to the Department and to other states.

   In calendar year 2016 the Department received 9,420,671 mandatory insurance and financial responsibility reports from insurance companies authorized to conduct business in this state. Of the total data volume, 77 percent of the reports were submitted by file transfer protocol and 23 percent by information exchange. In Calendar Year 2021, the Department received 10,152,784 mandatory insurance and financial responsibility reports electronically from insurance companies authorized to conduct business in this state.

   The electronic SR22 and SR26 reporting functionality significantly benefited the insurance companies and their customers by providing increased reporting accuracy, timeliness in processing, and the ability to provide immediate updates to each customer’s record of insurance on file with the Department. The Department, political subdivisions, and the motoring public
all benefit significantly with the enhanced reporting, compliance capability, and increased reporting accuracy these rules provide.

The Department has benefited with a significant reduction in the administrative costs previously expended to manually process and maintain the large number of SR22 and SR26 forms received from all insurance companies, which totaled:

<table>
<thead>
<tr>
<th>Number of SR22 and SR26 Forms Received from Insurance Companies</th>
</tr>
</thead>
<tbody>
<tr>
<td>Calendar Year 2006</td>
</tr>
<tr>
<td>Calendar Year 2021</td>
</tr>
</tbody>
</table>

The rules additionally preserve the public safety by limiting a $40,000 certificate of deposit filed with the state treasurer, as alternate proof of financial responsibility, to a maximum of 25 non-commercial vehicles registered in a person’s name.

9. **Has the agency received any business competitiveness analyses of the rules?**  
   Yes ___ No X  
   The Department did not receive any business competitive analyses of the rules.

10. **Has the agency completed the course of action indicated in the agency’s previous five-year-review report?**  
    The Department completed the course of action indicated in its previous five-year-review report on these rules by expedited rulemaking at 24 A.A.R. 279, effective January 12, 2018.

11. **A determination that the probable benefits of the rule outweigh within this state the probable costs of the rule, and the rule imposes the least burden and costs to regulated persons by the rule, including paperwork and other compliance costs, necessary to achieve the underlying regulatory objective:**  
    The Department routinely adopts the least costly and least burdensome option for any process or procedure required of the regulated public or businesses. The Department’s 2007 rulemaking imposed moderate upfront costs on insurance companies to electronically report mandatory insurance coverage. Those costs included the resources necessary for implementing the rules, system programming changes, and the administrative costs involved with preparing the SR22 and SR26 policy information for electronic processing with the Department, but the insurance companies should have experienced significant benefits due to the much lower administrative costs expected over time when using the electronic reporting process required by statute and these rules. For implementation of the rules, the Department adopted the standardized data format and reporting method the insurance industry has been using for many years to electronically notify state agencies of valid motor vehicle insurance coverage. Choosing this method lessened the burden on insurance companies and is consistent with the electronic reporting format in many other states. The Department believes that these rules impose the least burden and cost to persons regulated by the rules, including paperwork and other compliance costs necessary to achieve the underlying objectives.

    Customers of the insurance companies should have benefited from the significantly reduced processing times and increased accuracy in the electronic recording of all policy information.

    The Department anticipated a minimal economic impact to qualified persons and business entities subject to these rules who prefer to self-insure under A.R.S. §§ 28-4007 and 28-4076. Those costs included the usual administrative expenses relative to
preparing the application and providing the Department with the annual update documentation required to maintain a current self-insurance certificate. However, over time, these business entities should also have enjoyed the benefit of substantial savings by not having to individually purchase standard financial responsibility coverage for each registered fleet vehicle.

The Department anticipated no additional administrative or other costs associated with compliance of these rules. The rules are intended to incorporate the generally accepted electronic reporting guidelines that most insurance companies are currently using to report insurance information to the Department.

To reduce the initial impact of these rules, the Department provided an exemption from the electronic SR22 and SR26 reporting requirement for insurance companies that issued less than 1,000 SR22 policies per calendar year. This exemption benefited the smaller businesses by allowing them to voluntarily convert their manual SR22 and SR26 policy reporting to the electronic reporting process as appropriate for their business needs. Additionally, a delayed effective date of May 1, 2007, was provided to ensure that the insurance companies had enough time to appropriately plan and re-program their systems. The Department continues to work closely with all affected companies and industry representatives to ensure every success in implementing these rules.

12. **Are the rules more stringent than corresponding federal laws?**
   - Yes ___
   - No X

   The rules are not more stringent than federal law. There are no corresponding federal laws directly related to these rules.

13. **For rules adopted after July 29, 2010 that require the issuance of a regulatory permit, license, or agency authorization,** whether the rules are in compliance with the general permit requirements of A.R.S. § 41-1037 or explain why the agency believes an exception applies:
   
   This Article, last revised in 2018, incorporates guidelines for businesses statutorily required to electronically report to the Department mandatory insurance and financial responsibility information for all vehicles registered to operate in this state. These rules reflect the current business practices of the Department and the regulated insurance agencies. The rules do not require a permit, license, or authorization from the Department of Transportation and are in compliance with A.R.S. § 41-1037.

14. **Proposed course of action**

   The Department does not believe any rule changes are necessary at this time.
CHAPTER 5. DEPARTMENT OF TRANSPORTATION - COMMERCIAL PROGRAMS

Historical Note

ARTICLE 8. MANDATORY INSURANCE AND FINANCIAL RESPONSIBILITY

R17-5-801. Definitions
In addition to the definitions under A.R.S. §§ 28-101 and 28-4001, in this Chapter, unless otherwise specified:

“Arizona Mandatory Insurance Reporting System Guide for Insurance Companies” means the Department’s guide that is available on the agency’s website and provides technical information to a company about information transmission between the Department and the company.

“Company” means an insurance or indemnity company authorized to write motor vehicle liability coverage in Arizona.

“Customer number” means the system-generated, or other distinguishing number, assigned by the Department to each person conducting business with the Department, as prescribed in R17-5-805.

“EDI” means electronic data interchange, which is the transmission of data in a standardized format from one computer to another without the use of magnetic tape.

“EDI reporting” means the computer-to-computer transmission of data from a company to the Department.

“Error return” means the computer-to-computer transmission, from the Department to a company, of all data reporting errors received during EDI reporting.

“FEIN” means the federal employer identification number or federal tax identification number used to identify a business entity.

“FTP” means file transfer protocol, which is a common protocol used by the Department for exchanging files over any network that supports EDI reporting transmitted through the Internet or Intranet.

“Information exchange” means EDI reporting where a company or service provider transmits a report to the Department through a connection to a private information network.

“Motor Vehicle Division” means the Arizona Department of Transportation’s Motor Vehicle Division.

“NAIC” means the National Association of Insurance Commissioners.

“Private information network” means the value-added network used by a company or service provider to facilitate EDI transmissions to the Department and to provide other network services where fees are charged for the network connection based on the number of characters and messages transmitted.

“Reportable activity” means the information required to be transmitted to the Department under A.R.S. § 28-4148 and this Article.

“Self-insurer” means a person or entity that has met the qualifications, completed the application process, and received a certificate of self-insurance issued by the Department under R17-5-810.

“Service provider” means a person or entity that reports for an insurance company through a connection to a private information network or an FTP for EDI reporting.

“SR22” means a certification filed, by a company duly authorized to transact business in this state, as proof of financial responsibility for the future, which guarantees that the insured owner or operator has in effect at least the minimum motor vehicle liability insurance coverage required under A.R.S. Title 28, Chapter 9, Article 3.

“SR26” means a certification filed by a company duly authorized to transact business in this state, which notifies the Department that an insured owner or operator required to maintain proof of financial responsibility for the future, under A.R.S. Title 28, Chapter 9, Article 3, is no longer covered under a previously reported SR22.

“Value-added network” means a private network provider that is hired by a company to facilitate EDI or provide other network services.

“X12” means the American National Standards Institute, Accredited Standards Committee, uniform standards for the inter-industry electronic exchange of business transactions by EDI.

“X12 (TS811)” means X12 Transaction Set 811, Consolidated Service Invoice – Statement, version 3050, which is the specific set of EDI transactions developed for the insurance industry in the X12 standard format for automobile liability insurance reporting.

Historical Note
New Section made by final rulemaking at 13 A.A.R. 858, effective March 6, 2007 (Supp. 07-1). Section amended by final expedited rulemaking at 24 A.A.R. 279, effective January 12, 2018 (Supp. 18-1).

R17-5-802. Insurance Company Electronic Reporting Requirement; Applicability
A. A company that provides motor vehicle liability insurance coverage for an Arizona vehicle shall electronically transmit to the Department all reportable activity under A.R.S. § 28-4148 and R17-5-803 using one of the authorized EDI reporting methods identified in the Arizona Mandatory Insurance Reporting System Guide for Insurance Companies. Each transmission shall include all of the applicable record matching criteria prescribed under R17-5-804 or R17-5-805.

B. A company that issues 1,000 or more SR22 policies per calendar year shall electronically transmit to the Department all SR22 and SR26 activity using one of the Department-authorized EDI reporting methods identified in the Arizona Mandatory Insurance Reporting System Guide for Insurance Companies. Each transmission shall include all of the applicable record matching criteria prescribed under R17-5-804 or R17-5-805.

C. The Department shall not accept or record an out-of-state motor vehicle liability insurance policy for a passenger vehicle, even if written by a company authorized to transact business in this state.

Historical Note
New Section made by final rulemaking at 13 A.A.R. 858, effective March 6, 2007 (Supp. 07-1). Section amended by final expedited rulemaking at 24 A.A.R. 279, effective January 12, 2018 (Supp. 18-1).

R17-5-803. Insurance Company Reportable Activity
A. A company shall transmit to the Department:
1. All reportable activity, not previously reported, that was processed by the company seven or fewer days before each reporting date; or
2. A statement of inactivity, if no reportable activity occurred by the reporting date.

B. For the purpose of this Article, reportable activity shall include:
1. A policy cancellation;
2. A policy non-renewal;
3. A new policy issuance;
4. A commercial policy reissuance;
5. A vehicle added to a policy;
6. A vehicle deleted from a policy;
7. A policy reinstatement; and
8. All SR22 and SR26 filings by insurance companies issuing 1,000 or more SR22 policies per calendar year.

C. Reportable activity does not include the addition or deletion of a vehicle to or from a non-vehicle-specific commercial policy.

Historical Note
New Section made by final rulemaking at 13 A.A.R. 858, effective March 6, 2007 (Supp. 07-1). Section amended by final expedited rulemaking at 24 A.A.R. 279, effective January 12, 2018 (Supp. 18-1).

R17-5-804. Record Matching Criteria for a Vehicle-specific Policy
For each vehicle-specific policy transmitted to the Department, a company shall include all of the following information to assist with the matching of policies to Department customers:
1. The complete and valid vehicle identification number;
2. The policy number; and
3. The NAIC number of the reporting company.

Historical Note
New Section made by final rulemaking at 13 A.A.R. 858, effective March 6, 2007 (Supp. 07-1). Section amended by final expedited rulemaking at 24 A.A.R. 279, effective January 12, 2018 (Supp. 18-1).

R17-5-805. Record Matching Criteria for a Non-vehicle-specific Commercial Policy
A. For each non-vehicle-specific commercial policy transmitted to the Department, a company shall include all of the following information to assist with the matching of policies to Department customers:
1. The Department customer number of the insured:
   a. If a policy covers all vehicles registered in the name of a business or organization, the customer number is the FEIN of the business or organization, or a system-generated number; or
   b. If a policy covers all vehicles registered in the name of a private individual, the customer number is the Arizona Driver License number or the non-operating identification license number of the private individual;
2. The policy number; and
3. The NAIC number of the responsible company.

B. If the Department customer number required under subsection (A)(1) is not available to a company, the company may provide the complete and valid vehicle identification number of each vehicle covered under the policy in lieu of the Department customer number.

Historical Note
New Section made by final rulemaking at 13 A.A.R. 858, effective March 6, 2007 (Supp. 07-1). Section amended by final expedited rulemaking at 24 A.A.R. 279, effective January 12, 2018 (Supp. 18-1).

R17-5-806. Department-authorized EDI Reporting Methods; Reporting Schedule
A. A company shall transmit to the Department all reportable activity listed in R17-5-803 using a Department-authorized EDI reporting method specified in the Arizona Mandatory Insurance Reporting System Guide for Insurance Companies.
B. A company shall transmit all reportable activity to the Department at least once every seven days.

Historical Note
New Section made by final rulemaking at 13 A.A.R. 858, effective March 6, 2007 (Supp. 07-1). Section amended by final expedited rulemaking at 24 A.A.R. 279, effective January 12, 2018 (Supp. 18-1).

R17-5-807. X12 Data Format for Policy Receipt and Error Return
A. Reporting format. A company shall transmit to the Department all reportable activity using the format prescribed in the Arizona Mandatory Insurance Reporting System Guide for Insurance Companies provided by the Department.
B. Error return format. The Department shall return to a company all reporting errors received during a transmission of reportable activity using the X12 error return format prescribed in the Arizona Mandatory Insurance Reporting System Guide for Insurance Companies.
C. The Department shall return to a company an acknowledgment that a transmission of reportable activity was received and processed using the format in the Arizona Mandatory Insurance Reporting System Guide for Insurance Companies.

Historical Note
New Section made by final rulemaking at 13 A.A.R. 858, effective March 6, 2007 (Supp. 07-1). Section amended by final expedited rulemaking at 24 A.A.R. 279, effective January 12, 2018 (Supp. 18-1).

R17-5-808. Insurance Company Reporting Errors; Resolution; Noncompliance
A. The Department shall:
1. Return to a company, using the X12 error return format provided in R17-5-807(B), all reporting errors received during or after a transmission; and
2. Instruct the company to correct all reporting errors affecting the Department’s processing of the required data.
B. All companies reporting electronic policy information shall notify the Department prior to making changes to any reporting systems, or previously established policy reporting formats, that may affect the Department’s ability to match and process the information received.

Historical Note
New Section made by final rulemaking at 13 A.A.R. 858, effective March 6, 2007 (Supp. 07-1). Section amended by final expedited rulemaking at 24 A.A.R. 279, effective January 12, 2018 (Supp. 18-1).

R17-5-809. Insurance Company Failure to Submit Required Data; Request for Hearing
If a company fails to submit the data required under A.R.S. § 28-4148, and this Article, the Department shall:
1. Send to the company, a dated written notice, which:
   a. Identifies the business week or reporting period in which the company did not submit the required information;
CHAPTER 5. DEPARTMENT OF TRANSPORTATION - COMMERCIAL PROGRAMS

b. Instructs the company to submit the information for the identified business week or reporting period within seven days of the date of the notice;
c. Informs the company that a failure to respond to the Department’s request within the allotted time-frame, shall result in a referral of the matter to the Arizona Department of Insurance, under A.R.S. § 20-237, which may result in a civil penalty for each violation of up to $250 per day for each day the insurer is in violation of A.R.S. § 28-4148; and
d. Provides notice of the company’s right to request a hearing with the Arizona Department of Insurance under A.R.S. § 20-237;

2. Advise the Arizona Department of Insurance if the company fails to comply with the Department’s written notice provided under this Section.

Historical Note
New Section made by final rulemaking at 13 A.A.R. 858, effective March 6, 2007 (Supp. 07-1). Section amended by final expedited rulemaking at 24 A.A.R. 279, effective January 12, 2018 (Supp. 18-1).

R17-5-810. Self-insurance as Alternate Proof of Financial Responsibility; Provisions; Applicability

A. Self-insurance applicant qualification. A person or entity may apply for self-insurance under this section if the applicant:
1. Owns the minimum number of vehicles prescribed under A.R.S. § 28-4007(A) with current Arizona registration;
2. Demonstrates minimum assets of $1 million on documentation required under subsections (C) and (D);
3. Meets any additional financial responsibility requirements under A.R.S. § 28-4035(A), according to the insured vehicle’s weight and/or intended use; and
4. Provides a business office contact for the company with a current phone number and mailing information.

B. A self-insurance applicant shall provide, on a self-insurance application form provided by the Department, the following information:
1. Applicant’s name;
2. Business name, if applicable;
3. Mailing address, city, state, and ZIP code;
4. A selection of coverage type:
   a. Public liability only; or
   b. Public liability and property damage;
5. Number of vehicles in the applicant’s fleet;
6. A selection list that describes the nature of the applicant’s business;
7. A description of any hazardous materials transported by type, class, and weight;
8. A report of all accidents in the prior 39-month period before the application date;
9. The applicant’s signature and official business title to certify that all information is true and correct; and
10. Acknowledgment by a notary public or by the signature of an authorized Department agent.

C. Supplementary documentation. In addition to a completed self-insurance application form, the applicant shall submit a profit and loss statement certified by a Certified Public Accountant for the 12-month period before the application date. The profit and loss statement shall include one of the following:
1. A balance sheet; or
2. An annual financial report.

D. On approval of an application, the Department shall issue a certificate of self-insurance that is continuously valid, but shall require the self-insurer to submit a 12-month update of supplementary documentation prescribed under subsection (C) on or before July 1 of each successive year.

E. An initial self-insurance applicant or a self-insurer making an annual update shall submit documentation required under subsections (B) through (D) to the following address:
   Motor Vehicle Division
   Financial Responsibility Unit
   P.O. Box 2100, Mail Drop 535M
   Phoenix, AZ 85001-2100

F. A self-insurer shall keep a copy of the self-insurance certificate in each covered vehicle at all times.

G. A self-insurer shall submit periodic, written notification updates to the Department of vehicles added or removed from self-insurance coverage. The written notification shall include the vehicle identification number of each vehicle.

H. A self-insurer that terminates self-insurance shall provide new evidence of financial responsibility as required under A.R.S. § 28-4135 for each vehicle previously covered under a self-insurance certificate.

I. In addition to the reasonable grounds prescribed under A.R.S. § 28-4007(C), the Department may cancel a self-insurance certificate under the following circumstances:
1. A self-insurer fails to comply with provisions of the Department’s annual update requirement under subsection (D), or
2. A self-insurer no longer owns the covered business or fleet.

J. For the purpose of A.R.S. § 28-4007(C) and this Section, the Department shall conduct a self-insurance cancellation hearing according to the provisions prescribed under 17 A.A.C. 1, Article 5.

Historical Note
New Section made by final rulemaking at 13 A.A.R. 858, effective March 6, 2007 (Supp. 07-1). Section amended by final expedited rulemaking at 24 A.A.R. 279, effective January 12, 2018 (Supp. 18-1).

R17-5-811. Certificate of Deposit as Alternate Proof of Financial Responsibility; Applicability

For the purpose of A.R.S. §§ 28-4076(2) and 28-4084, a person depositing a $40,000 certificate of deposit with the state treasurer as alternate proof of financial responsibility may apply the certificate to a maximum of 25 non-commercial vehicles registered in the person’s name.

Historical Note
New Section made by final rulemaking at 13 A.A.R. 858, effective March 6, 2007 (Supp. 07-1).

ARTICLE 9. TRANSPORTATION NETWORK COMPANIES

R17-5-901. Definitions
In addition to the definitions provided under A.R.S. § 28-9551, when applicable to a transportation network company, the following definitions apply to this Article unless otherwise specified:

“Applicant” means a person that meets the statutory requirements of a transportation network company as prescribed under A.R.S. Title 28, Chapter 30, Article 3.

“Designated point of contact” means a person employed by a transportation network company who has the authority to gather and provide records to the Department on request.

“Transportation network company permit” means a document issued by the Department to an applicant that meets the requirements prescribed under A.R.S. Title 28, Chapter 30, Article 3, as authorization to conduct transportation network services in this state.
A.R.S. § 28-4001. Definitions

In this chapter, unless the context otherwise requires:

1. "Judgment" means a judgment that has become final by expiration without appeal of the time within which an appeal might have been perfected or by final affirmation on appeal and that is rendered by a court of competent jurisdiction of any state or of the United States on a cause of action either:
   (a) Arising out of the ownership, maintenance or use of a motor vehicle for damages, including damages for care and loss of services, because of either bodily injury to or death of a person or injury to or destruction of property, including the loss of use of the property.
   (b) On an agreement of settlement for damages described in subdivision (a) of this paragraph.

2. "License" means a license, temporary instruction permit or temporary license issued under the laws of this state pertaining to the licensing of persons to operate motor vehicles.

3. "Motor vehicle" means a self-propelled vehicle that is registered or required to be registered under the laws of this state.

4. "Motor vehicle liability policy" means an owner's or an operator's policy of liability insurance that is both:
   (a) Certified as provided in section 28-4077 or 28-4078 as proof of financial responsibility.
   (b) Issued by an insurance carrier duly authorized to transact business in this state, to or for the benefit of the person named as the insured, except as otherwise provided in section 28-4078.

5. "Nonresident operating privilege" means the privilege conferred on a nonresident by the laws of this state pertaining to the nonresident's operation of a motor vehicle or the use of a motor vehicle owned by the nonresident in this state.

6. "Operator" means a person who is in actual physical control of a motor vehicle, whether or not the person has a license.

7. "Proof of financial responsibility" means proof of ability to respond in damages for liability on account of accidents occurring after the effective date of the proof and arising out of the ownership, maintenance or use of a motor vehicle, in the amounts required by section 28-4009 or 28-4033.

8. "Registration" means the registration certificate or certificates and license plates issued under the laws of this state pertaining to the registration of motor vehicles.
9. "State" means a state, territory or possession of the United States, the District of Columbia or a province of the Dominion of Canada.

A.R.S. § 28-4031. Definitions
In this article, unless the context otherwise requires:
1. "Declared gross weight" has the meaning prescribed in section 28-5431. If a declaration has not been made, declared gross weight means gross weight.
2. "Gross weight" has the meaning prescribed in section 28-5431.
3. "Person" means:
   (a) An owner or operator of a motor vehicle or vehicle combination subject to the financial responsibility requirements of this article.
   (b) For taxis, limousines, sedans or executive sedans, the person listed on the department's records as the owner of the vehicle.
4. "Public highway" means any way or place of whatever nature and of any kind that is used or open to the use by the public as a matter of right for the purpose of vehicular travel, including a highway under construction.
5. "Vehicle combination" has the meaning prescribed in section 28-5431.

A.R.S. § 28-4131. Definition of evidence
In this article, unless the context otherwise requires, "evidence" includes:
1. An original, a photocopy or a copy of a current and valid:
   (a) Motor vehicle or automobile liability policy that meets the requirements of section 28-4009.
   (b) Binder or certificate of motor vehicle or automobile liability insurance that meets the requirements of section 28-4009.
   (c) Certificate of self-insurance issued by the department under article 1 of this chapter.
   (d) Certificate of deposit that meets the requirements of section 28-4084.
   (e) Motor vehicle insurance identification card issued by an authorized insurer or an authorized agent of the insurer for a motor vehicle or automobile liability policy that meets the requirements of section 28-4009.
   (f) Certificate of insurance for a policy that meets the requirements of section 28-4033.
2. Designation of a motor vehicle as owned or leased by this state or any of its political subdivisions according to section 38-538.
3. A display on a wireless communication device of any item listed in paragraph 1 of this section.
Statutory Authority

A.R.S. § 20-237. Failure to provide information; penalty
If after a hearing and certification by the department of transportation the director of the department of insurance and financial institutions finds that an insurer has failed to comply with section 28-4148, the director of the department of insurance and financial institutions shall impose a civil penalty for each violation of not more than $250 per day for each day the insurer is in violation of section 28-4148. The director of the department of insurance and financial institutions also may suspend the insurer's certificate of authority until the insurer complies with section 28-4148. No penalty shall be imposed pursuant to this section if noncompliance is determined by the director of the department of insurance and financial institutions to have been inadvertent or accidental. The burden of proving that the noncompliance was inadvertent or accidental shall be on the insurer.

A.R.S. § 28-366. Director; rules
The director shall adopt rules pursuant to title 41, chapter 6 as the director deems necessary for:
1. Collection of taxes and license fees.
2. Public safety and convenience.
3. Enforcement of the provisions of the laws the director administers or enforces.
4. The use of state highways and routes to prevent the abuse and unauthorized use of state highways and routes.

A.R.S. § 28-4002. Director; duties
The director shall:
1. Administer and enforce this chapter.
2. Print for distribution to the public rules adopted to administer this chapter and furnish the rules to a person on application and payment of the cost as prescribed by the director.

A.R.S. § 28-4007. Self-insurers
A. Except as provided in subsection E of this section, a person in whose name more than ten motor vehicles are registered or who is required to comply with the financial responsibility requirements prescribed in article 2 of this chapter may qualify as a self-insurer or partial self-insurer by obtaining a certificate of self-insurance or partial self-insurance issued by the director as provided in this section.
B. After determining that the person is financially able and will continue to be able to pay judgments obtained against the person, the director may issue a certificate of self-insurance or partial self-insurance.
C. On not less than five days' notice and after a hearing, the director may cancel a certificate of self-insurance or a certificate of partial self-insurance on reasonable grounds. For the purposes of this subsection, "reasonable grounds" includes any of the following circumstances:
1. Failure to pay a judgment within thirty days after the judgment becomes final.
2. Determination by the director that the person has not complied with the financial responsibility requirements of this chapter.
3. Determination by the director that the person knowingly submitted false information that is required by this chapter to this state, a political subdivision of this state, a court or a law enforcement agency.
4. Determination by the director that the person knowingly failed to respond within thirty days to a claim for damages for liability arising out of the ownership, maintenance or use of a motor vehicle.
5. Determination by the director that the person does not meet the bond requirements prescribed in section 28-4011.
D. A person who is required to comply with the financial responsibility requirements prescribed in article 2 of this chapter may file an application with the department for partial self-insurance to cover any portion of the financial responsibility requirements.
E. A person may also qualify as a self-insurer if the person is insured by a captive insurer that is domiciled and authorized by the department of insurance and financial institutions to transact business in this state and that provides coverage in an amount of at least that required by section 28-4033.
F. A person applying for self-insurance or partial self-insurance pursuant to this section shall comply with both of the following at the time of application:
1. The person shall submit evidence in a form prescribed by the director that the person is financially able and will continue to be able to pay the entire amount of self-insurance or partial self-insurance allowed by the director for judgments obtained against the person for liability arising out of the ownership, maintenance or use of a motor vehicle.
2. If applicable, the person shall submit evidence in a form prescribed by the director that the person has a valid insurance policy that meets the requirements prescribed in section 28-4033 and that is issued by an insurer that holds a valid certificate of authority or that is allowed to transact surplus lines insurance in this state.
G. The director may adopt rules to implement this section, including rules requiring additional evidence that the person meets the financial responsibility requirements of this chapter and rules providing for the periodic submission of evidence demonstrating that the person meets the standards required by the department to qualify as a self-insurer, a captive insurer or partial self-insurer.
H. The director of the department of transportation, in consultation with the director of the department of insurance and financial institutions, may establish procedures that allow a person to apply for and file a certificate of either partial self-insurance or self-insurance.
I. The director of the department of transportation, in consultation with the director of the department of insurance and financial institutions, shall establish procedures to exchange information regarding changes in the self-insurance status of persons who are subject to this section.

**A.R.S. § 28-4033. Financial responsibility requirements**

A. A person that is subject to the requirements of this article shall maintain motor vehicle combined single limit liability insurance as follows:

1. For the transportation of nonhazardous property:

(a) For a vehicle with a gross vehicle weight of more than twenty-six thousand pounds, minimum coverage in the amount of seven hundred fifty thousand dollars.
(b) For a vehicle with a gross vehicle weight of twenty thousand one pounds to twenty-six thousand pounds, minimum coverage in the amount of three hundred thousand dollars.

2. For the transportation of passengers:
   (a) In a vehicle with a seating capacity of sixteen passengers or more, minimum coverage in the amount of five million dollars and uninsured motorist coverage in the amount of at least three hundred thousand dollars.
   (b) In a vehicle with a seating capacity of less than sixteen passengers including the driver, but more than eight passengers including the driver, minimum coverage in the amount of seven hundred fifty thousand dollars and uninsured motorist coverage in the amount of at least three hundred thousand dollars.
   (c) In a vehicle with a seating capacity of not more than eight passengers including the driver, a policy containing one of the following:
      (i) Minimum coverage in the amount of two hundred fifty thousand dollars and uninsured motorist coverage in the amount of at least two hundred fifty thousand dollars issued by an insurer that holds a valid certificate of authority or that is permitted to transact surplus lines insurance in this state.
      (ii) Minimum coverage as prescribed by section 28-4038 or 28-4039, as applicable.

3. For the transportation of hazardous materials, hazardous substances or hazardous wastes:
   (a) Minimum coverage in the amount of five million dollars for the transportation of:
      (i) Hazardous substances, as defined in 49 Code of Federal Regulations part 171, transported in a cargo tank, portable tank or hopper-type vehicle with capacities in excess of three thousand five hundred water gallons.
      (ii) Any quantity of class A or B explosives.
      (iii) Any quantity of poison gas (poison A).
      (iv) Liquefied compressed gas or compressed gas transported in a cargo tank, portable tank or hopper-type vehicle with capacities in excess of three thousand five hundred water gallons.
      (v) The quantity of radioactive materials that requires specialized handling and transportation controls as indicated in 49 Code of Federal Regulations part 173.
   (b) Minimum coverage in the amount of one million dollars for the transportation of the following:
      (i) Any quantity of oil listed in 49 Code of Federal Regulations part 172.
      (ii) Any quantity of hazardous wastes, hazardous materials or hazardous substances as defined and listed in 49 Code of Federal Regulations part 171 and in 49 Code of Federal Regulations part 172 but not included in subdivision (a) of this paragraph.

B. If a motor vehicle is leased or rented, the lessor shall ensure that the lessee is covered under the lessor's liability insurance as provided by this section or the lessor shall require that the lessee meet the financial responsibility requirements of this section. In the case of taxis, livery vehicles or limousines, a person who is listed on the department's records as the owner shall comply with the financial responsibility requirements of this article and article 4 of this chapter.

C. If a lessee uses the motor vehicle for a purpose that is required under this section to have a higher amount of financial responsibility than was required of the lessor or renter, the lessee shall maintain the higher financial responsibility requirements of this section.

Definitions and Statutory Authority 17 A.A.C. 5, Article 8
D. The uninsured motorist coverage required by this section is not required until June 1, 1987 and may be provided by a self-insurance program authorized under section 28-4007. A person who is under contract with this state or a political subdivision of this state, who operates a motor vehicle owned by this state or a political subdivision of this state and who is included in the self-insurance program of this state or a political subdivision of this state is exempt from the uninsured motorist requirements of this section.

A.R.S. § 28-4034. Maintenance, certification and verification of financial requirements
A. A person who operates a motor vehicle in this state and who is subject to the financial responsibility requirements of this article shall maintain at all times the amounts prescribed in section 28-4033 that obligates the person to pay compensation for injuries to persons and for loss or damage to property by reason of the ownership, maintenance or use of a motor vehicle or vehicle combination owned or operated by the person.
B. The department may require a person who is subject to the financial responsibility requirements of this article to certify the existence of financial responsibility in the form and at the times the department deems necessary. The department may forward the certification to the named insurer to determine if the certification is correct. Civil liability does not accrue to the insurer or any of its employees for reports made to the department if the reports are made in good faith based on the most recent information available to the insurer.

A.R.S. § 28-4076. Alternate methods of proof
If required by this chapter, a person may give proof of financial responsibility by filing one of the following:
1. A certificate of insurance pursuant to section 28-4077 or 28-4078.
2. Certificates of deposit or cash pursuant to section 28-4084.

A.R.S. § 28-4077. Certificate of insurance
A. A person may give proof of financial responsibility by filing with the director the written certificate of an insurance carrier duly authorized to do business in this state certifying that there is in effect a motor vehicle liability policy for the benefit of the person required to furnish proof of financial responsibility. The certificate shall:
1. Be in a form and shall contain the information prescribed by the director.
2. Designate by explicit description or by appropriate reference all motor vehicles covered by the certificate, unless the policy is issued to a person who is not the owner of a motor vehicle.
B. A motor vehicle shall not be or shall not continue to be registered in the name of a person required to file proof of financial responsibility unless the motor vehicle is designated in the certificate.

A.R.S. § 28-4078. Certificate by nonresident
A. A nonresident owner of a motor vehicle that is not registered in this state may give proof of financial responsibility by filing with the director a written certificate of an insurance carrier authorized to transact business in the state in which the motor vehicle described in the certificate is registered, or if the nonresident does not own a motor vehicle, in the state in which the insured resides, if the certificate otherwise conforms with this chapter. The
Definitions and Statutory Authority 17 A.A.C. 5, Article 8

A. A motor vehicle that is operated on a highway in this state shall be covered by one of the following:

- privilege; evidence at hearing
- penalties; requirement; restricted Motor vehicle financial responsibility; driving requirements prescribed in article 2 of this chapter.

E. The director shall accept the certificate on the condition that the insurance carrier complies with the following provisions with respect to the policies certified:

1. The insurance carrier shall execute a power of attorney authorizing the director to accept service on its behalf of notice or process in an action arising out of a motor vehicle accident in this state.

2. The insurance carrier shall agree in writing that the policies shall be deemed to conform with the laws of this state relating to the terms of motor vehicle liability policies issued in this state.

B. If an insurance carrier that is not authorized to transact business in this state and that is qualified to furnish proof of financial responsibility defaults in any such undertaking or agreement, the director shall not accept a certificate of the carrier as proof whether filed before the default or tendered as proof after the default, as long as the default continues.

A.R.S. § 28-4081. Notice; cancellation or termination of policy

If an insurance carrier has certified a motor vehicle liability policy under section 28-4077 or 28-4078, the insurance carrier shall not cancel or terminate the certified insurance until at least ten days after the insurance carrier files a notice of cancellation or termination of the insurance with the director, except that a policy subsequently procured and certified terminates, on the effective date of its certification, the insurance previously certified with respect to a motor vehicle designated in both certificates.

A.R.S. § 28-4084. Monies or certificates of deposit as proof; exception

A. The state treasurer may issue a certificate that gives evidence of proof of financial responsibility that the person named in the certificate has deposited with the state treasurer forty thousand dollars in cash or certificates of deposit with a value of forty thousand dollars issued by a financial institution.

B. The state treasurer shall not accept the deposit and issue a certificate for and the director shall not accept the certificate unless the depositor provides evidence that there are no unsatisfied judgments of any kind against the depositor in the county where the depositor resides.

C. The state treasurer shall hold the deposit to satisfy, in accordance with this chapter, an execution on a judgment issued against the person making the deposit for damages, including damages for care and loss of services, because of bodily injury to or death of a person or for damages because of injury to or destruction of property, including the loss of use of the property, resulting from the ownership, maintenance, use or operation of a motor vehicle after the deposit is made.

D. Monies or certificates of deposit deposited pursuant to this section are not subject to attachment or execution unless the attachment or execution arises out of a suit for damages described in subsection C.

E. Deposits of cash or certificates of deposit under this section do not satisfy the financial responsibility requirements prescribed in article 2 of this chapter.

A.R.S. § 28-4135. Motor vehicle financial responsibility requirement; civil penalties; restricted driving privilege; evidence at hearing

A. A motor vehicle that is operated on a highway in this state shall be covered by one of the following:
1. A motor vehicle or automobile liability policy that provides limits not less than those prescribed in section 28-4009.
2. An alternate method of coverage as provided in section 28-4076.
3. A certificate of self-insurance as prescribed in section 28-4007.
4. A policy that satisfies the financial responsibility requirements prescribed in article 2 of this chapter.

B. A person operating a motor vehicle on a highway in this state shall have evidence within the motor vehicle of current financial responsibility applicable to the motor vehicle. The evidence may be displayed on a wireless communication device that is in the motor vehicle. If a person displays the evidence on a wireless communication device pursuant to this subsection, the person is not consenting for law enforcement to access other contents of the wireless communication device.

C. Failure to produce evidence of financial responsibility on the request of a law enforcement officer investigating a motor vehicle accident or an alleged violation of a motor vehicle law of this state or a traffic ordinance of a city or town is a civil traffic violation that is punishable as prescribed in this section.

D. A citation issued for violating subsection B or C of this section shall be dismissed if the person to whom the citation was issued produces evidence to the appropriate court officer on or before the date and time specified on the citation for court appearance and in a manner specified by the court, including the certification of evidence by mail, of either of the following:
   1. The financial responsibility requirements prescribed in this section were met for the motor vehicle at the date and time the citation was issued.
   2. A motor vehicle or automobile liability policy that meets the financial responsibility requirements of this state and that insured the person and the motor vehicle the person was operating at the time the person received the citation regardless of whether or not the motor vehicle was named in the policy.

E. Except as provided in section 28-4137, a person who violates this section is subject to a civil penalty as follows:
   1. The court shall impose a minimum civil penalty of five hundred dollars for the first violation. On receipt of the abstract of the record of judgment, the department shall suspend the person's driving privileges or restrict the person's driving privileges as described in section 28-144 for three months. Before issuing a restricted driving privilege pursuant to this paragraph, the department shall verify that the person is in compliance with the financial responsibility requirements of this article.
   2. If a person violates this section a second time within a period of thirty-six months, the court shall impose a minimum civil penalty of seven hundred fifty dollars. On receipt of the abstract of the record of judgment, the department shall suspend the driver license of the person and the registration and license plates of the motor vehicle involved for six months.
   3. If a person violates this section three or more times within a period of thirty-six months, the court shall impose a minimum civil penalty of one thousand dollars. On receipt of the abstract of the record of judgment, the department shall suspend the driver license of the person and the registration and license plates of the motor vehicle involved for one year. The department shall require on reinstatement of the driver license, the registration and the license plates that the person file with the department proof of financial responsibility in accordance with article 3 of this chapter.
F. A court may require a person to produce an insurance identification card as evidence in a hearing for a violation of this section.

A.R.S. § 28-4148. Notice of insurance cancellation or nonrenewal

A. Effective from and after January 1, 1998 and through July 31, 1998, each insurer who cancels or becomes aware of the cancellation or nonrenewal of or failure to renew or issuance of a motor vehicle liability insurance policy issued on a vehicle in this state shall provide to the department all cancellations, nonrenewals or new issues for any reason after thirty or fewer days have elapsed from the time of processing the cancellation, nonrenewal or new issue of a policy.

B. Effective August 1, 1998, each insurer who cancels or becomes aware of the cancellation or nonrenewal of or failure to renew or issuance of a motor vehicle liability insurance policy issued on a vehicle in this state shall provide to the department all cancellations, nonrenewals or new issues for any reason after seven or fewer days have elapsed from the time of processing the cancellation, nonrenewal or new issue of a policy. Any insurer with less than ten thousand policies in place as of the effective date of this section, shall have until August 1, 1999 to comply with the requirements of this section.

C. The insurer shall provide the information by electronic data interchange in a format pursuant to a schedule specified by and in a manner prescribed by the director.

D. The department shall not require an insurer to specify the vehicle identification number of a vehicle covered under a commercial vehicle policy that provides automatic coverage for additional or newly acquired vehicles until the policy's expiration date.

E. The department shall provide the notice of cancellation or nonrenewal information to all law enforcement agencies on an on-line computerized call in basis from law enforcement vehicles.

F. On cancellation or nonrenewal of a policy, an insurer shall notify the insured that the department has been notified of the cancellation or nonrenewal and that the insured's motor vehicle registration may be suspended.

G. Except as provided in section 28-4143, subsection E, information provided by an insurer to the department pursuant to this section shall be made available only to law enforcement agencies for law enforcement purposes.
Economic, Small Business and Consumer Impact Statement

A. Economic, small business and consumer impact summary:

1. Identification of the proposed rulemaking:
   The Arizona Department of Transportation, Motor Vehicle Division, is repealing Sections R17-5-502 and R17-5-503, which currently contain antiquated electronic reporting guidelines and processes for insurance companies authorized to conduct business in Arizona, and creating a new Article within Chapter 5; Article 8, Mandatory Insurance and Financial Responsibility. This new Article incorporates updated electronic reporting guidelines, mandatory insurance rules, and financial responsibility rules that reflect current business practices and are more clear, concise, and understandable. This action complies with recommendations made in the Division’s five-year-review report approved by the Governor’s Regulatory Review Council on August 2, 2005.

2. Brief summary of the information included in the economic, small business and consumer impact statement:
   The Division anticipates, as a result of this rulemaking, a minimal economic impact to qualified persons and business entities seeking to self-insure under A.R.S. §§ 28-4007 and 28-4076. Costs may include administrative expenses for preparing the application and providing the Division with the required annual update documentation needed to maintain a current self-insurance certificate. However, the Division anticipates a benefit of substantial savings for self-insuring entities in standard financial responsibility coverage of fleet vehicles.

   The Division anticipates that insurance companies issuing 1000 or more SR22 policies per year may experience a moderate economic impact for the initial programming and implementation of the electronic SR22 and SR26 reporting requirement under R17-5-802. However, the Division is currently working closely with all affected insurance companies to ensure a smooth transition, and since the electronic reporting system to be used for reporting SR22 and SR26 information is the same electronic reporting system the insurance companies currently use to report all other motor vehicle liability insurance policies to the Division, and to other states, the Division anticipates a smooth transition.
The new electronic SR22 and SR26 reporting functionality is expected to significantly benefit the insurance companies and their customers by providing increased accuracy, timeliness in processing, and the ability to provide immediate updates to the customer’s insurance information on file with the Division. The Division and the motoring public will benefit significantly with enhanced reporting and compliance capability and increased reporting accuracy.

The proposed rules also provide an exemption from the electronic SR22 and SR26 reporting requirement for companies issuing less than 1000 SR22 policies per calendar year. The Division anticipates this exemption may benefit the smaller businesses by allowing them to voluntarily convert their manual SR22 and SR26 policy reporting to the electronic reporting process as appropriate for their business needs.

3. **Name and address of agency employees who may be contacted to submit or request additional data on the information included in the economic, small business and consumer impact statement:**

   Telephone:  (602) 712-8804  
   Name: John Lindley, Administrative Rules Analyst  
   Address: Administrative Rules Unit  
   Department of Transportation, Motor Vehicle Division  
   1801 W. Jefferson St., Mail Drop 530M  
   Phoenix, AZ 85007  
   Fax:  (602) 712-3081  
   E-mail: jlindley@azdot.gov

**B. Economic, small business and consumer impact statement:**

1. **Identification of the proposed rulemaking:**

   See paragraph (A)(1) above.

2. **Identification of the persons who will be directly affected by, bear the costs of or directly benefit from the proposed rulemaking:**

<table>
<thead>
<tr>
<th>Persons to bear costs</th>
<th>Persons to benefit</th>
</tr>
</thead>
<tbody>
<tr>
<td>Arizona Department of Transportation, Motor Vehicle Division</td>
<td>Arizona Department of Transportation, Motor Vehicle Division</td>
</tr>
<tr>
<td>Arizona insurance companies that issue 1000 or more SR22 insurance policies per year</td>
<td>Arizona insurance companies</td>
</tr>
<tr>
<td>Qualified persons and business entities seeking to self-insure</td>
<td>Customers of Arizona insurance companies</td>
</tr>
<tr>
<td></td>
<td>Arizona’s motoring public</td>
</tr>
</tbody>
</table>

3. **Cost benefit analysis:**

   Cost-revenue scale. Annual costs or revenues are defined as follows:
Minimum less than $10,000
Moderate $10,000 to $99,999
Substantial $100,000 or more

a. Probable costs and benefits to ADOT and other agencies directly affected by the implementation and enforcement of the proposed rulemaking:

The anticipated economic impact to the Division is moderate and includes the costs associated with implementation of the rules, system programming changes, and the resources necessary for rulemaking. However, the Division expects to benefit with a significant reduction in the administrative costs currently expended to manually process and maintain the large number of SR22 and SR26 forms received from all insurance companies, which totaled 285,127 in calendar year 2006. There is no economic impact to any other state agency.

b. Probable costs and benefits to a political subdivision of this state directly affected by the implementation and enforcement of the proposed rulemaking:

The Division anticipates no economic impact to political subdivisions of this state as a result of this rulemaking. However, in terms of preserving the public safety, the new electronic SR22 and SR26 reporting requirement under R17-5-802 may benefit political subdivisions with an anticipated increase in reporting accuracy and the timely communication and recording of a driver’s proof of future financial responsibility. This information allows the Division to immediately: 1) verify whether a driver’s SR22 policy is still in force; 2) take action when a required SR22 policy is canceled; and 3) provide accurate up-to-date information to citizens and political subdivisions who may submit a lawful request for a driver’s insurance information.

The rules additionally preserve the public safety by limiting a $40,000 certificate of deposit filed with the state treasurer, as alternate proof of financial responsibility, to a maximum of 25 non-commercial vehicles registered in a person’s name.

c. Probable costs and benefits to businesses directly affected by the proposed rulemaking, including any anticipated effect on the revenues or payroll expenditures of employers who are subject to the proposed rulemaking:

The Division anticipates a moderate economic impact to insurance companies that issue 1000 or more SR22 policies per year. Anticipated costs include the resources necessary for implementation of the rules, system programming changes, and the administrative costs involved with preparing the SR22 and SR26 policy information for electronic processing with the Division.

The Division anticipates that the insurance companies affected by the rules will benefit significantly. The new SR22 and SR26 electronic reporting system is the same system the insurance companies currently use to electronically report liability insurance information to the Division. Customers of the insurance companies will benefit from the significantly reduced processing times and increased accuracy in the recording of all policy information. The insurance companies will benefit from the
elimination of the cumbersome paper process they currently use to report SR22 and SR26 policy information to the Division.

4. **General description of the probable impact on private and public employment in businesses, agencies and political subdivisions of this state directly affected by the proposed rulemaking:**
The Division anticipates no economic impact on private and public employment as a result of this rulemaking.

5. **Statement of the probable impact of the proposed rulemaking on small businesses:**
   a. **Identification of the small businesses subject to the proposed rulemaking:**
The small businesses subject to these rules are those identified under (3)(c) and also qualify under A.R.S. § 41-1001(19).

   b. **Administrative and other costs required for compliance with the proposed rulemaking:**
The Division anticipates, as a result of this rulemaking, a minimal economic impact to qualified persons and business entities seeking to self-insure under A.R.S. §§ 28-4007 and 28-4076. Costs may include additional administrative expenses for preparing the application and providing the Division with the annual update documentation required to maintain a current self-insurance certificate. However, the Division anticipates a benefit of substantial savings for self-insuring entities in standard financial responsibility coverage of fleet vehicles.

   The Division anticipates that the new requirement to electronically report SR22 and SR26 policy information, under R17-5-802, will require insurance companies that issue 1000 or more SR22 policies per year to provide the resources necessary for implementation of the rules, system programming changes, and the administrative costs involved with preparing the SR22 and SR26 policy information for electronic processing with the Division. However, the Division expects that the administrative costs currently expended by the insurance companies to manually report SR22 and SR26 policy information to the Division will be significantly reduced with the new electronic reporting functionality.

   With the exception of the new requirement to electronically report SR22 and SR26 policy information, as identified under (3)(c), the Division anticipates no additional administrative or other costs associated with compliance of this rulemaking. The rules are generally intended to incorporate the updated electronic reporting guidelines that Arizona insurance companies are currently using to report insurance information to the Division.

   c. **Description of the methods ADOT may use to reduce the impact on small businesses:**
The Division anticipates that of the 492 insurance companies that currently issue and report SR22 policies to the Division, only 44 will be affected by the new SR22 and SR26 electronic reporting requirement, under R17-5-802. Additionally, nine of the 44 affected companies have already converted their SR22 and SR26 filings to the electronic format.
The Division provided an exemption from the new electronic SR22 and SR26 reporting requirement for insurance companies that issue less than 1,000 SR22 policies per calendar year. Additionally, a delayed effective date of May 1, 2007, was provided to ensure that the insurance companies have enough time to appropriately plan and re-program their systems. The Division continues to work closely with all affected companies and industry representatives to ensure successful implementation of the rules.

d. Probable cost and benefit to private persons and consumers who are directly affected by the proposed rulemaking:

The Division anticipates that the customers of all affected insurance companies will benefit significantly by the new electronic SR22 and SR26 reporting requirement. The insurance company can immediately update the customer’s SR22 and SR26 insurance information on file with the Division.

The Division anticipates no economic impact on private persons, consumers, or small businesses as a result of the 25-vehicle limit being placed on the number of vehicles that can be covered under a $40,000 Certificate of Deposit on file with the State Treasurer’s Office. Division records indicate that 100% of the customers currently opting to submit a $40,000 Certificate of Deposit, in-lieu of purchasing separate motor vehicle liability insurance policies for each of their vehicles, are private individuals, each owning less than 25 vehicles.

6. Statement of the probable effect on state revenues:

The Division anticipates no economic impact on state revenues.

7. Description of any less intrusive or less costly alternative methods of achieving the purpose of the proposed rulemaking:

See 5(c)

C. Explanation of limitations of the data and the methods that were employed in the attempt to obtain the data and a characterization of the probable impacts in qualitative terms. The absence of adequate data, if explained in accordance with this subsection, shall not be grounds for a legal challenge to the sufficiency of the economic, small business and consumer impact statement:

None
1. INTRODUCTION TO THE ARIZONA MANDATORY INSURANCE REPORTING SYSTEM (AMIRS) ............................................. 1

1.1. AMIRS GUIDE FOR INSURANCE COMPANIES PURPOSE .................................................................................. 1

1.2. AMIRS GOAL AND AUTHORIZATION .................................................................................................................. 1

1.3. AMIRS DATA TRANSMISSION ............................................................................................................................... 2

1.4. AMIRS REPORTABLE ACTIVITY .......................................................................................................................... 2

1.5. POLICY REPORT PROCESS .................................................................................................................................... 3

1.5.1. Vehicle Specific Update Process .......................................................................................................................... 4

1.5.2. VIN Non-match Re-processing ............................................................................................................................ 5

1.5.3. Error Process .......................................................................................................................................................... 5

1.6. INSURANCE VERIFICATION OVERVIEW ............................................................................................................... 7

1.7. NIGHTLY PROCESSING CUT-OFF ............................................................................................................................ 7

1.8. EMAILING DATA PROHIBITION ............................................................................................................................ 7

2. ELECTRONIC DATA INTERCHANGE OVERVIEW ........................................................................................................ 8

2.1. EDI BACKGROUND .................................................................................................................................................... 8

2.2. DATA CONNECTIVITY ................................................................................................................................................. 8

2.2.1. Information Exchange .............................................................................................................................................. 9

2.2.1.1. Electronic Mailbox ............................................................................................................................................... 9

2.2.2. File Transfer Protocol .............................................................................................................................................. 9

2.3. ANSI ASC X12.39 TS 811 ........................................................................................................................................... 12

2.4. ELECTRONIC REPORTING PROCESS ....................................................................................................................... 13

3. BUSINESS REPORTING SPECIFICATIONS .................................................................................................................. 14

3.1. INSURANCE BUSINESS CONTACT AND SET UP ................................................................................................. 14

3.2. ON-GOING REPORTING OF INSURANCE INFORMATION ....................................................................................... 15

4. EDI TECHNICAL SPECIFICATIONS ............................................................................................................................. 16

4.1. X12 811 INFORMATION ............................................................................................................................................. 16

4.2. INFORMATION EXCHANGE INFORMATION ........................................................................................................... 16

5. DATA ELEMENT SPECIFICATIONS ............................................................................................................................. 17

5.1. 811 AMIRS POLICY RECEIPT .................................................................................................................................. 17

5.1.1. Table 1 – Header Level ............................................................................................................................................. 17

5.1.2. Table 2 – Detail Level ................................................................................................................................................ 18

5.1.2.1. Hierarchical Level 1: Insurer .............................................................................................................................. 18

5.1.2.2. Hierarchical Level 2: State .................................................................................................................................. 19

5.1.2.3. Hierarchical Level 4: Policy .............................................................................................................................. 20

5.1.2.4. Hierarchical Level 5: Vehicle .......................................................................................................................... 24

5.1.3. Table 3 – Summary Level ...................................................................................................................................... 25

5.2. 811 AMIRS ERROR RETURN .................................................................................................................................. 26

5.2.1. Table 1 – Header Level ............................................................................................................................................. 26

5.2.2. Table 2 – Detail Level ................................................................................................................................................ 27
1. Introduction to the Arizona Mandatory Insurance Reporting System (AMIRS)

1.1. AMIRS Guide for Insurance Companies Purpose

The purpose of this guide is to provide reporting entities with the information necessary to implement the required reporting of insurance policy information to the Arizona Department of Transportation (ADOT) Motor Vehicle Division (MVD) Arizona Mandatory Insurance Reporting System (AMIRS).

This guide provides a mix of business and technical information to define when and how insurance information must be transmitted between the Arizona Department of Transportation Motor Vehicle Division and the company.

The most current version of this guide will be posted on our web site at:


Permission granted to reproduce additional copies as needed.

1.2. AMIRS Goal and Authorization

ADOT MVD is dedicated to facilitating licensing, safety programs and compliance with motor vehicle laws. AMIRS takes advantage of current technology to communicate and partner with the insurance industry, and/or service bureaus, through a policy reporting system which reduces the need for vehicle owners and drivers to submit proof of insurance coverage.

AMIRS is operated by ADOT MVD and the reported information is stored in a database maintained internally on our mainframe computer. The operation of this system is not contracted with any outside entity.

Arizona Revised Statutes Title 28, Chapter 9, Section 4148 requires that each company report at least every seven days. Copies of the statute may be found at:

https://www.azleg.gov/ars/28/04148.htm
1.3. AMIRS Data Transmission

AMIRS requires the transmission of data through Electronic Data Interchange (EDI) using a standardized format. Data must be formatted in accordance with the specifications in this guide, which is an implementation of the 811 transaction set format as defined by the American National Standards Institute (ANSI), Accredited Standards Committee (ASC) X12N.

There are three (3) transmission methods available:

1. Information Exchange (IE)
2. File Transfer Protocol (FTP) with Pretty Good Privacy (PGP) file encryption
3. File Transfer Protocol with SSL supported communication (FTPS) with Pretty Good Privacy (PGP) file encryption.

1.4. AMIRS Reportable Activity

Insurance companies are required to report activity for both vehicle specific and non-vehicle specific policies. Reportable activity includes:

- Policy cancellation
- Policy non-renewal
- New policy issue
- Policy reinstatement
- Vehicle added to a vehicle specific policy
- Vehicle deleted from a vehicle specific policy
- Commercial coverage renewals reported at least annually

Currently, AMIRS receives and processes about 725,000 EDI policy report transactions every month, from about 500 NAICs, submitted by over 200 reporting entities.
1.5. Policy Report Process

Reportable policy types are vehicle specific, driver specific and non-vehicle specific.

**Vehicle specific policies** are the most common and are matched to vehicle records in the ADOT MVD Title and Registration database using the vehicle identification number (VIN).

**Driver specific policies** are the SR22 and SR26 policy types. These are matched to driver license records in the ADOT MVD driver license database. Driver license data is linked to the title and registration database using the primary owner’s driver license number. This policy type will link to vehicles where the SR policyholder is the primary owner. If the SR policyholder is not the primary vehicle owner, the SR policy coverage will not be linked to a vehicle record.

**Non-vehicle specific policies** are generally referred to as “all owned” or “blanket policies”. These are issued to organizational entities for a specific coverage amount insuring all of that organization’s vehicles at any given time. With this type of policy, the organizations do not provide the insurance company with their vehicles’ information. These reports are linked to vehicles through a customer number in the ADOT MVD customer database. The customer number may be the organization’s FEIN or an MVD issued customer number. **ADOT MVD does not have many of the organizational FEINs in our customer database. This means that the majority of non-specific reports with FEIN will not find a match and will be returned as customer not found (E170) errors.** Due to this failure to match, some vehicle owners with this policy type will be sent notices requesting proof of insurance and their responses will be entered manually. For this reason we advise all organizations to report vehicle specific, whenever possible. In the case of “blanket” or “all owned” coverage where the insurance company does not know the VIN, we try to match non-specific reports to vehicles using the FEIN reported, but this method cannot be considered accurate. **Non-vehicle specific reports will not be accepted for private passenger coverage using the policyholder’s driver license number as the customer number.**
1.5.1. Vehicle Specific Update Process

An accurately coded VIN is essential to link policy coverage to the vehicle record. Our system is vehicle based, not policy based as it is in many insurance companies’ systems. The VIN is the database key used to access the vehicle record. If the reported VIN does not match a VIN in Arizona’s Title and Registration database, that policy transaction report cannot be applied. We receive many vehicle specific reports without an accurate VIN; those cannot access the appropriate vehicle record and are returned as VIN errors. A VIN error means that a vehicle record matching that VIN is not in Arizona’s database. Insurance companies frequently inquire about errors on VINs that are valid according to VIN validation software. Even though it is a valid VIN, no vehicle record with that particular VIN was found. Most frequently this is because that particular vehicle is not registered in Arizona. Each vehicle record has its own policy record attached to it, and a policy report for one vehicle has no effect on policy records attached to other vehicles. Every vehicle (VIN) must be reported when coverage is added and cancelled. If one vehicle is being added and another dropped from a policy, then a new business report must be submitted for the vehicle being added and a cancellation report must be submitted for the vehicle being dropped. There is no master policy record; the policy number alone cannot be used to apply updates. Since each policy transaction is independent from others, a vehicle can be added to or cancelled from a policy, without affecting any other vehicle’s coverage by the same policy.

The system first attempts to match the VIN on the policy report to an existing vehicle on the ADOT MVD title and registration database. If a successful VIN match is found, the policy report is compared to any existing policies already connected to that vehicle record by checking for exact matches to the insurance company code and policy number. If an exact match is found, the policy report information overlays and updates the policy record on the database. When an exact match is not found, the policy report is attached as a new policy record. New business policy reports that match to cancelled policies already on the system are rejected if the registration is in a suspended status. If a non-matching new business or cancelled policy is received for a vehicle with a suspended registration, the policy record is attached to that vehicle record, but it will have no effect on the registration suspension status.

Due to the insurance code and policy number matching process, it is very important that insurance companies consistently use the same insurance code and policy number for the same vehicle’s coverage. If a company changes these values in any way, the system will not recognize a policy report as an update to an existing policy, but will instead insert it as a separate policy record. If either the insurance code or policy number must be changed, report a cancellation using the original values and send a new business policy report with the new values.
1.5.2. VIN Non-match Re-processing

A process is in place to give a vehicle specific policy transaction a “second chance” to make a successful VIN match. Policy reports are frequently received before the corresponding vehicle record is created. This occurs when vehicle owners inform their insurance company that they have moved to Arizona, but do not register their vehicles with MVD in a timely manner.

When a vehicle specific policy record does not match on a VIN, the reported VIN is validated through the following tests:

1. Pre-1981 model years:
   This test is designed to weed out policy reports with obvious VIN error values (e.g. “TBD”, “UNK”, “Unknown”, “To follow”, “99999”, “00000”, etc.). Policy reports that fail this validation are returned to the sender immediately.

2. 1981 and later model years:
   This test uses VINA software to validate the VIN as a valid, properly formed VIN. Policy reports that fail this validation are returned to the sender immediately.

3. Reprocessing:
   VINs that pass tests 1 and 2 above are written to a file for reprocessing. Every processing day for ninety calendar days, additional attempts are made to match the unmatched policy report to a vehicle record. If a matching vehicle record is registered at MVD within the ninety day period, the policy record will attach to the vehicle record; otherwise, the policy report is written to an error record and returned to the insurance company. This process results in several hundred additional matches every week. One disadvantage to this method is that the insurance company isn’t notified of most VIN errors for ninety days.

1.5.3. Error Process

AMIRS returns all policy report errors to the submitting entity, unless such reports are exempt from Arizona’s mandatory insurance legislative requirements. Some states have “hard” and “soft” errors where policy reports with hard errors are not applied and those with soft errors are applied, but require a subsequent correction. Any error returned from AMIRS is a “hard” error; that policy report transaction was not applied as a policy update and is not retained by AMIRS.

Returned error records must be corrected and resubmitted as soon as possible. Correction of unmatched policy records is essential to prevent unnecessary notices and enforcement actions being taken against the vehicle owner/policyholder. Currently AMIRS returns over 17,000 VIN errors every month. Policy reports with unmatched VINs and other errors result in problems and extra work for the vehicle owner/policyholder, the insurance company, and MVD. Reduction in the number of
reported errors and timely resolution of these errors is essential. The MI Reporting Coordinator can assist with the resolution of errors, when necessary.

Error files may be returned at any time from AMIRS, therefore insurance companies must check for error files every night, even if no files were sent to AMIRS. Timely resolution of errors on the part of insurance companies aids in researching and solving reporting issues, and prevents needless enforcement actions against our mutual customers.

Note that due to our VIN reprocessing to match policy reports with vehicles registered in Arizona, most VIN errors will be returned ninety days after the policy was reported.

*Do not send acknowledgements (997 files) of error files that ADOT returns.*
1.6. Insurance Verification Overview

Policy reports received from both insurance companies and vehicle owners update the MVD title and registration databases. Every week all currently registered vehicles on the databases are checked for active insurance coverage.

If active coverage is not found, the registered owner is sent a verification notice requesting that evidence of insurance coverage be provided to ADOT MVD within 15 days. Proof of coverage submitted in response to the notice is recorded in the appropriate insurance database. Failure to provide evidence in this time period results in that vehicle’s registration being suspended.

During the time a vehicle registration is in suspension status, AMIRS will no longer accept active coverage updates to policies already on file for that vehicle. At this point, it is the vehicle owner’s responsibility to prove that they did not let their coverage lapse. If insurance was not in effect, then the owner/owners of the vehicle will need to obtain coverage from a valid insurance company and pay a reinstatement fee of $50.

**It is in the best interest of both ADOT MVD and the insurance industry to ensure AMIRS is as accurate as possible to avoid sending unnecessary notices and generating invalid suspension actions against our joint customers.**

1.7. Nightly Processing cut-off

AMIRS processing begins at 6:30pm MST M-F and at 4:30pm MST Saturdays. If a file submission from an insurance company misses this cut-off time, the file will be processed during the next scheduled execution.

1.8. Prohibition on Emailing Data

Because email is an inherently insecure communication medium, personally identifiable information must never be emailed to ADOT. This includes, but is not limited to, customer name, address, SSN, driver’s license, and date of birth. Generally only two data items may be emailed to assist with researching an issue: VIN and/or policy number, though VIN is the most reliable item.

Data files also must never be emailed; secure communication channels have been established for insurance companies to submit data to ADOT. Only these established connections may be used.
2. Electronic Data Interchange Overview

2.1. EDI Background

Electronic Data Interchange, commonly referred to as EDI, is computer-to-computer transmission of business data using a standardized computer readable format. Any amount of data can be exchanged with message acknowledgments validating delivery. Large numbers of trading partners are easily managed by commercial EDI software.

Becoming an EDI trading partner requires a computer (PC, mid-range or mainframe) and the following:

- Communications hardware
- Communications software
- X12 translation software

There are many companies marketing EDI software and hardware. There are packages for all sizes of computers and most operating systems. Prices vary widely, usually based on the processing capacity of the computer.

There are also service bureaus that submit EDI X12 reports on behalf of insurance companies. Some of these are listed in section 7.3 of this document.

Sources for obtaining more information on X12 translation software include:

- EDI trade shows
- Insurance trade organizations

2.2. Data Connectivity

Reporting entities have the choice of using one of three (3) different connectivity methods:

1. Value added network (VAN) which connects to Information Exchange (IE)
2. File Transfer Protocol (FTP) with PGP file encryption
3. File Transfer Protocol with SSL supported communication (FTPS) with PGP file encryption
2.2.1. Information Exchange

ADOT MVD has selected Information Exchange (IE) to provide one method of data connectivity between reporting entities and AMIRS. IE services usually are billed as a one-time set up fee, a monthly charge, and a usage charge. IVANS is a re-marketer of IE services for the insurance industry.

If a company desires IE connectivity, it must obtain an account and electronic mailbox.

2.2.1.1. Electronic Mailbox

An electronic mailbox is a unique “address” that provides a company with the ability to send and receive information between trading partners. It packages data inside an ‘electronic envelope’ containing the address of the sender and receiver. When an envelope is received, it is opened, the contents are handled, it is re-packaged, and both acknowledgements and error data are returned back through the same mailbox.

2.2.2. File Transfer Protocol

Reporting entities may also use either FTP with PGP file encryption or FTPS with PGP file encryption as a connectivity method. An account directory for the company is set up on an ADOT FTPS server. Within this account directory are two sub-directories, one for sending data (toadot) and one for retrieving data (fromadot) (i.e. functional acknowledgments and any error files). You will place all files that you send to us in the “toadot” subdirectory. After AMIRS successfully extracts the data received, it is deleted from the “toadot” directory. We will place all 997 Functional Acknowledgements and 811 Error Files in the “fromadot” subdirectory. The reporting entity is responsible for deleting the files in the ‘fromadot’ directory after downloading and processing them in their system. This indicates to each of us that the other has successfully extracted the data sent to them.

Reporting entities must obtain their own Internet service provider and communications hardware and software.

ADOT MVD has endeavored to make the process as secure as possible through the exchange of PGP encryption keys and signatures.

The server is FTPS.AZDOT.GOV. Companies may use either FTP or FTP using explicit SSL supported communication, both on port 21 PASV, but PGP file encryption is required for either method. FTP will be used throughout the remainder of this document to refer to both FTP and FTPS connections.
When sending a file via FTP, the file name:
• Must have a maximum length of 8 characters
• Must contain only uppercase letters and numbers
• Must not have a file extension
• Must begin with the FTP account name
• Must vary from one transmission to the next. This prevents overlaying any previous data in case of a delay with our normal extract process. Our process will extract all files in the directory at run time. Time stamps as part of the name are discouraged; a simple sequence number (ABCD0001, ABCD0002, ABCD0003, etc.) ensures correct processing order. If the end of the sequence is reached, simply start over at 1.

When retrieving a file via FTP, the file name will follow one of the patterns below:
• Error files: A811MMDD, where MM is the month and DD is the day of processing.
• Acknowledgment files: A997MMDD, where MM is the month and DD is the day of processing.

If your FTP account is ABCD, ABCD0001 is an example of a valid file name. If you send liability and SR policies in separate files, then ABCD0001 and ABCDS001 are valid file names.

The file format:
• Must have an 80 byte record length
• Must be padded with spaces to 80 bytes where necessary
• Must split the ISA segment between 2 records, so that byte 81 of the ISA begins in position 1 of the next record
• Must have only one segment per line
• Must terminate each record with CR/LF
• Must be sent as ASCII text
• Must be PGP encrypted and signed in a single pass

We also have a requirement for the ISA06 element. The FTP account name must be repeated twice, with at least 1 space between the two occurrences, in all uppercase characters. The example below uses the value “FTPACCT” as a substitute for the FTP account name that will be assigned to your organization; you will use the actual account name assigned to you. Per the ANSI standard, the ISA06 must be exactly 15 characters counting spaces. Your ISA segment should look similar to the following:

ISA.00. .00. .ZZ.FTPACCT FTPACCT.ZZ.AZMV AZMVIE4 .030731.113 0.U.00305.000000214.0.P...

Please refer to p. B.3 of the ANSI X12 811 standard guide for specifics regarding the ISA segment.
Your GS segment will be similar to this:

\text{GS.CI.FTPACCT FTPACCT.AZMV AZMVE4.030731.1130.214.X.003050.}

In order to uniquely identify exchanges, functional groups, and transaction sets, control numbers must not be dates.
2.3. ANSI ASC X12.39 TS 811

Policy reports sent to AMIRS must be in the nationally standardized format as defined by the American National Standards Institute (ANSI), Accredited Standards Committee (ASC) X12N. This standard is known as the ANSI ASC X12.39, Transaction Set 811, Consolidated Service Invoice Statement, Version: 003050. The insurance industry subcommittee of ANSI has defined the business usage of this transaction set to be for notification to state agencies within the U.S. of insurance coverage on a motor vehicle.

Reporting entities planning to report electronically must obtain a copy of the ALIR Implementation Guide, Version 3.0. It will be used as a reference manual for identifying the ANSI standards currently used. This document provides information necessary to facilitate an implementation of EDI. This ALIR Implementation Guide enables the use of EDI for the notification of the status of insurance coverage.

In this guide for insurance companies, AMIRS has identified specific data segments and data elements out of the ANSI ALIR implementation guide, Version 3.0.

A complete copy of the ALIR Implementation Guide, Version 3.0 is available by contacting Washington Publishing at 425-562-2245 or at their web site at


Document Identification
Guide ID: X25
Set ID: 811
Registration Date: 4/15/1996
Publication Date: 11/15/1996
Version/Release: 003050
Owner: TG1/WG1
Guide Name: Automobile Liability Insurance Reporting
2.4. Electronic Reporting Process

The following steps describe an overview of how insurance information is received and processed via X12 (TS 811).

1. Reporting entities package their policy report into a document.
   a. VAN customers place this document into an electronic envelope and transmit it to the AMIRS electronic mailbox.
   b. FTP customers sign onto the ADOT server and put their PGP encrypted and signed policy report onto the AMIRS FTP server.

2. The EDI software retrieves the electronic envelope, removes the document and translates the information into individual records in the application’s data format. A Functional Acknowledgment document (ASC X12 TS 997) is prepared for returning to the sender. The translator checks to insure that the document follows the rules of the 811 ALIR standard and the AMIRS implementation. Certain translator errors will be identified in the 997 acknowledgments.

3. The 997 acknowledgment transaction is sent to the reporting entity’s electronic mailbox, or encrypted and signed (in a single pass) before being put on the AMIRS FTP server. A 997 file is always sent to acknowledge receipt, whether or not any translation errors were detected. Insurance companies must process these acknowledgments to confirm that the policy report was received. If an acknowledgment is not received within one business day, the AMIRS technical contact must be contacted for resolution.

4. The data is validated for content errors. Validation errors are described in section 5.4.2 of this guide. Records that do not pass validation are written to a file for subsequent error processing. Valid records are passed on for matching.

5. Validated records are matched either by VIN or customer number, depending on their specific reporting type. Matched records are used to update the insurance databases.

6. Error records are immediately translated back to an 811 document, placed in an electronic envelope and returned to the reporting entity’s electronic mailbox or FTP account’s sub-directory. Most VIN mismatched records are retained in a reprocessing file for ninety calendar days for rematch attempts. If there are no error records, only the TS997 acknowledgement transaction is returned. Insurance companies must process these error files to resolve the errors and send corrected reports.

7. Daily statistical reports regarding each insurance company’s policy reports are generated for the MI Reporting Coordinator.
3. Business Reporting Specifications

3.1. Insurance Business Contact and Set Up

In order to implement the EDI process for submitting insurance information, each reporting entity must contact the MI reporting coordinator and provide the following information:

1. The project managers and technical contacts during development and implementation. Include names, titles, addresses, phone numbers, e-mail addresses, etc. Also, identify the on-going contact person, if different.

2. The transmission method of choice (IE, or PGP encrypted file via FTP) based on reporting specifications found in this section and Section 2. If reporting by IE, provide the account information necessary to access the electronic mailbox.

3. As ADOT MVD is limited in the number of companies that can be converted at any given time, requests for starting dates will be on first request basis. Failure to report may result in a non-compliance report being filed with the Arizona Department of Insurance (DOI). The DOI may impose sanctions on the insurance company, including fines and suspension of license.

Once the Reporting Coordinator receives this information, the company will be instructed concerning the testing process.
3.2. On-going Reporting of Insurance Information

The following list addresses some of the on-going insurance information reporting requirements:

- Insurance companies must report at least once every seven days. If there was no reportable activity for the period, a no activity report is required.

- Reportable activity is:
  - A policy cancellation.
  - A policy non-renewal.
  - A new policy issue.
  - A vehicle added to a vehicle specific policy.
  - A vehicle deleted from a vehicle specific policy.
  - Commercial coverage renewals reported at least annually.

- Both vehicle specific and non-vehicle specific policies must be reported. Vehicle specific policies must have a valid VIN and non-vehicle specific policies must have a valid Arizona customer number.

- Both private passenger and commercial policies must be reported; please note the annual renewal requirement for commercial coverage.

Reports must be made in accordance with the X12 EDI specifications outlined in this guide.
4. EDI Technical Specifications

4.1. X12 811 Information

Reporting entity’s programming must include the ability to send a (TS811) policy report to AMIRS and to receive both (TS811) error transactions and (TS997) functional acknowledgments from AMIRS. If possible, do not return a (TS997) functional acknowledgment in response to the error records that are returned from AMIRS.

Translation errors can be avoided if a sender ensures that the transaction set is in compliance with the ANSI standard. A copy of the ANSI standard document, along with this implementation guide, is essential for a successful implementation. The following are examples of EDI data standards:

- Dates are all number characters and are valid according to a calendar.
- Alphanumeric data elements contain only uppercase letters, numbers, spaces and certain special characters.
- Related elements are either all populated or all omitted.

ADOT MVD recommends that the following commonly used data delimiters be used in EDI transaction sets:

<table>
<thead>
<tr>
<th>Data element delimiter:</th>
<th>hexadecimal 1D</th>
</tr>
</thead>
<tbody>
<tr>
<td>Segment delimiter:</td>
<td>hexadecimal 1C</td>
</tr>
<tr>
<td>Sub-element delimiter:</td>
<td>hexadecimal 1F</td>
</tr>
</tbody>
</table>

4.2. Information Exchange Information

<table>
<thead>
<tr>
<th>AMIRS Account Number:</th>
<th>AZMV</th>
</tr>
</thead>
<tbody>
<tr>
<td>AMIRS User id:</td>
<td>AZMVIE4</td>
</tr>
<tr>
<td>Test Message Class:</td>
<td>MIX12T</td>
</tr>
<tr>
<td>Production Message Class</td>
<td>MIX12P</td>
</tr>
</tbody>
</table>
5. Data Element Specifications

5.1. 811 AMIRS Policy Receipt

This is the Arizona adaptation of the X12 (TS811) Version 3050. The segments and data elements defined in this section specify the data required by Arizona with most of the values required for a valid 811 transaction. The inclusion of additional data is optional to the sender, but cannot be returned on the error records.

5.1.1. Table 1 – Header Level

### 811 Header
**Segment: ST – Transaction Set Header**

<table>
<thead>
<tr>
<th>Seq. No.</th>
<th>X12 Name</th>
<th>Value To Be Used</th>
<th>Min/Max</th>
</tr>
</thead>
<tbody>
<tr>
<td>ST01</td>
<td>Transaction Set Identifier Code</td>
<td>811</td>
<td>3/3</td>
</tr>
<tr>
<td>ST02</td>
<td>Transaction Set Control Number</td>
<td>Unique control number, assigned by sender</td>
<td>4/9</td>
</tr>
</tbody>
</table>

### Date Insurance Entity Created File
**Segment: BIG - Beginning Segment for Invoice**

<table>
<thead>
<tr>
<th>Seq. No.</th>
<th>X12 Name</th>
<th>Value To Be Used</th>
<th>Min/Max</th>
</tr>
</thead>
<tbody>
<tr>
<td>BIG01</td>
<td>Date</td>
<td>Creation date (YYMMDD)</td>
<td>6/6</td>
</tr>
<tr>
<td>BIG02</td>
<td>Invoice Number</td>
<td>“1”</td>
<td>1/1</td>
</tr>
</tbody>
</table>

### Sender’s Name and Identification Number
**Loop ID: N1 - Sender’s Name and Identification Number**

**Segment: N1 - Name**

<table>
<thead>
<tr>
<th>Seq. No.</th>
<th>X12 Name</th>
<th>Value To Be Used</th>
<th>Min/Max</th>
</tr>
</thead>
<tbody>
<tr>
<td>N101</td>
<td>Entity ID Code</td>
<td>“IN” (Insurer) “SQ” (Service Bureau)</td>
<td>2/2</td>
</tr>
<tr>
<td>N102</td>
<td>Name</td>
<td>Sender’s name</td>
<td>1/35</td>
</tr>
<tr>
<td>N103</td>
<td>ID Code Qualifier</td>
<td>“NI” (NAIC code) or “FI” (Federal Tax ID number)</td>
<td>2/2</td>
</tr>
<tr>
<td>N104</td>
<td>ID Code</td>
<td>NAIC Code or Federal Tax ID number</td>
<td>5/9</td>
</tr>
</tbody>
</table>

### Receiver’s Name and Identification Number
**Loop ID: N1 - Receiver’s Name and Identification Number**

**Segment: N1 - Name**

<table>
<thead>
<tr>
<th>Seq. No.</th>
<th>X12 Name</th>
<th>Value To Be Used</th>
<th>Min/Max</th>
</tr>
</thead>
<tbody>
<tr>
<td>N101</td>
<td>Entity ID Code</td>
<td>“2F” (State)</td>
<td>2/2</td>
</tr>
<tr>
<td>N102</td>
<td>Name</td>
<td>“ARIZONA MVD MI”</td>
<td>14/14</td>
</tr>
</tbody>
</table>
### 5.1.2. Table 2 – Detail Level

#### Hierarchical Level 1: Insurer

<table>
<thead>
<tr>
<th>Seq. No.</th>
<th>X12 Name</th>
<th>Value To Be Used</th>
<th>Min/Max</th>
</tr>
</thead>
<tbody>
<tr>
<td>HL01</td>
<td>Hierarchical ID Number</td>
<td>HL Identifier</td>
<td>1/4</td>
</tr>
<tr>
<td>HL02</td>
<td>Hierarchical Parent ID</td>
<td>Not used</td>
<td>0/0</td>
</tr>
<tr>
<td>HL03</td>
<td>Hierarchical Level Code</td>
<td>“1”</td>
<td>1/1</td>
</tr>
<tr>
<td>HL04</td>
<td>Hierarchical Child Code</td>
<td>“1”</td>
<td>1/1</td>
</tr>
</tbody>
</table>

#### Insurance Entity’s Name and NAIC Code

<table>
<thead>
<tr>
<th>Seq. No.</th>
<th>X12 Name</th>
<th>Value To Be Used</th>
<th>Min/Max</th>
</tr>
</thead>
<tbody>
<tr>
<td>NM101</td>
<td>Entity ID Code</td>
<td>“IN” (Insurer)</td>
<td>2/2</td>
</tr>
<tr>
<td>NM102</td>
<td>Entity Type Qualifier</td>
<td>“2” (Non-person)</td>
<td>1/1</td>
</tr>
<tr>
<td>NM103</td>
<td>Last Name or Organization Name</td>
<td>Organization name</td>
<td>1/35</td>
</tr>
<tr>
<td>NM108</td>
<td>Identification Code Qualifier</td>
<td>“NI” (NAIC Code)</td>
<td>2/2</td>
</tr>
<tr>
<td>NM109</td>
<td>ID Code</td>
<td>NAIC Code</td>
<td>5/5</td>
</tr>
</tbody>
</table>

#### Insurer Reporting Information

<table>
<thead>
<tr>
<th>Seq. No.</th>
<th>X12 Name</th>
<th>Value To Be Used</th>
<th>Min/Max</th>
</tr>
</thead>
<tbody>
<tr>
<td>IT102</td>
<td>Quantity Invoiced</td>
<td>“1”</td>
<td>1/1</td>
</tr>
<tr>
<td>IT103</td>
<td>Unit</td>
<td>“IP”</td>
<td>2/2</td>
</tr>
<tr>
<td>IT104</td>
<td>Unit Price</td>
<td>“0”</td>
<td>1/1</td>
</tr>
</tbody>
</table>

#### Submission Date

<table>
<thead>
<tr>
<th>Seq. No.</th>
<th>X12 Name</th>
<th>Value To Be Used</th>
<th>Min/Max</th>
</tr>
</thead>
<tbody>
<tr>
<td>DTM01</td>
<td>Date/Time Qualifier</td>
<td>“368”</td>
<td>3/3</td>
</tr>
<tr>
<td>DTM02</td>
<td>Date</td>
<td>Date submitted</td>
<td>6/6</td>
</tr>
<tr>
<td>DTM05</td>
<td>Century</td>
<td>Century of submittal date</td>
<td>2/2</td>
</tr>
</tbody>
</table>
### 5.1.2.2. Hierarchical Level 2: State

**State Level**  
Loop ID: HL  
Segment: HL - Hierarchical Level (Level 2: Occurs once for the state for each insurer being reported)

<table>
<thead>
<tr>
<th>Seq. No.</th>
<th>X12 Name</th>
<th>Value To Be Used</th>
<th>Min/Max</th>
</tr>
</thead>
<tbody>
<tr>
<td>HL01</td>
<td>Hierarchical ID Number</td>
<td>HL identifier</td>
<td>1/4</td>
</tr>
<tr>
<td>HL02</td>
<td>Hierarchical Parent ID</td>
<td>“1”</td>
<td>1/1</td>
</tr>
<tr>
<td>HL03</td>
<td>Hierarchical Level Code</td>
<td>“2”</td>
<td>1/1</td>
</tr>
<tr>
<td>HL04</td>
<td>Hierarchical Child Code</td>
<td>“1”</td>
<td>1/1</td>
</tr>
</tbody>
</table>

**State Name**  
Loop ID: HL/NM1  
Segment: NM1 - Individual or Organization Name

<table>
<thead>
<tr>
<th>Seq. No.</th>
<th>X12 Name</th>
<th>Value To Be Used</th>
<th>Min/Max</th>
</tr>
</thead>
<tbody>
<tr>
<td>NM101</td>
<td>Entity ID Code</td>
<td>“2F”</td>
<td>2/2</td>
</tr>
<tr>
<td>NM102</td>
<td>Entity Type Qualifier</td>
<td>“2”</td>
<td>1/1</td>
</tr>
<tr>
<td>NM103</td>
<td>Last Name or Organization Name</td>
<td>”AZ”</td>
<td>2/2</td>
</tr>
</tbody>
</table>
### 5.1.2.3. Hierarchical Level 4: Policy

#### Loop ID: HL
#### Segment: HL - Hierarchical Level

<table>
<thead>
<tr>
<th>Seq. No.</th>
<th>X12 Name</th>
<th>Value To Be Used</th>
<th>Min/Max</th>
</tr>
</thead>
<tbody>
<tr>
<td>HL01</td>
<td>Hierarchical ID Number</td>
<td>HL Identifier</td>
<td>1/4</td>
</tr>
<tr>
<td>HL02</td>
<td>Hierarchical Parent ID</td>
<td>Parent ID number</td>
<td>1/4</td>
</tr>
<tr>
<td>HL03</td>
<td>Hierarchical Level Code</td>
<td>“4”</td>
<td>1/1</td>
</tr>
<tr>
<td>HL04</td>
<td>Hierarchical Child Code</td>
<td>“1” (level 5 loops present) or “0” (no level 5 loops present)</td>
<td>1/1</td>
</tr>
</tbody>
</table>

#### Insured Name
#### Loop ID: HL/NM1
#### Segment: NM1 - Individual or Organization Name

<table>
<thead>
<tr>
<th>Seq. No.</th>
<th>X12 Name</th>
<th>Value To Be Used</th>
<th>Min/Max</th>
</tr>
</thead>
<tbody>
<tr>
<td>NM101</td>
<td>Entity ID Code</td>
<td>“IL”</td>
<td>2/2</td>
</tr>
<tr>
<td>NM102</td>
<td>Entity Type Qualifier</td>
<td>“1” (person) or “2” (non-person entity)</td>
<td>1/1</td>
</tr>
<tr>
<td>NM103</td>
<td>Last name or organization name</td>
<td>Insured last name or organization name</td>
<td>1/35</td>
</tr>
<tr>
<td>NM104</td>
<td>Name First</td>
<td>Insured first name</td>
<td>1/25</td>
</tr>
<tr>
<td>NM105</td>
<td>Name Middle</td>
<td>Insured middle initial</td>
<td>1/1</td>
</tr>
<tr>
<td>NM108</td>
<td>Identification Code Qualifier</td>
<td>“N” (Insured DL No) or “FI” (Federal Tax ID No) or Blank (NM109 not used)</td>
<td>0/2</td>
</tr>
<tr>
<td>NM109</td>
<td>ID Code</td>
<td>Insured Driver License Number or Non Person entity’s FEIN</td>
<td>0/9</td>
</tr>
</tbody>
</table>

#### Insured Address
#### Loop ID: HL/NM1
#### Segment: N3 - Address Information

<table>
<thead>
<tr>
<th>Seq. No.</th>
<th>X12 Name</th>
<th>Value To Be Used</th>
<th>Min/Max</th>
</tr>
</thead>
<tbody>
<tr>
<td>N301</td>
<td>Address Information</td>
<td>Insured mailing address</td>
<td>1/35</td>
</tr>
</tbody>
</table>

#### Insured City, State, Zip
#### Loop ID: HL/NM1
#### Segment: N4 - Geographic Location

<table>
<thead>
<tr>
<th>Seq. No.</th>
<th>X12 Name</th>
<th>Value To Be Used</th>
<th>Min/Max</th>
</tr>
</thead>
<tbody>
<tr>
<td>N401</td>
<td>City Name</td>
<td>Insured city</td>
<td>1/25</td>
</tr>
<tr>
<td>N402</td>
<td>State or Province Code</td>
<td>Insured state</td>
<td>2/2</td>
</tr>
<tr>
<td>N403</td>
<td>Postal Code</td>
<td>Insured zip</td>
<td>5/9</td>
</tr>
</tbody>
</table>
### Policy Information
#### Loop ID: HL/IT1
#### Segment: IT1 - Baseline Item Data

<table>
<thead>
<tr>
<th>Seq. No.</th>
<th>X12 Name</th>
<th>Value To Be Used</th>
<th>Min/Max</th>
</tr>
</thead>
<tbody>
<tr>
<td>IT102</td>
<td>Quantity Invoiced</td>
<td>“1”</td>
<td>1/1</td>
</tr>
<tr>
<td>IT103</td>
<td>Unit</td>
<td>“IP”</td>
<td>2/2</td>
</tr>
<tr>
<td>IT104</td>
<td>Unit Price</td>
<td>“0”</td>
<td>1/1</td>
</tr>
</tbody>
</table>

### Transaction Purpose
#### Loop ID: HL/IT1
#### Segment: SI - Service Characteristic Identification

<table>
<thead>
<tr>
<th>Seq. No.</th>
<th>X12 Name</th>
<th>Value To Be Used</th>
<th>Min/Max</th>
</tr>
</thead>
<tbody>
<tr>
<td>SI01</td>
<td>Agency Qualifier Code</td>
<td>“ZZ”</td>
<td>2/2</td>
</tr>
<tr>
<td>SI02</td>
<td>Service Characteristic Qualifier</td>
<td>“11”</td>
<td>2/2</td>
</tr>
<tr>
<td>SI03</td>
<td>Product/Service ID</td>
<td></td>
<td>3/3</td>
</tr>
<tr>
<td></td>
<td>Transaction Type:</td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td>“NBS” – (New business) or</td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td>“XLC” – (Cancellation) or</td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td>“S22” – (SR22) or</td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td>“S26” – (SR26) or</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

### Policy Number
#### Loop ID: HL/IT1
#### Segment: REF - Reference Number

<table>
<thead>
<tr>
<th>Seq. No.</th>
<th>X12 Name</th>
<th>Value To Be Used</th>
<th>Min/Max</th>
</tr>
</thead>
<tbody>
<tr>
<td>REF01</td>
<td>Reference No. Qualifier</td>
<td>“IG”</td>
<td>2/2</td>
</tr>
<tr>
<td>REF02</td>
<td>Reference Number</td>
<td>Policy number</td>
<td>1/30</td>
</tr>
<tr>
<td>REF03</td>
<td>Description</td>
<td></td>
<td>1/1</td>
</tr>
<tr>
<td></td>
<td>“1” – personal</td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td>“2” – commercial</td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td>“3” – collectible/classic</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

### Issuer of Operator’s Driver License
#### Loop ID: HL/IT1
#### Segment: REF - Reference Number

<table>
<thead>
<tr>
<th>Seq. No.</th>
<th>X12 Name</th>
<th>Value To Be Used</th>
<th>Min/Max</th>
</tr>
</thead>
<tbody>
<tr>
<td>REF01</td>
<td>Reference No. Qualifier</td>
<td>“XM”</td>
<td>2/2</td>
</tr>
<tr>
<td>REF03</td>
<td>Description</td>
<td>State or province code of jurisdiction issuing driver license</td>
<td>2/2</td>
</tr>
</tbody>
</table>
### Vehicle Specification Information
**Loop ID: HL/IT1**
**Segment: REF - Reference Number**

<table>
<thead>
<tr>
<th>Seq. No.</th>
<th>X12 Name</th>
<th>Value To Be Used</th>
<th>Min/Max</th>
</tr>
</thead>
<tbody>
<tr>
<td>REF01</td>
<td>Reference No. Qualifier</td>
<td>“S3”</td>
<td>2/2</td>
</tr>
<tr>
<td>REF02</td>
<td>Reference Number</td>
<td>“V” – Vehicle specific or “NS” – Not vehicle specific</td>
<td>1/2</td>
</tr>
</tbody>
</table>

### Insurance Company Information (Optional Segment)
**Loop ID: HL/IT1**
**Segment: REF - Reference Number**

<table>
<thead>
<tr>
<th>Seq. No.</th>
<th>X12 Name</th>
<th>Value To Be Used</th>
<th>Min/Max</th>
</tr>
</thead>
<tbody>
<tr>
<td>REF01</td>
<td>Reference No. Qualifier</td>
<td>“DD”</td>
<td>0/2</td>
</tr>
<tr>
<td>REF03</td>
<td>Description</td>
<td>Identifying information used by Insurance Co. which will be returned on error records</td>
<td>0/9</td>
</tr>
</tbody>
</table>

### Insured Date of Birth
**Loop ID: HL/IT1**
**Segment: DTM - Date/Time/Reference**

<table>
<thead>
<tr>
<th>Seq. No.</th>
<th>X12 Name</th>
<th>Value To Be Used</th>
<th>Min/Max</th>
</tr>
</thead>
<tbody>
<tr>
<td>DTM01</td>
<td>Date/Time Qualifier</td>
<td>“222”</td>
<td>3/3</td>
</tr>
<tr>
<td>DTM02</td>
<td>Date</td>
<td>Insured date of birth</td>
<td>6/6</td>
</tr>
<tr>
<td>DTM05</td>
<td>Century</td>
<td>Insured century of birth</td>
<td>2/2</td>
</tr>
</tbody>
</table>

### Policy Effective Date
**Loop ID: HL/IT1**
**Segment: DTM - Date/Time/Reference**

<table>
<thead>
<tr>
<th>Seq. No.</th>
<th>X12 Name</th>
<th>Value To Be Used</th>
<th>Min/Max</th>
</tr>
</thead>
<tbody>
<tr>
<td>DTM01</td>
<td>Date/Time Qualifier</td>
<td>“007”</td>
<td>3/3</td>
</tr>
<tr>
<td>DTM02</td>
<td>Date</td>
<td>Policy effective date</td>
<td>6/6</td>
</tr>
<tr>
<td>DTM05</td>
<td>Century</td>
<td>Century of policy effective date</td>
<td>2/2</td>
</tr>
</tbody>
</table>

### Policy Cancellation Date
**Loop ID: HL/IT1**
**Segment: DTM - Date/Time/Reference**

<table>
<thead>
<tr>
<th>Seq. No.</th>
<th>X12 Name</th>
<th>Value To Be Used</th>
<th>Min/Max</th>
</tr>
</thead>
<tbody>
<tr>
<td>DTM01</td>
<td>Date/Time Qualifier</td>
<td>“036”</td>
<td>3/3</td>
</tr>
<tr>
<td>DTM02</td>
<td>Date</td>
<td>Policy cancellation date or required policy expiration date if a commercial policy</td>
<td>6/6</td>
</tr>
<tr>
<td>DTM05</td>
<td>Century</td>
<td>Century of policy cancellation date</td>
<td>2/2</td>
</tr>
</tbody>
</table>
SR Policy Certification Date – (Optional, SR22 or SR26 reports only)

**Loop ID: HL/IT1**

**Segment: DTM - Date/Time/Reference**

<table>
<thead>
<tr>
<th>Seq. No.</th>
<th>X12 Name</th>
<th>Value To Be Used</th>
<th>Min/Max</th>
</tr>
</thead>
<tbody>
<tr>
<td>DTM01</td>
<td>Date/Time Qualifier</td>
<td>“458”</td>
<td>3/3</td>
</tr>
<tr>
<td>DTM02</td>
<td>Date</td>
<td>SR Certification date</td>
<td>6/6</td>
</tr>
<tr>
<td>DTM05</td>
<td>Century</td>
<td>Century of certification date</td>
<td>2/2</td>
</tr>
</tbody>
</table>
5.1.2.4. Hierarchical Level 5: Vehicle

Vehicle Level
Loop ID: HL
Segment: HL - Hierarchical Level

<table>
<thead>
<tr>
<th>Seq. No.</th>
<th>X12 Name</th>
<th>Value To Be Used</th>
<th>Min/Max</th>
</tr>
</thead>
<tbody>
<tr>
<td>HL01</td>
<td>Hierarchical ID Number</td>
<td>HL identifier</td>
<td>1/4</td>
</tr>
<tr>
<td>HL02</td>
<td>Hierarchical Parent ID</td>
<td>Parent identifier</td>
<td>1/4</td>
</tr>
<tr>
<td>HL03</td>
<td>Hierarchical Level Code</td>
<td>“5”</td>
<td>1/1</td>
</tr>
</tbody>
</table>

Section Separator – Vehicle Level
Loop ID: HL/LX
Segment: LX - Assigned Number

<table>
<thead>
<tr>
<th>Seq. No.</th>
<th>X12 Name</th>
<th>Value To Be Used</th>
<th>Min/Max</th>
</tr>
</thead>
<tbody>
<tr>
<td>LX01</td>
<td>Assigned Number</td>
<td>“1”</td>
<td>1/1</td>
</tr>
</tbody>
</table>

Vehicle Information
Loop ID: HL/LX
Segment: VEH –Vehicle Information

<table>
<thead>
<tr>
<th>Seq. No.</th>
<th>X12 Name</th>
<th>Value To Be Used</th>
<th>Min/Max</th>
</tr>
</thead>
<tbody>
<tr>
<td>VEH02</td>
<td>Vehicle ID Number</td>
<td>Vehicle Identification Number (VIN)</td>
<td>1/25</td>
</tr>
<tr>
<td>VEH03</td>
<td>Century</td>
<td>Century vehicle was made</td>
<td>2/2</td>
</tr>
<tr>
<td>VEH04</td>
<td>Year within Century</td>
<td>Year vehicle was made</td>
<td>2/2</td>
</tr>
<tr>
<td>VEH05</td>
<td>Agency Qualifier Code</td>
<td>“NA”</td>
<td>2/2</td>
</tr>
<tr>
<td>VEH06</td>
<td>Product Description Code</td>
<td>Vehicle make</td>
<td>1/5</td>
</tr>
</tbody>
</table>

Vehicle License Plate Number – (Optional)
Loop ID: HL/LX
Segment: REF - Reference Number

<table>
<thead>
<tr>
<th>Seq. No.</th>
<th>X12 Name</th>
<th>Value To Be Used</th>
<th>Min/Max</th>
</tr>
</thead>
<tbody>
<tr>
<td>REF01</td>
<td>Reference No. Qualifier</td>
<td>“LV”</td>
<td>1/2</td>
</tr>
<tr>
<td>REF02</td>
<td>Reference Number</td>
<td>Vehicle license plate number</td>
<td>1/8</td>
</tr>
</tbody>
</table>
### 5.1.3. Table 3 – Summary Level

#### Section Separator – Summary Level

#### Segment: TDS - Total Monetary Value Summary

<table>
<thead>
<tr>
<th>Seq. No.</th>
<th>X12 Name</th>
<th>Value To Be Used</th>
<th>Min/Max</th>
</tr>
</thead>
<tbody>
<tr>
<td>TDS01</td>
<td>Total Invoice Amount</td>
<td>“1”</td>
<td>1/1</td>
</tr>
</tbody>
</table>

#### Segment: CTT - Transaction Totals

<table>
<thead>
<tr>
<th>Seq. No</th>
<th>X12 Name</th>
<th>Value To Be Used</th>
<th>Min/Max</th>
</tr>
</thead>
<tbody>
<tr>
<td>CTT01</td>
<td>Number of Line Items</td>
<td>Total no of insurance policy transactions in this transaction set</td>
<td>1/4</td>
</tr>
</tbody>
</table>
5.2. 811 AMIRS Error Return

The following is the Arizona adaptation of the X12 (TS811) Version 3050, for error return. The segments and data elements identified are the data returned to the reporting entity from AMIRS.

5.2.1. Table 1 – Header Level

811 Header
Segment: ST – Transaction Set Header

<table>
<thead>
<tr>
<th>Seq. No.</th>
<th>X12 Name</th>
<th>Value To Be Used</th>
<th>Min/Max</th>
</tr>
</thead>
<tbody>
<tr>
<td>ST01</td>
<td>Transaction Set Identifier Code</td>
<td>811</td>
<td>3/3</td>
</tr>
<tr>
<td>ST02</td>
<td>Transaction Set Control Number</td>
<td>Unique control number, assigned by sender</td>
<td>4/9</td>
</tr>
</tbody>
</table>

Date Insurance Entity Created File
Segment: BIG - Beginning Segment for Invoice

<table>
<thead>
<tr>
<th>Seq. No.</th>
<th>X12 Name</th>
<th>Value To Be Used</th>
<th>Min/Max</th>
</tr>
</thead>
<tbody>
<tr>
<td>BIG01</td>
<td>Date</td>
<td>Creation date (YYMMDD)</td>
<td>6/6</td>
</tr>
<tr>
<td>BIG02</td>
<td>Invoice Number</td>
<td>“1”</td>
<td>1/1</td>
</tr>
</tbody>
</table>

Sender’s Name and Identification Number
Loop ID: N1 – Sender’s Name and Identification Number
Segment: N1 - Name

<table>
<thead>
<tr>
<th>Seq. No.</th>
<th>X12 Name</th>
<th>Value To Be Used</th>
<th>Min/Max</th>
</tr>
</thead>
<tbody>
<tr>
<td>N101</td>
<td>Entity ID Code</td>
<td>“2F” (State)</td>
<td>2/2</td>
</tr>
<tr>
<td>N102</td>
<td>Name</td>
<td>“ARIZONA MVD MI”</td>
<td>14/14</td>
</tr>
</tbody>
</table>

Receiver’s Name and Identification Number
Loop ID: N1 - Receiver’s Name and Identification Number
Segment: N1 - Name

<table>
<thead>
<tr>
<th>Seq. No.</th>
<th>X12 Name</th>
<th>Value To Be Used</th>
<th>Min/Max</th>
</tr>
</thead>
<tbody>
<tr>
<td>N101</td>
<td>Entity ID Code</td>
<td>“IN” (Insurer)</td>
<td>2/2</td>
</tr>
<tr>
<td>N102</td>
<td>Name</td>
<td>Receiver’s name</td>
<td>1/35</td>
</tr>
<tr>
<td>N103</td>
<td>ID Code Qualifier</td>
<td>“NI” (NAIC code) or “FI” (Tax ID number)</td>
<td>2/2</td>
</tr>
<tr>
<td>N104</td>
<td>ID Code</td>
<td>NAIC Code or Federal Tax ID number</td>
<td>5/9</td>
</tr>
</tbody>
</table>
5.2.2. Table 2 – Detail Level

5.2.2.1. Hierarchical Level 1: Insurer

Insurance Entity Level
Loop ID: HL – Insurance Entity Loop
Segment: HL - Hierarchical Level (Level 1: Insurer)

<table>
<thead>
<tr>
<th>Seq. No.</th>
<th>X12 Name</th>
<th>Value To Be Used</th>
<th>Min/Max</th>
</tr>
</thead>
<tbody>
<tr>
<td>HL01</td>
<td>Hierarchical ID Number</td>
<td>HL Identifier</td>
<td>1/4</td>
</tr>
<tr>
<td>HL02</td>
<td>Hierarchical Parent ID</td>
<td>Not used</td>
<td>0/0</td>
</tr>
<tr>
<td>HL03</td>
<td>Hierarchical Level Code</td>
<td>“1”</td>
<td>1/1</td>
</tr>
<tr>
<td>HL04</td>
<td>Hierarchical Child Code</td>
<td>“1”</td>
<td>1/1</td>
</tr>
</tbody>
</table>

Insurance Entity’s Name and NAIC Code
Loop ID: HL/NM1
Segment: NM1 - Individual or Organization Name

<table>
<thead>
<tr>
<th>Seq. No.</th>
<th>X12 Name</th>
<th>Value To Be Used</th>
<th>Min/Max</th>
</tr>
</thead>
<tbody>
<tr>
<td>NM101</td>
<td>Entity ID Code</td>
<td>“IN” (Insurer)</td>
<td>2/2</td>
</tr>
<tr>
<td>NM102</td>
<td>Entity Type Qualifier</td>
<td>“2” (Non-person)</td>
<td>1/1</td>
</tr>
<tr>
<td>NM103</td>
<td>Last Name or Organization Name</td>
<td>Organization name</td>
<td>1/35</td>
</tr>
<tr>
<td>NM108</td>
<td>Identification Code Qualifier</td>
<td>“NI” (NAIC Code)</td>
<td>2/2</td>
</tr>
<tr>
<td>NM109</td>
<td>ID Code</td>
<td>NAIC Code</td>
<td>5/5</td>
</tr>
</tbody>
</table>

Insurer Reporting Information
Loop ID: HL/IT1
Segment: IT1 Loop - Baseline Item Data

<table>
<thead>
<tr>
<th>Seq. No.</th>
<th>X12 Name</th>
<th>Value To Be Used</th>
<th>Min/Max</th>
</tr>
</thead>
<tbody>
<tr>
<td>IT102</td>
<td>Quantity Invoiced</td>
<td>“1”</td>
<td>1/1</td>
</tr>
<tr>
<td>IT103</td>
<td>Unit</td>
<td>“IP”</td>
<td>2/2</td>
</tr>
<tr>
<td>IT104</td>
<td>Unit Price</td>
<td>“0”</td>
<td>1/1</td>
</tr>
</tbody>
</table>

Submission Date
Loop ID: HL/IT1
Segment: DTM - Date/Time/Reference

<table>
<thead>
<tr>
<th>Seq. No.</th>
<th>X12 Name</th>
<th>Value To Be Used</th>
<th>Min/Max</th>
</tr>
</thead>
<tbody>
<tr>
<td>DTM01</td>
<td>Date/Time Qualifier</td>
<td>“368”</td>
<td>3/3</td>
</tr>
<tr>
<td>DTM02</td>
<td>Date</td>
<td>Date submitted</td>
<td>6/6</td>
</tr>
<tr>
<td>DTM05</td>
<td>Century</td>
<td>Century of submittal date</td>
<td>2/2</td>
</tr>
</tbody>
</table>
### 5.2.2.2. Hierarchical Level 2: State

**State Level**

**Loop ID: HL**

**Segment: HL - Hierarchical Level (Level 2: Occurs once for the state)**

<table>
<thead>
<tr>
<th>Seq. No.</th>
<th>X12 Name</th>
<th>Value To Be Used</th>
<th>Min/Max</th>
</tr>
</thead>
<tbody>
<tr>
<td>HL01</td>
<td>Hierarchical ID Number</td>
<td>HL identifier</td>
<td>1/4</td>
</tr>
<tr>
<td>HL02</td>
<td>Hierarchical Parent ID</td>
<td>“1”</td>
<td>1/1</td>
</tr>
<tr>
<td>HL03</td>
<td>Hierarchical Level Code</td>
<td>“2”</td>
<td>1/1</td>
</tr>
<tr>
<td>HL04</td>
<td>Hierarchical Child Code</td>
<td>“1”</td>
<td>1/1</td>
</tr>
</tbody>
</table>

**State Name**

**Loop ID: HL/NM1**

**Segment: NM1 - Individual or Organization Name**

<table>
<thead>
<tr>
<th>Seq. No.</th>
<th>X12 Name</th>
<th>Value To Be Used</th>
<th>Min/Max</th>
</tr>
</thead>
<tbody>
<tr>
<td>NM101</td>
<td>Entity ID Code</td>
<td>“2F”</td>
<td>2/2</td>
</tr>
<tr>
<td>NM102</td>
<td>Entity Type Qualifier</td>
<td>“2”</td>
<td>1/1</td>
</tr>
<tr>
<td>NM103</td>
<td>Last Name or Organization Name</td>
<td>”ARIZONA MVD MI”</td>
<td>14/14</td>
</tr>
</tbody>
</table>
5.2.2.3. Hierarchical Level 4: Policy

Loop ID: HL
Segment: HL - Hierarchical Level

<table>
<thead>
<tr>
<th>Seq. No.</th>
<th>X12 Name</th>
<th>Value To Be Used</th>
<th>Min/Max</th>
</tr>
</thead>
<tbody>
<tr>
<td>HL01</td>
<td>Hierarchical ID Number</td>
<td>HL Identifier</td>
<td>1/4</td>
</tr>
<tr>
<td>HL02</td>
<td>Hierarchical Parent ID</td>
<td>Parent ID number</td>
<td>1/4</td>
</tr>
<tr>
<td>HL03</td>
<td>Hierarchical Level Code</td>
<td>“4”</td>
<td>1/1</td>
</tr>
<tr>
<td>HL04</td>
<td>Hierarchical Child Code</td>
<td>“1” (level 5 loops present) or “0” (no level 5 loops present)</td>
<td>1/1</td>
</tr>
</tbody>
</table>

Section Separator

Loop ID: HL/LX
Segment: LX – Assigned Number

<table>
<thead>
<tr>
<th>Seq. No.</th>
<th>X12 Name</th>
<th>Value To Be Used</th>
<th>Min/Max</th>
</tr>
</thead>
<tbody>
<tr>
<td>LX01</td>
<td>Assigned Number</td>
<td>“1”</td>
<td>1/1</td>
</tr>
</tbody>
</table>

Error Identification

Loop ID: HL/LX
Segment: REF – Reference Numbers

<table>
<thead>
<tr>
<th>Seq. No.</th>
<th>X12 Name</th>
<th>Value To Be Used</th>
<th>Min/Max</th>
</tr>
</thead>
<tbody>
<tr>
<td>REF01</td>
<td>Reference No. Qualifier</td>
<td>Value is &quot;1Q&quot;</td>
<td>2/2</td>
</tr>
<tr>
<td>REF02</td>
<td>Reference Number</td>
<td>Error code</td>
<td>4/4</td>
</tr>
</tbody>
</table>

Insured Name

Loop ID: HL/NM1
Segment: NM1 - Individual or Organization Name

<table>
<thead>
<tr>
<th>Seq. No.</th>
<th>X12 Name</th>
<th>Value To Be Used</th>
<th>Min/Max</th>
</tr>
</thead>
<tbody>
<tr>
<td>NM101</td>
<td>Entity ID Code</td>
<td>“IL”</td>
<td>2/2</td>
</tr>
<tr>
<td>NM102</td>
<td>Entity Type Qualifier</td>
<td>“1” (person) or “2” (non-person entity)</td>
<td>1/1</td>
</tr>
<tr>
<td>NM103</td>
<td>Last name or organization name</td>
<td>Insured last name or organization name</td>
<td>1/35</td>
</tr>
<tr>
<td>NM104</td>
<td>Name First</td>
<td>Insured first name</td>
<td>1/25</td>
</tr>
<tr>
<td>NM105</td>
<td>Name Middle</td>
<td>Insured middle initial</td>
<td>1/1</td>
</tr>
<tr>
<td>NM108</td>
<td>Identification Code Qualifier</td>
<td>“N” (Insured DL No) or “FT” (Federal Tax ID No) or Blank (NM109 no used)</td>
<td>0/2</td>
</tr>
<tr>
<td>NM109</td>
<td>ID Code</td>
<td>Insured Driver License Number or Non Person entity’s FEIN</td>
<td>0/9</td>
</tr>
</tbody>
</table>
### Insured Address
Loop ID: HL/NM1  
Segment: N3 - Address Information

<table>
<thead>
<tr>
<th>Seq. No.</th>
<th>X12 Name</th>
<th>Value To Be Used</th>
<th>Min/Max</th>
</tr>
</thead>
<tbody>
<tr>
<td>N301</td>
<td>Address Information</td>
<td>Insured mailing address</td>
<td>1/35</td>
</tr>
</tbody>
</table>

### Insured City, State, Zip  
Loop ID: HL/NM1  
Segment: N4 - Geographic Location

<table>
<thead>
<tr>
<th>Seq. No.</th>
<th>X12 Name</th>
<th>Value To Be Used</th>
<th>Min/Max</th>
</tr>
</thead>
<tbody>
<tr>
<td>N401</td>
<td>City Name</td>
<td>Insured city</td>
<td>1/25</td>
</tr>
<tr>
<td>N402</td>
<td>State or Province Code</td>
<td>Insured state</td>
<td>2/2</td>
</tr>
<tr>
<td>N403</td>
<td>Postal Code</td>
<td>Insured zip</td>
<td>5/9</td>
</tr>
</tbody>
</table>

### Policy Information  
Loop ID: HL/IT1  
Segment: IT1 - Baseline Item Data

<table>
<thead>
<tr>
<th>Seq. No.</th>
<th>X12 Name</th>
<th>Value To Be Used</th>
<th>Min/Max</th>
</tr>
</thead>
<tbody>
<tr>
<td>IT102</td>
<td>Quantity Invoiced</td>
<td>“1”</td>
<td>1/1</td>
</tr>
<tr>
<td>IT103</td>
<td>Unit</td>
<td>“IP”</td>
<td>2/2</td>
</tr>
<tr>
<td>IT104</td>
<td>Unit Price</td>
<td>“0”</td>
<td>1/1</td>
</tr>
</tbody>
</table>

### Transaction Purpose  
Loop ID: HL/IT1  
Segment: SI - Service Characteristic Identification

<table>
<thead>
<tr>
<th>Seq. No.</th>
<th>X12 Name</th>
<th>Value To Be Used</th>
<th>Min/Max</th>
</tr>
</thead>
<tbody>
<tr>
<td>SI01</td>
<td>Agency Qualifier Code</td>
<td>“ZZ”</td>
<td>2/2</td>
</tr>
<tr>
<td>SI02</td>
<td>Service Characteristic Qualifier</td>
<td>“11”</td>
<td>2/2</td>
</tr>
<tr>
<td>SI03</td>
<td>Product/Service ID</td>
<td>Transaction Type:</td>
<td>3/3</td>
</tr>
<tr>
<td></td>
<td></td>
<td>“NBS” - (New business) or</td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td>“XLC” – (Cancellation) or</td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td>“S22” – (SR22) or</td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td>“S26” – (SR26)</td>
<td></td>
</tr>
</tbody>
</table>

### Policy Number  
Loop ID: HL/IT1  
Segment: REF - Reference Number

<table>
<thead>
<tr>
<th>Seq. No.</th>
<th>X12 Name</th>
<th>Value To Be Used</th>
<th>Min/Max</th>
</tr>
</thead>
<tbody>
<tr>
<td>REF01</td>
<td>Reference No. Qualifier</td>
<td>“IG”</td>
<td>2/2</td>
</tr>
<tr>
<td>REF02</td>
<td>Reference Number</td>
<td>Policy number</td>
<td>1/30</td>
</tr>
<tr>
<td>REF03</td>
<td>Description</td>
<td>“1” – personal or</td>
<td>1/1</td>
</tr>
<tr>
<td></td>
<td></td>
<td>“2” – commercial</td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td>“3” – collectible/classic</td>
<td></td>
</tr>
</tbody>
</table>
**Issuer of Operator’s Driver License**  
Loop ID: HL/IT1  
Segment: REF - Reference Number

<table>
<thead>
<tr>
<th>Seq. No.</th>
<th>X12 Name</th>
<th>Value To Be Used</th>
<th>Min/Max</th>
</tr>
</thead>
<tbody>
<tr>
<td>REF01</td>
<td>Reference No. Qualifier</td>
<td>“XM”</td>
<td>2/2</td>
</tr>
<tr>
<td>REF03</td>
<td>Description</td>
<td>State or province code of jurisdiction issuing driver license</td>
<td>2/2</td>
</tr>
</tbody>
</table>

**Vehicle Specification Information**  
Loop ID: HL/IT1  
Segment: REF - Reference Number

<table>
<thead>
<tr>
<th>Seq. No.</th>
<th>X12 Name</th>
<th>Value To Be Used</th>
<th>Min/Max</th>
</tr>
</thead>
<tbody>
<tr>
<td>REF01</td>
<td>Reference No. Qualifier</td>
<td>“S3”</td>
<td>2/2</td>
</tr>
<tr>
<td>REF02</td>
<td>Reference Number</td>
<td>“V” – Vehicle specific or “NS” – Not vehicle specific</td>
<td>1/2</td>
</tr>
</tbody>
</table>

**Insurance Company Information - (Optional)**  
Loop ID: HL/IT1  
Segment: REF - Reference Number

<table>
<thead>
<tr>
<th>Seq. No.</th>
<th>X12 Name</th>
<th>Value To Be Used</th>
<th>Min/Max</th>
</tr>
</thead>
<tbody>
<tr>
<td>REF01</td>
<td>Reference No. Qualifier</td>
<td>“DD”</td>
<td>0/2</td>
</tr>
<tr>
<td>REF03</td>
<td>Description</td>
<td>Identifying information used by Insurance Co. which will be returned on error records</td>
<td>0/9</td>
</tr>
</tbody>
</table>

**Insured Date of Birth**  
Loop ID: HL/IT1  
Segment: DTM - Date/Time/Reference

<table>
<thead>
<tr>
<th>Seq. No.</th>
<th>X12 Name</th>
<th>Value To Be Used</th>
<th>Min/Max</th>
</tr>
</thead>
<tbody>
<tr>
<td>DTM01</td>
<td>Date/Time Qualifier</td>
<td>“222”</td>
<td>3/3</td>
</tr>
<tr>
<td>DTM02</td>
<td>Date</td>
<td>Insured date of birth</td>
<td>6/6</td>
</tr>
<tr>
<td>DTM05</td>
<td>Century</td>
<td>Insured century of birth</td>
<td>2/2</td>
</tr>
</tbody>
</table>
### Policy Effective Date
**Loop ID: HL/IT1**
**Segment: DTM - Date/Time/Reference**

<table>
<thead>
<tr>
<th>Seq. No.</th>
<th>X12 Name</th>
<th>Value To Be Used</th>
<th>Min/Max</th>
</tr>
</thead>
<tbody>
<tr>
<td>DTM01</td>
<td>Date/Time Qualifier</td>
<td>“007”</td>
<td>3/3</td>
</tr>
<tr>
<td>DTM02</td>
<td>Date</td>
<td>Policy effective date</td>
<td>6/6</td>
</tr>
<tr>
<td>DTM05</td>
<td>Century</td>
<td>Century of policy effective date</td>
<td>2/2</td>
</tr>
</tbody>
</table>

### Policy Cancellation Date
**Loop ID: HL/IT1**
**Segment: DTM - Date/Time/Reference**

<table>
<thead>
<tr>
<th>Seq. No.</th>
<th>X12 Name</th>
<th>Value To Be Used</th>
<th>Min/Max</th>
</tr>
</thead>
<tbody>
<tr>
<td>DTM01</td>
<td>Date/Time Qualifier</td>
<td>“036”</td>
<td>3/3</td>
</tr>
<tr>
<td>DTM02</td>
<td>Date</td>
<td>Policy cancellation date</td>
<td>6/6</td>
</tr>
<tr>
<td>DTM05</td>
<td>Century</td>
<td>Century of policy cancellation date</td>
<td>2/2</td>
</tr>
</tbody>
</table>

### SR Policy Certification Date — (Optional, SR22 or SR26 reports only)
**Loop ID: HL/IT1**
**Segment: DTM - Date/Time/Reference**

<table>
<thead>
<tr>
<th>Seq. No.</th>
<th>X12 Name</th>
<th>Value To Be Used</th>
<th>Min/Max</th>
</tr>
</thead>
<tbody>
<tr>
<td>DTM01</td>
<td>Date/Time Qualifier</td>
<td>“458”</td>
<td>3/3</td>
</tr>
<tr>
<td>DTM02</td>
<td>Date</td>
<td>SR Certification date</td>
<td>6/6</td>
</tr>
<tr>
<td>DTM05</td>
<td>Century</td>
<td>Century of certification date</td>
<td>2/2</td>
</tr>
</tbody>
</table>
5.2.2.4. Hierarchical Level 5: Vehicle

**Loop ID: HL**  
Segment: HL - Hierarchical Level

<table>
<thead>
<tr>
<th>Seq. No.</th>
<th>X12 Name</th>
<th>Value To Be Used</th>
<th>Min/Max</th>
</tr>
</thead>
<tbody>
<tr>
<td>HL01</td>
<td>Hierarchical ID Number</td>
<td>HL identifier</td>
<td>1/4</td>
</tr>
<tr>
<td>HL02</td>
<td>Hierarchical Parent ID</td>
<td>Parent identifier</td>
<td>1/4</td>
</tr>
<tr>
<td>HL03</td>
<td>Hierarchical Level Code</td>
<td>“5”</td>
<td>1/1</td>
</tr>
</tbody>
</table>

**Section Separator**  
Loop ID: HL/LX  
Segment: LX - Assigned Number

<table>
<thead>
<tr>
<th>Seq. No.</th>
<th>X12 Name</th>
<th>Value To Be Used</th>
<th>Min/Max</th>
</tr>
</thead>
<tbody>
<tr>
<td>LX01</td>
<td>Assigned Number</td>
<td>“1”</td>
<td>1/1</td>
</tr>
</tbody>
</table>

**Vehicle Information**  
Loop ID: HL/LX  
Segment: VEH –Vehicle Information

<table>
<thead>
<tr>
<th>Seq. No.</th>
<th>X12 Name</th>
<th>Value To Be Used</th>
<th>Min/Max</th>
</tr>
</thead>
<tbody>
<tr>
<td>VEH02</td>
<td>Vehicle ID Number</td>
<td>Vehicle Identification Number (VIN)</td>
<td>1/25</td>
</tr>
<tr>
<td>VEH03</td>
<td>Century</td>
<td>Century vehicle was made</td>
<td>2/2</td>
</tr>
<tr>
<td>VEH04</td>
<td>Year within Century</td>
<td>Year vehicle was made</td>
<td>2/2</td>
</tr>
<tr>
<td>VEH05</td>
<td>Agency Qualifier Code</td>
<td>“NA”</td>
<td>2/2</td>
</tr>
<tr>
<td>VEH06</td>
<td>Product Description Code</td>
<td>Vehicle make</td>
<td>1/5</td>
</tr>
</tbody>
</table>

**Vehicle License Plate Number - (Optional)**  
Loop ID: HL/LX  
Segment: REF - Reference Number

<table>
<thead>
<tr>
<th>Seq. No.</th>
<th>X12 Name</th>
<th>Value To Be Used</th>
<th>Min/Max</th>
</tr>
</thead>
<tbody>
<tr>
<td>REF01</td>
<td>Reference No. Qualifier</td>
<td>“LV”</td>
<td>1/2</td>
</tr>
<tr>
<td>REF02</td>
<td>Reference Number</td>
<td>Vehicle license plate number</td>
<td>1/8</td>
</tr>
</tbody>
</table>

**Error Identification**  
Loop ID: HL/LX  
Segment: REF – Reference Numbers

<table>
<thead>
<tr>
<th>Seq. No.</th>
<th>X12 Name</th>
<th>Value To Be Used</th>
<th>Min/Max</th>
</tr>
</thead>
<tbody>
<tr>
<td>REF01</td>
<td>Reference No. Qualifier</td>
<td>Value is &quot;1Q&quot;</td>
<td>2/2</td>
</tr>
<tr>
<td>REF02</td>
<td>Reference Number</td>
<td>Error code</td>
<td>4/4</td>
</tr>
</tbody>
</table>
### 5.2.3. Table 3 – Summary Level

**Section Separator – Summary Level**

**Segment: TDS - Total Monetary Value Summary**

<table>
<thead>
<tr>
<th>Seq. No.</th>
<th>X12 Name</th>
<th>Value To Be Used</th>
<th>Min/Max</th>
</tr>
</thead>
<tbody>
<tr>
<td>TDS01</td>
<td>Total Invoice Amount</td>
<td>“1”</td>
<td>1/4</td>
</tr>
</tbody>
</table>

**Segment: CTT - Transaction Totals**

<table>
<thead>
<tr>
<th>Seq. No</th>
<th>X12 Name</th>
<th>Value To Be Used</th>
<th>Min/Max</th>
</tr>
</thead>
<tbody>
<tr>
<td>CTT01</td>
<td>Number of Line Items</td>
<td>Total no of insurance policy transactions in this transaction set</td>
<td>1/4</td>
</tr>
</tbody>
</table>
5.3. **811 AMIRS No Activity Report**

This is the Arizona adaptation of the X12 (TS811) Version 3050. The segments and data elements defined in this section specify the data required by Arizona for a “No Activity” report using a valid 811 transaction. This report is required when there is no policy activity to be reported for a NAIC number during the seven (7) day reporting period.

### 5.3.1. **Table 1 – Header Level**

#### 811 Header

**Segment: ST – Transaction Set Header**

<table>
<thead>
<tr>
<th>Seq. No.</th>
<th>X12 Name</th>
<th>Value To Be Used</th>
<th>Min/Max</th>
</tr>
</thead>
<tbody>
<tr>
<td>ST01</td>
<td>Transaction Set Identifier Code</td>
<td>811</td>
<td>3/3</td>
</tr>
<tr>
<td>ST02</td>
<td>Transaction Set Control Number</td>
<td>Unique control number, assigned by sender</td>
<td>4/9</td>
</tr>
</tbody>
</table>

#### Date Insurance Entity Created File

**Segment: BIG - Beginning Segment for Invoice**

<table>
<thead>
<tr>
<th>Seq. No.</th>
<th>X12 Name</th>
<th>Value To Be Used</th>
<th>Min/Max</th>
</tr>
</thead>
<tbody>
<tr>
<td>BIG01</td>
<td>Date</td>
<td>Creation date (YYMMDD)</td>
<td>6/6</td>
</tr>
<tr>
<td>BIG02</td>
<td>Invoice Number</td>
<td>“1”</td>
<td>1/1</td>
</tr>
</tbody>
</table>

#### Sender’s Name and Identification Number

**Loop ID: N1 - Sender’s Name and Identification Number**

**Segment: N1 - Name**

<table>
<thead>
<tr>
<th>Seq. No.</th>
<th>X12 Name</th>
<th>Value To Be Used</th>
<th>Min/Max</th>
</tr>
</thead>
<tbody>
<tr>
<td>N101</td>
<td>Entity ID Code</td>
<td>“IN” (Insurer)</td>
<td>2/2</td>
</tr>
<tr>
<td>N102</td>
<td>Name</td>
<td>Sender’s name</td>
<td>1/35</td>
</tr>
<tr>
<td>N103</td>
<td>ID Code Qualifier</td>
<td>“NI” (NAIC code) or “FI” (Tax ID number)</td>
<td>2/2</td>
</tr>
<tr>
<td>N104</td>
<td>ID Code</td>
<td>NAIC Code or Federal Tax ID number</td>
<td>5/9</td>
</tr>
</tbody>
</table>

#### Receiver’s Name and Identification Number

**Loop ID: N1 - Receiver’s Name and Identification Number**

**Segment: N1 - Name**

<table>
<thead>
<tr>
<th>Seq. No.</th>
<th>X12 Name</th>
<th>Value To Be Used</th>
<th>Min/Max</th>
</tr>
</thead>
<tbody>
<tr>
<td>N101</td>
<td>Entity ID Code</td>
<td>“2F” (State)</td>
<td>2/2</td>
</tr>
<tr>
<td>N102</td>
<td>Name</td>
<td>“ARIZONA MVD MI”</td>
<td>14/14</td>
</tr>
</tbody>
</table>
5.3.2. Table 2 – Detail Level

5.3.2.1. Hierarchical Level 1 - Insurer

Loop ID: HL – Insurance Entity Loop  
Segment: HL - Hierarchical Level (Level 1: Insurer)

<table>
<thead>
<tr>
<th>Seq. No.</th>
<th>X12 Name</th>
<th>Value To Be Used</th>
<th>Min/Max</th>
</tr>
</thead>
<tbody>
<tr>
<td>HL01</td>
<td>Hierarchical ID Number</td>
<td>HL Identifier</td>
<td>1/4</td>
</tr>
<tr>
<td>HL02</td>
<td>Hierarchical Parent ID</td>
<td>Not used</td>
<td>0/0</td>
</tr>
<tr>
<td>HL03</td>
<td>Hierarchical Level Code</td>
<td>“1”</td>
<td>1/1</td>
</tr>
<tr>
<td>HL04</td>
<td>Hierarchical Child Code</td>
<td>“1”</td>
<td>1/1</td>
</tr>
</tbody>
</table>

Insurance Entity’s Name and NAIC Code
Loop ID: HL/NM1  
Segment: NM1 - Individual or Organization Name

<table>
<thead>
<tr>
<th>Seq. No.</th>
<th>X12 Name</th>
<th>Value To Be Used</th>
<th>Min/Max</th>
</tr>
</thead>
<tbody>
<tr>
<td>NM101</td>
<td>Entity ID Code</td>
<td>“IN” (Insurer)</td>
<td>2/2</td>
</tr>
<tr>
<td>NM102</td>
<td>Entity Type Qualifier</td>
<td>“2” (Non-person)</td>
<td>1/1</td>
</tr>
<tr>
<td>NM103</td>
<td>Last Name or Organization Name</td>
<td>Organization name</td>
<td>1/35</td>
</tr>
<tr>
<td>NM108</td>
<td>Identification Code Qualifier</td>
<td>“NI” (NAIC Code)</td>
<td>2/2</td>
</tr>
<tr>
<td>NM109</td>
<td>ID Code</td>
<td>NAIC Code</td>
<td>5/5</td>
</tr>
</tbody>
</table>

Insurer Reporting Information
Loop ID: HL/IT1  
Segment: IT1 Loop - Baseline Item Data

<table>
<thead>
<tr>
<th>Seq. No.</th>
<th>X12 Name</th>
<th>Value To Be Used</th>
<th>Min/Max</th>
</tr>
</thead>
<tbody>
<tr>
<td>IT102</td>
<td>Quantity Invoiced</td>
<td>“1”</td>
<td>1/1</td>
</tr>
<tr>
<td>IT103</td>
<td>Unit</td>
<td>“IP”</td>
<td>2/2</td>
</tr>
<tr>
<td>IT104</td>
<td>Unit Price</td>
<td>“0”</td>
<td>1/1</td>
</tr>
</tbody>
</table>

Submission Date
Loop ID: HL/IT1  
Segment: DTM - Date/Time/Reference

<table>
<thead>
<tr>
<th>Seq. No.</th>
<th>X12 Name</th>
<th>Value To Be Used</th>
<th>Min/Max</th>
</tr>
</thead>
<tbody>
<tr>
<td>DTM01</td>
<td>Date/Time Qualifier</td>
<td>“368”</td>
<td>3/3</td>
</tr>
<tr>
<td>DTM02</td>
<td>Date</td>
<td>Date submitted</td>
<td>6/6</td>
</tr>
<tr>
<td>DTM05</td>
<td>Century</td>
<td>Century of submittal date</td>
<td>2/2</td>
</tr>
</tbody>
</table>


5.3.2.2. Hierarchical Level 2: State

Loop ID: HL
Segment: HL - Hierarchical Level (Level 2: Occurs once for the state)

<table>
<thead>
<tr>
<th>Seq. No.</th>
<th>X12 Name</th>
<th>Value To Be Used</th>
<th>Min/Max</th>
</tr>
</thead>
<tbody>
<tr>
<td>HL01</td>
<td>Hierarchical ID Number</td>
<td>HL identifier</td>
<td>1/4</td>
</tr>
<tr>
<td>HL02</td>
<td>Hierarchical Parent ID</td>
<td>“1”</td>
<td>1/1</td>
</tr>
<tr>
<td>HL03</td>
<td>Hierarchical Level Code</td>
<td>“2”</td>
<td>1/1</td>
</tr>
<tr>
<td>HL04</td>
<td>Hierarchical Child Code</td>
<td>“1”</td>
<td>1/1</td>
</tr>
</tbody>
</table>

State Name
Loop ID: HL/NM1
Segment: NM1 - Individual or Organization Name

<table>
<thead>
<tr>
<th>Seq. No.</th>
<th>X12 Name</th>
<th>Value To Be Used</th>
<th>Min/Max</th>
</tr>
</thead>
<tbody>
<tr>
<td>NM101</td>
<td>Entity ID Code</td>
<td>“2F”</td>
<td>2/2</td>
</tr>
<tr>
<td>NM102</td>
<td>Entity Type Qualifier</td>
<td>“2”</td>
<td>1/1</td>
</tr>
<tr>
<td>NM103</td>
<td>Last Name or Organization Name</td>
<td>“AZ”</td>
<td>2/2</td>
</tr>
</tbody>
</table>
5.3.2.3. Hierarchical Level 4: Policy

**Policy Level**  
Loop ID: HL  
Segment: HL - Hierarchical Level

<table>
<thead>
<tr>
<th>Seq. No.</th>
<th>X12 Name</th>
<th>Value To Be Used</th>
<th>Min/Max</th>
</tr>
</thead>
<tbody>
<tr>
<td>HL01</td>
<td>Hierarchical ID Number</td>
<td>HL Identifier</td>
<td>1/4</td>
</tr>
<tr>
<td>HL02</td>
<td>Hierarchical Parent ID</td>
<td>Parent ID number</td>
<td>1/4</td>
</tr>
<tr>
<td>HL03</td>
<td>Hierarchical Level Code</td>
<td>“4”</td>
<td>1/1</td>
</tr>
<tr>
<td>HL04</td>
<td>Hierarchical Child Code</td>
<td>“0”</td>
<td>1/1</td>
</tr>
</tbody>
</table>

**Insured Name**  
Loop ID: HL/NM1  
Segment: NM1 - Individual or Organization Name

<table>
<thead>
<tr>
<th>Seq. No.</th>
<th>X12 Name</th>
<th>Value To Be Used</th>
<th>Min/Max</th>
</tr>
</thead>
<tbody>
<tr>
<td>NM101</td>
<td>Entity ID Code</td>
<td>“IL”</td>
<td>2/2</td>
</tr>
<tr>
<td>NM102</td>
<td>Entity Type Qualifier</td>
<td>“1” (person) or “2” (non-person entity)</td>
<td>1/1</td>
</tr>
<tr>
<td>NM103</td>
<td>Last name or organization name</td>
<td>Value “NO ACTIVITY”</td>
<td>11/11</td>
</tr>
</tbody>
</table>

**Policy Information**  
Loop ID: HL/IT1  
Segment: IT1 - Baseline Item Data

<table>
<thead>
<tr>
<th>Seq. No.</th>
<th>X12 Name</th>
<th>Value To Be Used</th>
<th>Min/Max</th>
</tr>
</thead>
<tbody>
<tr>
<td>IT102</td>
<td>Quantity Invoiced</td>
<td>“1”</td>
<td>1/1</td>
</tr>
<tr>
<td>IT103</td>
<td>Unit</td>
<td>“IP”</td>
<td>2/2</td>
</tr>
<tr>
<td>IT104</td>
<td>Unit Price</td>
<td>“0”</td>
<td>1/1</td>
</tr>
</tbody>
</table>

**Transaction Purpose**  
Loop ID: HL/IT1  
Segment: SI - Service Characteristic Identification

<table>
<thead>
<tr>
<th>Seq. No.</th>
<th>X12 Name</th>
<th>Value To Be Used</th>
<th>Min/Max</th>
</tr>
</thead>
<tbody>
<tr>
<td>SI01</td>
<td>Agency Qualifier Code</td>
<td>“ZZ”</td>
<td>2/2</td>
</tr>
<tr>
<td>SI02</td>
<td>Service Characteristic Qualifier</td>
<td>“11”</td>
<td>2/2</td>
</tr>
<tr>
<td>SI03</td>
<td>Product/Service ID</td>
<td>Transaction Type: “OTH” - (Other)</td>
<td>3/3</td>
</tr>
</tbody>
</table>

**Vehicle Specification Information**  
Loop ID: HL/IT1  
Segment: REF - Reference Number

<table>
<thead>
<tr>
<th>Seq. No.</th>
<th>X12 Name</th>
<th>Value To Be Used</th>
<th>Min/Max</th>
</tr>
</thead>
<tbody>
<tr>
<td>REF01</td>
<td>Reference No. Qualifier</td>
<td>“S3”</td>
<td>2/2</td>
</tr>
<tr>
<td>REF02</td>
<td>Reference Number</td>
<td>“NS” – Not vehicle specific</td>
<td>2/2</td>
</tr>
</tbody>
</table>
5.3.3. Table 3 – Summary Level

Section Separator – Summary Level
Segment: TDS - Total Monetary Value Summary

<table>
<thead>
<tr>
<th>Seq. No.</th>
<th>X12 Name</th>
<th>Value To Be Used</th>
<th>Min/Max</th>
</tr>
</thead>
<tbody>
<tr>
<td>TDS01</td>
<td>Total Invoice Amount</td>
<td>“1”</td>
<td>1/1</td>
</tr>
</tbody>
</table>

Segment: CTT - Transaction Totals

<table>
<thead>
<tr>
<th>Seq. No</th>
<th>X12 Name</th>
<th>Value To Be Used</th>
<th>Min/Max</th>
</tr>
</thead>
<tbody>
<tr>
<td>CTT01</td>
<td>Number of Line Items</td>
<td>Total no of insurance policies reported in this transaction set</td>
<td>1/4</td>
</tr>
</tbody>
</table>

5.4. Criteria for Editing AMIRS Data

5.4.1. Translation Errors

The translation software will reject the entire interchange if it does not conform to the ANSI standard. Interchange rejection requires the reporting entity to correct the interchange and resubmit. Translated data is processed by the AMIRS application validation software.

5.4.2. AMIRS Data Validation Error Codes

The following table lists the error codes that are used to notify the reporting entity of a problem in the data. Error reporting returns the original data record as sent by the reporting entity along with a segment including an error code. Policy reports returned in error records are not retained and will not be included in any subsequent processing. These edit errors are due to missing or invalid information in one or more of the data fields. Error records that are returned to the insurer have not been recorded in the AMIRS database. Records that are exempt from insurance legislation are neither recorded nor returned to the reporting entity.

<table>
<thead>
<tr>
<th>Table</th>
<th>Level</th>
<th>Error Type</th>
<th>Error Code</th>
<th>Description</th>
</tr>
</thead>
<tbody>
<tr>
<td>2</td>
<td>1</td>
<td>E</td>
<td>011</td>
<td>NAIC Not Active not found, effective date greater than today's date, or end date less than today's date (note: We check for the ADOT Code, not the NAIC Code.)</td>
</tr>
<tr>
<td>2</td>
<td>4</td>
<td>E</td>
<td>020</td>
<td>Insured Last Name (or Company) missing, null value in Last Name (Organization Name) field</td>
</tr>
<tr>
<td>Code</td>
<td>VLC</td>
<td>PL</td>
<td>Code Meaning</td>
<td></td>
</tr>
<tr>
<td>------</td>
<td>-----</td>
<td>----</td>
<td>------------------------------------------------------------------------------</td>
<td></td>
</tr>
<tr>
<td>245</td>
<td>E</td>
<td>045</td>
<td>Driver License (or FEIN) missing or invalid. If missing or unable to match, DL required for S22 and S26 transactions</td>
<td></td>
</tr>
<tr>
<td>2075</td>
<td>E</td>
<td>075</td>
<td>Transaction Type Code invalid or missing. If missing or not one of the valid values</td>
<td></td>
</tr>
<tr>
<td>2085</td>
<td>E</td>
<td>085</td>
<td>Insurance Policy missing, incorrect characters, or policy type mismatch. If missing, not one of the valid values, or policy type not commercial for a commercial registration use</td>
<td></td>
</tr>
<tr>
<td>2107</td>
<td>E</td>
<td>107</td>
<td>Vehicle-Specific Information incorrect value. Vehicle specific (V) policies must contain a valid vehicle identifier non vehicle-specific (NS) policies must contain a valid customer identifier</td>
<td></td>
</tr>
<tr>
<td>2115</td>
<td>E</td>
<td>115</td>
<td>Policy Effective Date or Registration Suspended. There is an issue in the date format or it is an invalid date, OR, on an NBS transaction; the registration is currently in suspended status, OR, on an S22 transaction; there is an existing SR22 with an Effective Date greater than or equal to the Effective Date of the incoming record, OR, on an S22 transaction; the Effective Date is greater than Today's Date, OR, on an S26 transaction</td>
<td></td>
</tr>
<tr>
<td>2125</td>
<td>E</td>
<td>125</td>
<td>Policy Expiration Date. If there is an issue in the date format or if it is missing and policy type is XLC, S22, or S26.</td>
<td></td>
</tr>
<tr>
<td>2170</td>
<td>E</td>
<td>170</td>
<td>Organizational Customer Number must be present if the policy type is 2</td>
<td></td>
</tr>
<tr>
<td>2200</td>
<td>E</td>
<td>200</td>
<td>Invalid VIN - does not decode or vehicle is not registered. No matching VIN found</td>
<td></td>
</tr>
</tbody>
</table>
5.4.3. AMIRS Data Validation Action

This chart identifies specific data elements where edits occur in the AMIRS validation programs. Notice that some elements are conditional (X).

<table>
<thead>
<tr>
<th>Error Code</th>
<th>Data Element</th>
<th>(M)andatory</th>
<th>Edit Criteria</th>
<th>Error Type</th>
<th>MVD Action (if data does not meet edit criteria)</th>
<th>Reporting Entity’s Action</th>
</tr>
</thead>
<tbody>
<tr>
<td>011</td>
<td>NAIC</td>
<td>M</td>
<td>Present</td>
<td>E</td>
<td>Transaction set rejected</td>
<td>Contact MI reporting coordinator</td>
</tr>
<tr>
<td>020</td>
<td>Insured Last Name</td>
<td>M</td>
<td>Present</td>
<td>E</td>
<td>Record rejected</td>
<td>Correct data element and resubmit</td>
</tr>
<tr>
<td>045</td>
<td>Insured Driver License Number</td>
<td>X</td>
<td>Present if SR filing, preferred for others</td>
<td>E</td>
<td>Record rejected if SR filing</td>
<td>Correct data element and resubmit</td>
</tr>
<tr>
<td>075</td>
<td>Transaction type code</td>
<td>M</td>
<td>Valid codes from data element specifications</td>
<td>E</td>
<td>Record rejected</td>
<td>Correct data element and resubmit</td>
</tr>
<tr>
<td>085</td>
<td>Policy Number</td>
<td>M</td>
<td>Present</td>
<td>E</td>
<td>Record rejected</td>
<td>Correct data element and resubmit</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td>May be invalid policy type for given vehicle registration (i.e. type = 3 when it should be type = 2).</td>
<td></td>
</tr>
<tr>
<td>107</td>
<td>Vehicle Specific Information</td>
<td>M</td>
<td>Valid codes from data element specifications</td>
<td>E</td>
<td>Record rejected</td>
<td>Correct data element and resubmit</td>
</tr>
<tr>
<td>115</td>
<td>Policy Effective Date</td>
<td>X</td>
<td>Present if transaction</td>
<td>E</td>
<td>Record rejected</td>
<td>On ‘NBS’ it normally indicates a vehicle registration suspension. Vehicle</td>
</tr>
<tr>
<td>Error Code</td>
<td>Data Element</td>
<td>(M)andatory (O)ptional (X)Conditional</td>
<td>Edit Criteria</td>
<td>Error Type</td>
<td>MVD Action (if data does not meet edit criteria)</td>
<td>Reporting Entity’s Action</td>
</tr>
<tr>
<td>------------</td>
<td>--------------------</td>
<td>---------------------------------------</td>
<td>--------------------------------------------------------------------------------</td>
<td>------------</td>
<td>-------------------------------------------------------------------------------------------------------------------</td>
<td>---------------------------------------------------------------------------------------------------------------</td>
</tr>
<tr>
<td></td>
<td>Policy Expiration Date</td>
<td>X</td>
<td>Present if transaction type equals 'XLC' or 'S22' or 'S26'</td>
<td>E</td>
<td>Record rejected</td>
<td>Correct data element and resubmit</td>
</tr>
<tr>
<td>125</td>
<td>Policy Expiration Date</td>
<td>X</td>
<td>Present if transaction type equals 'XLC' or 'S22' or 'S26'</td>
<td>E</td>
<td>Record rejected</td>
<td>Correct data element and resubmit</td>
</tr>
<tr>
<td></td>
<td>Organizational Customer Number</td>
<td>M</td>
<td>Present if policy type equals ‘2’</td>
<td>E</td>
<td>Record rejected if commercial policy</td>
<td>Correct data element and resubmit</td>
</tr>
<tr>
<td>170</td>
<td>VIN</td>
<td>M</td>
<td>Present if Policy Type equals 'V' Not present if Policy type is</td>
<td>E</td>
<td>Record rejected</td>
<td>Verify VIN on the most current AZ issued Title or Registration Document, correct record and resubmit. Most likely vehicle is not registered in Arizona.</td>
</tr>
<tr>
<td>200</td>
<td>VIN</td>
<td>M</td>
<td>Present if Policy Type equals 'V' Not present if Policy type is</td>
<td>E</td>
<td>Record rejected</td>
<td>Verify VIN on the most current AZ issued Title or Registration Document, correct record and resubmit. Most likely vehicle is not registered in Arizona.</td>
</tr>
<tr>
<td>Error Code</td>
<td>Data Element</td>
<td>(M)andatory (O)ptional (X)Conditional</td>
<td>Edit Criteria</td>
<td>Error Type</td>
<td>MVD Action (if data does not meet edit criteria)</td>
<td>Reporting Entity’s Action</td>
</tr>
<tr>
<td>------------</td>
<td>--------------</td>
<td>--------------------------------------</td>
<td>---------------</td>
<td>------------</td>
<td>-------------------------------------------------</td>
<td>--------------------------</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td></td>
<td>&quot;NS&quot;.</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>
6. EDI Testing


A reporting entity sending insurance information through EDI is known as a trading partner.

To become a trading partner, a reporting entity must meet system requirements, along with successfully completing the testing defined in this section.

Three (3) levels of testing must be completed:

- Connectivity testing— sending and receiving messages electronically.
- Transaction set testing— translating the 811 transactions and the ability to receive 997 acknowledgments and 811 errors.
- Validation testing— testing the data for content errors.

Once testing has begun the trading partners must agree to respond to the test files and requests for revisions in a timely manner. Failure to remain in contact with the MI reporting coordinator during the testing process may result in a non-compliance report being filed with the Arizona Department of Insurance (DOI). The DOI may, after a hearing, impose sanctions on the insurance company, including fines and suspension of license.

6.2. Connectivity Testing

6.2.1. FTP

Accounts, passwords, and directories are set up for trading partners on the ADOT FTP server. Encryption keys are exchanged between AMIRS and the reporting entity. The reporting entity will log onto the server and test uploading and downloading sample files to verify the FTP account is functioning properly. Upon verification of functioning FTP services, PGP encryption will be tested by exchanging encrypted test files. AMIRS will then execute processes to extract the policy reports file from the server and write error records back to the server for the company’s extraction.
6.2.2. IE

The reporting entity provides the account information needed to provide access to their electronic mailbox. The reporting entity must authorize AMIRS to send to their account/user id. Once the mailbox setup is complete, sample files are sent to the electronic mailbox and the programmer is notified. AMIRS will execute processes to extract the reporting entity’s file from the electronic mailbox and write error records back to the electronic mailbox for the company’s extraction.

6.3. Transaction Set Testing

Transaction set testing is between the reporting entity and AMIRS to determine that the 811 documents are formatted correctly. For testing purposes, AMIRS may modify some of the records sent in the 811 transaction set to create error records. These records will be returned to the reporting entity in order to test the error return process.

The following lists the basic transaction steps:

- The reporting entity sends a small test 811 document (6-10 records, including both NBS and XLC records) to AMIRS.
- AMIRS sends back the 997 Functional Acknowledgment to the reporting entity.
- AMIRS sends a policy error 811 to the reporting entity.
- The process is repeated with a test 811 document of a size representing a “typical” weekly report for that company.

The reporting entity will also send a No Activity Report as part of testing.

6.4. Validation Test

AMIRS will process the 811 documents sent by the reporting entity that have passed the transaction set testing. ADOT MVD will review the results of the file processing and determine whether the level of accepted records is sufficient. Validation testing will continue until both parties are satisfied with the level of accepted records.
7. AMIRS Contacts and Information

7.1. ADOT MVD AMIRS Contacts

Questions and issues regarding insurance coverage, verification and suspension letters received by insureds, adding new companies, changing companies' contact information, system functionality, and other business related items must be directed to the Business Contact listed below.

**Business Contact:**
Mandatory Insurance
Reporting Coordinator
MVD
PO Box 2100, Mail Drop 535M
Phoenix, AZ 85001-2100
mailto: AMIRS@azdot.gov
Phone – (602) 712-4300
Fax – (602) 712-3288

Questions and issues regarding missing file acknowledgements (997 files), processing delays, PGP encryption, and other technical issues may be directed to the Technical Contact listed below.

**Technical Contact**
Cindy Kieckhaefer
Programmer
ADOT
2929 N Central Ave
Phoenix, AZ 85012
mailto: Ckieckhaefer@azdot.gov

7.2. ADOT MVD Information on the Internet

The ADOT MVD web site is [http://www.azdot.gov/mvd/index.asp](http://www.azdot.gov/mvd/index.asp)
7.3. Service Bureau contacts

There are service bureaus that submit EDI X12 policy reports on behalf of insurance companies. The following list includes some of these service bureaus, but is not an all-inclusive list of all service bureau companies.

**Insurity, a LexisNexis Company**
Eslyn R. Hazel
[Eslyn.Hazel@lexisnexis.com](mailto:Eslyn.Hazel@lexisnexis.com)
Phone: 770.619.8692
Fax: 770.619.8686

**Insurance Information Exchange**
Pamela Drewery
CV-ALIR Product Analyst
[pldrewery@iso.com](mailto:pldrewery@iso.com)
(800) 299-7099 ext. 88481

**IVANS, Inc.**
Allison Bucker
ALIR Project Manager
[allison.buckner@ivansinsurance.com](mailto:allison.buckner@ivansinsurance.com)
Phone: (813) 288-3247
Fax: (203) 601-3842
8. Glossary

The following is a list of definitions and acronyms used throughout Arizona’s MI X12 implementation guide. These definitions are intended to help clarify the terms used.

**ADOT**: Arizona Department of Transportation.

**ALIR**: Automobile Liability Insurance Reporting.

**AMIRS**: Arizona’s Mandatory Insurance Reporting System.

**ANSI ASC X12**: The American National Standards Institute (ANSI), Accredited Standards Committee (ASC) X12. These are universal standards to enable all organizations to use a single agency (X12) to develop and maintain transaction sets.

**Data Element**: Fields used in X12 segments.

**Date of Birth**: Date of birth (month, day, and year) of the policyholder.

**Document**: Refers to a single vehicle or non-vehicle specific policy.

**EDI**: Electronic Data Interchange is inter-company, computer-to-computer transmission of business data in a standard format.

**Effective Date**: Inception date of the policy. This value must be provided for new business and SR26 reports.

**Expiration Date**: This is the date that the insurance coverage is no longer effective. It must be provided in the following instances:

1) Liability cancellation records. A liability policy will be considered valid until a cancellation record is received.
2) SR26 reports. SR22 policies are considered open for 3 years, or until a matching SR26 report is received.
3) Commercial policy reports. Expiration date must be reported for all commercial policy reports (new business and cancellation).

**Hard Error**: An error that signifies a rejected policy report record or transaction set. The error must be corrected and the document or transaction resubmitted.

**Information Exchange Mailbox (IE)**: A unique "address" that provides a reporting entity with the ability to send and receive information to and from trading partners.

**Make**: This is the manufacturer of the vehicle. If the policy type is vehicle specific, this value should be present. Likewise, if the vehicle make is present, then the policy type must be vehicle specific.
**Match:** A match occurs when the insurance record corresponds to a vehicle record or customer record.

**Message:** A data file transmitted through EDI.

**MI:** Mandatory Insurance program.

**MVD:** Motor Vehicle Division.

**NAIC:** The National Association of Insurance Commissioners.

**No Match:** A “no match” occurs when a vehicle record or customer record cannot be found on the ADOT MVD databases.

**Owner Type:** A single character code used to describe the type of owner that is being reported. This will represent either an individual or an organization.

- “1”—Individual
- “2”—Organization

**PGP Encryption:** A data encryption and decryption computer program that provides cryptographic privacy and authentication for data communication. PGP is used by ADOT MVD for signing, encrypting and decrypting files sent via FTP.

**Policy:** Motor vehicle liability coverage issued by an insurer. It is identified as a vehicle specific policy, or a non-vehicle specific policy.

**Policy Number:** This is the insurance policy number. It must be included with each submitted record and must match the policy number as shown on either the customer’s proof of insurance card or certificate of liability. *If a policy number changes, it must be reported as a cancellation using the existing policy number, and then a new business record must be submitted with the new policy number.*

**Policy record:** Record submitted by insurance companies to MVD to report changes to insurance coverage and to correct errors associated with records previously submitted.

**Policy Type:** Type of policy being reported. The three possible values are:

- “1”—Personal/passenger coverage
- “2”—Commercial coverage
- “3”—Collectible/Classic coverage

**Record Reject:** Insufficient, or inconclusive, insurance information received by AMIRS and is returned to the reporting entity as an error.
**Transaction:** Sometimes referred to as transaction set. A transaction contains all of the data sent or received at one time. It can contain more than one document.

**Transaction type:** This field indicates the type of processing that will be done against the record. The four possible values are:
- “XLC”—Cancellation
- “NBS”—New Business
- “S22”—SR22 New Business
- “S26”—SR26 Cancellation

**VAN:** Value Added Network. Provides links among trading partners required by electronic communication functions such as EDI or e-mail.

**Vehicle Specific/Non Vehicle Specific:** Type of policy coverage being reported. The two possible values are:
- “V”—Vehicle specific records with a specific vehicle ID.
- “NS”—Non-vehicle specific does not list a specific vehicle’s ID; that information is maintained by MVD. Any changes to a non-vehicle specific policy (cancellations, etc.) will affect all vehicles on file for that customer number.

**VIN (Vehicle Identification Number):** The vehicle identification number. If the policy is vehicle specific, this data element is required or the record is rejected. If the policy is non-vehicle specific, then this field must be left blank. Include the full 17 characters of the VIN for vehicles with vehicle year 1981 and newer.

**Year:** Model year of the vehicle.
9. Frequently Asked Questions

*Which companies must report?*

The statute states “each insurer who cancels or becomes aware of the cancellation or nonrenewal of or failure to renew or issuance of a motor vehicle liability insurance policy issued on a vehicle in this state shall provide the department all cancellations, non-renewals or new issues . . .” This has been interpreted as any company that is licensed to write policies in Arizona.

*What if we have written no policies in Arizona?*

Contact the Reporting Coordinator to be placed in “inactive” status. While in this status your company does not need to report. However, you are required to notify the Reporting Coordinator prior to writing any business in Arizona to have the status removed and arrange to begin reporting.

Our system will reject policy reports from companies that are in an “inactive” state.

*We write only commercial policies, do we need to report?*

Yes, both private passenger and commercial policies must be reported.

*Can you process with partial VINs?*

No, the full VIN must be provided for vehicle specific policies.

*What is the Arizona customer number required for non-vehicle specific policies?*

A unique number known as the customer number identifies each person and organization in our database. For individuals it is their driver license number. For organizations it is their Federal Employer Identification Number (FEIN), if provided to AMIRS, or a system-generated number. Contact your customer to obtain this information if needed.

*Can you access an insurance record by policy number?*

No, insurance records are only accessed by VIN or customer number.

*Are there vehicle types, such as non-motorized trailers, that are exempt from reporting?*

Arizona Revised Statute Title 28, Chapter 9, Section 4132 lists the vehicles that are exempt from the mandatory insurance requirements. A copy of the statute may be found at:

[https://www.azleg.gov/ars/28/04132.htm](https://www.azleg.gov/ars/28/04132.htm)

*Is there a standard form to submit the required set up information?*

No, the information required by Section 3.1 of this guide may be submitted to the Reporting Coordinator by phone, fax, e-mail, or in writing.
Can we report more often than once a week?
Yes. Reporting is required at least once every seven days.

We have multiple locations (private passenger and commercial). Can each report separately using the same insurance code?
Yes, multiple reports for the same NAIC may be made.

We have a fourteen (14) day waiting period built into our system before a policy is considered cancelled, but we have to report to you every seven (7) days. How should this be handled?
Report only after you consider the cancellation final.

Do we have to report even if there is no activity during the prior week?
Yes, a “no activity” report must be submitted to be considered in compliance with state statute.

Can multiple insurance codes be included in the same report?
Yes, however only one code can appear in the header (sender) information.

Do you expect a book of business after testing is completed?
No book of business is required at this time.

Can we report transactions with future dates or should we wait until they become effective?
Wait until they become effective before reporting.

Do we report policies that are “flat cancelled,” i.e., cancelled before they went into effect?
You would only report a cancellation if you have previously reported the policy as new business.

How does an insurance company register with the Arizona MVD?
The insurance company provides their NAIC (National Association of Insurance Commissioners) number on a Certificate of Authority to MVD. The Certificate of Authority, provided to the company by the Department of Insurance, is the company’s authorization to do business in Arizona. Contact the Mandatory Insurance Reporting Coordinator at 602-712-8308.

How often should the insurance company report policies?
All new business, cancellations and reinstatements must be reported at least every (7) days, by X12 (TS 811) submissions.
What if there is a mistake on the vehicle identification number?
The error is returned to the company for correction and the corrected policy report must be reported to AMIRS as soon as possible.

What if the error is not corrected?
If no proof is provided or received from the owner or insurance company, the vehicle’s registration and plates will be suspended.

After a policy is canceled when does it get reported to MVD?
Once the cancellation is considered finalized, it must be submitted in the company’s next report. Many companies make daily submissions, while others report weekly.

What if a notice is generated on a cancellation, but the policy is reinstated?
Once the company receives a reinstatement and notifies MVD, and if the vehicle’s registration has not been suspended, the ‘NBS’ policy report reactivates the record of policy coverage and no further verification is needed.

Are faxed insurance verifications necessary once the company has reinstated the policy?
No. Once the reinstatement has been electronically resubmitted, then it is not necessary for the agents to send faxes to MVD.

What if a vehicle is suspended for no proof of insurance, but its insurance was valid?
The registered owner needs to provide proof of insurance coverage on the date of suspension, in person, at the nearest MVD office. This will insure that the suspension is lifted and the plates and registration are active.

The agent for the insured may fax verification for suspended registrations if the proof of coverage is valid.

If insurance was not in effect, then the owner/owners of the vehicle will need to obtain coverage from a valid insurance company and pay a reinstatement fee of $50.

Is an ADOT code mandatory on the insurance verification?
The code is no longer mandatory. What needs to be provided is the name of the company that is providing coverage and that company’s NAIC.

Since so many companies provide varied forms of coverage, and have different NAIC codes for each branch of their companies, a specific code is useful in determining the correct company that is providing the coverage.
What is the correct policy number to be reported?
The policy number that appears on the insurance certificate, insurance card, or policy certificate must be consistent on all documents and reports. This avoids any confusion for the vehicle record and inconvenience for our mutual customers.

If a policy is reinstated with a different number, or the policy number changes, should it be reported as a new policy?
Yes. When a policy number is changed, for any reason, the old policy number must be reported as a cancellation transaction and the new policy number must be reported as a new business transaction.

We often receive subsequent policy reports where the policy number differs from the originally reported policy number by a suffix (e.g. ABC01234 vs. ABC0123401 or ABC01234-01). If ABC01234 was the original policy, ABC01234 must always be reported, unless first cancelled and the new policy number then reported. This also applies to policy prefixes (e.g. ABC01234 vs. 01ABC01234 or 01-ABC01234).

Are SR22 and SR26’s reported electronically?
Yes.

How soon should verification be submitted to MVD after the purchase of a new vehicle?
Once the vehicle is registered with MVD, it needs to have proof of coverage on record. If it is not provided or found, then the first notice is mailed to the registered owner(s). The policy input process searches for the registration VIN and will attach the policy to the vehicle record if a match is located. If coverage is not applied to the vehicle record, then a suspension notice is generated and the plates and registration are suspended, until current proof of insurance is received.

Why is policy expiration date required for commercial policies?
Arizona statute requires that commercial policies be reported annually. To enforce this requirement, the policy expiration date is required with new policies and with each subsequent renewal, as well as cancellation transactions.

Policy dates (inception and expiration) must match those dates as printed on the insured’s proof of insurance card or certificate.

How do I report commercial trusts?
Commercial trusts must be reported as VIN specific and follow all other requirements for commercial policy reporting.

I’m an agent (or a brokerage). How do I send policy reports?
Neither agents nor brokerages may send policy reports. Insurance policy reporting is the responsibility of insurance companies and is a requirement for being authorized to conduct business in Arizona.
My company is merging/has merged with another company operating in Arizona. How do we report that?

Companies merging operations with another company operating in Arizona must cancel their book of business if policy numbers from the old company will not continue in force. This can be done by sending cancelation transactions for every policy or vehicle insured by the company being purchased.

My company is ceasing operations in Arizona. How do we report that?

Companies terminating operations in Arizona must cancel their book of business. This can be done by sending cancelation transactions for every policy or vehicle insured by the company ceasing operations.

What current security is supported for FTPS?

We currently support TLS v1.1 and TLS v1.2

What is your FTP IP address?

Our FTP site can be reached at 192.133.42.128, in addition to FTPS.AZDOT.GOV.

What ports does your FTP site use?

Our FTPS server currently uses TCP data ports 21000–21010
10. Sample X12 811 Transaction Set Policy Report

The following is for illustration purposes only; it is not intended to represent completely accurate X12 structure and does not properly reflect the non-printable characters contained in a transaction set.

ISA00 00 ZZBBB1 BABAB ZZAZMV AZMVIE4 000622162
4U003050200006221T
GSCIBBB1 BABABAZMV AZMVIE4000622162420000622X003050
ST8110001
BIG0006221
NIINSENDER'S NAMENI11111
NI2FARIZONA MVD MI
HL111
NM1IN2INSURANCE COMPANY NAMENI22222
IT11IP0
DTM36800062220
HL2121
NM12F2AZ
HL3241
NM1IL1BOLDERCURTISN443222222
N38820 W PERSHING AVE
N4PEORIAAZ85381
IT11IP0
SIZZ11NBS
REFIG1102SL22203
REFXMAZ
REFS3V
DTM22257060519
DTM00700063020
HL4350
LX1
VEH12G4WB52M3S88477781995NABUIC
HL5350
LX1
VEH2JN1EJ01F9NT1444441992NANISS
TDS1
CTT0001
SE000300001
GE120000622
IEA1020000622
11. Sample X12 811 Transaction Set No Activity Report

The following is for illustration purposes only; it is not intended to represent completely accurate X12 structure and does not properly reflect the non-printable characters contained in a transaction set.

```
ISA00 00 ZZALIR ALIR000 ZZAZMV AZMVIE4
0102051326U0030500000000071P
GSCIALIR ALIR000AZMV AZMVIE401020513267X003050
ST8110007
BIG0102051
N1INSENDER'S NAMENI12345
N12FARIZONA MVD MI
HL111
NM1IN2INSURANCE COMPANY NAMENI12345
IT11IP0
DTM36801020520
HL2121
NM12F2AZ
HL3240
NM1IL3NO ACTIVITY
IT11IP0
SIZZ11OTH
REFS3NS
TDS1
CTT1
SE180007
GE17
IEA1000000007
```
12. Hierarchical Levels in 811 transaction sets

An X12 811 transaction set is hierarchical with parent and children relationships. The HL segment type identifies a segment as a hierarchical level. Each HL segment has a unique identifier in the HL01 element. If an HL segment is a child, then its parent's ID is identified in the HL02 element. The HL03 element identifies the level (1, 2, 4, or 5). Level (1) is the insurance company identifier and is the first level. The next level (2) identifies the State and it is linked as a child to the most recent level (1) that precedes it. There is no level (3); it skips to the level (4) policy level. The parent of the level (4) is the most recent level (2). The next level (5) is the vehicle level which is a child of the most recent level (4) level that precedes it.

HL 1 level - (first) insurance company

  HL 2 level - identifies the state being reported to for the preceding (first) HL 1 level

  HL 4 level - identifies the policy information for the preceding (first) HL 1/HL 2 level

  HL 5 level - identifies the vehicle(s) information for the preceding (first) HL 1/HL 2/HL 4 level

HL 4 level - identifies the policy information for the preceding (first) HL 1/HL 2 level

HL 5 level - identifies the vehicle(s) information for the preceding (first) HL 1/HL 2/HL 4 level (1 to many HL 5s depending on how many vehicles are on a policy)

HL 5 level - identifies the vehicle(s) information for the preceding (first) HL 1/HL 2/HL 4 level

HL 4 level - identifies the policy information for the preceding (first) HL 1/HL 2 level

HL 5 level - identifies the vehicle(s) information for the preceding (first) HL 1/HL 2/HL 4 level

Levels 4 and 5 are repeated until the end of the transaction set, or until another insurance company is identified by another level (1) level.
ARIZONA HEALTH CARE COST CONTAINMENT SYSTEM (AHCCCS)
Title 9, Chapter 28, Articles 6, 7
GOVERNOR’S REGULATORY REVIEW COUNCIL

ATTORNEY MEMORANDUM - FIVE-YEAR REVIEW REPORT

MEETING DATE:  June 1, 2022; July 6, 2022

TO:  Members of the Governor’s Regulatory Review Council (Council)

FROM:  Council Staff

DATE:  May 11, 2022

SUBJECT:  ARIZONA HEALTH CARE COST CONTAINMENT SYSTEM (AHCCCS)
Title 9, Chapter 28, Articles 6 & 7

Summary

This Five-Year Review Report (5YRR) from the Arizona Health Care Cost Containment System (AHCCCS) relates to six (6) rules in Title 9, Chapter 28, Article 6 (RFP and Contract Process) and five (5) rules in Article 7 (Standards for Payments).

The rules in Article 6 relate to Request for Proposal and contract process for the Arizona Long-Term Care System (ALTCS). The ALTCS is health insurance for individuals who are age 65 or older, or who have a disability, and who require nursing facility level of care. Services may be provided in an institution or in a home or community-based setting. Pursuant to A.R.S. 36-2944, the director at least every five years shall prepare and issue a request for proposal and a proposed contract format to qualified group disability insurers, hospital and medical service corporations, health care services organizations and any other qualified public or private persons to be a program contractor and provide long-term care services. The director may adopt rules regarding the request for proposal process, which was done in Title 9, Chapter 28, Article 6.

The rules in Article 7 relate to Standards for Payments regarding ALTCS. Specifically, these rules describe general reimbursement requirements, the requirements for assessments to nursing facilities, the requirements for supplemental payments for nursing facilities, and the criteria for determining the county that is financially responsible for the state’s share of the ALTCS funding as referenced in A.R.S. §36-2913.
In the previous 5YRR for these rules, approved by the Council in October 2017, AHCCCS did not indicate any proposed changes to the rules.

**Proposed Action**

In the current report, AHCCCS does not propose to make any changes to the rules.

1. **Has the agency analyzed whether the rules are authorized by statute?**

   AHCCCS cites both general and specific authority for these rules.

2. **Summary of the agency’s economic impact comparison and identification of stakeholders:**

   AHCCCS indicates that for Articles 6 and 7 there has not been a rulemaking since the last 5YRR. Therefore, the economic impact is not significantly different from the original economic impact.

3. **Has the agency analyzed the costs and benefits of the rulemaking and determined that the rules impose the least burden and costs to those who are regulated?**

   AHCCCS believes the rules as written impose the least burden and cost when meeting their objectives.

4. **Has the agency received any written criticisms of the rules over the last five years?**

   AHCCCS indicates it has not received written criticisms of the rules in the last five years.

5. **Has the agency analyzed the rules’ clarity, conciseness, and understandability?**

   AHCCCS indicates the rules are clear, concise, and understandable.

6. **Has the agency analyzed the rules’ consistency with other rules and statutes?**

   AHCCCS indicates the rules are consistent with other rules and statutes.

7. **Has the agency analyzed the rules’ effectiveness in achieving its objectives?**

   AHCCCS indicates the rules are effective in achieving their objectives.

8. **Has the agency analyzed the current enforcement status of the rules?**

   AHCCCS indicates the rules are enforced as written.
9. **Are the rules more stringent than corresponding federal law and, if so, is there statutory authority to exceed the requirements of federal law?**

AHCCCS indicates the rules are not more stringent than corresponding federal law.

10. **For rules adopted after July 29, 2010, do the rules require a permit or license and, if so, does the agency comply with A.R.S. § 41-1037?**

Not applicable. The rules do not require a permit, license, or agency authorization.

11. **Conclusion**

This 5YRR relates to six (6) rules in Title 9, Chapter 28, Article 6 (RFP and Contract Process) and five (5) rules in Article 7 (Standards for Payments). AHCCCS indicates the rules are generally clear, concise, understandable, consistent, effective, and enforced as written. AHCCCS does not intend to take any action regarding these rules.

Council staff recommends approval of this report.
January 28, 2022

VIA EMAIL: grrc@azdoa.gov

Nicole Sornsin, Chair  
Governor’s Regulatory Review Council  
100 North 15th Avenue, Suite 305  
Phoenix, Arizona 85007

RE: AHCCCS Title 9, Chapter 28, Article 6, Five Year Review Report

Dear Ms. Sornsin:

Please find enclosed the Five-Year Review Report of AHCCCS for Title 9, Chapter 28, Article 6 which is due on January 31, 2022.

AHCCCS hereby certifies compliance with A.R.S. 41-1091.

For questions about this report, please contact Nicole Fries at 602-417-4232 or nicole.fries@azahcccs.gov.

Sincerely,

Kasey Rogg  
Assistant Director

Attachments
Arizona Health Care Cost Containment System (AHCCCS)  
5 YEAR REVIEW REPORT  
A.A.C. Title 9, Chapter 28, Articles 6  
January 2022

1. **Authorization of the rule by existing statutes**
   
   General Statutory Authority: A.R.S. § 36-2932
   
   Implementing statute: A.R.S. §§ 36-2944, 36-2943, 36-2959, and 36-2999.51

2. **The objective of each rule:**

<table>
<thead>
<tr>
<th>Rule</th>
<th>Objective</th>
</tr>
</thead>
<tbody>
<tr>
<td>R9-28-601</td>
<td>The objective of the rule is to list the authority for the Request for Proposal (RFP) and describe the applicability of Title 9 Chapter 28 Article 6</td>
</tr>
<tr>
<td>R9-28-602</td>
<td>The objective of this rule is to prescribe the contents of the RFP and the proposal process.</td>
</tr>
<tr>
<td>R9-28-603</td>
<td>The objective of this rule is to prescribe the process the Administration follows when awarding contracts.</td>
</tr>
<tr>
<td>R9-28-604</td>
<td>The objective of this rule is to prescribe the means of protesting an RFP or award including the administrative appeal process.</td>
</tr>
<tr>
<td>R9-28-605</td>
<td>The objective of this rule is to prescribe means by which an offeror or contractor may request from the Director a waiver of the requirement for hospital subcontracts.</td>
</tr>
<tr>
<td>R9-28-606</td>
<td>The objective of this rule is to prescribe sanctions the Director may impose on contractors for noncompliance and the factors considered when doing so.</td>
</tr>
</tbody>
</table>

3. **Are the rules effective in achieving their objectives?**  
   Yes _X_  No __

4. **Are the rules consistent with other rules and statutes?**  
   Yes _X_  No __

5. **Are the rules enforced as written?**  
   Yes _X_  No __

6. **Are the rules clear, concise, and understandable?**  
   Yes _X_  No __

7. **Has the agency received written criticisms of the rules within the last five years?**  
   Yes __  No _X_

8. **Economic, small business, and consumer impact comparison:**

   There has not been a rulemaking since the last Five Year Review Report. Therefore, the economic impact is not significantly different than the original economic impact.

9. **Has the agency received any business competitiveness analyses of the rules?**  
   Yes __  No _X_

1
10. **Has the agency completed the course of action indicated in the agency’s previous five-year-review report?**
   Not applicable.

11. **A determination that the probable benefits of the rule outweigh within this state the probable costs of the rule, and the rule imposes the least burden and costs to regulated persons by the rule, including paperwork and other compliance costs, necessary to achieve the underlying regulatory objective:**
   The Administration believes the rules as written impose the least burden and cost when meeting their objectives.

12. **Are the rules more stringent than corresponding federal laws?**
   Yes ___  No __X__

13. **For rules adopted after July 29, 2010, that require the issuance of a regulatory permit, license, or agency authorization, whether the rules are in compliance with the general permit requirements of A.R.S. § 41-1037 or explain why the agency believes an exception applies:**
   Not applicable.

14. **Proposed course of action:**
   The agency did not provide any recommended changes to this article, therefore there is no proposed course of action.
January 28, 2022

**VIA EMAIL: grrc@azdoa.gov**

Nicole Sornsin, Chair
Governor’s Regulatory Review Council
100 North 15th Avenue, Suite 305
Phoenix, Arizona 85007

RE: AHCCCS Title 9, Chapter 28, Article 7, Five Year Review Report

Dear Ms. Sornsin:

Please find enclosed the Five-Year Review Report of AHCCCS for Title 9, Chapter 28, Article 7 which is due on January 31, 2022.

AHCCCS hereby certifies compliance with A.R.S. 41-1091.

For questions about this report, please contact Nicole Fries at 602-417-4232 or nicole.fries@azahcccs.gov.

Sincerely,

Kasey Rogg
Assistant Director

Attachments
1. **Authorization of the rule by existing statutes**
   
   General Statutory Authority: A.R.S. § 36-2932
   
   Implementing statute: A.R.S. §§ 36-2944, 36-2943, 36-2959, and 36-2999.51

2. **The objective of each rule:**

<table>
<thead>
<tr>
<th>Rule</th>
<th>Objective</th>
</tr>
</thead>
<tbody>
<tr>
<td>R9-28-701</td>
<td>The objective of this rule is to provide definitions that specifically support the payment regulations outlined in Article 7.</td>
</tr>
<tr>
<td>R9-28-701.10</td>
<td>The objective of this rule is to describe the general reimbursement requirements cross-referencing Chapter 28 reimbursement rules.</td>
</tr>
<tr>
<td>R9-28-702</td>
<td>The objective of this rule is to set forth the requirements for assessments to nursing facilities.</td>
</tr>
<tr>
<td>R9-28-703</td>
<td>The objective of this rule is to set forth the requirements for supplemental payments for nursing facilities.</td>
</tr>
<tr>
<td>R9-28-712</td>
<td>The objective of the rule is to set forth the criteria for determining the county that is financially responsible for the state's share of the ALTCS funding as referenced in A.R.S. §36-2913.</td>
</tr>
</tbody>
</table>

3. **Are the rules effective in achieving their objectives?**

   Yes _X_  No __

4. **Are the rules consistent with other rules and statutes?**

   Yes _X_  No __

5. **Are the rules enforced as written?**

   Yes _X_  No __

6. **Are the rules clear, concise, and understandable?**

   Yes _X_  No __

7. **Has the agency received written criticisms of the rules within the last five years?**

   Yes  No _X_

8. **Economic, small business, and consumer impact comparison:**

   There has not been a rulemaking since the last Five Year Review Report. Therefore, the economic impact is not significantly different than the original economic impact.

9. **Has the agency received any business competitiveness analyses of the rules?**

   Yes  No _X_

10. **Has the agency completed the course of action indicated in the agency’s previous five-year-review report?**

    Yes  No _X_
11. **A determination that the probable benefits of the rule outweigh within this state the probable costs of the rule, and the rule imposes the least burden and costs to regulated persons by the rule, including paperwork and other compliance costs, necessary to achieve the underlying regulatory objective:**

The Administration believes the rules as written impose the least burden and cost when meeting their objectives.

12. **Are the rules more stringent than corresponding federal laws?**

   Yes ___  No _X_

13. **For rules adopted after July 29, 2010, that require the issuance of a regulatory permit, license, or agency authorization, whether the rules are in compliance with the general permit requirements of A.R.S. § 41-1037 or explain why the agency believes an exception applies:**

   Not applicable.

14. **Proposed course of action:**

   The agency has no recommended changes, so there is no corresponding course of action proposed.
A program contractor shall submit a service plan and other information related to the case management plan upon request to the Administration.

**Historical Note**

A program contractor shall:

1. Comply with all requirements specified in A.A.C. R9-22-522; and

**Historical Note**

**R9-28-512. Expired**

**Historical Note**

**R9-28-513. Program Compliance Audits**
The Administration shall meet the requirements specified under A.A.C. R9-22-521 for a program contractor.

**Historical Note**
Adopted effective October 1, 1988, filed September 1, 1988 (Supp. 88-3). Amended effective June 6, 1989 (Supp. 89-2). Amended effective August 11, 1997 (Supp. 97-3). Section repealed; new Section adopted by final rulemaking at 6 A.A.R. 896, effective February 8, 2000 (Supp. 00-1).
R9-28-603. Contract Award
The Administration shall award a contract under A.R.S. § 36-2944 R9-28-603. Contract Award
and A.A.C. R9-22-603.

Historical Note
Adopted effective October 1, 1988, filed September 1, 1988 (Supp. 88-3). Amended effective August 11, 1997 (Supp. 97-3). Section repealed; new Section adopted by final rulemaking at 6 A.A.R. 896, effective February 8, 2000 (Supp. 00-1). Section repealed; new Section made by final rulemaking at 8 A.A.R. 444, effective January 10, 2002 (Supp. 02-1).

R9-28-604. Contract or Proposal Protests; Appeals
Contract or proposal protests or appeals shall be under A.A.C. R9-22-604 and 9 A.A.C. 34.

Historical Note
Adopted effective October 1, 1988, filed September 1, 1988 (Supp. 88-3). Amended effective August 11, 1997 (Supp. 97-3). Section repealed; new Section adopted by final rulemaking at 6 A.A.R. 896, effective February 8, 2000 (Supp. 00-1). Section repealed; new Section made by final rulemaking at 8 A.A.R. 444, effective January 10, 2002 (Supp. 02-1).

R9-28-605. Waiver of Contractor’s Subcontract with Hospitals
A contractor’s subcontract with hospitals may be waived under A.A.C. R9-22-605.

Historical Note
Adopted effective October 1, 1988, filed September 1, 1988 (Supp. 88-3). Amended effective August 11, 1997 (Supp. 97-3). Section repealed; new Section adopted by final rulemaking at 6 A.A.R. 896, effective February 8, 2000 (Supp. 00-1). Section repealed; new Section made by final rulemaking at 8 A.A.R. 444, effective January 10, 2002 (Supp. 02-1).

R9-28-606. Contract Compliance Sanction
A. The Administration shall follow sanction provisions under A.A.C. R9-22-606.
B. The Administration shall apply remedies found in 42 CFR 488, Subpart F, effective January 1, 2012, incorporated by reference and on file with the Administration and the Office of the Secretary of State, for a nursing facility that does not meet requirements of participation under 42 U.S.C. 1396e. This incorporation by reference contains no future editions or amendments.

Historical Note
Adopted effective October 1, 1988, filed September 1, 1988 (Supp. 88-3). Amended effective August 11, 1997 (Supp. 97-3). Section repealed; new Section adopted by final rulemaking at 6 A.A.R. 896, effective February 8, 2000 (Supp. 00-1). Section repealed; new Section made by final rulemaking at 8 A.A.R. 444, effective January 10, 2002 (Supp. 02-1).

R9-28-607. Repealed

Historical Note
Adopted effective October 1, 1988, filed September 1, 1988 (Supp. 88-3). Amended effective November 5, 1993 (Supp. 93-4). Amended effective August 11, 1997 (Supp. 97-3). Section repealed; new Section adopted by final rulemaking at 6 A.A.R. 896, effective February 8, 2000 (Supp. 00-1). Section repealed by final rulemaking at 8 A.A.R. 444, effective January 10, 2002 (Supp. 02-1).

R9-28-608. Repealed

Historical Note
New Section adopted by final rulemaking at 6 A.A.R. 896, effective February 8, 2000 (Supp. 00-1). Section repealed by final rulemaking at 8 A.A.R. 444, effective January 10, 2002 (Supp. 02-1).

R9-28-609. Repealed

Historical Note
Adopted effective October 1, 1988, filed September 1, 1988 (Supp. 88-3). Amended under an exemption from the provisions of the Administrative Procedure Act effective March 1, 1993 (Supp. 93-1). Section repealed by final rulemaking at 6 A.A.R. 896, effective February 8, 2000 (Supp. 00-1).

ARTICLE 7. STANDARDS FOR PAYMENTS

R9-28-701. Standards for Payment Related Definitions
Definitions. In this Article, in addition to definitions contained in A.R.S. §§ 36-2901 and 36-2931, and 9 A.A.C. 22, Article 1, the following phrase has the following meaning unless the context of the Article explicitly requires another meaning:
“County of fiscal responsibility” means the county that is financially responsible for the state’s share of ALTCS funding.

Historical Note
Adopted effective October 1, 1988, filed September 1, 1988 (Supp. 88-3). Amended by final rulemaking at 8 A.A.R. 444, effective January 10, 2002 (Supp. 02-1). Section repealed by final rulemaking at 11 A.A.R. 3165, effective October 1, 2005 (Supp. 05-3).

R9-28-701.10. General Requirements
The following Sections of A.A.C. Chapter 22, Articles 2 and 7, are applicable to reimbursement for services provided under the ALTCS program, except that the term “program contractor” shall be substituted for “contractor.”
1. Scope of the Administration’s and Contractor’s Liability, R9-22-701.10;
2. Charges to Members, R9-22-702;
3. Payments by the Administration or by a program contractor, R9-22-703 and R9-22-705;
4. Contractor’s Liability to Hospitals for the Provision of Emergency and Post-stabilization Care, R9-22-709;
5. Payment for Non-hospital services, R9-22-710;
6. Specialty Contracts, R9-22-712(G)(3), R9-22-712.01 (10) and Article 2;
The Administration shall award a contract under A.R.S. § 36-2944 and A.A.C. R9-22-603.

**Historical Note**
Adopted effective October 1, 1988, filed September 1, 1988 (Supp. 88-3). Amended effective August 11, 1997 (Supp. 97-3). Section repealed; new Section adopted by final rulemaking at 6 A.A.R. 896, effective February 8, 2000 (Supp. 00-1). Section repealed; new Section made by final rulemaking at 8 A.A.R. 444, effective January 10, 2002 (Supp. 02-1).

**R9-28-604. Contract or Proposal Protests; Appeals**
Contract or proposal protests or appeals shall be under A.A.C. R9-22-604 and 9 A.A.C. 34.

**Historical Note**
Adopted effective October 1, 1988, filed September 1, 1988 (Supp. 88-3). Amended effective August 11, 1997 (Supp. 97-3). Section repealed; new Section adopted by final rulemaking at 6 A.A.R. 896, effective February 8, 2000 (Supp. 00-1). Section repealed; new Section made by final rulemaking at 8 A.A.R. 444, effective January 10, 2002 (Supp. 02-1).

**R9-28-605. Waiver of Contractor’s Subcontract with Hospitals**
A contractor’s subcontract with hospitals may be waived under A.A.C. R9-22-605.

**Historical Note**
Adopted effective October 1, 1988, filed September 1, 1988 (Supp. 88-3). Amended effective August 11, 1997 (Supp. 97-3). Section repealed; new Section adopted by final rulemaking at 6 A.A.R. 896, effective February 8, 2000 (Supp. 00-1). Section repealed; new Section made by final rulemaking at 8 A.A.R. 444, effective January 10, 2002 (Supp. 02-1).

**R9-28-606. Contract Compliance Sanction**
A. The Administration shall follow sanction provisions under A.A.C. R9-22-606.

B. The Administration shall apply remedies found in 42 CFR 488, Subpart F, effective January 1, 2012, incorporated by reference and on file with the Administration and the Office of the Secretary of State, for a nursing facility that does not meet requirements of participation under 42 U.S.C. 1396c. This incorporation by reference contains no future editions or amendments.

**Historical Note**
Adopted effective October 1, 1988, filed September 1, 1988 (Supp. 88-3). Amended effective August 11, 1997 (Supp. 97-3). Section repealed; new Section adopted by final rulemaking at 6 A.A.R. 896, effective February 8, 2000 (Supp. 00-1). Section repealed; new Section made by final rulemaking at 8 A.A.R. 444, effective January 10, 2002 (Supp. 02-1). Amended by final rulemaking at 18 A.A.R. 2502, effective November 13, 2012 (Supp. 12-3).

**R9-28-607. Repealed**

**Historical Note**
Adopted effective October 1, 1988, filed September 1, 1988 (Supp. 88-3). Amended effective November 5, 1993 (Supp. 93-4). Amended effective August 11, 1997 (Supp. 97-3). Section repealed; new Section adopted by final rulemaking at 6 A.A.R. 896, effective February 8, 2000 (Supp. 00-1). Section repealed by final rulemaking at 8 A.A.R. 444, effective January 10, 2002 (Supp. 02-1).

**R9-28-608. Repealed**

**Historical Note**
New Section adopted by final rulemaking at 6 A.A.R. 896, effective February 8, 2000 (Supp. 00-1). Section repealed by final rulemaking at 8 A.A.R. 444, effective January 10, 2002 (Supp. 02-1).

**R9-28-609. Repealed**

**Historical Note**
Adopted effective October 1, 1988, filed September 1, 1988 (Supp. 88-3). Amended under an exemption from the provisions of the Administrative Procedure Act effective March 1, 1993 (Supp. 93-1). Section repealed by final rulemaking at 6 A.A.R. 896, effective February 8, 2000 (Supp. 00-1).

### ARTICLE 7. STANDARDS FOR PAYMENTS

**R9-28-701. Standards for Payment Related Definitions**
Definitions. In this Article, in addition to definitions contained in A.R.S. §§ 36-2901 and 36-2931, and 9 A.A.C. 22, Article 1, the following phrase has the following meaning unless the context of the Article explicitly requires another meaning:
“County of fiscal responsibility” means the county that is financially responsible for the state’s share of ALTCS funding.

**Historical Note**
Adopted effective October 1, 1988, filed September 1, 1988 (Supp. 88-3). Amended by final rulemaking at 8 A.A.R. 444, effective January 10, 2002 (Supp. 02-1).

**R9-28-701.10. General Requirements**
The following Sections of A.A.C. Chapter 22, Articles 2 and 7, are applicable to reimbursement for services provided under the ALTCS program, except that the term “program contractor” shall be substituted for “contractor.”

1. Scope of the Administration’s and Contractor’s Liability, R9-22-701.10;
2. Charges to Members, R9-22-702;
3. Payments by the Administration or by a program contractor, R9-22-703 and R9-22-705;
4. Contractor’s Liability to Hospitals for the Provision of Emergency and Post-stabilization Care, R9-22-709;
5. Payment for Non-hospital services, R9-22-710;
6. Specialty Contracts, R9-22-712(G)(3), R9-22-712.01 (10) and Article 2;
7. Payments by the Administration for Hospital Services
Provided to an Eligible Person, R9-22-712; R9-22-712.01
and R9-22-712.10;
8. Overpayment and Recovery of Indebtedness, R9-22-713;
9. Payments to Providers, R9-22-714;
10. Hospital Rate Negotiations, R9-22-715; and

Historical Note
New Section made by final rulemaking at 13 A.A.R. 458,
effective April 7, 2007 (Supp. 07-1).

R9-28-702. Repealed Nursing Facility Assessment
A. For purposes of this Section, in addition to the definitions
under A.R.S. § 36-2999.51, the following terms have the fol-
lowing meaning unless the context specifically requires
another meaning:
“820 transaction” means the standard health care pre-
mium payments transaction required by 45 CFR
162.1702.
“Assessment year” means the 12 month period beginning
October 1st each year.
“Nursing Facility Assessment” means a tax paid by a
qualifying nursing facility to the Department of Revenue
on a quarterly basis established under A.R.S. § 36-
2999.52.
“Medicaid days” means days of nursing facility services
paid for by the Administration or its contractors as the
primary payor and as reported in AHCCCS’ claim and
encounter data.
“Medicare days” means resident days where the Medi-
care program, a Medicare advantage or special needs plan,
or the Medicare hospice program is the primary
payor.
“Payment year” means the 12 month period beginning
October 1st each year.”Payment year” means the 12
month period beginning October 1st each year.
B. Subject to Centers for Medicare and Medicaid Services (CMS)
approval, effective October 1, 2012, nursing facilities shall be
subject to a provider assessment payable on a quarterly basis.
C. All nursing facilities licensed in the state of Arizona shall be
subject to the provider assessment except for:
1. A continuing care retirement community,
2. A facility with 58 or fewer beds,
3. A facility designated by the Arizona Department of
Health Services as an Intermediate Care Facility for the
Mentally Retarded,
4. A tribally owned or operated facility located on a reserva-
tion, or
5. Arizona Veteran’s Homes.
D. The Administration shall calculate the prospective nursing
facility provider assessment for qualifying nursing facilities as
follows:
1. The Administration shall utilize each nursing facility’s
Uniform Accounting Report (UAR) submitted to the Ar-
izona Department of Health Services as of August 1st
the most recent and complete twelve months of adjudicated
claims and encounter data, for every combination of con-
tractor and every facility eligible for a supplemental pay-
ment, the Administration shall determine annually a ratio
equal to the number of bed days for the facility paid by
each contractor divided by the total number of bed days
paid to all facilities by all contractors and the Administra-

Historical Note
Adopted effective October 1, 1988, filed September 1,
1988 (Supp. 88-3). Amended effective September 22,
1997 (Supp. 97-3). Amended by final rulemaking at 8
A.A.R. 3340, effective July 15, 2002 (Supp. 02-3).
Amended by final rulemaking at 11 A.A.R. 3244, effective
October 1, 2005 (Supp. 05-3). Section repealed by
final rulemaking at 13 A.A.R. 458, effective April 7,
2007 (Supp. 07-1). New Section made by final rulemak-
ing at 19 A.A.R. 137, effective January 8, 2013 (Supp.
13-1). Amended by final rulemaking at 19 A.A.R. 4168,
effective February 1, 2014 (Supp. 13-4).

R9-28-703. Nursing Facility Supplemental Payments
A. Nursing Facility Supplemental Payments
1. Using Medicaid resident bed information from the
most recent and complete twelve months of adjudicated
claims and encounter data, for every combination of con-
tractor and every facility eligible for a supplemental pay-
ment, the Administration shall determine annually a ratio
equal to the number of bed days for the facility paid by
each contractor divided by the total number of bed days
paid to all facilities by all contractors and the Administra-

2. For each nursing facility, other than a nursing facility
noted in subsection (D)(3), the provider assessment is
calculated by multiplying the nursing facility’s non-
Medicare resident day data for each assessment year by
$7.50.
3. For a nursing facility with the number of annual Medicaid
days greater than or equal to the number required to
achieve a slope of at least 1 applying the uniformity tax
waiver test described in 42 CFR 433.68(e)(2), the pro-
viders assessment is calculated by multiplying the nursing
facility’s non-Medicare resident day data for each assess-
ment year by $1.00.
4. The number of annual Medicaid days used in subsection
(D)(3) shall be recalculated each August 1, to achieve a
slope of at least 1 applying the uniformity tax waiver test
described in 42 CFR 433.68(e)(2).
5. The assessment calculated under subsections (D)(2),
(D)(3) and (D)(4), shall not exceed 3.5 percent of aggre-
gate net patient service revenue of all assessed providers.
6. The Administration will forward the provider assessment
by facility to the Department of Revenue by no later than
December preceding the assessment year.
7. In the event a nursing facility closes during the assess-
ment year, the nursing facility shall cease to be responsi-
ble for the portion of the assessment applied to the dates
the nursing facility is not operating.
8. In the event a nursing facility begins operation during the
assessment year, that facility would have no responsibil-
ity for the assessment until such time as the facility has
UAR data that falls within the collection period for the
assessment calculation.
9. In the event a nursing facility has a change of ownership
such that the facility remains open and the ownership of
the facility changes, the assessment liability transfers
with the change in ownership.
3. Quarterly, each contractor shall make payments to each facility in an amount equal to 98% of the amounts identified as Nursing Facility Enhanced Payments in the 820 transaction sent from AHCCCS to the contractor for the quarter multiplied by the percentage determined in subsection (A)(2) applicable to the contractor and to each facility.

4. Quarterly, the Administration shall make payments to each facility in an amount equal to 99% of the amounts collected during the preceding quarter under R9-28-702, less amounts collected and used to fund the Nursing Facility Enhanced Payments included in the capitation paid to contractors and the corresponding federal financial participation, multiplied by the percentage determined in subsection (A)(2) applicable to the Administration and to each facility. The Administration shall make the supplemental payments to the nursing facilities within 20 calendar days of the determination of the quarterly supplemental payment.

5. Neither the Administration nor the Contractors shall be required to make quarterly payments to facilities otherwise required by subsections (A)(3) or (A)(4) until the assessment collected and actually available in the nursing facility assessment fund, plus the corresponding federal financial participation, are equal to or greater than 101% of the amount necessary for contractors to make the payments to facilities described in subsections (A)(4) and (A)(5).

6. Contractors shall not be required to make quarterly payments to facility otherwise required by subsection (A)(4) until the Administration has made a retroactive adjustment to the capitation rates paid to contractors to correct the Nursing Facility Enhanced payments based on actual member months for the specified quarter.

B. Each contractor must pay each facility the amount computed within 20 calendar days of receiving the nursing facility enhanced payment from the Administration. The contractors must confirm each payment and payment date to the Administration within 20 calendar days from receipt of the funds.

C. After each assessment year, the Administration shall reconcile the payments made by contractors under subsection (A) and (B) to the portion of the annual collections under R9-28-702 attributable to Medicaid resident bed days paid for by contractors for the same year, less one percent, plus available federal financial participation. The proportion of each nursing facility’s Medicaid resident bed days as described in subsection (A)(2)(ii) shall be used to calculate the reconciliation amounts. Contractors shall make additional payments to or recoup payments from nursing facilities based on the reconciliation in compliance with the requirements of subsection (B).

D. General requirements for all payments.

1. A facility must be open on the date the supplemental payment is made in order to receive a payment. In the event a nursing facility closes during the assessment year, the nursing facility shall cease to be eligible for supplemental payments.

2. In the event a nursing facility begins operation during the assessment year, that facility shall not receive a supplemental payment until such time as the facility has claims and encounter data that falls within the collection period for the payment calculation.

3. In the event a nursing facility has a change of ownership, payments shall be made to the owner of the facility as of the date of the supplemental payment.

4. Subsection (E)(3) shall not be interpreted to prohibit the current and prior owner from agreeing to a transfer of the payment from the current owner to the prior owner.

E. The Arizona Veterans’ Homes are not eligible for supplemental payments.

Historical Note

R9-28-704. Repealed

Historical Note

R9-28-705. Repealed

Historical Note

R9-28-706. Repealed

Historical Note
Adopted effective October 1, 1988, filed September 1, 1988 (Supp. 88-3). Amended subsections (A) and (B) effective June 6, 1989 (Supp. 89-2). Amended effective April 25, 1990 (Supp. 90-2). Amended under an exemption from the provisions of the Administrative Procedure Act, effective March 1, 1993 (Supp. 93-1). Amended effective September 22, 1997 (Supp. 97-3). Amended by final rulemaking at 10 A.A.R. 4658, effective January 1, 2005 (Supp. 04-4). Amended by final rulemaking at 11 A.A.R. 3852, effective November 12, 2005 (Supp. 05-3). Section repealed by final rulemaking at 13 A.A.R. 458, effective April 7, 2007 (Supp. 07-1).

R9-28-707. Repealed

Historical Note
Editor’s Note: The following Section was amended under an exemption from the provisions of the Administrative Procedure Act which means that the amendment was not reviewed by the Governor’s Regulatory Review Council; the agency did not submit a notice of proposed rulemaking for publication in the Arizona Administrative Register; the agency was not required to hold public hearings on the rulemaking; and the Attorney General has not certified the rule. This Section was subsequently amended through the regular rulemaking process.

R9-28-708. Repealed

Historical Note
Adopted effective October 1, 1988, filed September 1, 1988 (Supp. 88-3). Amended effective April 26, 1989 (Supp. 89-2). Amended under an exemption from the provisions of the Administrative Procedure Act, effective March 1, 1993 (Supp. 93-1). Amended by final rulemaking at 11 A.A.R. 3852, effective November 12, 2005 (Supp. 05-3). Section repealed by final rulemaking at 13 A.A.R. 458, effective April 7, 2007 (Supp. 07-1).

R9-28-709. Repealed

Historical Note

R9-28-710. Repealed

Historical Note
Adopted effective October 1, 1988, filed September 1, 1988 (Supp. 88-3). Amended subsections (C) and (D) effective June 6, 1989 (Supp. 89-2). Amended effective September 22, 1997 (Supp. 97-3). Section repealed by final rulemaking at 8 A.A.R. 444, effective January 10, 2002 (Supp. 02-1).

R9-28-711. Repealed

Historical Note

R9-28-712. County of Fiscal Responsibility

A. General requirements.
   1. The Administration shall determine the county of fiscal responsibility under A.R.S. § 36-2913 for an applicant or member who is elderly or physically disabled.
   2. A program contractor shall cover services and provisions specified in 9 A.A.C. 22, Articles 2 and 7 and Article 11 of this Chapter.

B. Criteria for determining county of fiscal responsibility for an applicant.
   1. If the applicant resides in the applicant’s own home, the county of fiscal responsibility is the county where the applicant currently resides.
   2. This applies only if subsection (B)(3) does not apply. If the applicant is residing in a NF or alternative HCBS setting, the county of fiscal responsibility is the county in which the applicant last resided in the applicant’s own home.
   3. If the applicant moves from another state directly into a NF or alternative HCBS setting in this state, the county of fiscal responsibility is the county in which the person currently resides.
   4. If the applicant moves from the Arizona State Hospital (ASH) into a NF or alternative HCBS setting, or is an inmate of a public institution moving from the public institution into a NF or alternative HCBS setting, the county of fiscal responsibility is the county in which the applicant resided in the applicant’s own home prior to admission to ASH or the public institution.

C. Criteria for determining if there is a change in county of fiscal responsibility for a member moving from one county to another county.
   1. No change in the county of fiscal responsibility. There is no change in the county of fiscal responsibility for a member if:
      a. The member moves from a NF to another NF in a different county,
      b. The member moves from a NF to an alternative HCBS setting in a different county,
      c. The member moves from an alternative HCBS setting to another alternative HCBS setting in a different county,
      d. The member moves from an alternative HCBS setting to a NF in a different county,
      e. The member moves from the member’s own home to an alternative HCBS setting in a different county,
      f. The member moves from the member’s own home to a NF in a different county,
      g. The member moves from a NF or alternative HCBS setting into ASH, or
      h. The member moves from ASH to a NF or alternative HCBS setting.
   2. Change in the county of fiscal responsibility. If a member moves from one county to another, the county of fiscal responsibility changes to the new county if the member moves from:
      a. An alternative HCBS setting to the member’s own home in a different county,
      b. A NF to the member’s own home in a different county,
      c. The member’s own home to the member’s own home in a different county, or
      d. ASH to the member’s own home.
   3. Transfers between program contractors. The county of fiscal responsibility changes if the Administration transfers a member from one program contractor to a different program contractor and if:
      a. Both program contractors agree, or
      b. The Administration determines that it is in the best interest of the member.

Historical Note

R9-28-713. Repealed

Historical Note
New Section adopted by final rulemaking at 6 A.A.R. 896, effective February 8, 2000 (Supp. 00-1). Amended by final rulemaking at 11 A.A.R. 3165, effective October 1, 2005 (Supp. 05-3). Section repealed by final rulemak-
Arizona Administrative Code

Arizona Health Care Cost Containment System – Arizona Long-term Care System

R9-28-714. Repealed

Historical Note

New Section made by final rulemaking at 8 A.A.R. 444, effective January 10, 2002 (Supp. 02-1). Section repealed by final rulemaking at 13 A.A.R. 458, effective April 7, 2007 (Supp. 07-1).

R9-28-715. Repealed

Historical Note

New Section made by final rulemaking at 8 A.A.R. 444, effective January 10, 2002 (Supp. 02-1). Section repealed by final rulemaking at 13 A.A.R. 458, effective April 7, 2007 (Supp. 07-1).

ARTICLE 8. TEFRA LIENS AND RECOVERIES

R9-28-801. Definitions Related to TEFRA Liens

In addition to the definitions in A.R.S. §§ 36-2901 and 36-2931, 9 A.A.C. 22, Article 1, and 9 A.A.C. 28, Article 1, the following definitions apply to this Article:

“Consecutive days” means days following one after the other without an interruption resulting from a discharge.

“File” means the date that AHCCCS receives a request for a State Fair Hearing under R9-28-805, as established by a date stamp on the request or other record of receipt.

“Home” means property in which a member has an ownership interest and that serves as the member’s principal place of residence. This property includes the shelter in which a member resides, the land on which the shelter is located, and related outbuildings.

“Recover” means that AHCCCS takes action to collect from a claim.


Historical Note

Adopted effective October 1, 1988, filed September 1, 1988 (Supp. 88-3). Amended effective November 5, 1993 (Supp. 93-4). Section repealed; new Section adopted effective August 11, 1997 (Supp. 97-3). Section repealed; new Section adopted by final rulemaking at 6 A.A.R. 3365, effective August 7, 2000 (Supp. 00-3). Section repealed by final rulemaking at 10 A.A.R. 820, effective April 3, 2004 (Supp. 04-1). New Section made by final rulemaking at 14 A.A.R. 3791, effective November 8, 2008 (Supp. 08-3).

R9-28-801.01. TEFRA Liens – General

Purpose. The purpose of TEFRA is to allow AHCCCS to file a lien on an AHCCCS member’s interest in any real property before the member is deceased, including but not limited to life estates and beneficiary deeds.

Historical Note

New Section made by final rulemaking at 14 A.A.R. 3791, effective November 8, 2008 (Supp. 08-3).

R9-28-802. TEFRA Liens – Affected Members

A. Except for members under R9-28-803, AHCCCS shall file a TEFRA lien against the real property of all members who are:

1. Receiving ALTCS services,
2. 55 years of age or older, and
3. Permanently institutionalized.

B. A rebuttable presumption exists that a member is permanently institutionalized if the member has continually resided in a nursing facility, ICF/MR, or other medical institution defined in 42 CFR 435.1010 for 90 or more consecutive days. A member may rebut the presumption by providing a written opinion from a treating physician, rendered to a reasonable degree of medical certainty, that the member’s condition is likely to improve to the point that the member will be discharged from the medical institution and will be capable of returning home by a date certain.

Historical Note

Adopted effective October 1, 1988, filed September 1, 1988 (Supp. 88-3). Amended effective November 5, 1993 (Supp. 93-4). Section repealed; new Section adopted effective August 11, 1997 (Supp. 97-3). Section repealed; new Section adopted by final rulemaking at 6 A.A.R. 3365, effective August 7, 2000 (Supp. 00-3). Section repealed by final rulemaking at 10 A.A.R. 820, effective April 3, 2004 (Supp. 04-1). New Section made by final rulemaking at 14 A.A.R. 3791, effective November 8, 2008 (Supp. 08-3).

R9-28-803. TEFRA Liens – AHCCCS Notice of Intent

A. Time-frame. At least 30 days before filing a TEFRA lien, AHCCCS shall send the member or member’s representative a Notice of Intent describing the factual basis for a claim that the member’s home is lawfully residing in the member’s home:

1. Member’s spouse;
2. Member’s child who is under the age of 21;
3. Member’s child who is blind or disabled under 42 U.S.C. 1382c;
4. Member’s sibling who has an equity interest in the home and who is residing in the member’s home for at least one year immediately before the date the member was admitted to a nursing facility, ICF/MR, or other medical institution as defined under 42 CFR 435.1010.

Historical Note

Adopted effective October 1, 1988, filed September 1, 1988 (Supp. 88-3). Section repealed; new Section adopted effective August 11, 1997 (Supp. 97-3). Section repealed; new Section adopted by final rulemaking at 6 A.A.R. 3365, effective August 7, 2000 (Supp. 00-3). Section repealed by final rulemaking at 10 A.A.R. 820, effective April 3, 2004 (Supp. 04-1). New Section made by final rulemaking at 14 A.A.R. 3791, effective November 8, 2008 (Supp. 08-3).

R9-28-804. TEFRA Liens – AHCCCS Notice of Intent

A. Time-frame. At least 30 days before filing a TEFRA lien, AHCCCS shall send the member or member’s representative a Notice of Intent.

B. Content of the Notice of Intent. The Notice of Intent shall include the following information:

1. A description of a TEFRA lien and the action that AHCCCS intends to take,
2. How a TEFRA lien affects a member’s property,
3. The legal authority for filing a TEFRA lien,
4. The time-frames and procedures involved in filing a TEFRA lien, and
5. The member’s right to request an exemption.

C. Request for exemption. A member or a member’s representative may request an exemption. To request an exemption the member or the member’s representative shall submit a written statement to AHCCCS within 30 days from the receipt of the Notice of Intent describing the factual basis for a claim that the property should be exempt from placement of a TEFRA lien or from recovery of lien based on R9-28-802, R9-28-803, or R9-
36-2932. Arizona long-term care system; powers and duties of the director; expenditure limitation

A. The Arizona long-term care system is established. The system includes the management and delivery of hospitalization, medical care, institutional services and home and community based services to members through the administration, the program contractors and providers pursuant to this article together with federal participation under title XIX of the social security act. The director in the performance of all duties shall consider the use of existing programs, rules and procedures in the counties and department where appropriate in meeting federal requirements.

B. The administration has full operational responsibility for the system, which shall include the following:

1. Contracting with and certification of program contractors in compliance with all applicable federal laws.

2. Approving the program contractors' comprehensive service delivery plans pursuant to section 36-2940.

3. Providing by rule for the ability of the director to review and approve or disapprove program contractors' requests for proposals for providers and provider subcontracts.

4. Providing technical assistance to the program contractors.

5. Developing a uniform accounting system to be implemented by program contractors and providers of institutional services and home and community based services.

6. Conducting quality control on eligibility determinations and preadmission screenings.

7. Establishing and managing a comprehensive system for assuring the quality of care delivered by the system as required by federal law.

8. Establishing an enrollment system.

9. Establishing a member case management tracking system.

10. Establishing and managing a method to prevent fraud by applicants, members, eligible persons, program contractors, providers and noncontracting providers as required by federal law.

11. Coordinating benefits as provided in section 36-2946.

12. Establishing standards for the coordination of services.

13. Establishing financial and performance audit requirements for program contractors, providers and noncontracting providers.

14. Prescribing remedies as required pursuant to 42 United States Code section 1396r. These remedies may include the appointment of temporary management by the director, acting in collaboration with the director of the department of health services, in order to continue operation of a nursing care institution providing services pursuant to this article.

15. Establishing a system to implement medical child support requirements, as required by federal law. The administration may enter into an intergovernmental agreement with the department of economic security to implement this paragraph.

16. Establishing requirements and guidelines for the review of trusts for the purposes of establishing eligibility for the system pursuant to section 36-2934.01 and posteligibility treatment of income pursuant to subsection L of this section.
17. Accepting the delegation of authority from the department of health services to enforce rules that prescribe minimum certification standards for adult foster care providers pursuant to section 36-410, subsection B. The administration may contract with another entity to perform the certification functions.

18. Assessing civil penalties for improper billing as prescribed in section 36-2903.01, subsection K.

C. For nursing care institutions and hospices that provide services pursuant to this article, the director shall contract periodically as deemed necessary and as required by federal law for a financial audit of the institutions and hospices that is certified by a certified public accountant in accordance with generally accepted auditing standards or conduct or contract for a financial audit or review of the institutions and hospices. The director shall notify the nursing care institution and hospice at least sixty days before beginning a periodic audit. The administration shall reimburse a nursing care institution or hospice for any additional expenses incurred for professional accounting services obtained in response to a specific request by the administration. On request, the director of the administration shall provide a copy of an audit performed pursuant to this subsection to the director of the department of health services or that person's designee.

D. Notwithstanding any other provision of this article, the administration may contract by an intergovernmental agreement with an Indian tribe, a tribal council or a tribal organization for the provision of long-term care services pursuant to section 36-2939, subsection A, paragraphs 1, 2, 3 and 4 and the home and community based services pursuant to section 36-2939, subsection B, paragraph 2 and subsection C, subject to the restrictions in section 36-2939, subsections D and E for eligible members.

E. The director shall require as a condition of a contract that all records relating to contract compliance are available for inspection by the administration subject to subsection F of this section and that these records are maintained for five years. The director shall also require that these records are available on request of the secretary of the United States department of health and human services or its successor agency.

F. Subject to applicable law relating to privilege and protection, the director shall adopt rules prescribing the types of information that are confidential and circumstances under which that information may be used or released, including requirements for physician-patient confidentiality. Notwithstanding any other law, these rules shall provide for the exchange of necessary information among the program contractors, the administration and the department for the purposes of eligibility determination under this article.

G. The director shall adopt rules to specify methods for the transition of members into, within and out of the system. The rules shall include provisions for the transfer of members, the transfer of medical records and the initiation and termination of services.

H. The director shall adopt rules that provide for withholding or forfeiting payments made to a program contractor if it fails to comply with a provision of its contract or with the director's rules.

I. The director shall:

1. Establish by rule the time frames and procedures for all grievances and requests for hearings consistent with section 36-2903.01, subsection B, paragraph 4.

2. Apply for and accept federal monies available under title XIX of the social security act in support of the system. In addition, the director may apply for and accept grants, contracts and private donations in support of the system.

3. Not less than thirty days before the administration implements a policy or a change to an existing policy relating to reimbursement, provide notice to interested parties. Parties interested in receiving notification of policy changes shall submit a written request for notification to the administration.

J. The director may apply for federal monies available for the support of programs to investigate and prosecute violations arising from the administration and operation of the system. Available state monies appropriated for
the administration of the system may be used as matching monies to secure federal monies pursuant to this subsection.

K. The director shall adopt rules that establish requirements of state residency and qualified alien status as prescribed in section 36-2903.03. The administration shall enforce these requirements as part of the eligibility determination process. The rules shall also provide for the determination of the applicant's county of residence for the purpose of assignment of the appropriate program contractor.

L. The director shall adopt rules in accordance with the state plan regarding posteligibility treatment of income and resources that determine the portion of a member's income that shall be available for payment for services under this article. The rules shall provide that a portion of income may be retained for:

1. A personal needs allowance for members receiving institutional services of at least fifteen per cent of the maximum monthly supplemental security income payment for an individual or a personal needs allowance for members receiving home and community based services based on a reasonable assessment of need.

2. The maintenance needs of a spouse or family at home in accordance with federal law. The minimum resource allowance for the spouse or family at home is twelve thousand dollars adjusted annually by the same percentage as the percentage change in the consumer price index for all urban consumers (all items; United States city average) between September 1988 and the September before the calendar year involved.

3. Expenses incurred for noncovered medical or remedial care that are not subject to payment by a third party payor.

M. In addition to the rules otherwise specified in this article, the director may adopt necessary rules pursuant to title 41, chapter 6 to carry out this article. Rules adopted by the director pursuant to this subsection may consider the differences between rural and urban conditions on the delivery of services.

N. The director shall not adopt any rule or enter into or approve any contract or subcontract that does not conform to federal requirements or that may cause the system to lose any federal monies to which it is otherwise entitled.

O. The administration, program contractors and providers may establish and maintain review committees dealing with the delivery of care. Review committees and their staff are subject to the same requirements, protections, privileges and immunities prescribed pursuant to section 36-2917.

P. If the director determines that the financial viability of a nursing care institution or hospice is in question, the director may require a nursing care institution and a hospice providing services pursuant to this article to submit quarterly financial statements within thirty days after the end of its financial quarter unless the director grants an extension in writing before that date. Quarterly financial statements submitted to the department shall include the following:

1. A balance sheet detailing the institution's assets, liabilities and net worth.

2. A statement of income and expenses, including current personnel costs and full-time equivalent statistics.

Q. The director may require monthly financial statements if the director determines that the financial viability of a nursing care institution or hospice is in question. The director shall prescribe the requirements of these statements.

R. The total amount of state monies that may be spent in any fiscal year by the administration for long-term care shall not exceed the amount appropriated or authorized by section 35-173 for that purpose. This article shall not be construed to impose a duty on an officer, agent or employee of this state to discharge a responsibility or to create any right in a person or group if the discharge or right would require an expenditure of state monies in excess of the expenditure authorized by legislative appropriation for that specific purpose.
36-2943. Provider subcontracts; hospital reimbursement

A. Subcontracts for services rendered by providers pursuant to section 36-2940 shall be awarded through competitive statewide proposals in as nearly the same manner as that provided in section 41-2534. If there is not a sufficient number of qualified proposals, a subcontract may be negotiated with a provider and shall be awarded pursuant to section 41-2536. In order to deliver covered services to members enrolled or expected to be enrolled in the system within a county, the program contractor may negotiate and award without bid a provider subcontract if during the contract year there is an insufficient number of subcontracts awarded to providers. The term of the subcontract shall not extend beyond the next bid and subcontract award process as provided in this section, and the subcontract shall be at rates no greater than the weighted average rates for the appropriate level of care paid to similar providers in the same county. This section does not allow a program contractor to forego the competitive bid process pursuant to section 41-2534 unless there is an unanticipated increase in members enrolled in the system or a decrease in available beds brought about by the closure of a facility operated by a provider that is unable to be absorbed by current contracting providers located in the same general area. Before soliciting subcontracts without the competitive bid process, the program contractor shall receive approval from the director.

B. Hospitals that render care to members shall be paid by the program contractor as prescribed in section 36-2903.01, or such lower rate as may be negotiated by the program contractor.

C. The director may ensure through the subcontracts pursuant to subsection A of this section that at least ten per cent of the members are provided services pursuant to this article on a capitation basis.

D. A claim for an authorized service submitted by a licensed skilled nursing facility, an assisted living Arizona long-term care system provider or a home and community based Arizona long-term care system provider that renders care to members pursuant to this article shall be adjudicated within thirty calendar days after receipt by the program contractor. Any clean claim for an authorized service provided to a member that is not paid within thirty calendar days after the claim is received accrues interest at the rate of one per cent per month from the date the claim is submitted. The interest is prorated on a daily basis and must be paid by the program contractor at the time the clean claim is paid.
36-2944. Qualified plan health service contracts; proposals; administration; contract terms

A. For each county that has a population of four hundred thousand persons or less according to the most recent United States decennial census and that was not approved as a program contractor before January 1, 1994 or that officially states that it wishes to end its status as a program contractor, the director at least every five years shall prepare and issue a request for proposal and a proposed contract format to qualified group disability insurers, hospital and medical service corporations, health care services organizations and any other qualified public or private persons to be a program contractor and provide services pursuant to this article on a capitation rate basis to members who are enrolled with the program contractors by the system, who are not persons with developmental disabilities as defined in section 36-551 and who are residents of the county at the time of application for the system.

B. The director may adopt rules regarding the request for proposal process which provide:

1. For the award of contracts by categories of members or services in order to secure the most financially advantageous proposals for the system.

2. That each qualified proposal shall be entered with separate categories for the distinct groups of members or services to be covered by the proposed contracts, as set forth in the request for proposal.

3. For the procurement of reinsurance for expenses incurred by any program contractor, any member or the system in providing services in excess of amounts specified by the director in any contract year.

4. For second round competitive proposals to request voluntary price reduction of proposals from only those proposals that have been tentatively selected for award, before the final award or rejection of proposals.

C. Contracts shall be awarded as otherwise provided by law, except that in no event may a contract be awarded to any program contractor which will cause the system to lose any federal monies to which it is otherwise entitled.

D. After contracts are awarded pursuant to this section, the director may negotiate with any successful proposal respondent for the expansion or contraction of services or service areas if there are unnecessary gaps or duplications in services or service areas.

E. Payments to program contractors pursuant to this section shall be made monthly or quarterly and may be subject to contract provisions requiring the retention of a specified percentage of the payment by the director, a reserve fund or other contract provisions by which adjustments to the payments are made based on utilization efficiency, including incentives for maintaining quality care and minimizing unnecessary inpatient services. Reserve funds withheld from contracts shall be distributed to program contractors who meet performance standards established by the director. Any reserve fund established pursuant to this subsection shall be established as a separate account within the Arizona long-term care system fund.

F. Payments made pursuant to this section shall begin after a member is enrolled in the system.

G. Each program contractor pursuant to this section shall submit an annual audited financial and programmatic report for the preceding fiscal year as required by the administration. The report shall include beginning and ending fund balances, revenues and expenditures including specific identification of administrative costs. The report shall include the number of members served by the program contractor and the cost incurred for various types of services provided to members in a format prescribed by the director.

H. The director shall require contract terms necessary to ensure adequate performance by the program contractor of the provisions of each contract executed pursuant to this section. Contract provisions required by the director shall include the maintenance of deposits, performance bonds, financial reserves or other financial security.
A. The department shall contract with an independent consulting firm for an annual study of the adequacy and appropriateness of title XIX reimbursement rates to service providers for the persons with developmental disabilities program of both the Arizona long-term care system and the state only program. The consultant shall also include a recommendation for annual inflationary costs. Unless modified in response to federal or state law, the independent consulting firm shall include, in its recommendation, costs arising from amendments to existing contracts. The department may require, and the department's contracted providers shall provide, financial data to the department in the format prescribed by the department to assist in the study. A complete study of reimbursement rates shall be completed no less than once every five years.

B. Capitation rate adjustments shall be limited to utilization of existing services and inflation unless policy changes, including creation or expansion of programs, have been approved by the legislature or are specifically required by federal law or court mandate.

C. The administration shall contract with an independent consulting firm for an annual study of the adequacy and appropriateness of title XIX reimbursement rates to service providers for the elderly and physical disability program of the Arizona long-term care system. The administration may require, and the administration's contracted providers shall provide, financial data to the administration in the format prescribed by the administration to assist in the study. A complete study of reimbursement rates shall be completed no less than once every five years. In determining the adequacy of the rates in the five year study, the consulting firm shall examine in detail the costs associated with the delivery of services, including programmatic, administrative and indirect costs in providing services in rural and urban Arizona.

D. The department and the administration shall provide each of their reports to the joint legislative budget committee and the administration by October 1 of each year.

E. The department shall include the results of the study in its yearly capitation rate request to the administration.

F. If results of the study are not completely incorporated into the capitation rate, the administration shall provide a report to the joint legislative budget committee within thirty days of setting the final capitation rate, including reasons for differences between the rate and the study.
36-2999.51. Definitions

(Rpld. 10/1/23)

In this article, unless the context otherwise requires:

1. "Continuing care retirement community" means an entity that provides nursing facility services and assisted living or independent living services on a contiguous campus that is either registered as a life care facility with the department of insurance and financial institutions or has assisted living and independent living beds in the aggregate that equal at least twice the number of nursing facility beds. For the purposes of this paragraph, "contiguous" means land that adjoins or touches the other property held by the same or a related organization and land divided by a public road.

2. "Fiscal year" means the period beginning on October 1 and ending on September 30.

3. "Medicare resident days" means resident days that are funded by the medicare program, a medicare advantage or special needs plan or the medicare hospice program.

4. "Net patient service revenue" means gross inpatient revenues from services that are provided to nursing facility patients minus reductions from gross inpatient revenue. For the purposes of this paragraph, inpatient revenues from services do not include nonpatient care revenues such as beauty and barber income, vending income, interest and contributions, revenues from the sale of meals and all outpatient revenues.

5. "Nursing facility" means a health care institution that provides inpatient beds or resident beds and nursing services to persons who need nursing services on a continuing basis but who do not require hospital care or direct daily care from a physician. Nursing facility does not include the Arizona veterans' homes.

6. "Reductions from gross inpatient revenue" includes bad debts, contractual adjustments, uncompensated care, administrative, courtesy and policy discounts, adjustments and other similar revenue deductions.

7. "Resident day" means a calendar day of care provided to a nursing facility resident, including the day of admission and excluding the day of discharge. Resident day includes a day on which a bed is held for a patient and for which the facility receives compensation for holding the bed.

8. "Upper payment limit" means the limitation established pursuant to 42 Code of Federal Regulations section 447.272 that disallows federal matching funds if a state medicaid agency pays certain classes of nursing facilities an aggregate amount for services that would exceed the amount that would be paid for the same services furnished by that class of nursing facilities under medicare payment principles.
Summary

This Five-Year Review Report (5YRR) from the Arizona Health Care Cost Containment System (AHCCCS) relate to six (6) rules in Title 9, Chapter 22, Article 6 (RFP and Contract Process) and fifty-three (53) rules in Article 7 (Standards for Payments).

The rules in Article 6 relate to Request for Proposal (RFP) and contract process generally. Pursuant to A.R.S. § 36-2906, the director shall prepare and issue a request for proposal, including a proposed contract format, in each of the counties of this state, at least once every five years, to qualified group disability insurers, hospital and medical service corporations, health care services organizations and any other qualified public or private persons, including county-owned and operated health care facilities. The director shall adopt rules regarding the request for proposal process, which was done in Title 9, Chapter 22, Article 6. The rules in Article 7 relate to general standards for payments.

In the previous 5YRR for these rules, approved by the Council in November 2017, with regards to the rules in Article 7, AHCCCS indicated that it was "currently in the process of amending the [Diagnosis Related Group] rules to rebase the components of the DRG system using updated claims and encounter data" and would also "update the version of the All Patient Refined Diagnosis Related Group (APR-DRG) classification system established by 3M Health.
Information Systems for dates of discharge beginning January 1, 2018.” AHCCCS indicates it completed this proposed course of action by rulemaking subsequent to the prior 5YRR.

**Proposed Action**

As indicated in more detail below, AHCCCS intends to complete a rulemaking to address rules in Article 6 related to the RFP process that it believes are not currently effective in achieving their regulatory objectives and not enforced as written. AHCCCS indicates the proposed amendments are intended to: 1) Clarify the current RFP process wherein there are ambiguities, and 2) align AHCCCS’s process to best practice and other state procurement laws. AHCCCS indicates it will request a rulemaking exemption to make these changes within a month of this 5YRR being approved by the Council.

1. **Has the agency analyzed whether the rules are authorized by statute?**

   AHCCCS cites both general and specific authority for these rules.

2. **Summary of the agency’s economic impact comparison and identification of stakeholders:**

   In the prior economic impact statement, AHCCCS stated that the amendments are primarily made to make the rules more clear, concise, and understandable. Minimal impact was anticipated. The small business community as a whole was not impacted by the clarifications. All affected entities benefit from the additional clarity and conciseness of the rule language. AHCCCS and contractors are also directly affected by and benefit from the clarifications.

   AHCCCS indicates there has been no noticeable change in the economic impact on small businesses or consumers of these regulations, in this case the offerors to the agency’s RFPs. This is because the prior rulemaking in 2012 enacted changes to streamline the RFP process for offerors. Since then, the rules have continued to operate as they were intended, are clear, concise, and understandable.

   The rule changes represent the most cost-effective and efficient method of fulfilling the agency’s responsibilities and impose only those requirements that are necessary to comply with federal law and state statute.

3. **Has the agency analyzed the costs and benefits of the rulemaking and determined that the rules impose the least burden and costs to those who are regulated?**

   For Article 6, AHCCCS believes the rules as written impose the least burden and cost when meeting their objectives. For Article 7, AHCCCS did not consider other alternatives because the changes are the most cost effective and efficient method of complying with federal law and state statute.

4. **Has the agency received any written criticisms of the rules over the last five years?**
AHCCCS indicates it has not received written criticisms of the rules in the last five years.

5. **Has the agency analyzed the rules’ clarity, conciseness, and understandability?**

AHCCCS indicates the rules are clear, concise, and understandable.

6. **Has the agency analyzed the rules’ consistency with other rules and statutes?**

AHCCCS indicates the rules are consistent with other rules and statutes.

7. **Has the agency analyzed the rules’ effectiveness in achieving its objectives?**

AHCCCS indicates the rules are generally effective in achieving their objectives. However, AHCCCS indicates rule R9-22-601 could be made more effective by amending the rule to remove the term “bids/offers” with “submitted proposals.”

8. **Has the agency analyzed the current enforcement status of the rules?**

AHCCCS indicates the rules are generally enforced as written except for the following rules:

- R9-22-602
- R9-22-603
- R9-22-604

The amendments AHCCCS proposes to make regarding these rules are outlined in Section 5 of the 5YRR.

9. **Are the rules more stringent than corresponding federal law and, if so, is there statutory authority to exceed the requirements of federal law?**

AHCCCS indicates the rules are not more stringent than corresponding federal law.

10. **For rules adopted after July 29, 2010, do the rules require a permit or license and, if so, does the agency comply with A.R.S. § 41-1037?**

Not applicable. The rules do not require a permit, license, or agency authorization.

11. **Conclusion**

This 5YRR relates to six (6) rules in Title 9, Chapter 22, Article 6 (RFP and Contract Process) and fifty-three (53) rules in Article 7 (Standards for Payments). AHCCCS indicates the rules are generally clear, concise, understandable, consistent, effective, and enforced as written, except for rules R9-22-601 through 604. For those rules AHCCCS intends to amend to clarify the current RFP process wherein there are ambiguities and align AHCCCS’s process to best
practice and other state procurement laws. AHCCCS indicates it intends to request a rulemaking exemption to make these changes within a month of this 5YRR being approved by the Council.

Council staff recommends approval of this report.
January 28, 2022

**VIA EMAIL: grrc@azdoa.gov**

Nicole Sornsin, Chair  
Governor’s Regulatory Review Council  
100 North 15th Avenue, Suite 305  
Phoenix, Arizona 85007

RE: AHCCCS Title 9, Chapter 22, Article 6, Five Year Review Report

Dear Ms. Sornsin:

Please find enclosed the Five-Year Review Report of AHCCCS for Title 9, Chapter 22, Article 6 which is due on January 31, 2022.

AHCCCS hereby certifies compliance with A.R.S. 41-1091.

For questions about this report, please contact Nicole Fries at 602-417-4232 or nicole.fries@azahcccs.gov.

Sincerely,

Kasey Rogg  
Assistant Director

Attachments
1. **Authorization of the rule by existing statutes**

   General Statutory Authority: A.R.S. § 36-2903.01(F)
   Implementing statute: A.R.S. § 36-2906

2. **The objective of each rule:**

<table>
<thead>
<tr>
<th>Rule</th>
<th>Objective</th>
</tr>
</thead>
<tbody>
<tr>
<td>R9-22-601</td>
<td>The objective of this rule is to list the authority for the Request for Proposal (RFP) and describe the applicability of Article 6.</td>
</tr>
<tr>
<td>R9-22-602</td>
<td>The objective of this rule is to prescribe the contents of the RFP and the proposal process.</td>
</tr>
<tr>
<td>R9-22-603</td>
<td>The objective of this rule is to prescribe the process the Administration follows when awarding contracts.</td>
</tr>
<tr>
<td>R9-22-604</td>
<td>The objective of these rules is to prescribe the means of protesting an RFP or award including the administrative appeal process.</td>
</tr>
<tr>
<td>R9-22-605</td>
<td>The objective of this rule is to prescribe means by which an offeror or contractor may request from the Director a waiver of the requirement for hospital subcontracts.</td>
</tr>
<tr>
<td>R9-22-606</td>
<td>The objective of this rule is to prescribe sanctions the Director may impose on contractors for noncompliance and the factors considered when doing so.</td>
</tr>
</tbody>
</table>

3. **Are the rules effective in achieving their objectives?**

   Yes _X__    No __

   Except:

<table>
<thead>
<tr>
<th>Rule</th>
<th>Objective</th>
</tr>
</thead>
<tbody>
<tr>
<td>R9-22-601</td>
<td>Replace bids/offers with submitted proposals</td>
</tr>
</tbody>
</table>

4. **Are the rules consistent with other rules and statutes?**

   Yes _X__    No __

5. **Are the rules enforced as written?**

   Yes _X__    No __

   Except:

<table>
<thead>
<tr>
<th>Rule</th>
<th>Objective</th>
</tr>
</thead>
<tbody>
<tr>
<td>R9-22-602</td>
<td>Remove “The Administration shall not request best and final offers more than once unless the Administration determines that it is advantageous to the state to request additional best and final offers.” from subsection B(8) because ADOA (Arizona Department of Administration) has removed this language from their rules and AHCCCS would like to align with state best practices for procurement. Add “or other scope of work as applicable,” to subsection A(2). Add “or post such information publicly with the solicitation” to subsection B(1). Change and in subsection B(3) to and/or. Change proposal to RFP in subsection D</td>
</tr>
<tr>
<td>R9-22-603</td>
<td>Update references to contract file to procurement file.</td>
</tr>
</tbody>
</table>
Add “to an RFP” to subsection C.
Remove “or contract” from subsection C(2).
Add “3. The protest must be submitted to the procurement office by email unless otherwise allowed for in the RFP Instructions to Offerors.” to subsection C.
Change D to “Time for filing a RFP protest”.
Add “4. A protest is due by 5:00pm Arizona time on the due date. If the due date does not fall on a business day, the protest is due on the next business day.” to subsection D.
Add “Unless extended by a time period not to exceed 30 days under G(3)” to subsection G(1).
Add “electronic mail” to subsection G(2).
Change G(3) to read “The Administration may extend, for good cause, the time-limit for a decision in subsection (G)(1) by an additional time frame not to exceed 30 days. The procurement officer shall notify the protester in writing that the time for the issuance of a decision has been extended and the date by which a decision shall be issued.”

6. Are the rules clear, concise, and understandable?  
   Yes X  No 

7. Has the agency received written criticisms of the rules within the last five years?  
   Yes  No X

8. Economic, small business, and consumer impact comparison:
   There has been no noticeable change in economic impact on small businesses or consumers of these regulations, in this case the offerors to the agency’s RFPs (Request for Proposal). This is because the prior rulemaking in 2012 enacted changes to streamline the RFP process for offerors. Since then, the rules have continued to operate as they were intended, are clear, concise, and understandable. The changes recommended in this Five-Year Review Report have the same intention of streamlining the RFP process by updating the time for submissions and allowing correspondence, explicitly by e-mail, a practice already enacted by the agency. Therefore, the changes recommended in this report will have no economic impact on the agency or participants in the agency’s RFP process.

9. Has the agency received any business competitiveness analyses of the rules?  
   Yes  No X

10. Has the agency completed the course of action indicated in the agency’s previous five-year-review report?

11. A determination that the probable benefits of the rule outweigh within this state the probable costs of the rule, and the rule imposes the least burden and costs to regulated persons by the rule, including paperwork and other compliance costs, necessary to achieve the underlying regulatory objective:
   The Administration believes the rules as written impose the least burden and cost when meeting their objectives.

12. Are the rules more stringent than corresponding federal laws?  
   Yes  No X

13. For rules adopted after July 29, 2010, that require the issuance of a regulatory permit, license, or agency authorization, whether the rules are in compliance with the general permit requirements of A.R.S. § 41-1037 or explain why the agency believes an exception applies:
   Not applicable.
14. **Proposed course of action:**

Following GRRC approval of this Five-Year Review Report, AHCCCS plans to undertake a workgroup with internal stakeholders in the RFP process to determine whether larger changes are made to the RFP process. Since any substantive changes to the RFP process could implicate the eligibility of contractors’ proposals, AHCCCS plans to undertake a regular rulemaking that allows for full participation by the public.
January 28, 2022

VIA EMAIL: grrc@azdoa.gov

Nicole Sornsin, Chair
Governor’s Regulatory Review Council
100 North 15th Avenue, Suite 305
Phoenix, Arizona 85007

RE: AHCCCS Title 9, Chapter 22, Article 7, Five Year Review Report

Dear Ms. Sornsin:

Please find enclosed the Five-Year Review Report of AHCCCS for Title 9, Chapter 22, Article 7 which is due on January 31, 2022.

AHCCCS hereby certifies compliance with A.R.S. 41-1091.

For questions about this report, please contact Nicole Fries at 602-417-4232 or nicole.fries@azahcccs.gov.

Sincerely,

Kasey Rogg
Assistant Director

Attachments
1. **Authorization of the rule by existing statutes**
   
   General Statutory Authority: A.R.S. § 36-2903.01(F)
   
   Implementing statute: A.R.S. § 36-2906

2. **The objective of each rule:**

<table>
<thead>
<tr>
<th>Rule</th>
<th>Comment</th>
</tr>
</thead>
<tbody>
<tr>
<td>R9-22-701</td>
<td>The objective of this rule is to primarily provide definitions that specifically support the payment regulations outlined in Article 7.</td>
</tr>
<tr>
<td>R9-22-701.10</td>
<td>The objective of this rule is to describe the limitations on the scope of the liability for the Administration and contractors.</td>
</tr>
<tr>
<td>R9-22-702</td>
<td>The objective of this rule is to require health care providers to accept, as payment in full, the amount paid by the AHCCCS program plus any additional copayment or third-party payments made by or on behalf of the member. It also sets forth the circumstances when a member may be billed for services.</td>
</tr>
<tr>
<td>R9-22-703</td>
<td>The objective of this rule is to set forth claims submission timelines and related claims processing provisions required for reimbursement to providers for health care services.</td>
</tr>
<tr>
<td>R9-22-705</td>
<td>The objective of this rule is to describe payment guidelines for contracting prepaid health plans to reimburse subcontractors and non-contracting providers for the provision of health care services rendered to an AHCCCS member.</td>
</tr>
<tr>
<td>R9-22-708</td>
<td>The objective of this rule is to set forth provisions governing payment for services rendered to eligible American Indians.</td>
</tr>
<tr>
<td>R9-22-709</td>
<td>The objective of this rule is to describe provisions governing payment liability for emergency health care and subsequent care as well as facility transfer conditions.</td>
</tr>
<tr>
<td>R9-22-710</td>
<td>The objective of this rule is to describe provisions relating to fee schedules maintained by the Administration to reimburse non-hospital health care services.</td>
</tr>
<tr>
<td>R9-22-711</td>
<td>The objective of this rule is to describe the co-payment requirements that a member must pay when receiving medical services.</td>
</tr>
<tr>
<td>R9-22-712</td>
<td>The objective of this rule is to describe the cost-based reimbursement system that uses a prospective tiered per diem reimbursement methodology for inpatient services and a cost-to-charge ratio for outpatient services. The tiered per diem methodology includes: a statewide operating component, a blended statewide/hospital specific capital component and provisions for outlier payments; and provisions for transplant services and annual update factors.</td>
</tr>
<tr>
<td>R9-22-712.01</td>
<td>The objective of this rule is to describe the methodology for inpatient hospital reimbursement, explaining the tier rate data, components, assignment, and exclusions. In addition, it describes</td>
</tr>
</tbody>
</table>
when the tiers are updated and how new hospitals, outliers, transplants, ownership changes, psychiatric hospital specialty facilities and outliers for new hospitals are reimbursed.

<p>| R9-22-712.05 | The objective of this rule is to describe how the Graduate Medical Education Fund will be allocated among hospitals. |
| R9-22-712.07 | The objective of this rule is to describe how the Rural Hospital Inpatient Fund will be allocated among rural hospitals. |
| R9-22-712.09 | The objective of this rule is to list the tier hierarchy of the inpatient reimbursement system. |
| R9-22-712.10 | The objective of this rule is to describe general information applicable to the reimbursement of outpatient hospital services. |
| R9-22-712.15 | The objective of this rule is to notify that reimbursement using the capped fee for service schedule is applicable to non-IHS acute hospitals. |
| R9-22-712.20 | The objective of this rule is to describe the methodology for reimbursement using the capped fee for service schedule for outpatient hospital services. |
| R9-22-712.25 | The objective of this rule is to describe how associated service costs are accounted for within the outpatient reimbursement methodology. |
| R9-22-712.30 | The objective of this rule is to describe how reimbursement is made for a service not listed in the outpatient capped fee-for-service schedule. |
| R9-22-712.35 | The objective of this rule is to describe how the outpatient capped fee for service schedule is adjusted by type of hospital submitting claims. |
| R9-22-712.40 | The objective of this rule is to describe when updates are made to the outpatient fee schedule and rates used for reimbursement. |
| R9-22-712.45 | The objective of this rule is to describe the reimbursement restrictions for outpatient hospital services. |
| R9-22-712.50 | The objective of this rule is to describe the forms a hospital must use when billing for outpatient hospital services. |
| R9-22-712.60 | The objective of this rule is to describe how the payments are made using the Diagnosis Related Group methodology. |
| R9-22-712.61 | The objective of this rule explains the exceptions to the Diagnosis Related Group (DRG) methodology. |
| R9-22-712.62 | The objective of this rule explains the calculation of the DRG base payment. |
| R9-22-712.63 | The objective of this rule is to describe the calculation when the DRG base payment is not based on the statewide standardized amount. |
| R9-22-712.64 | The objective of this rule sets forth the methodology for DRG base payments and the Outlier CCR (Cost-To-Charge Ratio) for out-of-state hospitals. |
| R9-22-712.65 | The objective of this rule is to describe the DRG provider policy adjuster. |
| R9-22-712.66 | The objective of this rule is to describe the DRG service policy adjuster. |
| R9-22-712.67 | The objective of this rule explains the DRG reimbursement when there is a “transfer” of a member from a hospital to a short-term general hospital for inpatient care, a designated cancer center, children’s hospital, or a critical access hospital. |</p>
<table>
<thead>
<tr>
<th>Rule Number</th>
<th>Description</th>
</tr>
</thead>
<tbody>
<tr>
<td>R9-22-712.68</td>
<td>The objective of this rule is to describe the DRG reimbursement when there is an unadjusted outlier add-on payment.</td>
</tr>
<tr>
<td>R9-22-712.69</td>
<td>The objective of this rule explains the DRG reimbursement when there is a covered day adjusted DRG base payment and covered day adjusted outlier add-on payment.</td>
</tr>
<tr>
<td>R9-22-712.70</td>
<td>The objective of this rule explains the DRG reimbursement when there is a covered day adjusted DRG payment and covered day adjusted outlier add-on payment for FES members.</td>
</tr>
<tr>
<td>R9-22-712.71</td>
<td>The objective of this rule describes the final DRG payment.</td>
</tr>
<tr>
<td>R9-22-712.72</td>
<td>The objective of this rule explains DRG reimbursement when there is an enrollment change during an inpatient stay.</td>
</tr>
<tr>
<td>R9-22-712.73</td>
<td>The objective of this rule explains DRG reimbursement for Inpatient stays for members eligible for Medicare.</td>
</tr>
<tr>
<td>R9-22-712.74</td>
<td>The objective of this rule describes DRG reimbursement when there is third party liability.</td>
</tr>
<tr>
<td>R9-22-712.75</td>
<td>The objective of this rule describes the payment for administrative days in relation to DRG reimbursement.</td>
</tr>
<tr>
<td>R9-22-712.76</td>
<td>The objective of this rule explains the reimbursement of interim claims in relation to DRG reimbursement.</td>
</tr>
<tr>
<td>R9-22-712.77</td>
<td>The objective of this rule describes DRG reimbursement when there are admissions and discharges on the same day.</td>
</tr>
<tr>
<td>R9-22-712.78</td>
<td>The objective of this rule explains DRG reimbursement when a member is readmitted to the hospital.</td>
</tr>
<tr>
<td>R9-22-712.79</td>
<td>The objective of this rule describes DRG reimbursement when there is a change in hospital’s ownership.</td>
</tr>
<tr>
<td>R9-22-712.80</td>
<td>The objective of this rule explains DRG reimbursement pertaining to new hospitals.</td>
</tr>
<tr>
<td>R9-22-712.81</td>
<td>The objective of this rule describes how the Administration handles updates to the DRG.</td>
</tr>
<tr>
<td>R9-22-712.90</td>
<td>The objective of this rule is to set forth reimbursement requirements for hospital-based freestanding emergency departments.</td>
</tr>
<tr>
<td>R9-22-713</td>
<td>The objective of this rule is to require a provider to repay overpayments to the Administration.</td>
</tr>
<tr>
<td>R9-22-714</td>
<td>The objective of this rule is to describe the requirement of a provider agreement and to set forth specific requirements for the Administration and a contractor to reimburse a provider.</td>
</tr>
<tr>
<td>R9-22-715</td>
<td>The objective of this rule is to describe basic contractor responsibilities relating to hospital negotiations. This subsection also enables the Administration to negotiate with hospitals on behalf of prepaid health plans for AHCCCS services.</td>
</tr>
<tr>
<td>R9-22-718</td>
<td>The objective of this rule is to require contractors to enter a contract for reimbursement of inpatient hospital services with one or more hospitals in a county of more than 500,000 individuals. This rule also delineates mandatory terms to be included in the contract.</td>
</tr>
<tr>
<td>R9-22-719</td>
<td>The objective of this rule is to allow the Administration to retain a specified percentage of capitation reimbursement to distribute monies to contractors based on their performance outcomes.</td>
</tr>
<tr>
<td>R9-22-720</td>
<td>The objective of this rule is to describe the reimbursement of reinsurance for high-cost hospital services.</td>
</tr>
</tbody>
</table>
The objective of this rule is to set forth the requirements for the hospital assessment levied against hospitals pursuant to ARS 36-2901.08.

3. **Are the rules effective in achieving their objectives?**  
   Yes _X__  No __

4. **Are the rules consistent with other rules and statutes?**  
   Yes _X__  No __

5. **Are the rules enforced as written?**  
   Yes _X__  No __

6. **Are the rules clear, concise, and understandable?**  
   Yes _X__  No __

7. **Has the agency received written criticisms of the rules within the last five years?**  
   Yes __  No _X_

8. **Economic, small business, and consumer impact comparison:**  
   The rules in this article change often, some change annually. However much of the economic change, does not have a corresponding economic impact on the public because the costs are offset by legislative appropriations or federal-match funds made by the Center for Medicare and Medicaid Services. Economic differences between the programs outlined in these rulemakings can fluctuate annually based on several factors, which are outlined in each unique rulemaking. An example of these factors can be found in the Economic Impact Statement of the most recent rulemaking in this article, which has been attached to this 5YRR. However, for this article, there has not been a substantive economic impact since the last 5YRR.

9. **Has the agency received any business competitiveness analyses of the rules?**  
   Yes __  No _X_

10. **Has the agency completed the course of action indicated in the agency’s previous five-year-review report?**  
    Yes, the prior course of action has been implemented in successive rulemakings following the last 5YRR.

11. **A determination that the probable benefits of the rule outweigh within this state the probable costs of the rule, and the rule imposes the least burden and costs to regulated persons by the rule, including paperwork and other compliance costs, necessary to achieve the underlying regulatory objective:**  
    The Administration believes the rules as written impose the least burden and cost when meeting their objectives.

12. **Are the rules more stringent than corresponding federal laws?**  
    Yes ___  No X

13. **For rules adopted after July 29, 2010, that require the issuance of a regulatory permit, license, or agency authorization, whether the rules are in compliance with the general permit requirements of A.R.S. § 41-1037 or explain why the agency believes an exception applies:**  
    Not applicable.
14. **Proposed course of action:**

The agency did not recommend any changes to the article, therefore there is no proposed course of action.
CHAPTER 22. ARIZONA HEALTH CARE COST CONTAINMENT SYSTEM - ADMINISTRATION


R9-22-525. Repealed

Historical Note
Adopted as an emergency effective May 20, 1982, pursuant to A.R.S. § 41-1003, valid for only 90 days (Supp. 82-3). Former Section R9-22-525 adopted as an emergency adopted, amended and renumbered as Section R9-22-523, former Section R9-22-527 adopted as an emergency now adopted, amended and renumbered as Section R9-22-525 as a permanent rule effective August 30, 1982 (Supp. 82-4). Repealed effective October 1, 1985 (Supp. 85-5).

R9-22-526. Renumbered

Historical Note

R9-22-527. Renumbered

Historical Note

R9-22-528. Renumbered

Historical Note

R9-22-529. Renumbered

Historical Note
Adopted as Section R9-22-529 effective October 1, 1985, then renumbered as Section R9-22-1002 effective October 1, 1985 (Supp. 85-5).

ARTICLE 6. RFP AND CONTRACT PROCESS

A. The Director has full operational authority to adopt rules for the RFP process and the award of contracts under A.R.S. § 36-2906.
B. This Article applies to the award of contracts under A.R.S. §§ 36-2904 and 36-2906 to provide services under A.R.S. § 36-2907 and the expenditure of public monies by the Administration pertaining to covered services when the procurement so states. The Administration shall establish conflict-of-interest safeguards for officers and employees of this state with responsibilities relating to contracts that comply with 42 U.S.C. 1396a-2(d)(3).
C. The Administration is exempt from the procurement code under A.R.S. § 41-2501.
D. The Administration and contractors shall retain all contract records for five years under A.R.S. § 36-2903 and dispose of the records under A.R.S. § 41-2550.
E. The following terms are defined as related to this Article:

"Procurement file" means the official records file of the Director whether located in the Office of the Director or at the public procurement unit. The procurement file shall include in electronic or paper form a list of notified vendors, final solicitation, solicitation amendments, bids/offers, final proposal revisions, clarifications, and final evaluation report.

Historical Note

R9-22-602. RFP
A. RFP content. The Administration shall include the following items in any RFP under this Article:
1. Instructions and information to an offeror concerning the proposal submission including:
   a. The deadline for submitting a proposal,
   b. The address of the office at which a proposal is to be received,
   c. The period during which the RFP remains open, and
   d. Any special instructions and information;
2. The scope of covered services under Article 2 of this Chapter and A.R.S. §§ 36-2906 and 36-2907, covered populations, geographic coverage, service and performance requirements, and a delivery or performance schedule;
3. The contract terms and conditions, including bonding or other security requirements, if applicable;
4. The factors used to evaluate a proposal;
5. The location and method of obtaining documents that are incorporated by reference in the RFP;
6. A requirement that the offeror acknowledge receipt of all RFP amendments issued by the Administration;
7. The type of contract to be used and a copy of a proposed contract form or provisions;
8. The length of the contract service;
9. A requirement for cost or pricing data;
10. The minimum RFP requirements; and
11. A provision requiring an offeror to certify that a submitted proposal does not involve collusion or other anti-competitive practices.
B. Proposal process.
1. After the deadline for submitting proposals, the Administration may open a proposal publicly and announce and record the name of the offeror. The Administration shall keep all other information contained in a proposal confidential. The Administration shall open a proposal for public inspection after contract award unless the Administration determines that disclosure is not in the best interest of the state.
2. The Administration shall evaluate a proposal based on the GSA and the evaluation factors listed in the RFP.
3. The Administration may initiate discussions with a responsive and responsible offeror to clarify and assure full understanding of an offeror's proposal. The Administration shall provide an offeror fair treatment with respect
to discussion and revision of a proposal. The Administration shall not disclose information derived from a proposal submitted by a competing offeror.

4. The Administration shall allow for the adjustment of covered services by expansion, deletion, segregation, or combination in order to secure the most financially advantageous proposals for the state.

5. The Administration may conduct an investigation of a person or organization who has ownership or management interests in corporate offerors or affiliated corporate organizations of an offeror.

6. The Administration may issue a written request for best and final offers. The Administration shall state in the request the date, time, and place for the submission of best and final offers.

7. The Administration shall not request best and final offers more than once unless the Administration determines that it is advantageous to the state to request additional best and final offers. The Administration shall state in the written request for best and final offers that if the offeror does not submit a notice of withdrawal or a best and final offer, the Administration shall take the most recent offer as the offeror's best and final offer.

C. Proposal rejection.

1. The Administration may reject an offeror's proposal if the offeror fails to supply the information requested by the Administration.

2. The offeror shall not disclose information pertaining to its proposal to any other offeror prior to contract award. The offeror may disclose proposal information to a person other than another offeror if the recipient agrees to keep the information confidential until contract award. Diseno in violation of this subsection may be grounds for rejecting a proposal.

3. The Administration shall provide written notification to an offeror whose proposal is rejected. The rejection notice shall be part of the contract file and a public record.

4. If the Administration determines that it is in the best interest of the state, the Administration may reject any and all proposals, in whole or in part, under the RFP. The reasons for rejection shall be part of the contract file. An offeror shall have no right to damages for any claims against the state, the state's employees, or agents if a proposal is rejected in whole or in part.

D. Proposal cancellation. If the Administration determines that it is in the best interest of the state, the Administration may cancel a RFP. The reasons for cancellation shall be part of the contract file. An offeror shall have no right to damages for any claims against the state, the state's employees, or agents if a RFP is cancelled.

Historical Note


R9-22-603.

Contract Award

The Administration shall award a contract to the responsible and responsive offeror whose proposal is determined most advantageous to the state under A.R.S. § 36-2906. If the Administration determines that multiple contracts are in the best interest of the state, the Administration may award multiple contracts. The contract file shall contain the basis on which the award is made.

Historical Note


R9-22-604.

Contract or Proposal Protests; Appeals

A. Disputes related to contract performance. This Section does not apply to a dispute related to contract performance. A contract performance dispute is governed by 9 A.A.C. 34.

B. Resolution of a proposal protest. The procurement officer issuing a RFP shall have the authority to resolve proposal protests. An appeal from the decision of the procurement officer shall be made to the Director.

C. Filing of a protest.

1. A person may file a protest with the procurement officer regarding:
   a. A RFP issued by the Administration,
   b. A proposed award, or
   c. An award of a contract.

2. A protester shall submit a written protest and include the following information:
   a. The name, address, and telephone number of the protester;
   b. The signature of the protester or protester's representative;
   c. Identification of a RFP or contract number;
   d. A detailed statement of the legal and factual grounds of the protest including copies of any relevant documents; and
   e. The relief requested.

D. Time for filing a protest.

1. A protester filing a protest alleging improprieties in an RFP or an amendment to an RFP shall file the protest at least 14 days before the due date of receipt of proposals.

2. Any protest alleging improprieties in an amendment issued 14 or fewer days before the due date of the proposal shall be filed before the due date for receipt of proposals.

3. In cases other than those covered in subsections (D)(1) and (2), a protester shall file a protest no later than 10 days after the procurement officer makes the procurement file available for public inspection.

E. Stay of procurement during the protest. If a protester files a protest before the contract award, the procurement officer may issue a written stay of the contract award. In considering whether to issue a written stay of contract, the procurement officer shall consider but is not limited to considering whether:

1. A reasonable probability exists that the protest will be sustained, and

2. The stay of the contract award is in the best interest of the state.
F. Stay of contract award during an appeal to the Director. The Director shall automatically continue the stay of a contract award if:  
   1. An appeal is filed before a contract award, and  
   2. The procurement officer issues a stay of the contract award under subsection (E), unless  
   3. The Director issues a written determination that the contract award is necessary to protect the best interest of the state.  
   d. A request for hearing unless the person requests that the Director’s decision be based solely upon the procurement file.  
J. Dismissal. The Director shall not schedule a hearing and shall dismiss an appeal with a written determination if:  
   1. The appeal does not state a basis for protest,  
   2. The appeal is untimely under subsection (I)(1), or  
   3. The appeal is moot.  
K. Hearing. Hearings under this Section shall be conducted using the Arizona Administrative Procedure Act under A.R.S. Title 41, Ch. 6.  

Historical Note  

R9-22-605. Waiver of Contractor’s Subcontract with Hospitals  
If a contractor is unable to obtain a subcontract with a hospital as contractually required, the contractor may request in writing a waiver from the Administration as allowed by A.R.S. § 36-2906. The contractor shall state in the request the reasons a waiver is believed to be necessary and all efforts the contractor has made to secure a subcontract.  

Historical Note  

R9-22-606. Contract Compliance Sanction  
A. The Director may impose sanctions upon a contractor for violation of any provision of this Chapter or of a contract. Sanctions include but are not limited to:  
   1. Suspension of any or all further member enrollment, by choice and/or assignment for a period of time.  
   2. Imposition of a monetary sanction.  
B. The Director shall consider the nature, severity, and length of the violation when determining a sanction.  
C. The Director shall provide a contractor with written notice specifying grounds and terms for the sanction.  
D. Nothing contained in this Section shall be construed to prevent the Administration from imposing sanctions as provided in contract under A.R.S. § 36-2903.  

Historical Note  
New Section made by final rulemaking at 8 A.A.R. 424, effective January 10, 2002 (Supp. 02-1). Amended by final rulemaking at 18 A.A.R. 2340, effective November 11, 2012 (Supp. 12-3).

ARTICLE 7. STANDARDS FOR PAYMENTS  

R9-22-701. Standard for Payments Related Definitions  
In addition to definitions contained in A.R.S. § 36-2901, the words and phrases in this Article have the following meanings unless the context explicitly requires another meaning:  
“Accommodation” means room and board services provided to a patient during an inpatient hospital stay and includes all staffing, supplies, and equipment. The accommodation is
F. Stay of contract award during an appeal to the Director. The Director shall automatically continue the stay of a contract award if:
   1. An appeal is filed before a contract award, and
   2. The procurement officer issues a stay of the contract award under subsection (E), unless
   3. The Director issues a written determination that the contract award is necessary to protect the best interest of the state.

G. Decision by the procurement officer.
   1. The procurement officer shall issue a written decision no later than 14 days after a protest has been filed. The decision shall contain an explanation of the basis of the decision.
   2. The procurement officer shall furnish a copy of the decision to the protester by:
      a. Certified mail, return receipt requested; or
      b. Any other method that provides evidence of receipt.
   3. The Administration may extend, for good cause, the time-limit for decisions in subsection (G)(1) for a time not to exceed 30 days. The procurement officer shall notify the protester in writing that the time for the issuance of a decision has been extended and the date by which a decision shall be issued.
   4. If the procurement officer fails to issue a decision within the time-limits in subsection (G)(1) or (G)(3), the protester may proceed as if the procurement officer issued an adverse decision.

H. Remedies.
   1. If the procurement officer sustains the protest in whole or in part and determines that the RFP, proposed contract award, or contract award does not comply with applicable statutes and rules, the procurement officer shall order an appropriate remedy.
   2. In determining an appropriate remedy, the procurement officer shall consider all the circumstances of the procurement or proposed procurement, including:
      a. Seriousness of the procurement deficiency,
      b. Degree of prejudice to other interested parties or to the integrity of the RFP process,
      c. Good faith of the parties,
      d. Extent of performance,
      e. Costs to the state, and
      f. Urgency of the procurement.
      g. Best interest of the state.
   3. An appropriate remedy may include one or more of the following:
      a. Terminating the contract;
      b. Reissuing the RFP;
      c. Issuing a new RFP;
      d. Awarding a contract consistent with statutes, rules, and the terms of the RFP; or
      e. Any relief determined necessary to ensure compliance with applicable statutes and rules.

I. Appeals to the Director.
   1. A person may file an appeal of a procurement officer’s decision with both the Director and the procurement officer no later than five days from the date the decision is received. The date the decision is received shall be determined under subsection (G)(2).
   2. The appeal shall contain:
      a. The information required in subsection (C)(2),
      b. A copy of the procurement officer’s decision,
      c. The alleged factual or legal error in the decision of the procurement officer on which the appeal to the Director is based, and
      d. A request for hearing unless the person requests that the Director’s decision be based solely upon the procurement file.

J. Dismissal. The Director shall not schedule a hearing and shall dismiss an appeal with a written determination if:
   1. The appeal does not state a basis for protest,
   2. The appeal is untimely under subsection (I)(1), or
   3. The appeal is moot.

K. Hearing. Hearings under this Section shall be conducted using the Arizona Administrative Procedure Act under A.R.S. Title 41, Ch. 6.

**Historical Note**

**R9-22-605. Waiver of Contractor’s Subcontract with Hospitals**
If a contractor is unable to obtain a subcontract with a hospital as contractually required, the contractor may request in writing a waiver from the Administration as allowed by A.R.S. § 36-2906. The contractor shall state in the request the reasons a waiver is believed to be necessary and all efforts the contractor has made to secure a subcontract.

**Historical Note**

**R9-22-606. Contract Compliance Sanction**
A. The Director may impose sanctions upon a contractor for violation of any provision of this Chapter or of a contract. Sanctions include but are not limited to:
   1. Suspension of any or all further member enrollment, by choice and/or assignment for a period of time.
   2. Imposition of a monetary sanction.
B. The Director shall consider the nature, severity, and length of the violation when determining a sanction.
C. The Director shall provide a contractor with written notice specifying grounds and terms for the sanction.
D. Nothing contained in this Section shall be construed to prevent the Administration from imposing sanctions as provided in contract under A.R.S. § 36-2903.

**Historical Note**
New Section made by final rulemaking at 8 A.A.R. 424, effective January 10, 2002 (Supp. 02-1). Amended by final rulemaking at 18 A.A.R. 2340, effective November 11, 2012 (Supp. 12-3).

**ARTICLE 7. STANDARDS FOR PAYMENTS**

**R9-22-701. Standard for Payments Related Definitions**
In addition to definitions contained in A.R.S. § 36-2901, the words and phrases in this Article have the following meanings unless the context explicitly requires another meaning:
“Accommodation” means room and board services provided to a patient during an inpatient hospital stay and includes all staffing, supplies, and equipment. The accommodation is
semi-private except when the member must be isolated for medical reasons. Types of accommodation include hospital routine medical/surgical units, intensive care units, and any other specialty care unit in which room and board are provided.

“Aggregate” means the combined amount of hospital payments for covered services provided within and outside the GSA.

“AHCCCS inpatient hospital day or days of care” means each day of an inpatient stay for a member beginning with the day of admission and including the day of death, if applicable, but excluding the day of discharge, provided that all eligibility, medical necessity, and medical review requirements are met.

“Ancillary service” means all hospital services for patient care other than room and board and nursing services, including but not limited to, laboratory, radiology, drugs, delivery room (including maternity labor room), operating room (including postanesthesia and postoperative recovery rooms), and therapy services (physical, speech, and occupational).

“APC” means the Ambulatory Payment Classification system under 42 CFR 419.31 used by Medicare for grouping clinically and resource-similar procedures and services.

“Billed charges” means charges for services provided to a member that a hospital includes on a claim consistent with the rates and charges filed by the hospital with Arizona Department of Health Services (ADHS).

“Business agent” means a company such as a billing service or accounting firm that renders billing statements and receives payment in the name of a provider.

“Capital costs” means costs as reported by the hospital to CMS as required by 42 CFR 413.20.

“Copayment” means a monetary amount, specified by the Director, that a member pays directly to a contractor or provider at the time covered services are rendered.

“Cost-to-charge ratio” (CCR) means a hospital’s costs for providing covered services divided by the hospital’s charges for the same services. The CCR is the percentage derived from the cost and charge data for each revenue code provided to AHCCCS by each hospital.

“Covered charges” means billed charges that represent medically necessary, reasonable, and customary items of expense for covered services that meet medical review criteria of AHCCCS or a contractor.

“CPT” means Current Procedural Terminology, published and updated by the American Medical Association. CPT is a nationally-accepted listing of descriptive terms and identifying codes for reporting medical services and procedures performed by physicians that provide a uniform language to accurately designate medical, surgical, and diagnostic services.

“Critical Access Hospital” is a hospital certified by Medicare under 42 CFR 485 Subpart F and 42 CFR 440.170(g). “Direct graduate medical education costs” or “direct program costs” means the costs that are incurred by a hospital for the educational activities of an approved graduate medical education program that are the proximate result of training medical residents in the hospital, including resident salaries and fringe benefits, the portion of teaching physician salaries and fringe benefits that are related to the time spent in teaching and supervision of residents, and other related GME overhead costs.

“DRI inflation factor” means Global Insights Prospective Hospital Market Basket.

“Eligibility posting” means the date a member’s eligibility information is entered into the AHCCCS Pre-paid Medical Management Information System (PMMIS).

“Encounter” means a record of a medically-related service rendered by an AHCCCS-registered provider to a member enrolled with a contractor on the date of service.

“Existing outpatient service” means a service provided by a hospital before the hospital files an increase in its charge master as defined in R9-22-712(G), regardless of whether the service was explicitly described in the hospital charge master before filing the increase or how the service was described in the charge master before filing the increase.

“Expansion funds” means funds appropriated to support GME program expansions as described under A.R.S. § 36-2903.01(G)(9)(b) and (c)(i).

“Factor” means a person or an organization, such as a collection agency or service bureau, that advances money to a provider for accounts receivable that the provider has assigned, sold, or transferred to the organization for an added fee or a deduction of a portion of the accounts receivable. Factor does not include a business agent.

“Fiscal intermediary” means an organization authorized by CMS to make determinations and payments for Part A and Part B provider services for a given region.

“Freestanding Children’s Hospital” means a separately standing hospital with at least 120 pediatric beds that is dedicated to provide the majority of the hospital’s services to children.

“GME program approved by the Administration” or “approved GME program” means a graduate medical education program that has been approved by a national organization as described in 42 CFR 415.152.

“Graduate medical education (GME) program” means an approved residency program that prepares a physician for independent practice of medicine by providing didactic and clinical education in a medical environment to a medical student who has completed a recognized undergraduate medical education program.

“HCAC” means a health care acquired condition described under 42 CFR 447.26 but does not include Deep Vein Thrombosis (DVT)/Pulmonary Embolism (PE) as related to total knee replacement or hip replacement surgery in pediatric and obstetric patients.

“HCPCS” means the Health Care Procedure Coding System, published and updated by Center for Medicare and Medicaid Services (CMS). HCPCS is a listing of codes and descriptive terminology used for reporting the provision of physician services, other health care services, and substances, equipment, supplies or other items used in health care services.

“HIPAA” means the Health Insurance Portability and Accountability Act of 1996, as specified under 45 CFR 162, that establishes standards and requirements for the electronic transmission of certain health information by defining code sets used for encoding data elements, such as tables of terms, medical concepts, medical diagnostic codes, or medical procedure codes.

“ICU” means the intensive care unit of a hospital.
“Indirect program costs” means the marginal increase in operating costs that a hospital experiences as a result of having an approved graduate medical education program and that is not accounted for by the hospital’s direct program costs.

“Intern and Resident Information System” means a software program used by teaching hospitals and the provider community for collecting and reporting information on resident training in hospital and non-hospital settings.

“Medical education costs” means direct hospital costs for intern and resident salaries, fringe benefits, program costs, nursing school education, and paramedical education, as described in the Medicare Provider Reimbursement Manual.

“Medical review” means a clinical evaluation of documentation conducted by AHCCCS or a contractor for purposes of prior authorization, concurrent review, post-payment review, or determining medical necessity. The criteria for medical review are established by AHCCCS or a contractor based on medical practice standards that are updated periodically to reflect changes in medical care.

“Medicare Urban or Rural Cost-to-Charge Ratio (CCR)” means statewide average capital cost-to-charge ratio published annually by CMS added to the urban or rural statewide average operating cost-to-charge ratio published annually by CMS.

“National Standard code sets” means codes that are accepted nationally in accordance with federal requirements under 45 CFR 160 and 45 CFR 164.

“New hospital” means a hospital for which Medicare Cost Report claim and encounter data are not available for the fiscal year used for initial rate setting or rebasing.

“NICU” means the neonatal intensive care unit of a hospital that is classified as a Level II or Level III perinatal center by the Arizona Perinatal Trust.

“Non-IHS Acute Hospital” means a hospital that is not run by Indian Health Services, is not a free-standing psychiatric hospital, such as an IMD, and is paid under ADHS rates.

“Observation day” means a physician-ordered evaluation period of less than 24 hours to determine whether a person needs treatment or needs to be admitted as an inpatient. Each observation day consists of a period of 24 hours or less.

“Operating costs” means AHCCCS-allowable accommodation costs and ancillary department hospital costs excluding capital and medical education costs.

“OPPC” means an Other Provider Preventable Condition that is: (1) a wrong surgical or other invasive procedure performed on a patient, (2) a surgical or other invasive procedure performed on the wrong body part, or (3) a surgical or other invasive procedure performed on the wrong patient.

“Organized health care delivery system” means a public or private organization that delivers health services. It includes, but is not limited to, a clinic, a group practice prepaid capitation plan, and a health maintenance organization.

“Outlier” means a hospital claim or encounter in which the operating costs per day for an AHCCCS inpatient hospital stay meet the criteria described under this Article and A.R.S. § 36-2903.01(G).

“Outpatient hospital service” means a service provided in an outpatient hospital setting that does not result in an admission.

“Ownership change” means a change in a hospital’s owner, lessor, or operator under 42 CFR 489.18(a).

“Participating institution” means an institution at which portions of graduate medical education program are regularly conducted and to which residents rotate for an educational experience for at least one month.

“Peer group” means hospitals that share a common, stable, and independently definable characteristic or feature that significantly influences the cost of providing hospital services, including specialty hospitals that limit the provision of services to specific patient populations, such as rehabilitative patients or children.

“PPC” means prior period coverage. PPC is the period of time, prior to the member’s enrollment, during which a member is eligible for covered services. The time-frame is the first day of the month of application or the first eligible month, whichever is later, until the day a member is enrolled with a contractor.

“PPS bed” means Medicare-approved Prospective Payment beds for inpatient services as reported in the Medicare cost reports for the most recent fiscal year for which the Administration has a complete set of Medicare cost reports for every rural hospital as determined as of the first of February of each year.

“Procedure code” means the numeric or alphanumeric code listed in the CPT or HPCPCS manual by which a procedure or service is identified.

“Prospective rates” means inpatient or outpatient hospital rates set by AHCCCS in advance of a payment period and representing full payment for covered services excluding any quick-pay discounts, slow-pay penalties, and first-and third-party payments regardless of billed charges or individual hospital costs.

“Public hospital” means a hospital that is owned and operated by county, state, or hospital health care district.

“Qualifying health information exchange organization” means a non-profit health information organization as defined in A.R.S. § 36-3801 that provides the statewide exchange of patient health information among disparate health care organizations and providers not owned, operated, or controlled by the health information exchange. A qualifying health information exchange organization must include representation by the administration on its board of directors, and have a significant number of health care participants, including hospitals, laboratories, payers, community physicians and Federally Qualified Health Centers.

“Rebase” means the process by which the most currently available and complete Medicare Cost Report data for a year and AHCCCS claim and encounter data for the same year are collected and analyzed to reset the Inpatient Hospital Tiered per diem rates, or the Outpatient Hospital Capped Fee-For-Service Schedule.

“Reinsurance” means a risk-sharing program provided by AHCCCS to contractors for the reimbursement of specified contract service costs incurred by a member beyond a certain monetary threshold.

“Remittance advice” means an electronic or paper document submitted to an AHCCCS-registered provider by AHCCCS to explain the disposition of a claim.

“Resident” means a physician engaged in postdoctoral training in an accredited graduate medical education program, including an intern and a physician who has completed the requirements for the physician’s eligibility for board certification.
“Revenue code” means a numeric code, that identifies a specific accommodation, ancillary service, or billing calculation, as defined by the National Uniform Billing committee for UB-04 forms.

“Sub-acute services” means inpatient care for a patient with an acute illness, injury or exacerbation of a disease process when the patient does not require acute inpatient hospitalization. Sub-acute care is rendered immediately after, or instead of, acute inpatient hospitalization.

“Specialty facility” means a facility where the service provided is limited to a specific population, such as rehabilitative services for children.

“Sponsoring institution” means the institution or entity that is recognized by the GME accrediting organization and designated as having ultimate responsibility for the assurance of academic quality and compliance with the terms of accreditation.

“Tier” means a grouping of inpatient hospital services into levels of care based on diagnosis, procedure, or revenue codes, peer group, NICU classification level, or any combination of these items.

“Tiered per diem” means an AHCCCS capped fee schedule in which payment is made on a per-day basis depending upon the tier (or tiers) into which an AHCCCS inpatient hospital day of care is assigned.

“Trip” means a one-way transport each time a taxi is called. If the taxi waits for the member then the transport continues to be part of the one-way trip. If the taxi leaves and is called to pick up the member, that is considered a new one-way trip.

### Historical Note


<table>
<thead>
<tr>
<th>Rule Number</th>
<th>Description</th>
</tr>
</thead>
<tbody>
<tr>
<td>R9-22-701.01</td>
<td>Reserved</td>
</tr>
<tr>
<td>R9-22-701.02</td>
<td>Reserved</td>
</tr>
<tr>
<td>R9-22-701.03</td>
<td>Reserved</td>
</tr>
<tr>
<td>R9-22-701.04</td>
<td>Reserved</td>
</tr>
<tr>
<td>R9-22-701.05</td>
<td>Reserved</td>
</tr>
<tr>
<td>R9-22-701.06</td>
<td>Reserved</td>
</tr>
<tr>
<td>R9-22-701.07</td>
<td>Reserved</td>
</tr>
<tr>
<td>R9-22-701.08</td>
<td>Reserved</td>
</tr>
<tr>
<td>R9-22-701.09</td>
<td>Reserved</td>
</tr>
<tr>
<td>R9-22-701.10</td>
<td>Scope of the Administration’s and Contractor’s Liability</td>
</tr>
</tbody>
</table>

The Administration shall bear no liability for providing covered services for any member beyond the date of termination of the member’s eligibility or during the member’s enrollment with a contractor. A contractor has no financial responsibility for services provided to a member beyond the last date of enrollment except as provided in Articles 2 and 5 of this Chapter and as specified in contract.

### Historical Note

New Section made by final rulemaking at 13 A.A.R. 662, effective April 7, 2007 (Supp. 07-1).

**R9-22-702.** Charges to Members

A. For purposes of this subsection, the term “member” includes the member’s financially responsible representative as described under A.R.S. § 36-2903.01.

B. Registered providers must accept payment from the Administration or a contractor as payment in full.

C. Except as provided in subsection (D) a registered provider shall not request or collect payment from, refer to a collection agency, or report to a credit reporting agency an eligible person or a person claiming to be an eligible person.

D. An AHCCCS registered provider may charge, submit a claim to, or demand or collect payment from a member:

1. To collect the copayment described in R9-22-711;
2. To recover from a member that portion of a payment made by a third party to the member for an AHCCCS covered service if the member has not transferred the payment to the Administration or the contractor as required by the statutory assignment of rights to AHCCS;
3. To obtain payment from a member for medical expenses incurred during a period when the member intentionally withheld information or intentionally provided inaccurate information pertaining to the member’s AHCCCS eligibility or enrollment that caused payment to the provider to be reduced or denied;
4. For a service that is excluded by statute or rule, or provided in an amount that exceeds a limitation in statute or rule, if the member signs a document in advance of receiving the service stating that the member understands the service is excluded or is subject to a limit and that the member will be financially responsible for payment for the excluded service or for the services in excess of the limit;
5. When the contractor or the Administration has denied authorization for a service if the member signs a document in advance of receiving the service stating that the member understands that authorization has been denied and that the member will be financially responsible for payment for the service;
6. For services requested for a member enrolled with a contractor, and rendered by a noncontracting provider under circumstances where the member’s contractor is not responsible for payment of “out of network” services under R9-22-705(A), if the member signs a document in advance of receiving the service stating that the member understands the provider is out of network, that the member’s contractor is not responsible for payment, and that the member will be financially responsible for payment for the excluded service;

7. For services rendered to a person eligible for the FESP if the provider submits a claim to the Administration in the reasonable belief that the service is for treatment of an emergency medical condition and the Administration denies the claim because the service does not meet the criteria of R9-22-217; or

8. If the provider has received verification from the Administration that the person was not an eligible person on the date of service.

E. The signature requirement of subsections (D)(4), (D)(5), and (D)(6) do not apply if:
   1. The member is unable or incompetent to sign such a document, or
   2. When services are rendered for the purpose of treating an emergency medical condition as defined in R9-22-217 and a delay in providing treatment to obtain a signature would have a significant adverse affect on the member’s health.

F. Except as provided for in this Section, registered providers shall not bill a member when the provider could have received reimbursement from the Administration or a contractor but for the provider’s failure to file a claim in accordance with the requirements of AHCCCS statutes, rules, the provider agreement, or contract, such as, but not limited to, requirements to request and obtain prior authorization, timely filing, and clean claim requirements.

Historical Note

R9-22-703. Payments by the Administration

A. General requirements. A provider shall enter into a provider agreement with the Administration that meets the requirements of A.R.S. § 36-2904 and 42 CFR 431.107(b) as of October 1, 2012, which is incorporated by reference and on file with the Administration, and available from the U.S. Government Printing Office, Mail Stop: IDCC, 732 N. Capitol Street, NW, Washington, DC, 20401. This incorporation by reference contains no future editions or amendments.

B. Timely submission of claims.

1. Under A.R.S. § 36-2904, the Administration shall deem a paper claim to be submitted on the date that it is received by the Administration. An electronic claim is deemed received by the Administration when the claim enters the information processing system designated by the Administration for electronic claims in a form that is capable of being processed by the designated information processing system. The Administration shall do one or more of the following for each claim it receives:
   a. Place a date stamp on the face of the claim,
   b. Assign a system-generated claim reference number, or
   c. Assign a system-generated date-specific number.

2. Unless a shorter time period is specified in contract, the Administration shall not pay a claim for a covered service unless the claim is initially submitted within one of the following time limits, whichever is later:
   a. Six months from the date of service or for an inpatient hospital claim, six months from the date of discharge; or
   b. Six months from the date of eligibility posting.

3. Unless a shorter time period is specified in contract, the Administration shall not pay a clean claim for a covered service unless the claim is submitted within one of the following time limits, whichever is later:
   a. Twelve months from the date of service or for an inpatient hospital claim, 12 months from the date of discharge; or
   b. Twelve months from the date of eligibility posting.

4. Unless a shorter time period is specified in contract, the Administration shall not pay a claim submitted by an HHS or tribal facility for a covered service unless the claim is initially submitted within 12 months from the date of service, date of discharge, or eligibility posting, whichever is later.

C. Claims processing.

1. The Administration shall notify the AHCCCS-registered provider with a remittance advice when a claim is processed for payment.

2. The Administration shall reimburse a hospital for inpatient hospital admissions and outpatient hospital services rendered on or after March 1, 1993, as follows and in the manner and at the rate described in A.R.S. § 36-2903.01:
   a. If the hospital bill is paid within 30 days from the date of receipt, the claim is paid at 99 percent of the rate.
   b. If the hospital bill is paid between 30 and 60 days from the date of receipt, the claim is paid at 100 percent of the rate.
   c. If the hospital bill is paid after 60 days from the date of receipt, the claim is paid at 100 percent of the rate plus a fee of one percent per month for each month or portion of a month following the 60th day of receipt of the bill until date of payment.

3. A claim is paid on the date indicated on the disbursement check.

4. A claim is denied as of the date of the remittance advice.

5. The Administration shall process a hospital claim under this Article.

D. Prior authorization.

1. An AHCCCS-registered provider shall:
CHAPTER 22. ARIZONA HEALTH CARE COST CONTAINMENT SYSTEM - ADMINISTRATION

a. Obtain prior authorization from the Administration for non-emergency hospital admissions, covered services as specified in Articles 2 and 12 of this Chapter, and for administrative days as described in R9-22-712.75.

b. Notify the Administration of hospital admissions under Article 2 of this Chapter, and

c. Make records available for review by the Administration upon request.

2. The Administration may deny a claim if the provider fails to comply with subsection (D)(1).

3. If the Administration issues prior authorization for an inpatient hospital admission, a specific service, or level of care but subsequent medical review indicates that the admission, the service, or level of care was not medically appropriate, the Administration shall adjust the claim payment.

E. Review of claims and coverage for hospital supplies.

1. The Administration may conduct prepayment and post-payment review of any claims, including but not limited to hospital claims.

2. Personal care items supplied by a hospital, including but not limited to the following, are not covered services:

   a. Patient care kit,
   b. Toothbrush,
   c. Toothpaste,
   d. Petroleum jelly,
   e. Deodorant,
   f. Septi soap,
   g. Razor or disposable razor,
   h. Shaving cream,
   i. Slippers,
   j. Mouthwash,
   k. Shampoo,
   l. Powder,
   m. Lotion,
   n. Comb, and
   o. Patient gown.

3. The following hospital supplies and equipment, if medically necessary and used by the member, are covered services:

   a. Arm board,
   b. Diaper,
   c. Underpad,
   d. Special mattress and special bed,
   e. Gloves,
   f. Wrist restraint,
   g. Limb holder,
   h. Disposable item used instead of a durable item,
   i. Universal precaution,
   j. Stat charge, and
   k. Portable charge.

4. The Administration shall determine in a hospital claims review whether services rendered were:

   a. Covered services as defined in Article 2;
   b. Medically necessary;
   c. Provided in the most appropriate, cost-effective, and least restrictive setting; and
   d. For claims with dates of admission on and after March 1, 1993, substantiated by the minimum documentation specified in A.R.S. § 36-2903.01.

5. If the Administration adjudicates a claim, a person may file a claim dispute challenging the adjudication under 9 A.C. 34.

F. Overpayment for AHCCCS services.

1. An AHCCCS-registered provider shall notify the Administration when the provider discovers the Administration made an overpayment.

2. The Administration shall recoup an overpayment from a future claim cycle if an AHCCCS-registered provider fails to return the overpaid amount to the Administration.

3. The Administration shall document any recoupment of an overpayment on a remittance advice.

4. An AHCCCS-registered provider may file a claim dispute under 9 A.C. 34 if the AHCCCS-registered provider disagrees with a recoupment action.

G. For services subject to limitations or exclusions such as the number of hours, days, or visits covered as described in Article 2 of this Chapter, once the limit is reached the Administration will not reimburse the services.

H. Prior quarter reimbursement. A provider shall:

1. Bill the Administration for services provided during a prior quarter eligibility period upon verification of eligibility or upon notification from a member of AHCCCS eligibility.

2. Reimburse a member when payment has been received from the Administration for covered services during a prior quarter eligibility period. All funds paid by the member shall be reimbursed.

3. Accept payment received by the Administration as payment in full.

I. Payment for in-state inpatient hospital services for claims with discharge dates on or before September 30, 2014. The Administration shall reimburse an in-state provider of inpatient hospital services rendered with a discharge date on or before September 30, 2014, the prospective tiered-per-diem amount in A.R.S. § 36-2903.01 and this Article.

J. Payment for out-of-state inpatient hospital services for claims with discharge dates on or before September 30, 2014. The Administration shall reimburse an out-of-state provider of inpatient hospital services rendered with a discharge date on or before September 30, 2014, for covered inpatient services by multiplying covered charges by the most recent statewide urban cost-to-charge ratio as determined in R9-22-712.01(6)(b).

K. Payment for inpatient hospital services for claims with discharge dates on and after October 1, 2014 regardless of admission date. The Administration shall reimburse an in-state or out-of-state provider of inpatient hospital services rendered with a discharge date on or after October 1, 2014, the DRG rate established by the Administration.

L. The Administration may enter into contracts for the provisions of transplant services.

Historical Note

R9-22-704. Repealed

Historical Note

R9-22-705. Payments by Contractors

A. General requirements. A contractor shall contract with providers to provide covered services to members enrolled with the contractor. The contractor is responsible for reimbursing providers and coordinating care for services provided to a member. Except as provided in subsection (A)(2), a contractor is not required to reimburse a noncontracting provider for services rendered to a member enrolled with the contractor.

1. Providers. A provider shall enter into a provider agreement with the Administration that meets the requirements of A.R.S. § 36-2904 and 42 CFR 431.107(b) as of March 6, 1992, which is incorporated by reference and on file with the Administration, and available from the U.S. Government Printing Office, Mail Stop: IDCC, 732 N. Capitol Street, NW, Washington, DC, 20401. This incorporation by reference contains no future editions or amendments.

2. A contractor shall reimburse a noncontracting provider for services rendered to a member enrolled with the contractor as specified in this Article if:
   a. The contractor referred the member to the provider or authorized the provider to render the services and the claim is otherwise payable under this Chapter, or
   b. The service is emergent under Article 2 of this Chapter.

B. Timely submission of claims.

1. Under A.R.S. § 36-2904, a contractor shall deem a paper or electronic claim as submitted on the date that the claim is received by the contractor. The contractor shall do one or more of the following for each claim the contractor receives:
   a. Place a date stamp on the face of the claim,
   b. Assign a system-generated claim reference number, or
   c. Assign a system-generated date-specific number.

2. Unless a shorter time period is specified in subcontract, a contractor shall not pay a claim for a covered service unless the claim is initially submitted within one of the following time limits, whichever is later:
   a. Six months from the date of service or for an inpatient hospital claim, six months from the date of discharge; or
   b. Six months from the date of eligibility posting.

3. Unless a shorter time period is specified in subcontract, a contractor shall not pay a claim for a covered service unless the claim is submitted within one of the following time limits, whichever is later:
   a. Twelve months from the date of service or for an inpatient hospital claim, 12 months from the date of discharge; or
   b. Twelve months from the date of eligibility posting.

C. Date of claim.

1. A contractor’s date of receipt of an inpatient or an outpatient hospital claim is the date the claim is received by the contractor as indicated by the date stamp on the claim, the system-generated claim reference number, or the system-generated date-specific number assigned by the contractor.

2. A hospital claim is considered paid on the date indicated on the disbursement check.

3. A denied hospital claim is considered adjudicated on the date of the claim’s denial.

4. For a claim that is pending for additional supporting documentation specified in A.R.S. § 36-2903.01 or 36-2904, the contractor shall assign a new date of receipt upon receipt of the additional documentation.

5. For a claim that is pending for documentation other than the minimum required documentation specified in either A.R.S. § 36-2903.01 or 36-2904, the contractor shall not assign a new date of receipt.

6. A contractor and a hospital may, through a contract approved as specified in R9-22-715, adopt a method for identifying, tracking, and adjudicating a claim that is different from the method described in this subsection.

D. Payment for in-state inpatient hospital services for claims with discharge dates on or before September 30, 2014. A contractor shall reimburse an in-state provider of inpatient hospital services rendered with a discharge date on or before September 30, 2014, at either a rate specified by subcontract or, in absence of the subcontract, the prospective tiered-per-diem amount in A.R.S. § 36-2903.01 and this Article. Subcontract rates, terms, and conditions are subject to review and approval or disapproval under A.R.S. § 36-2904 and R9-22-715. This subsection does not apply to an urban contractor as specified in R9-22-718 and A.R.S. § 36-2905.01.

E. Payment for Inpatient out-of-state hospital payments for claims with discharge dates on or before September 30, 2014. In the absence of a contract with an out-of-state hospital that specifies payment rates, a contractor shall reimburse out-of-state hospitals for covered inpatient services by multiplying covered charges by the most recent statewide urban cost-to-charge ratio as determined in R9-22-712.01(6)(b).

F. Payment for inpatient hospital services for claims with discharge dates on and after October 1, 2014 regardless of admission date. Subject to R9-22-718 and A.R.S. § 36-2905.01 regarding urban hospitals, a contractor shall reimburse an in-state or out-of-state provider of inpatient hospital services, at either a rate specified by subcontract or, in absence of a subcontract, the DRG rate established by the Administration and this Article. Subcontract rates, terms, and conditions are subject to review and approval or disapproval under A.R.S. § 36-2904 and R9-22-715.

G. Payment for in-state outpatient hospital services.

A contractor shall reimburse an in-state provider of outpatient hospital services rendered on or after July 1, 2005,
at either a rate specified by a subcontract or, in absence of a subcontract, as provided under R9-22-712.10, A.R.S. § 36-2903.01 and other sections of this Article. The terms of the subcontract are subject to review and approval or disapproval under A.R.S. § 36-2904 and R9-22-715.

H. Outpatient out-of-state hospital payments. In the absence of a contract with an out-of-state hospital that specifies payment rates, a contractor shall reimburse out-of-state hospitals for covered outpatient services by applying the methodology described in R9-22-712.10 through R9-22-712.50. If the outpatient procedure is not assigned a fee schedule amount, the contractor shall pay the claim by multiplying the covered charges for the outpatient services by the statewide outpatient cost-to-charge ratio.

I. Payment for observation days. A contractor shall reimburse a provider and a noncontracting provider for the provision of observation days at either a rate specified by subcontract or, in the absence of a subcontract, as prescribed under R9-22-712, R9-22-712.10, and R9-22-712.45.

J. Review of claims and coverage for hospital supplies. 1. A contractor may conduct a review of any claims submitted and recoup any payments made in error.

2. A hospital shall obtain prior authorization from the appropriate contractor for nonemergency admissions. When issuing prior authorization, a contractor shall consider the medical necessity of the service, and the availability and cost-effectiveness of an alternative treatment. Failure to obtain prior authorization when required is cause for nonpayment or denial of a claim. A contractor shall not require prior authorization for medically necessary services provided during any prior period for which the contractor is responsible. If a contractor and a hospital agree to a subcontract, the parties shall abide by the terms of the subcontract regarding utilization control activities. A hospital shall cooperate with a contractor’s reasonable activities necessary to perform concurrent review and shall make the hospital’s medical records pertaining to a member enrolled with a contractor available for review.

3. Regardless of prior authorization or concurrent review activities, a contractor may make prepayment or post-payment review of all claims, including but not limited to a hospital claim. A contractor may recoup an erroneously paid claim. If prior authorization was given for an inpatient hospital admission, a specific service, or level of care but subsequent medical review indicates that the admission, the service, or level of care was not medically appropriate, the contractor shall adjust the claim payment.

4. A contractor and a hospital may enter into a subcontract that includes hospital claims review criteria and procedures if the subcontract meets the requirements of R9-22-715.

5. Personal care items supplied by a hospital, including but not limited to the following, are not covered services:
   a. Patient care kit,
   b. Toothbrush,
   c. Toothpaste,
   d. Petroleum jelly,
   e. Deodorant,
   f. Septi soap,
   g. Razor,
   h. Shaving cream,
   i. Slippers,
   j. Mouthwash,
   k. Disposable razor,
   l. Shampoo,
   m. Powder,
   n. Lotion,
   o. Comb, and
   p. Patient gown.

6. The following hospital supplies and equipment, if medically necessary and used by the member, are covered services:
   a. Arm board,
   b. Diaper,
   c. Underpad,
   d. Special mattress and special bed,
   e. Gloves,
   f. Wrist restraint,
   g. Limb holder,
   h. Disposable item used instead of a durable item,
   i. Universal precaution,
   j. Stat charge, and
   k. Portable charge.

7. The contractor shall determine in a hospital claims review whether services rendered were:
   a. Covered services as defined in R9-22-201;
   b. Medically necessary;
   c. Provided in the most appropriate, cost-effective, and least restrictive setting; and
   d. For claims with dates of admission on and after March 1, 1993, substantiated by the minimum documentation specified in A.R.S. § 36-2904.

8. If a contractor adjudicates a claim or recoups payment for a claim, a person may file a claim dispute challenging the adjudication or recoupment as described under 9 A.A.C. 34.

K. Non-hospital claims. A contractor shall pay claims for non-hospital services in accordance with contract, or in the absence of a contract, at a rate not less than the Administration’s capped fee-for-service schedule or at a lower rate if negotiated between the two parties.

L. Payments to hospitals. A contractor shall pay for inpatient hospital admissions and outpatient hospital services rendered on or after March 1, 1993, as follows and as described in A.R.S. § 36-2904:

1. If the hospital bill is paid within 30 days from the date of receipt, the claim is paid at 99 percent of the rate.

2. If the hospital bill is paid between 30 and 60 days from the date of receipt, the claim is paid at 100 percent of the rate.

3. If the hospital bill is paid after 60 days from the date of receipt, the claim is paid at 100 percent of the rate plus a 1 percent penalty of the rate for each month or portion of the month following the 60th day of receipt of the bill until date of payment.

M. Interest payment. In addition to the requirements in subsection (L), a contractor shall pay interest for late claims as defined by contract.

N. For services subject to limitations or exclusions such as the number of hours, days, or visits covered as described in Article 2 of this Chapter, once the limit is reached the Administration will not reimburse the services.

Historical Note

Adopted as an emergency effective May 20, 1982, pursuant to A.R.S. § 41-1003, valid for only 90 days (Supp. 82-3). Former Section R9-22-705 adopted as an emergency now adopted and amended as a permanent rule effective August 30, 1982 (Supp. 82-4). Amended as an emergency effective February 23, 1983, pursuant to A.R.S. § 41-1003, valid for only 90 days (Supp. 83-1). Amended as a permanent rule effective May 16, 1983; text of the

R9-22-706. Repealed

Historical Note

R9-22-707. Repealed

Historical Note

R9-22-708. Payments for Services Provided to Eligible American Indians

A. For purposes of this Article “IHS enrolled” or “enrolled with IHS” means an American Indian who has elected to receive covered services through IHS instead of a contractor.

B. For an American Indian who is enrolled with IHS, AHCCCS shall pay IHS the most recent all-inclusive inpatient, outpatient or ambulatory surgery rates published by Health and Human Services (IHS) in the Federal Register, or a separately contracted rate with IHS, for AHCCCS-covered services provided in an IHS facility. AHCCCS shall reimburse providers for the Medicare coinsurance and deductible amounts required to be paid by the Administration or contractor in Chapter 29, Article 3 of this Title.

C. When IHS refers an American Indian enrolled with IHS to a provider other than an IHS or tribal facility, the provider to whom the referral is made shall obtain prior authorization from AHCCCS for services as required under Articles 2, 7 or 12 of this Chapter.

D. For an American Indian enrolled with a contractor, AHCCCS shall pay the contractor a monthly capitation payment.

E. Once an American Indian enrolls with a contractor, AHCCCS shall not reimburse any provider other than IHS or a Tribal facility.

Historical Note

R9-22-709. Contractor’s Liability to Hospitals for the Provision of Emergency and Post-stabilization Care

A contractor is liable for emergency hospitalization and post-stabilization care as described in R9-22-210 and R9-22-210.01.
CHAPTER 22. ARIZONA HEALTH CARE COST CONTAINMENT SYSTEM - ADMINISTRATION

Historical Note

Editor’s Note: The following Section was amended under an exemption from the provisions of the Administrative Procedure Act which means that this rule was not reviewed by the Governor’s Regulatory Review Council; the agency did not submit notice of proposed rulemaking to the Secretary of State for publication in the Arizona Administrative Register; the agency was not required to hold public hearings on the rules; and the Attorney General did not certify this rule. This Section was subsequently amended through the regular rulemaking process.

R9-22-710. Payments for Non-hospital Services
A. Capped fee-for-service. The Administration shall provide notice of changes in methods and standards for setting payment rates for services in accordance with 42 CFR 447.205, December 19, 1983, incorporated by reference and on file with the Administration and available from the U.S. Government Printing Office, Mail Stop: IDCC, 732 N. Capitol Street, NW, Washington, DC, 20401. This incorporation by reference contains no future editions or amendments.

1. Non-contracted services. In the absence of a contract that specifies otherwise, a contractor shall reimburse a provider or noncontracting provider for non-hospital services according to the Administration’s capped-fee-for-service schedule.


a. A person shall submit an electronic claim consistent with 45 CFR 160 (October 1, 2004) and 45 CFR 162 (October 1, 2004).

b. A person shall submit a paper claim using the National Standard Code Sets as described under 45 CFR 160 (October 1, 2004) and 45 CFR 162 (October 1, 2004).

c. The Administration may deny a claim for failure to comply with subsection (A) (2) (a) or (b).

3. Fee schedule. The Administration shall pay providers, including noncontracting providers, at the lesser of billed charges or the capped fee-for-service rates specified in subsections (A)(3)(a) through (A)(3)(d) unless a different fee is specified in a contract between the Administration and the provider, or is otherwise required by law.

a. Physician services. Fee schedules for payment for physician services are on file at the central office of the Administration for reference use during customary business hours.

b. Dental services. Fee schedules for payment for dental services are on file at the central office of the Administration for reference use during customary business hours.

c. Transportation services. Fee schedules for payment for transportation services are on file at the central office of the Administration for reference use during customary business hours. For dates of service beginning:

i. October 1, 2012 through September 30, 2013, the Administration and its contractors shall reimburse ambulance services at 68.59 percent of the ADHS rates that are in effect as of August 2, 2012.

ii. October 1, 2013 through September 30, 2014, the Administration and its contractors shall reimburse ambulance services at 68.59 percent of the ADHS rates that are in effect as of August 2, 2013.

iii. October 1, 2014 through September 30, 2015, the Administration and its contractors shall reimburse ambulance services at 74.74 percent of the ADHS rates that are in effect as of August 2, 2014.

d. Medical supplies and durable medical equipment (DME). Fee schedules for payment for medical supplies and DME are on file at the central office of the Administration for reference use during customary business hours. The Administration shall reimburse a provider once for purchase of DME during any two-year period, unless the Administration determines that DME replacement within that period is medically necessary for the member. Unless prior authorized by the Administration, no more than one repair and adjustment of DME shall be reimbursed during any two-year period.

B. Pharmacy services. The Administration shall not reimburse pharmacy services unless the services are provided by a pharmacy having a subcontract with a Pharmacy Benefit Manager (PBM) contracted with AHCCCS. Except as specified in subsection (C), the Administration shall reimburse pharmacy services according to the terms of the contract.

C. FQHC Pharmacy reimbursement.

1. For purposes of this Section the following terms are defined:


b. “340B Ceiling Price” means the maximum price that drug manufacturers can charge covered entities participating in the 340B Drug Pricing Program as reported by the drug manufacturer to HRSA.

c. “340B entity” means a covered entity, eligible to participate in the 340B Drug Pricing Program, as defined by the Health Resources and Human Services Administration.

d. “Actual Acquisition Cost (AAC)” means the purchase price of a drug paid by a pharmacy net of discounts, rebates, chargebacks and other adjustments to the price of the drug. The AAC excludes dispensing fees.
CHAPTER 22. ARIZONA HEALTH CARE COST CONTAINMENT SYSTEM - ADMINISTRATION

e. “Contracted Pharmacy” means an arrangement through which a 340B entity may contract with an outside pharmacy to provide comprehensive pharmacy services utilizing medications subject to 340B pricing.

f. “Dispensing Fee” means the amount paid for the professional services provided by the pharmacist for dispensing a prescription. The Dispensing Fee does not include any payment for the drugs being dispensed.

g. “Federally Qualified Health Center” means a public or private non-profit health care organization that has been identified by HRSA and certified by CMS as meeting the criteria under sections 1861(aa)(4) and 1905(i)(2)(B) of the Social Security Act and receives funds under section 330 of the Public Health Service Act.

h. “Federally Qualified Health Center Look-Alike” means a public or private non-profit health care organization that has been identified by HRSA and certified by CMS as meeting the definition of “health center” under section 330 of the Public Health Service Act, but does not receive grant funding under section 330.

i. “FQHC or FQHC Look-Alike pharmacy” means a pharmacy that dispenses drugs to FQHC or FQHC-LA patients and that is owned and/or operated by an FQHC/FQHC-LA or by an entity that reports the costs of an FQHC/FQHC-LA on its Medicare Cost Report, whether or not collocated with an FQHC or an FQHC Look-Alike.

2. Effective the later of February 1, 2012, or CMS approval of a State Plan Amendment, an FQHC or FQHC Look-Alike shall:

a. Notify the AHCCCS provider registration unit of its status as a 340B covered entity no later than:

i. 30 days after the effective date of this Section;

ii. 30 days after registration with the Health Resources and Services Administration (HRSA) for participation in the 340B program,

iii. The time of application to become an AHCCCS provider.

b. Provide the 340B pricing file to the AHCCCS Administration upon request. The 340B pricing file shall be provided in the file format as defined by AHCCCS.

c. Identify 340B drug claims submitted to the AHCCCS FFS PBMs or the Managed Care Contractors’ PBMs for reimbursement. The 340B drug claim identification and claims processing for a drug claim submission shall be consistent with claim instructions issued and required by AHCCCS to identify such claims.

3. The FQHC and the FQHC Look-Alike pharmacies shall submit claims for AHCCCS members for drugs that are identified in the 340B pricing file, whether or not purchased under the 340B pricing file, with the lesser of:

a. The actual acquisition cost, or

b. The 340B ceiling price.

4. The AHCCCS Fee-for-Service and Managed Care Contractors’ PBMs shall reimburse claims for drugs which are identified in the 340B pricing file dispensed by FQHC and FQHC Look -Alke pharmacies, whether or not purchased under the 340B pricing file, at the amount submitted under subsection (C)(3) plus a dispensing fee listed in the AHCCCS Capped Fee-For-Service Schedule unless a contract between the 340B entity and a Managed Care Contractor’s PBMs specifies a different dispensing fee.

5. Contracted pharmacies shall not submit claims for drugs dispensed under an agreement with the 340B entity as part of the 340B drug pricing program, and the AHCCCS Administration and Managed Care Contractors shall not reimburse such claims.

6. The AHCCCS Administration and Managed Care Contractors shall reimburse contracted pharmacies for drugs not dispensed under an agreement with the 340B entity as part of the 340B program at the price and dispensing fee set forth in the contract between the contracted pharmacy and the AHCCCS or its Managed Care Contractors’ PBMs. Neither the Administration nor its Managed Care Contractors will reimburse a contracted pharmacy that does not have a contract with the Administration or MCO’s PBMs.

7. The AHCCCS Administration and its Managed Care Contractors shall reimburse FQHC and FCHC Look-Alke pharmacies for drugs that are not eligible under the 340B Drug Pricing Program at the price and dispensing fee set forth in their contract with the AHCCCS or its Managed Care Contractors’ PBMs.

8. AHCCCS may periodically conduct audits to ensure compliance with this Section.

Historical Note


R9-22-711. Copayments

A. For purposes of this Article:

1. A copayment is a monetary amount that a member pays directly to a provider at the time a covered service is rendered.
2. An eligible individual is assigned to a hierarchy established in subsections (B) through (E), for the purposes of establishing a copayment amount.
3. No refunds shall be made for a retroactive period if there is a change in an individual’s status that alters the amount of a copayment.

B. The following services are exempt from AHCCCS copayments for all members:
1. Family planning services and supplies,
2. Services related to a pregnancy or any other medical condition that may complicate the pregnancy, including tobacco cessation treatment for a pregnant woman,
3. Emergency services as described in 42 CFR 447.56(2)(i),
4. All services paid on a fee-for-service basis,
5. Preventive services, such as well visits, immunizations, pap smears, colonoscopies, and mammograms,
6. Provider preventable services.

C. The following individuals are exempt from AHCCCS copayments:
1. An individual under age 19, including individuals eligible for the KidsCare Program in A.R.S. § 36-2982;
2. An individual determined to be Seriously Mentally Ill (SMI) by the Arizona Department of Health Services;
3. An individual eligible for the Arizona Long-Term Care Program in A.R.S. § 36-2931;
4. An individual eligible for QMB under Chapter 29;
5. An individual eligible for the Children’s Rehabilitative Services program under A.R.S. § 36-2906(E);
6. An individual receiving nursing facility or HCBS services under R9-22-216;
7. An individual receiving hospice care as defined in 42 U.S.C. 1396(d);
8. An American Indian individual enrolled in a health plan and has received services through an IHS facility, tribal 638 facility or urban Indian health program;
9. An individual eligible in the Breast and Cervical Cancer program as described under Article 20;
10. An individual who is pregnant and through the postpartum period following the pregnancy;
11. An individual with respect to whom child welfare services are made available under Part B of Title IV of the Social Security Act on the basis of being a child in foster care, without regard to age;
12. An individual with respect to whom adoption or foster care assistance is made available under Part E of Title IV of the Social Security Act, without regard to age; and
13. An adult eligible under R9-22-1427(E), with income at or below 106% of the FPL.

D. Non-mandatory copayments. Unless otherwise listed in subsection (B) or (C), individuals under subsections (D)(1) through (6) are subject to the copayments listed in this subsection. A provider shall not deny a service when a member states to the provider an inability to pay a copayment.
1. A caretaker relative eligible under R9-22-1427(A);
2. An individual eligible for Young Adult Transitional Insurance (YATI) in A.R.S. § 36-2901(6)(a)(iii);
3. An individual eligible for State Adoption Assistance in R9-22-1433;
4. An individual eligible for Supplemental Security Income (SSI);
5. An individual eligible for SSI Medical Assistance Only (SSI/MAO) in Article 15; and
7. Copayment amount per service:
   a. $2.30 per prescription drug.
   b. $3.40 per outpatient visit, excluding an emergency room visit, if any of the services rendered during the visit are coded as evaluation and management services or non-emergent surgical procedures according to the National Standard Code Sets. An outpatient visit includes any setting where these services are performed such as a physician’s office, an Ambulatory Surgical Center (ASC), or a clinic.
   c. $2.30 per visit, if a copayment is not being imposed under subsection (D)(7)(b) and any of the services rendered during the visit are coded as physical, occupational or speech therapy services according to the National Standard Code Sets.

E. Mandatory copayments.
1. Copayments for individuals eligible for Transitional Medical Assistance (TMA) under R9-22-1427(B)(1)(c)(i). Unless otherwise listed in subsection (C), an individual is required to pay the following copayments for prescription drugs and outpatient services unless the service is provided during an emergency room visit or the service is otherwise exempt under subsection (B). An outpatient visit includes any setting where these outpatient services are performed such as, an outpatient hospital, a physician’s provider’s office, HCBS setting, an Ambulatory Surgical Center (ASC), or a clinic:
   a. $2.30 per prescription drug.
   b. $4.00 per outpatient visit, if any of the services rendered during the visit are coded as evaluation and management services according to the National Standard Code Sets.
   c. If a copayment is not being imposed under subsection (E)(1)(b), $3.00 per visit if any of the services rendered during the visit are coded as physical, occupational or speech therapy services according to the National Standard Code Sets.
   d. If a copayment is not being imposed under subsection (E)(1)(b) or (c), $3.00 per visit, if any of the services rendered during the visit are coded as non-emergent surgical procedures according to the National Standard Code Sets.
2. Copayments for persons eligible under R9-22-1427(E) with income above 106% of the FPL and for persons eligible under A.R.S. §§ 36-2907.10 and 36-2907.11. Subject to CMS approval, unless otherwise listed in subsection (C), these individuals are required to pay the following copayments for prescription drugs and outpatient services unless the service is provided during an emergency room visit or the service is otherwise exempt under subsection (B). An outpatient visit includes any setting where these outpatient services are performed such as, an outpatient hospital, a physician’s provider’s office, HCBS setting, an Ambulatory Surgical Center (ASC), or a clinic:
   a. $4.00 per prescription drug.
   b. $5.00 per outpatient visit when the AHCCCS fee schedule for the visit code is a rate from $50 to less than $100, if any of the services rendered during the visit are coded as evaluation and management services according to the National Standard Code Sets.
   c. $10.00 per outpatient visit when the AHCCCS fee schedule for the visit code is a rate of $100 or greater, if any of the services rendered during the visit are coded as evaluation and management services according to the National Standard Code Sets.
   d. If a copayment is not being imposed under subsection (E)(2)(b) or (E)(2)(c), for services coded as
physical, occupational or speech therapy services according to the National Standard Code Sets.

i. $2.00 if the rate on the fee schedule is $20 to $39.99.

ii. $4.00 if the rate on the fee schedule is $40 to $49.99, or

iii. $5.00 if the rate on the fee schedule is $50 and above per visit.

e. If a copayment is not being imposed under subsection (E)(2)(b) – (E)(2)(d), for services coded as non-emergent surgical procedures according to the National Standard Code Sets.

i. $30.00 if the rate on the fee schedule is $300 to $499.99, or

ii. $50.00 if the rate on the fee schedule is $500 and above per visit.

f. Unless the individual is otherwise exempt in subsection (C) or the service is exempted under subsection (B) the individual is required to pay $2.00 per trip for non-emergency transportation in an urban area.

g. Unless the individual is otherwise exempt in subsection (C) or the service is exempted under subsection (B) the individual is required to pay $8.00 for non-emergency use of the emergency room.

h. Unless the individual is otherwise exempt in subsection (C) or the service is exempted under subsection (B) the individual is required to pay $75 for an Inpatient stay.

3. The provider may deny a service if the member does not pay the copayment required under subsection (E), however, a provider may choose to reduce or waive copayments under this subsection on a case-by-case basis.

F. A provider is responsible for collecting any copayment imposed under this Section.

G. The total aggregate amount of copayments under subsections (D) or (E) may not exceed 5% of the family’s income as applied on a quarterly basis. The member may establish that the aggregate limit has been met on a quarterly basis by providing the Administration with records of copayments incurred during the quarter. In addition, the Administration shall also use claims and encounters information available to the Administration to establish when a member’s copayment obligation has reached 5% of the family’s income.

H. Reduction in payments to providers. The Administration and its contractors shall reduce the payment it makes to any provider by the amount of a member’s copayment obligation under subsection (E), regardless of whether the provider successfully collects the copayments described in this Section.

Historical Note


Editor’s Note: The following Section was adopted and amended under an exemption from the provisions of the Administrative Procedure Act which means that this rule was not reviewed by the Governor’s Regulatory Review Council; the agency did not submit notice of proposed rulemaking to the Secretary of State for publication in the Arizona Administrative Register; the agency was not required to hold public hearings on the rules; and the Attorney General did not certify this rule. This Section was subsequently amended through the regular rulemaking process.

R9-22-712.  Reimbursement: General

A. Inpatient and outpatient discounts and penalties. If a claim is denied for additional documentation required under A.R.S. § 36-2903.01(G)(4), the period during which the claim is denied is not used in the calculation of the quick-pay discounts and slow-pay penalties under A.R.S. § 36-2903.01(G)(5).

B. Inpatient and outpatient in-state or out-of-state hospital payments.

1. Payment for inpatient out-of-state hospital services for claims with discharge dates on or before September 30, 2014. In the absence of a contract with an out-of-state hospital that specifies payment rates, AHCCCS shall reimburse out-of-state hospitals for covered inpatient services by multiplying covered charges by the most recent statewide urban cost-to-charge ratio as determined in R9-22-712.01(6)(d).

2. Payment for inpatient in-state hospital services for claims with discharge dates on or before September 30, 2014. AHCCCS shall reimburse an in-state provider of inpatient hospital services rendered with a discharge date on or before September 30, 2014, at the prospective tiered-per-diem amount in A.R.S. § 36-2903.01 and this Article.

3. Payment for inpatient in-state or out-of-state hospital services for claims with discharge dates on and after October 1, 2014 regardless of admission date. Subject to R9-22-718 and A.R.S. § 36-2905.01 regarding urban hospitals, a contractor shall reimburse an in-state or out-of-state provider of inpatient hospital services, at either a rate specified by subcontract or, in the absence of a subcontract, the DRG rate established by the Administration and this Article. Subcontract rates, terms, and conditions are subject to review and approval or disapproval under A.R.S. § 36-2904 and R9-22-715.

4. Outpatient out-of-state hospital payments. In the absence of a contract with an out-of-state hospital that specifies payment rates, AHCCCS shall reimburse an out-of-state hospital for covered outpatient services by applying the methodology described in R9-22-712.10 through R9-22-712.50. If the outpatient procedure is not assigned a fee schedule amount, the Administration shall pay the claim by multiplying the covered charges for the outpatient services by the statewide outpatient cost-to-charge ratio.
5. Outpatient in-state hospital payments. A contractor shall reimburse an in-state provider of outpatient hospital services rendered on or after July 1, 2005, at either a rate specified by a subcontract or, in absence of a subcontract, as provided under R9-22-712.10, A.R.S. § 36-2903.01 and other sections of this Article. The terms of the subcontract are subject to review and approval or disapproval under A.R.S. § 36-2904 and R9-22-715.

C. Access to records. Subcontracting and noncontracting providers of outpatient or inpatient hospital services shall allow the Administration access to medical records regarding eligible persons and shall in all other ways fully cooperate with the Administration or the Administration’s designated representative in performance of the Administration’s utilization control activities. The Administration shall deny a claim for failure to cooperate.

D. Prior authorization. The Administration or contractor may deny a claim if a provider fails to obtain prior authorization as required under R9-22-210.

E. Review of claims. Regardless of prior authorization or concurrent review activities, the Administration may subject all hospital claims, including outliers, to prepayment medical review or post-payment review, or both. The Administration shall conduct post-payment reviews consistent with A.R.S. § 36-2903.01 and may recoup erroneously paid claims.

F. Claim receipt.
   1. The Administration’s date of receipt of inpatient or outpatient hospital claims is the date the claim is received by the Administration as indicated by the date stamp on the claim and the system-generated claim reference number or system-generated date-specific number.
   2. Hospital claims are considered paid on the date indicated on disbursement checks.
   3. A denied claim is considered adjudicated on the date the claim is denied.
   4. Claims that are denied and are resubmitted are assigned new receipt dates.
   5. For a claim that is pending for additional supporting documentation specified in A.R.S. § 36-2903.01 or 36-2904, the Administration shall assign a new date of receipt upon receipt of the additional documentation.
   6. For a claim that is pending for documentation other than the minimum required documentation specified in either A.R.S. § 36-2903.01 or 36-2904, the Administration shall not assign a new date of receipt.

G. Outpatient hospital reimbursement. The Administration shall pay for covered outpatient hospital services provided to eligible persons with dates of service from March 1, 1993 through June 30, 2005, at the AHCCCS outpatient hospital cost-to-charge ratio, multiplied by the amount of the covered charges.
   1. Computation of outpatient hospital reimbursement. The Administration shall compute the cost-to-charge ratio on a hospital-specific basis by determining the covered charges and costs associated with treating eligible persons in an outpatient setting at each hospital. Outpatient operating and capital costs are included in the computation but outpatient medical education costs that are included in the inpatient medical education component are excluded. To calculate the outpatient hospital cost-to-charge ratio annually for each hospital, the Administration shall use each hospital’s Medicare Cost Reports and a database consisting of outpatient hospital claims paid and encounters processed by the Administration for each hospital, subjecting both to the data requirements specified in R9-22-712.01. The Administration shall use the following methodology to establish the outpatient hospital cost-to-charge ratios:
      a. Cost-to-charge ratios. The Administration shall calculate the costs of the claims and encounters for outpatient hospital services by multiplying the ancillary line item cost-to-charge ratios by the covered charges for corresponding revenue codes on the claims and encounters. Each hospital shall provide the Administration with information on how the revenue codes used by the hospital to categorize charges on claims and encounters correspond to the ancillary line items on the hospital’s Medicare Cost Report. The Administration shall then compute the overall outpatient hospital cost-to-charge ratio for each hospital by taking the average of the ancillary line items cost-to-charge ratios for each revenue code weighted by the covered charges.
      b. Cost-to-charge limit. To comply with 42 CFR 447.325, the Administration may limit cost-to-charge ratios to 1.00 for each ancillary line item from the Medicare Cost Report. The Administration shall remove ancillary line items that are non-covered or not applicable to outpatient hospital services from the Medicare Cost Report data for purposes of computing the overall outpatient hospital cost-to-charge ratio.
   2. New hospitals. The Administration shall reimburse new hospitals at the weighted statewide average outpatient hospital cost-to-charge ratio multiplied by covered charges. The Administration shall continue to use the statewide average outpatient hospital cost-to-charge ratio for a new hospital until the Administration rebases the outpatient hospital cost-to-charge ratios and the new hospital has a Medicare Cost Report for the fiscal year being used in the rebasing.
   3. Specialty outpatient services. The Administration may negotiate, at any time, reimbursement rates for outpatient hospital services in a specialty facility.
   4. Reimbursement requirements. To receive payment from the Administration, a hospital shall submit claims that are legible, accurate, error free, and have a covered charge greater than zero. The Administration shall not reimburse hospitals for emergency room treatment, observation hours or days, or other outpatient hospital services performed on an outpatient basis, if the eligible person is admitted as an inpatient to the same hospital directly from the emergency room, observation area, or other outpatient department. Services provided in the emergency room, observation area, and other outpatient hospital services provided before the hospital admission are included in the tiered per diem payment.
   5. Rebasings. The Administration shall rebase the outpatient hospital cost-to-charge ratios at least every four years but no more than once a year using updated Medicare Cost Reports and claim and encounter data.
   6. If a hospital files an increase in its charge master for an existing outpatient service provided on or before July 1, 2004, and on or before June 30, 2005, which represents an aggregate increase in charges of more than 4.7%, the Administration shall adjust the hospital-specific cost-to-charge ratio as calculated under subsection (G)(1) through (5) by applying the following formula:
$$ CCR[1.047(1+\%\text{\quad increase})] $$
CHAPTER 22. ARIZONA HEALTH CARE COST CONTAINMENT SYSTEM - ADMINISTRATION

Where “CCR” means the hospital-specific cost-to-charge ratio as calculated under subsection (G)(1) through (5) and “% increase” means the aggregate percentage increase in charges for outpatient services shown on the hospital charge master. “Charge master” means the schedule of rates and charges as described under A.R.S. § 36-436 and the rules that relate to those rates and charges that are filed with the Director of the Arizona Department of Health Services.

Historical Note


R9-22-712.01. Inpatient Hospital Reimbursement for claims with admission dates and discharge dates from October 1, 1998 through September 30, 2014

Inpatient hospital reimbursement. The Administration shall pay for covered inpatient acute care hospital services provided to eligible persons for claims with admission dates and discharge dates from October 1, 1998 through September 30, 2014, on a prospective reimbursement basis. The prospective rates represent payment in full, excluding quick-pay discounts, slow-pay penalties, and third-party payments for both accommodation and ancillary department services. The rates include reimbursement for operating and capital costs. The Administration shall make reimbursement for direct graduate medical education as described in A.R.S. § 36-2903.01. For payment purposes, the Administration shall classify each AHCCCS inpatient hospital day of care into one of several tiers appropriate to the services rendered. The rate for a tier is referred to as the tiered per diem rate of reimbursement. The number of tiers is seven and the maximum number of tiers payable per continuous stay is two. Payment of outlier claims, transplant claims, or payment to out-of-state hospitals, freestanding psychiatric hospitals, and other specialty facilities may differ from the inpatient hospital tiered per diem rates of reimbursement described in this Section.

1. Tier rate data. The Administration shall base tiered per diem rates effective on and after October 1, 1998 on Medicare Cost Reports for Arizona hospitals for the fiscal year ending in 1996 and a database consisting of inpatient hospital claims and encounters for dates of service matching each hospital’s 1996 fiscal year end.

2. Tier rate components. The Administration shall establish inpatient hospital prospective tiered per diem rates based on the sum of the operating and capital components. The rate for the operating component is a statewide rate for each tier except for the NICU and Routine tiers, which are based on peer groups. The rate for the capital component is a blend of statewide and hospital-specific values, as described in A.R.S. § 36-2903.01. The Administration shall use the following methodologies to establish the rates for each of these components.

a. Operating component. Using the Medicare Cost Reports and the claim and encounter database, the Administration shall compute the rate for the operating component as follows:

i. Data preparation. The Administration shall identify and group into department categories, the Medicare Cost Report data that provide ancillary department cost-to-charge ratios and accommodation costs per day. To comply with 42 CFR 447.271, the Administration shall limit cost-to-charge ratios to 1.00 for each ancillary department.

ii. Operating cost calculation. To calculate the rate for the operating component, the Administration shall derive the operating costs from claims and encounters by combining the Medicare Cost Report data and the claim and encounter database for all hospitals. In performing this calculation, the Administration shall match the revenue codes on the claims and encounters to the

September 30, 2021
Supp. 21-3 Page 61
departments in which the line items on the Medicare Cost Reports are grouped. The ancillary department cost-to-charge ratios for a particular hospital are multiplied by the covered ancillary department charges on each of the hospital’s claims and encounters. The AHCCCS inpatient days of care on the particular hospital’s claims and encounters are multiplied by the corresponding accommodation costs per day from the hospital’s Medicare Cost Report. The ancillary cost-to-charge ratios and accommodation costs per day do not include medical education and capital costs. The Administration shall inflate the resulting operating costs for the claims and encounters of each hospital to a common point in time, December 31, 1996, using the DRI inflation factor and shall reduce the operating costs for the hospital by an audit adjustment factor based on available national data and Arizona historical experience in adjustments to Medicare reimbursable costs. The Administration shall further inflate operating costs to the midpoint of the rate year (March 31, 1999).

iii. Operating cost tier assignment. After calculating the operating costs, the Administration shall assign the claims and encounters used in the calculation to tiers based on diagnosis, procedure, or revenue codes, or NICU classification level, or a combination of these. For the NICU tier, the Administration shall further assign claims and encounters to NICU Level II or NICU Level III peer groups, based on the hospital’s certification by the Arizona Perinatal Trust. For the Routine tier, the Administration shall further assign claims and encounters to the general acute care hospital or rehabilitation hospital peer groups, based on state licensure by the Department of Health Services. For claims and encounters assigned to more than one tier, the Administration shall allocate ancillary department costs to the tiers in the same proportion as the accommodation costs. Before calculating the rate for the operating component, the Administration shall identify and exclude any claims and encounters that are outliers as defined in subsection (6).

iv. Operating rate calculation. The Administration shall set the rate for the operating component for each tier by dividing total statewide or peer group hospital costs identified in this subsection within the tier by the total number of AHCCCS inpatient hospital days of care reflected in the claim and encounter database for that tier.

b. Capital component. For rates effective October 1, 1999 the capital component is calculated as described in A.R.S. § 36-2903.01.

c. Statewide inpatient hospital cost-to-charge ratio. For dates of service prior to October 1, 2007, the statewide inpatient hospital cost-to-charge ratio is used for payment of outliers, as described in subsections (4), (5), and (6), and out-of-state hospitals, as described in R9-22-712(B). The Administration shall calculate the AHCCCS statewide inpatient hospital cost-to-charge ratio by using the Medicare Cost Report data and claim and encounter database described in subsection (1) and used to determine the tiered per diem rates. For each hospital, the covered inpatient days of care on the claims and encounters are multiplied by the corresponding accommodation costs per day from the Medicare Cost Report. Similarly, the covered ancillary department charges on the claims and encounters are multiplied by the ancillary department cost-to-charge ratios. The accommodation costs per day and the ancillary department cost-to-charge ratios for each hospital are determined in the same way described in subsection (2)(a) but include costs for operating and capital. The Administration shall then calculate the statewide inpatient hospital cost-to-charge ratio by summing the covered accommodation costs and ancillary department costs from the claims and encounters for all hospitals and dividing by the sum of the total covered charges for these services for all hospitals.

d. Unassigned tiered per diem rates. If a hospital has an insufficient number of claims to set a tiered per diem rate, the Administration shall pay that hospital the statewide average rate for that tier.

3. Tier assignment. The Administration shall assign AHCCCS inpatient hospital days of care to tiers based on information submitted on the inpatient hospital claim or encounter including diagnosis, procedure, or revenue codes, peer group, NICU classification level, or a combination of these:

a. Tier hierarchy. In assigning claims for AHCCCS inpatient hospital days of care to a tier, the Administration shall follow the Hierarchy for Tier Assignment through September 30, 2014 in R9-22-712.09. The Administration shall not pay a claim for inpatient hospital services unless the claim meets medical review criteria and the definition of a clean claim. The Administration shall not pay for a hospital stay on the basis of more than two tiers, regardless of the number of interim claims that are submitted by the hospital.

b. Tier exclusions. The Administration shall not assign to a tier or pay AHCCCS inpatient hospital days of care that do not occur during a period when the person is eligible. Except in the case of death, the Administration shall pay claims in which the day of admission and the day of discharge are the same, termed a same day admit and discharge, including same day transfers, as an outpatient hospital claim. The Administration shall pay same day admit and discharge claims that qualify for either the maternity or nursery tiers based on the lesser of the rate for the maternity or nursery tier, or the outpatient hospital fee schedule.

c. Seven tiers. The seven tiers are:

i. Maternity. The Administration shall identify the Maternity Tier by a primary diagnosis code. If a claim has an appropriate primary diagnosis, the Administration shall pay the AHCCCS inpatient hospital days of care on the claim at the maternity tiered per diem rate.

ii. NICU. The Administration shall identify the NICU Tier by a revenue code. A hospital
does not qualify for the NICU tiered per diem rate unless the hospital is classified as either a NICU Level II or NICU Level III perinatal center by the Arizona Perinatal Trust. The Administration shall pay AHCCCS inpatient hospital days of care on the claim that meet the medical review criteria for the NICU tier and have a NICU revenue code at the NICU tiered per diem rate. The Administration shall pay any remaining AHCCCS inpatient hospital day on the claim that does not meet NICU Level II or NICU Level III medical review criteria at the nursery tiered per diem rate.

iii. ICU. The Administration shall identify the ICU Tier by a revenue code. The Administration shall pay AHCCCS inpatient hospital days of care on the claim that meets the medical review criteria for the ICU tier and has an ICU revenue code at the ICU tiered per diem rate. The Administration may classify any AHCCCS inpatient hospital days on the claim without an ICU revenue code, as surgery, psychiatric, or routine tiers.

iv. Surgery. The Administration shall identify the Surgery Tier by a revenue code and a valid surgical procedure code that is not on the AHCCCS excluded surgical procedure list. The excluded surgical procedure list identifies minor procedures such as sutures that do not require the same hospital resources as other procedures. The Administration shall only split a surgery tier with an ICU tier. AHCCCS shall pay at the surgery tier rate only when the surgery occurs on a date during which the member is eligible.

v. Psychiatric. The Administration shall identify the Psychiatric Tier by either a psychiatric revenue code and a psychiatric diagnosis or any routine revenue code if all diagnosis codes on the claim are psychiatric. The Administration shall not split a claim with AHCCCS inpatient hospital days of care in the psychiatric tier with any tier other than the ICU tier.

vi. Nursery. The Administration shall identify the Nursery Tier by a revenue code. The Administration shall not split a claim with AHCCCS inpatient hospital days of care in the nursery tier with any tier other than the NICU tier.

vii. Routine. The Administration shall identify the Routine Tier by revenue codes. The routine tier includes AHCCCS inpatient hospital days of care that are not classified in another tier or paid under any other provision of this Section. The Administration shall not split the routine tier with any tier other than the ICU tier.

4. Annual update. The Administration shall annually update the inpatient hospital tiered per diem rates through September 30, 2011.

5. New hospitals. For rates effective on and after October 1, 1998, the Administration shall pay new hospitals the statewide average rate for each tier, as appropriate. The Administration shall update new hospital tiered per diem rates through September 30, 2011.

6. Outliers. The Administration shall reimburse hospitals for AHCCCS inpatient hospital days of care identified as outliers under this Section by multiplying the covered charges on a claim by the Medicare Urban or Rural Cost-to-Charge Ratio. The Urban cost-to-charge ratio will be used for hospitals located in a county of 500,000 residents or more. The Rural cost-to-charge ratio will be used for hospitals located in a county of fewer than 500,000 residents.

a. Outlier criteria. For rates effective on and after October 1, 1998, the Administration set the statewide outlier cost threshold for each tier at the greater of three standard deviations from the statewide mean operating cost per day within the tier, or two standard deviations from the statewide mean operating cost per day across all the tiers. If the covered costs per day on a claim exceed the urban or rural cost threshold for a tier, the claim is considered an outlier. Outliers will be paid by multiplying the covered charges by the applicable Medicare Urban or Rural CCR. The resulting amount will be the outlier payment. If there are two tiers on a claim, the Administration shall determine whether the claim is an outlier by using a weighted threshold for the two tiers. The weighted threshold is calculated by multiplying each tier rate by the number of AHCCCS inpatient hospital days of care for that tier and dividing the product by the total tier days for that hospital. Routine maternity stays shall be excluded from outlier reimbursement. A routine maternity is any one-day stay with a delivery of one or two babies. A routine maternity stay will be paid at tier.

b. Update. The CCR is updated annually by the Administration for dates of service beginning October 1, using the most current Medicare cost-to-charge ratios published or placed on display by CMS by August 31 of that year. The Administration shall update the outlier cost thresholds for each hospital through September 30, 2011 as described under A.R.S. § 36-2903.01. For inpatient hospital admissions with begin dates of service on and after October 1, 2011, AHCCCS will increase the outlier cost thresholds by 5% of the thresholds that were effective on September 30, 2011.

c. Medicare Cost-to-Charge Ratio Phase-In. AHCCCS shall phase in the use of the Medicare Urban or Rural Cost-to-Charge Ratios for outlier determination, calculation and payment. The three-year phase-in does not apply to out-of-state or new hospitals.

i. Medicare Cost-to-Charge Ratio Phase-In outlier determination and threshold calculation. For outlier claims with dates of service on or after October 1, 2007 through September 30, 2008, AHCCCS shall adjust each hospital’s specific inpatient cost-to-charge ratio in effect on September 30, 2007 by subtracting one-third of the difference between the hospital’s specific inpatient cost-to-charge ratio and the effective Medicare Urban or Rural Cost-to-Charge Ratio. For outlier claims with dates of service on or after October 1, 2008 through September 30, 2009, AHCCCS shall adjust each hospital specific inpatient cost-to-charge ratio in effect on
September 30, 2007 by subtracting two-thirds of the difference between the hospital specific inpatient cost-to-charge ratio and the effective Medicare Urban or Rural Cost-to-Charge Ratio. The adjusted hospital specific inpatient cost-to-charge ratios shall be used for all calculations using the Medicare Urban or Rural Cost-to-Charge Ratios, including outlier determination, and threshold calculation.

ii. Medicare Cost-to-Charge Ratio Phase-In calculation for payment. For payment of outlier claims with dates of service on or after October 1, 2007 through September 30, 2008, AHCCCS shall adjust the statewide inpatient hospital cost-to-charge ratio in effect on September 30, 2007 by subtracting one-third of the difference between the statewide inpatient hospital cost-to-charge ratio and the effective Medicare urban or rural cost-to-charge ratio. For payment of outlier claims with dates of service on or after October 1, 2008 through September 30, 2009, AHCCCS shall adjust the statewide inpatient hospital cost-to-charge ratio in effect on September 30, 2007 by subtracting two-thirds of the difference between the statewide inpatient hospital cost-to-charge ratio and the effective Medicare urban or rural cost-to-charge ratio.

iii. Medicare Cost-to-Charge Ratio for outlier determination, threshold calculation, and payment. For outlier claims with dates of service on or after October 1, 2009, the full Medicare Urban or Rural Cost-to-Charge Ratios shall be utilized for all outlier calculations.

d. Cost-to-Charge Ratio used for qualification and payment of outlier claims.

i. For qualification and payment of outlier claims with begin dates of service on or after April 1, 2011 through September 30, 2011, the CCR will be equal to 95% of the ratios in effect on October 1, 2010.

ii. For qualification and payment of outlier claims with begin dates of service on or after October 1, 2011, the CCR will be equal to 90.25% of the most recent published Urban or Rural Medicare CCR as described in subsection (6)(b).

iii. For qualification and payment of outlier claims with begin dates of service on or after October 1, 2011 through September 30, 2012, AHCCCS will reduce the cost-to-charge ratio determined under subsection (6)(d)(ii) for a hospital that filed a charge master with ADHS on or after June 1, 2012 by an additional percentage equal to the total percent increase reported on the charge master.

iv. Subject to approval by CMS, for qualification and payment of outlier claims with begin dates of service on or after October 1, 2012, AHCCCS will reduce the cost-to-charge ratio determined under subsection (6)(d)(ii) for a hospital that filed a charge master with ADHS on or after June 1, 2012 by an additional percentage equal to the total percent increase reported on the charge master.

7. Transplants. The Administration shall reimburse hospitals for an AHCCCS inpatient stay in which a covered transplant as described in R9-22-206 is performed through the terms of the relevant contract. If the Administration and a hospital that performs transplant surgery on an eligible person do not have a contract for the transplant surgery, the Administration shall not reimburse the hospital more than what would have been paid to the contracted hospital for that same surgery.

8. Ownership change. The Administration shall not change any of the components of a hospital’s tiered per diem rates upon an ownership change.

9. Psychiatric hospitals. The Administration shall pay free-standing psychiatric hospitals an all-inclusive per diem rate based on the contracted rates used by the Department of Health Services.

10. Specialty facilities. The Administration may negotiate, at any time, reimbursement rates for inpatient specialty facilities or inpatient hospital services not otherwise addressed in this Section as provided by A.R.S. § 36-2903.01. For purposes of this subsection, “specialty facility” means a facility where the service provided is limited to a specific population, such as rehabilitative services for children.

11. Outliers for new hospitals. Outliers for new hospitals will be calculated using the Medicare Urban or Rural Cost-to-Charge Ratio times covered charges. If the resulting cost is equal to or above the cost threshold, the claim will be paid at the Medicare Urban or Rural Cost-to-Charge ratio.

12. Reductions to tiered per diem payment for inpatient hospital services. Inpatient hospital admissions with begin dates of service on or after October 1, 2011, shall be reimbursed at 95 percent of the tiered per diem rates in effect on September 30, 2011.

Historical Note
CHAPTER 22. ARIZONA HEALTH CARE COST CONTAINMENT SYSTEM - ADMINISTRATION

A.R.S. § 36-2903.01(G)(9)(b). A GME program is deemed to be established as of the date of its original accreditation. All determinations that are necessary to make distributions described by this subsection shall be made using information possessed by the Administration as of the date of reporting under subsection (B)(3).

1. Eligible health care facilities. A health care facility is eligible for distributions under subsection (B) if all of the following apply:
   a. It is a hospital in Arizona that is the sponsoring institution of, or a participating institution in, one or more of the GME programs in Arizona;
   b. It incurs direct costs for the training of residents in the GME programs, which costs are or will be reported on the hospital’s Medicare Cost Report;
   c. It is not administered by or does not receive its primary funding from an agency of the federal government.

2. Eligible resident positions. For purposes of determining program allocation amounts under subsection (B)(4) the following resident positions are eligible for consideration to the extent that the resident training takes place in Arizona and not at a health care facility made ineligible under subsection (B)(1)(c):
   a. Filled resident positions in approved programs established as of October 1, 1999 at hospitals that receive funding as described in A.R.S. § 36-2903.01(G)(9)(a) that are additional to the number of resident positions that were filled as of October 1, 1999; and
   b. All filled resident positions in approved programs other than GME programs described in A.R.S. § 36-2903.01(G)(9)(a) that were established before July 1, 2006.

3. Annual reporting. By April 1st of each year, each GME program and each hospital seeking a distribution under subsection (B) shall provide the applicable information listed in this subsection to the Administration:
   a. A GME program shall provide all of the following:
      i. The program name and number assigned by the accrediting organization;
      ii. The original date of accreditation;
      iii. The names of the sponsoring institution and all participating institutions current as of the date of reporting;
      iv. The number of approved resident positions and the number of filled resident positions current as of the date of reporting;
      v. For programs established as of October 1, 1999, the number of resident positions that were filled as of October 1, 1999, if the program has not already provided this information to the Administration;
   b. A hospital seeking a distribution under subsection (B) shall provide all of the following that apply:
      i. If the hospital uses the Intern and Resident Information System (IRIS) for tracking and reporting its resident activity to the fiscal intermediary, copies of the IRIS master and assignment files for the hospital’s two most recently completed Medicare cost reporting years as filed with the fiscal intermediary;
      ii. If the hospital does not use the IRIS or has less than two cost reporting years available in the form of the IRIS master and assignment files, the information normally contained in the IRIS master and assignment files in an alternative format for the hospital’s two most recently completed Medicare cost reporting years;
   iii. At the request of the Administration, a copy of the hospital’s Medicare Cost Report or any part of the report for the most recently completed cost reporting year.

4. Allocation of expansion funds. Annually the Administration shall allocate available funds to each approved GME program in the following manner:
   a. Information provided by hospitals under subsection (B)(3)(b) shall be used to determine the program in which each eligible resident is enrolled and the number of days that each eligible resident worked in any area of the hospital complex or in a non-hospital setting under agreement with the hospital during the period of assignment to that hospital. For this purpose, the Administration shall use data relating to the most recent 12-month period that is common to all information provided under subsections (B)(3)(b)(i) and (ii).
   b. The number of eligible residents allocated to each participating institution within each approved GME program shall be determined as follows:
      i. Total the number of days determined for each participating institution under subsection (B)(4)(a) and divide each total by 365.
      ii. Proportionally adjust the result of subsection (B)(4)(b)(i) for each participating institution within each program according to the number of residents determined to be eligible under subsection (B)(2).
   c. The number of allocated eligible residents determined under subsection (B)(4)(b)(ii) shall be adjusted for Arizona Medicaid utilization using the most recent Medicare Cost Report information on file with the Administration as of the date of reporting under subsection (B)(3) and the Administration’s inpatient hospital claims and encounter data for the time period corresponding to the Medicare Cost Report information for each hospital. The Administration shall use only those inpatient hospital claims paid by the Administration and encounters that were adjudicated by the Administration as of the date of reporting under subsection (B)(3). The Medicaid-adjusted eligible residents shall be determined as follows:
      i. For each hospital, the total AHCCCS inpatient hospital days of care shall be divided by the total Medicare Cost Report inpatient hospital days, multiplied by 100 and rounded up to the nearest multiple of 5 percent.
      ii. The number of allocated eligible residents determined for each participating hospital under subsection (B)(4)(b)(ii) shall be multiplied by the percentage derived under subsection (B)(4)(c)(i) for that hospital. The number of allocated eligible residents determined under subsection (B)(4)(b)(ii) for a participating institution that is not a hospital and not a health care facility made ineligible under subsection (B)(1)(c) shall be multiplied by the percentage derived under subsection (B)(4)(c)(i) for the program’s sponsoring institution or, if the sponsoring
CHAPTER 22. ARIZONA HEALTH CARE COST CONTAINMENT SYSTEM - ADMINISTRATION

institution is not a hospital, the sponsoring institution’s affiliated hospital. The number of allocated eligible residents determined under subsection (B)(4)(b)(ii) for a participating institution that is made ineligible under subsection (B)(1)(c) shall be multiplied by zero percent.

d. The total allocation for each approved program shall be determined by multiplying the Medicaid-adjusted eligible residents determined under subsection (B)(4)(c)(ii) by the per-resident conversion factor determined below and totaling the resulting dollar amounts for all participating institutions in the program. The per-resident conversion factor shall be determined as follows:

i. Calculate the total direct GME costs from the most recent Medicare Cost Reports on file with the Administration for all hospitals that have reported such costs.

ii. Calculate the total allocated residents determined under subsection (B)(4)(b)(i) for those hospitals described under subsection (B)(4)(d)(i).

iii. Divide the total GME costs calculated under subsection (B)(4)(d)(i) by the total allocated residents calculated under subsection (B)(4)(d)(ii).

5. Distribution of expansion funds. On an annual basis subject to available funds, the Administration shall distribute the allocated amounts determined under subsection (B)(4) in the following manner:

a. The allocated amounts shall be distributed in the following order of priority:

i. To eligible hospitals that do not receive funding in accordance with A.R.S. § 36-2903.01(G)(9)(a) for the direct costs of programs established before July 1, 2006;

ii. To eligible hospitals that receive funding in accordance with A.R.S. § 36-2903.01(G)(9)(a) for the direct costs of programs established before July 1, 2006;

b. The allocated amounts shall be distributed to the eligible hospitals in each approved program in proportion to the number of Medicaid-adjusted eligible residents allocated to each hospital within that program under subsection (B)(4)(c)(ii).

c. If funds are insufficient to cover all distributions within any priority group described under subsection (B)(5)(a), the Administration shall adjust the distributions proportionally within that priority group.

C. Subject to available funds and approval by CMS, the Administration shall annually distribute monies appropriated for the expansions of GME programs approved by the Administration to hospitals for direct program costs eligible for funding under A.R.S. § 36-2903.01(G)(9)(c)(i). A GME program is deemed to be established as of the date of its original accreditation. All determinations that are necessary to make distributions described by this subsection shall be made using information possessed by the Administration as of the date of reporting under subsection (C)(3).

1. Eligible health care facilities. A health care facility is eligible for distributions under subsection (C) if it meets all the conditions of subsections (B)(1)(a) through (c).

2. Eligible resident positions. For purposes of determining program allocation amounts under subsection (C)(4), the following resident positions are eligible for consideration to the extent that the resident training takes place in Arizona and not at a health care facility made ineligible under subsection (B)(1)(c):

a. All filled resident positions in approved programs established on or after July 1, 2006; and

b. For approved programs established on or after July 1, 2006 that have been established for less than one year as of the date of reporting under subsection (C)(3) and have not yet filled their first-year resident positions, all prospective residents reasonably expected by the program to be enrolled as a result of the most recently completed annual resident match.

3. Annual reporting. By April 1st of each year, each GME program and each hospital seeking a distribution under subsection (C) shall provide to the Administration:

a. A GME program shall provide all of the following:

i. The requirements of subsections (B)(3)(a)(i) through (iv);

ii. The academic year rotation schedule on file with the program current as of the date of reporting; and

iii. For programs described under subsection (C)(2)(b), the number of residents expected to be enrolled as a result of the most recently completed annual resident match.

b. A hospital seeking a distribution under subsection (C) shall provide the requirements of subsection (B)(3)(b).

4. Allocation of expansion funds. Annually the Administration shall allocate available funds to approved GME programs in the following manner:

a. Information provided by hospitals in accordance with subsection (B)(3)(b) shall be used to determine the program in which each eligible resident is enrolled and the number of days that each eligible resident worked in any area of the hospital complex or in a non-hospital setting under agreement with the reporting hospital during the period of assignment to that hospital. For this purpose, the Administration shall use data relating to the most recent 12-month period that is common to all information provided in accordance with subsections (B)(3)(b)(i) and (ii).

b. For approved programs whose resident activity is not represented in the information provided in accordance with subsection (B)(3)(b), information provided by GME programs under subsection (C)(3)(a) shall be used to determine the number of days that each eligible resident is expected to work at each participating institution.

c. The number of eligible residents allocated to each participating institution for each approved GME program shall be determined by totaling the number of days determined under subsections (C)(4)(a) and (b) and dividing the totals by 365.

d. The number of allocated residents determined under subsection (C)(4)(c) shall be adjusted for Arizona Medicaid utilization in accordance with subsection (B)(4)(c).

e. The total allocation for each approved program shall be determined in accordance with subsection (B)(4)(d).

5. Distribution of expansion funds. On an annual basis subject to available funds, the Administration shall distribute the allocated amounts determined under subsection (C)(4) to the eligible hospitals in each approved program in proportion to the number of Medicaid-adjusted eligible
residents allocated to each within that program under subsection (C)(4)(d).  

D. Subject to available funds and approval by CMS, the Administration shall annually distribute monies appropriated for GME programs approved by the Administration to hospitals for indirect program costs eligible for funding under A.R.S. § 36-2903.01(G)(9)(c)(ii). A GME program is deemed to be established as of the date of its original accreditation. All determinations that are necessary to make distributions described by this subsection shall be made using information possessed by the Administration as of the date of reporting under subsection (D)(3).

1. Eligible health care facilities. A health care facility is eligible for distributions under subsection (D) if all of the following apply:
   a. It is a hospital in Arizona that is the sponsoring institution of, or a participating institution in, one or more of the GME programs in Arizona or is the base hospital for one or more of the GME programs in Arizona whose sponsoring institutions are not hospitals;
   b. It incurs indirect program costs for the training of residents in the GME programs, which are or will be calculated on the hospital’s Medicare Cost Report or are reimbursable under the Children’s Hospitals Graduate Medical Education Payment Program administered by HRSA;
   c. It is not administered by or does not receive its primary funding from an agency of the federal government.

2. Eligible resident positions. For purposes of determining program allocation amounts under subsection (D)(4) the following resident positions are eligible for consideration to the extent that the resident training takes place in Arizona and not at a health care facility made ineligible under subsection (D)(1)(c):
   a. Any filled resident position in an approved program that includes a rotation of at least one month per year in a county other than Maricopa or Pima whose population was less than 500,000 persons at the time the residency rotation was added to the academic year rotation schedule;
   b. For approved programs that have been established for less than one year as of the date of reporting under subsection (D)(3) and have not yet filled their first-year resident positions, all prospective residents reasonably expected by the program to be enrolled as a result of the most recently completed annual resident match who will perform rotations of at least one month per year in a county other than Maricopa or Pima whose population was less than 500,000 persons at the time the residency rotation was added to the academic year rotation schedule.

3. Annual reporting. By April 1st of each year, each GME program and each hospital seeking a distribution under subsection (D) shall provide to the Administration:
   a. A GME program shall provide all of the following:
      i. The requirements of subsections (B)(3)(a)(i) through (iv);
      ii. The academic year rotation schedule on file with the program current as of the date of reporting;
      iii. For programs described under subsection (D)(2)(c), the number of residents expected to be enrolled as a result of the most recently completed annual resident match.
   b. A hospital seeking a distribution under subsection (D) shall provide the requirements of subsection (B)(3)(b)(ii).

4. Allocation of funds for indirect program costs. Annually the Administration shall allocate available funds to approved GME programs in the following manner:
   a. Using the information provided by programs under subsection (D)(3), the Administration shall determine for each program the number of residents in the program who are eligible under subsection (D)(2) and the number of months per year that each eligible resident will perform rotations in counties described by subsection (D)(2), multiply the number of eligible residents by the number of months and multiply the result by the per resident per month conversion factor determined under subsection (D)(4)(b).
   b. Using the most recent Medicare Cost Reports on file with the Administration for all hospitals that have calculated a Medicare indirect medical education payment, the Administration shall determine a per resident per month conversion factor as follows:
      i. Calculate each hospital’s Medicare share by dividing the Medicare inpatient discharges on the Medicare Cost Report by the total inpatient hospital discharges on the Medicare Cost Report.
      ii. Calculate the ratio of patients to beds by dividing the total allocated residents described in subsection (B)(4)(d)(ii) by the number of bed days available from the Medicare Cost Report and dividing the result by the number of days in the cost reporting period.
      iii. Calculate the indirect medical education adjustment factor by adding 1 to the value calculated in (D)(4)(b)(iii), multiplying the result by the exponential value 0.405, subtracting 1 from the result, and multiplying that result by 1.35.
      iv. Calculate each hospital’s total indirect medical education cost by adding the DRG amounts other than outlier payments from the Medicare cost report and the managed care simulated payments from the Medicare Cost Report, multiplying the total by the indirect medical education adjustment factor determined in (D)(4)(b)(iii) and dividing the result by the Medicare share determined in (D)(4)(b)(i).
      v. Calculate each hospital’s Medicaid indirect medical education cost by multiplying the amount determined in (D)(4)(b)(iv) by the value determined in subsection (B)(4)(c)(i).
      vi. Total the amounts determined in (D)(4)(b)(v) for all hospitals, divide the result by the total allocated residents described in subsection (B)(4)(d)(ii) for all hospitals, and divide that result by 12.

5. Distribution of funds for indirect program costs. On an annual basis subject to available funds, the Administration shall distribute to each eligible hospital the amount calculated for the hospital at subsection (D)(4)(a).

E. Reallocation of funds. If funds appropriated for subsection (B) are not allocated by the Administration and funds appropriated for subsections (C) and (D) are insufficient to cover all distri-
butions under subsections (C)(5) and (D)(5), the funds not allocated under subsection (B) shall be allocated under subsections (C) and (D) to the extent of the calculated distributions. If funds are insufficient to cover all distributions under subsections (C)(5) and (D)(5), the Administration shall adjust the distributions proportionally. If funds appropriated for subsections (C) and (D) are not allocated by the Administration and funds appropriated for subsection (B) are insufficient to cover all distributions under subsection (B)(5), the funds not allocated under subsections (C) and (D) shall be allocated under subsection (B) to the extent of the calculated distributions.

F. The Administration may enter into intergovernmental agreements with local, county, and tribal governments wherein local, county and tribal governments may transfer funds or certify public expenditures to the Administration. Such funds or certification, subject to approval by CMS, will be used to qualify for additional federal funds. Those funds will be used for the purposes of reimbursing hospitals that are eligible under subsection (D)(1) and specified by the local, county, or tribal government for indirect program costs other than those reimbursed under subsection (D). The Administration shall allocate available funds in accordance with subsection (D) except that reimbursement with such funds is not limited to resident positions or rotations in counties with populations of less than 500,000 persons. On an annual basis subject to available funds, the Administration shall distribute to each eligible hospital the greatest among the following amounts, less any amounts distributed under subsection (D)(5):

1. The amount that results from multiplying the total number of eligible residents allocated to the hospital under subsection (B)(4)(d)(ii) by 12 by the per resident per month conversion factor determined under subsection (D)(4)(b);

2. The amount calculated for the hospital at subsection (D)(4)(b)(v);

3. The median of all amounts calculated at subsection (D)(4)(b)(v) if the hospital does not have an indirect medical education payment calculated on the Medicare Cost Report because it is a new training hospital; or

4. If the hospital does not have an indirect medical education payment calculated on the Medicare Cost Report because it is a children’s hospital, the median Medicaid indirect medical education payment costs shall be calculated as follows:
   a. For each hospital with indirect medical education costs on the Medicare Cost Report, determine a per resident total indirect medical education cost by dividing the total indirect medical education costs determined under subsection (D)(4)(b) by the number of filled resident positions under subsection (B)(2).
   b. Determine the median per resident amount under subsection (F)(4)(a).
   c. For each hospital without an indirect medical education component on the Medicare cost report, multiply the median per resident amount under subsection (F)(4)(b) by the number of filled resident positions under subsection (B)(2) for that hospital and by the Medicaid utilization percent for that hospital determined in subsection (B)(4)(c)(i).

Historical Note

R9-22-712.06. Reserved

R9-22-712.07. Rural Hospital Inpatient Fund Allocation

A. For purposes of this Section, the following words and phrases have the following meanings unless the context specifically requires another meaning:

1. “Calculated inpatient costs” means the sum of inpatient covered charges multiplied by the Milliman study’s implied cost-to-charge ratio of .8959.

2. “Claims paid amount” means the sum of all claims paid by the Administration and contractors, as reported by the contractor to the Administration, to a rural hospital for covered inpatient services rendered for dates of service during the previous state fiscal year.

3. “Fund” means any state funds appropriated by the Legislature for the purposes set forth in A.R.S. § 36-2905.02 and any federal funds that are available for matching the state funds.

4. “Inpatient covered charges” means the sum of all covered charges billed by a hospital to the Administration or contractors, as reported by the contractors to the Administration, for inpatient services rendered during the previous state fiscal year.

5. “Milliman study” means the report issued by Milliman USA on March 11, 2004, to the Arizona Hospital and Healthcare Association that updated a portion of a cost study entitled “Evaluation of the AHCCCS Inpatient Hospital Reimbursement System” prepared by Milliman USA for AHCCCS on November 15, 2002. A copy of each report is on file with the Administration.

6. “Rural hospital” means a health care institution that is licensed as an acute care hospital by the Arizona Department of Health Services for the previous state fiscal year and is not an IHS hospital or a tribally owned or operated facility and:
   a. Has 100 or fewer PPS beds, not including beds reported as sub provider beds on the hospital’s Medicare Cost Report, and is located in a county with a population of less than 500,000 persons, or
   b. Is designated as a critical access hospital for the majority of the previous state fiscal year.

B. Each February, the Administration shall allocate the Fund to the following three pools for the fiscal year:

1. Rural hospitals with 25 or fewer PPS beds not including sub provider beds and all Critical Access Hospitals, regardless of the number of beds in the Critical Access Hospital;

2. Rural hospitals other than Critical Access Hospitals with 26 to 75 PPS beds not including sub provider beds; and

3. Rural hospitals other than Critical Access Hospitals with 76 to 100 PPS beds not including sub provider beds.

C. The Administration shall allocate the Fund to each pool according to the ratio of claims paid amount for all hospitals assigned to the pool to total claims paid amount for all rural hospitals.

D. The Administration shall determine each hospital’s claims paid amount and allocate the funds in each pool to each hospital in the pool based on the ratio of each hospital’s claims paid amount to the sum of the claims paid amount for all hospitals assigned to the pool.

E. The Administration shall not make a Fund payment to a hospital that will result in the hospital’s claims paid amount plus
CHAPTER 22. ARIZONA HEALTH CARE COST CONTAINMENT SYSTEM - ADMINISTRATION

that hospital’s Fund payment being greater than that hospital’s calculated inpatient costs.
1. If a hospital’s claims paid amount plus the hospital’s Fund payment would be greater than the hospital’s calculated inpatient costs, the Administration shall make a Fund payment to the hospital equal to the difference between the hospital’s calculated inpatient costs and the hospital’s claims paid amount.
2. The Administration shall reallocate any portion of a hospital’s Fund allocation that is not paid to the hospital due to the reason in subsection (E)(1) to the other eligible hospitals in the pool based upon the ratio of the claims paid amount for each hospital remaining in the pool to the sum of the claims paid amount for each hospital remaining in the pool.
F. If funds remain in a pool after allocations to each hospital in the pool under subsections (D) and (E), the Administration shall reallocate the remaining funds to the other pools based upon the ratio of each pool’s original allocation of the Fund as determined under subsection (C) to the sum of the remaining pools’ original Fund allocations under subsection (C). The Administration shall allocate remaining funds to the hospitals in the remaining pools under subsection (D) and (E). See Exhibit 1 for an example.

G. Subject to CMS approval of the method and distribution of the Fund, the administration or its contractors will distribute the Fund as a lump sum allocation to the rural hospitals in either one or two installments by the end of each state fiscal year.

Historical Note
New Section made by final rulemaking at 12 A.A.R. 2188, effective June 6, 2006 (Supp. 06-2). Amended by final rulemaking at 22 A.A.R. 3476, effective January 30, 2016 (Supp. 15-4).

Historical Note

R9-22-712.10. Outpatient Hospital Reimbursement: General
A. Effective rule. The outpatient hospital reimbursement rules apply to dates of service beginning July 1, 2005, subject to Laws 2004, Ch. 279, § 19.
B. Basis For Payment. Except as provided under R9-22-712.30, AHCCCS shall pay for designated outpatient procedures provided to AHCCCS members according to the AHCCCS Outpatient Capped Fee-For-Service Schedule as defined in R9-22-712.20.
C. Data. AHCCCS shall use Medicare Cost Report and adjudicated claim and encounter data from non-IHS acute care hospitals located in the state of Arizona to develop fees for the AHCCCS Outpatient Capped Fee-For-Service Schedule.
D. Hospital Services Subject To Fees. AHCCCS shall reimburse services, in the following outpatient hospital categories under the AHCCCS Outpatient Capped Fee-For-Service Schedule:
1. Surgery,
2. Emergency Department,
3. Laboratory,
4. Radiology,
5. Clinic, and
6. Other services.
E. Reimbursement. AHCCCS shall reimburse outpatient hospital services by procedure codes, in proper combination with revenue codes, as prescribed by AHCCCS.

Historical Note
New Section made by exempt rulemaking at 11 A.A.R. 2297, effective July 1, 2005 (Supp. 05-2).
CHAPTER 22. ARIZONA HEALTH CARE COST CONTAINMENT SYSTEM - ADMINISTRATION

R9-22-712.11. Reserved
R9-22-712.12. Reserved
R9-22-712.13. Reserved
R9-22-712.15. Outpatient Hospital Reimbursement: Affected Hospitals
Except as provided in R9-22-712(G), the AHCCCS Outpatient Capped Fee-For-Service Schedule shall apply to AHCCCS payments for outpatient services in all non-IHS acute hospitals.

Historical Note
New Section made by exempt rulemaking at 11 A.A.R. 2297, effective July 1, 2005 (Supp. 05-2).

R9-22-712.16. Reserved
R9-22-712.17. Reserved
R9-22-712.18. Reserved
R9-22-712.19. Reserved
R9-22-712.20. Outpatient Hospital Reimbursement: Methodology for the AHCCCS Outpatient Capped Fee-For-Service Schedule
A. To establish the AHCCCS Outpatient Capped Fee-for-service Schedule for all claims with a begin date of service on or before September 30, 2011, AHCCCS shall:

1. Define the dataset of claims and encounters that shall be used to establish the AHCCCS Outpatient Capped Fee-for-service Schedule.
2. Identify all the claims and encounters from non-IHS acute hospitals located in Arizona for services to be paid under the AHCCCS Outpatient Capped Fee-for-service Schedule.
3. Match the revenue code on each detail of each claim and encounter to the ancillary line itemCCR as reported on hospital-specific mapping documents and hospital-specific Medicare Cost Report for those hospitals that have submitted Medicare Cost Reports FYE 2002.
4. Multiply the line item CCR from subsection (A)(3) by the covered billed charge for that revenue code to establish the cost for the service.
5. Inflated the cost for the service from subsection (A)(4) using Global Insight Health-care Cost Review inflation factors from date of service month to the midpoint of the rate year in which the fees are initially effective.
6. Include associated costs under R9-22-712.25 to calculate the rates for emergency room and surgery services.
7. Combine data from all Arizona hospitals identified in subsection (A)(3) for each procedure code to establish the statewide median cost for each procedure.
8. Group procedure codes according to the Ambulatory Payment Classification (APC) System groups as listed in 69 FR 65682, November 15, 2004, and establish a statewide median cost for each APC. Multiply each statewide median APC cost by 116 percent to establish the AHCCCS-based fee for each procedure in that specific APC group. AHCCCS shall assign each procedure in the group the same fee.
9. For those procedure codes that are not grouped into any APC, establish a procedure-specific fee using either:
   a. The AHCCCS Non-hospital Capped Fee-for-service Fee Schedule,
   b. 116 percent of the procedure-specific median cost AHCCCS-based fee, or
   c. The Medicare Clinical Laboratory Fee Schedule for laboratory services.
10. Compare the AHCCCS-based fee established in subsections (A)(8) and (9) against the comparable Medicare fee established for the Medicare APC group as listed in the 69 FR 65682, November 15, 2004. The fee for each procedure shall be the greater of the AHCCCS-based fee or the Medicare fee but no more than 150 percent of the AHCCCS-based fee; however, for those laboratory services for which a limit is established in the Medicare Clinical Laboratory Fee Schedule, the fee shall not exceed that limit.
11. Assign the 2005 Medicare fee in the AHCCCS Outpatient Capped Fee-for-service Schedule for those procedures for which there are fewer than 20 occurrences of the procedure code in the dataset, either independently, or, if applicable, for all procedure codes within an APC Group.

B. For all claims with a begin date of service on or after October 1, 2011, the AHCCCS Outpatient Capped Fee-for-service Schedule shall be derived from the CMS Medicare Outpatient Prospective Payment System (OPPS) fee schedule modified by an Arizona conversion factor determined annually.

1. When clinical services are billed using 51X revenue codes, the reimbursement to the hospital is the difference between the facility and non-facility rates payable to the practitioner for the procedures listed in the Administration’s Capped Fee-for-service Schedule under R9-22-710.
2. Observation services, when not billed in conjunction with a service for which a single payment is made under R9-22-712.25, are reimbursed at an hourly rate published in the Outpatient Capped Fee-for-service Schedule. This hourly rate includes reimbursement for associated services.
3. The AHCCCS Outpatient Capped Fee-for-service Schedule including the effective date of any changes to the listing are on file and posted on AHCCCS’ web site.

Historical Note

R9-22-712.21. Reserved
R9-22-712.22. Reserved
R9-22-712.23. Reserved
R9-22-712.24. Reserved
R9-22-712.25. Outpatient Hospital Fee Schedule Calculations: Associated Service Costs
A. AHCCCS shall include the costs of associated services, as defined by revenue codes and procedure codes, when determining the specific fees for the outpatient hospital procedures for emergency department and surgery services.
B. Payment made under subsection (A) or R9-22-712.20(B)(2) is inclusive of all services on the claim regardless of whether the services are provided on one or more days.
C. A complete listing of the revenue codes and procedure codes for associated costs included in the payment for emergency and surgery services including the effective date of any changes to the listing are on file and posted on AHCCCS’ web site.
CHAPTER 22. ARIZONA HEALTH CARE COST CONTAINMENT SYSTEM - ADMINISTRATION

Historical Note
New Section made by exempt rulemaking at 11 A.A.R. 2297, effective July 1, 2005 (Supp. 05-2). Amended by final rulemaking at 17 A.A.R. 1460, effective October 1, 2011 (Supp. 11-3).

R9-22-712.26. Reserved

R9-22-712.27. Reserved

R9-22-712.28. Reserved

R9-22-712.29. Reserved

R9-22-712.30. Outpatient Hospital Reimbursement: Payment for a Service Not Listed in the AHCCCS Outpatient Capped Fee-For-Service Schedule
A. AHCCCS shall calculate a statewide CCR for a service where a specific fee cannot be determined under R9-22-712.20.
B. For claims with a begin date of service on or before September 30, 2011, the statewide CCR shall be calculated based on the costs and covered charges associated with a service under subsection (A) for all Arizona hospitals, using the method specified in R9-22-712.20(A)(3).
C. For all claims with a begin date of service on or after October 1, 2011, the statewide CCR calculation shall equal either the CMS Medicare Outpatient Urban Cost-to-charge Ratio or the CMS Medicare Outpatient Rural Cost-to-charge Ratio published by CMS for the state of Arizona. AHCCCS shall use the urban cost-to-charge ratio for hospitals located in a county of 500,000 residents or more and for out-of-state hospitals. AHCCCS shall use the rural cost-to-charge ratio for hospitals located in a county of fewer than 500,000 residents. On October 1st of each year, AHCCCS shall adjust urban and rural CCRs to the CCRs as published by CMS in the Federal Register on or before August 1st of that year.
D. To determine the payment amount for procedures where a specific fee is not determined under R9-22-712.20, the statewide CCR is multiplied by the covered charges.
E. Reductions to payments for outpatient hospital services not listed in the AHCCCS Outpatient Capped Fee-For-Service Schedule. Outpatient hospital services not listed in the AHCCS Outpatient Capped Fee-For-Service Schedule with dates of service on or after October 1, 2011, shall be reimbursed at 95 percent of the rate published by CMS pursuant to subsection (C) of this Section.

Historical Note

R9-22-712.31. Reserved

R9-22-712.32. Reserved

R9-22-712.33. Reserved

R9-22-712.34. Reserved

R9-22-712.35. Outpatient Hospital Reimbursement: Adjustments to Fees
A. For all claims with a begin date of service on or before September 30, 2011, AHCCCS shall increase the Outpatient Capped Fee-for-service Schedule established under R9-22-712.20 (except for laboratory services and out-of-state hospital services) for the following hospitals submitting any claims:

1. By 48 percent for public hospitals on July 1, 2005, and hospitals that were public anytime during the calendar year 2004;
2. By 45 percent for hospitals in counties other than Maricopa and Pima with more than 100 Medicare PPS beds during the contract year in which the Outpatient Capped Fee-for-service Schedule rates are effective;
3. By 50 percent for hospitals in counties other than Maricopa and Pima with 100 or less Medicare PPS beds during the contract year in which the Outpatient Capped Fee-for-service Schedule rates are effective;
4. By 115 percent for hospitals designated as Critical Access Hospitals or hospitals that have not been designated as Critical Access Hospitals but meet the criteria during the contract year in which the Outpatient Capped Fee-for-service Schedule rates are effective; or
5. By 113 percent for a Freestanding Children’s Hospital with at least 110 pediatric beds during the contract year in which the Outpatient Capped Fee-for-service Schedule rates are effective; or
6. By 14 percent for a University Affiliated Hospital which is a hospital that has a majority of the members of its board of directors appointed by the Board of Regents during the contract year in which the Outpatient Capped Fee-for-service Schedule rates are effective.

B. For all claims with a begin date of service on or after October 1, 2011, AHCCCS shall increase the Outpatient Capped Fee-for-service Schedule (except for laboratory services, and out-of-state hospital services) for the following hospitals. A hospital shall receive an increase from only one of the following categories:

1. By 73 percent for public hospitals;
2. By 31 percent for hospitals in counties other than Maricopa and Pima with more than 100 licensed beds as of October 1 of that contract year;
3. By 37 percent for hospitals in counties other than Maricopa and Pima with 100 or fewer licensed beds as of October 1 of that contract year;
4. By 100 percent for hospitals designated as Critical Access Hospitals or hospitals that have not been designated as Critical Access Hospitals but meet the critical access criteria;
5. By 78 percent for a Freestanding Children’s Hospital with at least 110 pediatric beds as of October 1 of that contract year; or
6. By 41 percent for a University Affiliated Hospital, this is a hospital that has a majority of the members of its board of directors appointed by the Arizona Board of Regents.

C. In addition to subsections (A) and (B), an Arizona Level 1 trauma center as defined by R9-22-2101 shall receive a 50 percent increase to the Outpatient Capped Fee-for-service Schedule (except for laboratory services and out-of-state hospital services) for Level 2 and 3 emergency department procedures.

D. Hospitals with greater than 100 pediatric beds not receiving an increase under subsection (B) shall receive an 18 percent increase to the Outpatient Capped Fee-for-service Schedule (except for laboratory services, and out-of-state hospital services).

E. For outpatient services with dates of service from October 1, 2020 through September 30, 2021, the payment otherwise required for outpatient hospital services provided by qualifying hospitals shall be increased by a percentage established by the administration. The percentage is published on the Administration’s public website as part of its fee schedule subsequent to the public notice published no later than September 1, 2020.
A hospital will qualify for an increase if it meets the criteria specified below for the applicable hospital subtype.

1. A hospital designated by the Arizona Department of Health Services Division of Licensing Services as type: hospital, subtype: short-term or children’s will qualify for an increase if it meets the criteria in (E)(1)(a), (b), (c), (d), or (e):

   a. By May 27, 2020, a hospital which did not receive Differential Adjusted Payments from October 1, 2019 through September 30, 2020, submits a Letter of Intent to AHCCCS and a qualifying Health Information Exchange (HIE) organization in which the hospital agrees to achieve all of the following:

      i. By May 27, 2020, the hospital must have in place an active participation agreement with a qualifying HIE organization and submit a LOI to AHCCCS and the HIE, in which it agrees to achieve the following milestones by the specified dates, or maintain its participation in the milestone activities if they have already been achieved;

      ii. By June 1, 2020, the hospital must electronically submit the following actual patient identifiable information to the production environment of qualifying HIE organization: admission, discharge, and transfer information (generally known as ADT information), including data from the hospital emergency department if the provider has an emergency department;

      iii. By August 1, 2020, the hospital must electronically submit the following actual patient identifiable information to the production environment of a qualifying HIE organization: laboratory and radiology information (if the provider has these services), transcription, medication information, immunization data, and discharge summaries that include, at a minimum, discharge orders, discharge instructions, active medications, new prescriptions, active problem lists (diagnosis), treatments and procedures conducted during the stay, active allergies, and discharge destination;

      iv. By September 1, 2020, or within 30 days of initiating COVID-19 lab testing, submit all COVID-19 lab test codes and the associated LOINC codes to qualifying HIE to ensure proper processing of lab results within the HIE system if applicable;

   v. By September 1, 2020, or within 30 days of initiating COVID-19 antibody testing, submit all COVID-19 antibody test codes and the associated LOINC codes to the qualifying HIE to ensure proper processing of lab results within the HIE system if applicable;

      vi. Within 30 days of initiating COVID-19 immunizations, submit all COVID-19 immunization codes and the associated LOINC codes to the qualifying HIE to ensure proper processing of immunizations within the HIE system if applicable;

      vii. By October 1, 2020, hospitals that utilize external reference labs for any lab result processing must submit necessary provider authorization forms to the qualifying HIE, if required by the external reference lab, to have all outsourced lab test results flow to the qualifying HIE on their behalf if applicable;

   viii. By November 1, 2020, the hospital must approve and authorize a formal scope of work (SOW) with a qualifying HIE organization to initiate and complete a Phase 1 data quality improvement effort, as defined by the qualifying HIE organization in collaboration with the qualifying HIE organization;

   ix. By January 1, 2021, the hospital must complete the Phase 1 initial data quality profile with a qualifying HIE organization;

   x. By May 1, 2021, the hospital must complete the Phase 1 final data quality profile with a qualifying HIE organization;

   b. By May 27, 2020, a hospital which received Differential Adjusted Payments October 1, 2019 through September 30, 2020, submits a Letter of Intent to AHCCCS and a qualifying HIE organization in which the hospital agrees to achieve all of the following:

      i. By May 27, 2020, the hospital must have in place an active participation agreement with a qualifying HIE organization and submit a LOI to AHCCCS and the HIE, in which it agrees to achieve the following milestones by the specified dates, or maintain its participation in the milestone activities if they have already been achieved;

      ii. By June 1, 2020, the hospital must electronically submit the following actual patient identifiable information to the production environment of a qualifying HIE organization: laboratory and radiology information (if the provider has these services), transcription, medication information, immunization data, and discharge summaries that include, at a minimum, discharge orders, discharge instructions, active medications, new prescriptions, active problem lists (diagnosis), treatments and procedures conducted during the stay, active allergies, and discharge destination;

      iii. By September 1, 2020, or within 30 days of initiating COVID-19 lab testing, submit all COVID-19 lab test codes and the associated LOINC codes to qualifying HIE to ensure proper processing of lab results within the HIE system if applicable;

      iv. By September 1, 2020, or within 30 days of initiating COVID-19 antibody testing, submit all COVID-19 antibody test codes and the associated LOINC codes to the qualifying HIE to ensure proper processing of lab results within the HIE system if applicable;

      v. By September 1, 2020, or within 30 days of initiating COVID-19 antibody testing, submit all COVID-19 antibody test codes and the associated LOINC codes to the qualifying HIE to ensure proper processing of lab results within the HIE system if applicable;

      vi. Within 30 days of initiating COVID-19 immunizations, submit all COVID-19 immunization codes and the associated LOINC codes to the qualifying HIE to ensure proper processing of immunizations within the HIE system if applicable;

      vii. By October 1, 2020, hospitals that utilize external reference labs for any lab result processing must submit necessary provider authorization forms to the qualifying HIE, if required by the external reference lab, to have all outsourced lab test results flow to the qualifying HIE on their behalf if applicable;
vi. By October 1, 2020, hospitals that utilize external reference labs for any lab result processing must submit necessary provider authorization forms to the qualifying HIE, if required by the external reference lab, to have all outsourced lab test results flow to the qualifying HIE on their behalf if applicable;

vii. By November 1, 2020, the hospital must approve and authorize a formal SOW to initiate and complete a Phase 2 data quality improvement effort, as defined by the qualifying HIE organization and in collaboration with the qualifying HIE organization;

viii. By January 1, 2021, the hospital must complete the Phase 2 initial data quality profile with a qualifying HIE organization;

ix. By May 1, 2021, the hospital must complete the Phase 2 final data quality profile with a qualifying HIE organization;

x. Hospitals that meet each of the following HIE data quality performance criteria will be eligible to receive DAP increases:

1. Demonstrate a 10% improvement from baseline measurements in the initial data quality profile, based on July 2019 data, to the final data quality profile, based on March 2020 data.

2. Meet a minimum performance standard of at least 60% based on March 2020 data.

3. If performance meets or exceeds an upper threshold of 90% based on March 2020 data the hospital meets the criteria. Regardless of the percentage improvement from the baseline measurements;

c. Meet or exceed the statewide average on May 12, 2020 for the Severe Sepsis/Septic Shock (SEP-1) performance measure from the Medicare Hospital Compare website;

d. Be a participant in the Improving Pediatric Sepsis Outcomes collaborative in 2020;

e. For dates of services from October 1, 2020 through September 30, 2021, hospitals subject to APR-DRG reimbursement (Provider Type 02) may qualify for a DAP on codes J7296-J7298, J7300-J7301, and J7307 billed on the 1500 or UB-04 forms for long-acting reversible contraception devices.

2. A hospital designated by the Arizona Department of Health Services Division of Licensing Services as type: hospital, subtype: critical access hospital will qualify for an increase if it meets this criteria. By May 27, 2020, a hospital which received Differential Adjusted Payments October 1, 2019 through September 30, 2020, submits a Letter of Intent to AHCCCS and a qualifying HIE organization in which the hospital agrees to achieve all of the following:

a. By May 27, 2020, the hospital must have in place an active participation agreement with a qualifying HIE organization and submit a LOI to AHCCCS and the HIE, in which it agrees to achieve the following milestones by the specified dates, or maintain its participation in the milestone activities if they have already been achieved;

b. By June 1, 2020, the hospital must electronically submit the following actual patient identifiable information to the production environment of a qualifying HIE organization: admission, discharge and transfer information (generally known as ADT information), including data from the hospital emergency department if the provider has an emergency department, laboratory and radiology information (if the provider has these services), transcription, medication information, immunization data, and discharge summaries that include, at a minimum, discharge orders, discharge instructions, active medications, new prescriptions, active problem lists (diagnosis), treatments and procedures conducted during the stay, active allergies, and discharge destination;

c. By September 1, 2020, or within 30 days of initiating COVID-19 lab testing, submit all COVID-19 lab test codes and the associated LOINC codes to qualifying HIE to ensure proper processing of lab results within the HIE system if applicable;

d. By September 1, 2020 or within 30 days of initiating COVID-19 antibody testing, submit all COVID-19 antibody test codes and the associated LOINC codes to the qualifying HIE to ensure proper processing of lab results within the HIE system if applicable;

e. Within 30 days of initiating COVID-19 immunizations, submit all COVID-19 immunization codes and the associated LOINC codes to the qualifying HIE to ensure proper processing of immunizations within the HIE system if applicable;

f. By October 1, 2020, hospitals that utilize external reference labs for any lab result processing must submit necessary provider authorization forms to the qualifying HIE, if required by the external reference lab, to have all outsourced lab test results flow to the qualifying HIE on their behalf if applicable;

2. By November 1, 2020, the hospital must approve and authorize a formal SOW to initiate and complete a Phase 2 data quality improvement effort, as defined by the qualifying HIE organization and in collaboration with the qualifying HIE organization;

h. By January 1, 2021, the hospital must complete the Phase 2 initial data quality profile with a qualifying HIE organization;

i. By May 1, 2021, the hospital must complete the Phase 2 final data quality profile with a qualifying HIE organization;

j. Hospitals that meet each of the following HIE data quality performance criteria will be eligible to receive DAP increases:

i. Demonstrate a 10% improvement from baseline measurements in the initial data quality profile, based on July 2019 data, to the final data quality profile, based on March 2020 data;

ii. Meet a minimum performance standard of at least 60% based on March 2020 data;

iii. If performance meets or exceeds an upper threshold of 90% based on March 2020 data the hospital meets the criteria, regardless of the percentage improvement from the baseline measurements;

3. A hospital designated as type: hospital, subtype: long term, psychiatric, or rehabilitation by the Arizona Department of Health Services Division of Licensing Services will qualify for an increase if it meets the criteria specified in (E)(3)(a), (b), (c), (d), or (e);

a. By May 27, 2020, a hospital which did receive Differential Adjusted Payments from October 1, 2019 through September 30, 2020, submits a Letter of
Intent to AHCCCS and a qualifying HIE organization in which the hospital agrees to achieve all of the following:

i. By May 27, 2020, the hospital must have in place an active participation agreement with a qualifying HIE organization and submit a LOI to AHCCCS and the HIE, in which it agrees to achieve the following milestones by the specified dates, or maintain its participation in the milestone activities if they have already been achieved;

ii. By June 1, 2020, the hospital must electronically submit the following actual patient identifiable information to the production environment of a qualifying HIE organization: admission, discharge, and transfer information (generally known as ADT information), including data from the hospital emergency department if the provider has an emergency department;

iii. By August 1, 2020, the hospital must electronically submit the following actual patient identifiable information to the production environment of a qualifying HIE organization: laboratory and radiology information (if the provider has these services), transcription, medication information, immunization data, and discharge summaries that include, at a minimum, discharge orders, discharge instructions, active medications, new prescriptions, active problem lists (diagnosis), treatments and procedures conducted during the stay, active allergies, and discharge destination;

iv. By September 1, 2020, or within 30 days of initiating COVID-19 lab testing, submit all COVID-19 lab test codes and the associated LOINC codes to qualifying HIE to ensure proper processing of lab results within the HIE system if applicable;

v. By September 1, 2020 or within 30 days of initiating COVID-19 antibody testing, submit all COVID-19 antibody test codes and the associated LOINC codes to the qualifying HIE to ensure proper processing of lab results within the HIE system if applicable;

vi. Within 30 days of initiating COVID-19 immunizations, submit all COVID-19 immunization codes and the associated LOINC codes to the qualifying HIE to ensure proper processing of immunizations within the HIE system if applicable;

i. By October 1, 2020, hospitals that utilize external reference labs for any lab result processing must submit necessary provider authorization forms to the qualifying HIE, if required by the external reference lab, to have all outsourced lab test results flow to the qualifying HIE on their behalf if applicable;

vii. By November 1, 2020, the hospital must approve and authorize a formal SOW with a qualifying HIE organization to initiate and complete a Phase 1 data quality improvement effort, as defined by the qualifying HIE organization and in collaboration with the qualifying HIE organization;

ix. By January 1, 2021, the hospital must complete the Phase 1 initial data quality profile with a qualifying HIE organization;

x. By May 1, 2021, the hospital must complete the Phase 1 final data quality profile with a qualifying HIE organization;

b. By May 27, 2020, a hospital which received Differential Adjusted Payments October 1, 2019 through September 30, 2020, submits a Letter of Intent to AHCCCS and a qualifying HIE organization in which the hospital agrees to achieve all of the following:

i. By May 27, 2020, the hospital must have in place an active participation agreement with a qualifying HIE organization and submit a LOI to AHCCCS and the HIE, in which it agrees to achieve the following milestones by the specified dates, or maintain its participation in the milestone activities if they have already been achieved;

ii. By June 1, 2020, the hospital must electronically submit the following actual patient identifiable information to the production environment of a qualifying HIE organization: laboratory and radiology information (if the provider has these services), transcription, medication information, immunization data, and discharge summaries that include, at a minimum, discharge orders, discharge instructions, active medications, new prescriptions, active problem lists (diagnosis), treatments and procedures conducted during the stay, active allergies, and discharge destination;
CHAPTER 22. ARIZONA HEALTH CARE COST CONTAINMENT SYSTEM - ADMINISTRATION

ment effort, as defined by the qualifying HIE organization and in collaboration with a qualifying HIE organization;

viii. By January 1, 2021, the hospital must complete the Phase 2 initial data quality profile with a qualifying HIE organization;

ix. By May 1, 2021, the hospital must complete the Phase 2 final data quality profile with a qualifying HIE organization;

x. Performance Criteria: Hospitals that meet each of the following HIE data quality performance criteria will be eligible to DAP increases;

1. Demonstrate a 10% improvement from baseline measurements in the initial data quality profile, based on July 2019 data, to the final data quality profile, based on March 2020 data;

2. Meet a minimum performance standard of at least 60% based on March 2020 data;

3. If performance meets or exceeds an upper threshold of 90% based on March 2020 data the hospital meets the criteria, regardless of the percentage improvement from the baseline measurements.

c. On May 12, 2020 is identified as a Medicare Annual Payment Update recipients on the QualityNet.org website;

d. On May 12, 2020 meets or falls below the national average for the rate of pressure ulcers that are new or worsened from the Medicare Long Term Hospital Compare website;

e. On May 12, 2020 meets or falls below the national average for the rate of pressure ulcers that are new or worsened from the Medicare Inpatient Rehabilitation Facility Compare website.

4. A hospital designated as type: hospital by the Arizona Department of Health Services Division of Licensing Services and is owned and/or operated by Indian Health Services (HIS) or under Tribal authority will qualify for an increase if it meets this criteria. By May 27, 2020, a hospital submits a Letter of Intent to AHCCCS and a qualifying HIE organization in which the hospital agrees to achieve all of the following:

a. By May 27, 2020, the facility must have in place an active participation agreement with a qualifying HIE organization and submit a LOI to AHCCCS and the HIE, in which it agrees to achieve the following milestones by the specified dates, or maintain its participation in the milestone activities if they have already been achieved;

b. By October 1, 2020, hospitals that utilize external reference labs for any lab result processing must submit necessary provider authorization forms to the qualifying HIE, if required by the external reference lab, to have all outsourced lab test results flow to the qualifying HIE on their behalf;

c. By December 1, 2020, the facility must approve and authorize a formal SOW with a qualifying HIE organization to develop and implement the data exchange necessary to meet the requirements of Milestones d, e and f;

d. By April 1, 2021 the facility must electronically submit actual patient identifiable information to the production environment of a qualifying HIE organization, including admission, discharge, and transfer information (generally known as ADT information), including data from the hospital emergency department if the facility has an emergency department;

e. By June 1, 2021 the facility must electronically submit the following actual patient identifiable information to the production environment of a qualifying HIE organization: laboratory and radiology information (if the provider has these services), transcription, medication information, immunization data, and discharge summaries that include, at a minimum, discharge orders, discharge instructions, active medications, new prescriptions, active problem lists (diagnosis), treatments and procedures conducted during the stay, active allergies, and discharge destination;

f. If the facility has ambulatory and/or behavioral health practices, then no later than June 1, 2021 the facility must submit actual patient identifiable information to the production environment of a qualifying HIE, including registration, encounter summary, and SMI data elements as defined by the qualifying HIE organization.

F. If a hospital submits a Letter of Intent to AHCCCS and received the Differential Adjusted Payments October 1, 2019 through September 30, 2020, but fails to achieve or maintain one or more of the required criteria by the specified date, that hospital will be ineligible to receive any Differential Adjusted Payments for dates of service from October 1, 2020 through September 30, 2021 if a Differential Adjusted Payment is available at that time.

G. Fee adjustments made under subsections (A), (B), (C), (D), and (E) are on file with AHCCCS and current adjustments are posted on AHCCCS’ website.

Historical Note

R9-22-712.36. Reserved
R9-22-712.37. Reserved
R9-22-712.38. Reserved
R9-22-712.39. Reserved
R9-22-712.40. Outpatient Hospital Reimbursement: Annual and Periodic Update
A. Procedure codes. When procedure codes are issued by CMS and added to the Current Procedural Terminology published by the American Medical Association, AHCCCS shall add to the Outpatient Capped Fee-for-Service Schedule the new procedure codes for covered outpatient services and shall either assign the default CCR under R9-22-712.40(F)(2), the Medicare rate, or calculate an appropriate fee.
CHAPTER 22. ARIZONA HEALTH CARE COST CONTAINMENT SYSTEM - ADMINISTRATION

B. APC changes. AHCCCS may reassign procedure codes to new or different APC groups when APC groups are revised by CMS. AHCCCS may reassign procedure codes to a different APC group than Medicare. If AHCCCS determines that utilization of a procedure code within the Medicare program is substantially different from utilization of the procedure code in the AHCCCS program, AHCCCS may choose not to assign the procedure code to any APC group. For procedure codes not grouped into an APC by Medicare, AHCCCS may assign the code to an APC group when AHCCCS determines that the cost and resources associated with the non-assigned code are substantially similar to those in the APC group.

C. Annual update for Outpatient Hospital Fee Schedule. Beginning October 1, 2006, through September 30, 2011, AHCCCS shall adjust outpatient fee schedule rates:
   1. Annually by multiplying the rates effective during the prior year by the Global Insight Prospective Hospital Market Basket Inflation Index; or
   2. In a particular year the director may substitute the increase in subsection (C)(1) by calculating the dollar value associated with the inflation index in subsection (C)(1), and applying the dollar value to adjust rates at varying levels.

D. Reductions to the Outpatient Capped Fee-For-Service Schedule. Claims paid using the Outpatient Capped Fee-For-Service Schedule with dates of service on or after October 1, 2011, shall be reimbursed at 95 percent of the rates in effect on September 30, 2011, subject to the annual adjustments to procedure codes and APCs under this Section.

E. Rebase. AHCCCS shall rebase the outpatient fees every five years.

F. Statewide CCR:
   1. For begin dates of service on or before September 30, 2011, the statewide CCR calculated in R9-22-712.30 shall be recalculated at the time of rebasing. When rebasing, AHCCCS may recalculate the statewide CCR based on the costs and charges for services excluded from the outpatient hospital fee schedule.
   2. For begin dates of service on or after October 1, 2011, the statewide CCR shall be set under R9-22-712.30(C).

G. Other Updates. In addition to the other updates provided for in this Section, the Administration may adjust the Outpatient Capped Fee-For-Service Fee Schedule and the Statewide CCR to the extent necessary to assure that payments are consistent with efficiency, economy, and quality of care and are sufficient to enlist enough providers so that care and services are available at least to the extent that such care and services are available to the general population in the geographic area.

**Historical Note**

R9-22-712.41. Reserved
R9-22-712.42. Reserved
R9-22-712.43. Reserved
R9-22-712.44. Reserved
R9-22-712.45. Outpatient Hospital Reimbursement: Outpatient Payment Restrictions

A. AHCCCS shall not reimburse hospitals for emergency room treatment, observation hours, or other outpatient hospital services performed on an outpatient basis if the member is admitted as an inpatient to the same hospital directly from the emergency room, observation, or other outpatient department.

B. AHCCCS shall include payment for the emergency room, observation, and other outpatient hospital services provided to the member before the hospital admission in the AHCCCS Inpatient Tiered Per Diem Capped Fee-For-Service Schedule under Article 7 of this Chapter.

C. Same day admit and discharge.
   1. For discharges before September 30, 2014. Same day admit and discharge claims that qualify for either the maternity or nursery tiers shall be paid based on the lesser of the rate for the maternity or nursery tier, or the outpatient hospital fee schedule.
   2. For discharge dates on and after October 1, 2014. Same day admit and discharge claims are paid for through the outpatient fee schedule.

**Historical Note**
New Section made by exempt rulemaking at 11 A.A.R. 2297, effective July 1, 2005 (Supp. 05-2). Amended by final rulemaking at 20 A.A.R. 1956, September 6, 2014 (Supp. 14-3).

R9-22-712.46. Reserved
R9-22-712.47. Reserved
R9-22-712.48. Reserved
R9-22-712.49. Reserved
R9-22-712.50. Outpatient Hospital Reimbursement: Billing
To receive appropriate reimbursement, hospitals shall:
   1. Bill outpatient hospital services on the CMS approved Uniform Billing Form or in electronic format using the appropriate HIPAA transaction.
   2. Follow the UB Manual Guidelines, as published by the National Uniform Billing Committee, and use the appropriate revenue code and procedure code combination as prescribed by AHCCCS and on file and online with AHCCCS.

**Historical Note**
New Section made by exempt rulemaking at 11 A.A.R. 2297, effective July 1, 2005 (Supp. 05-2).
R9-22-712.59.  Reserved

R9-22-712.60.  Diagnosis Related Group Payments
A.  Inpatient hospital services with discharge dates on or after October 1, 2014, shall be reimbursed using the diagnosis related group (DRG) payment methodology described in this Section and sections R9-22-712.61 through R9-22-712.81.
B.  Payments made using the DRG methodology shall be the sole reimbursement to the hospital for all inpatient hospital services and related supplies provided by the hospital.  Services provided in the emergency room, observation area, or other outpatient departments that are directly followed by an inpatient admission to the same hospital are not reimbursed separately.  Are reimbursed through the DRG methodology and not reimbursed separately.
C.  Each claim for an inpatient hospital stay shall be assigned a DRG code and a DRG relative weight based on the All Patient Refined Diagnosis Related Group (APR-DRG) classification system established by 3M Health Information Systems.  The applicable version of the APR-DRG classification system shall be available on the agency’s website.
D.  Payments for inpatient hospital services reimbursed using the DRG payment methodology are subject to quick pay discounts and slow pay penalties under A.R.S. 36-2904.
E.  Payments for inpatient hospital services reimbursed using the DRG payment methodology are subject to the Urban Hospital Reimbursement Program under R9-22-718.
F.  For purposes of this Section and sections R9-22-712.61 through R9-22-712.81:
   1.  “DRG National Average length of stay” means the national arithmetic mean length of stay published in the All Patient Refined Diagnosis Related Group (APR-DRG) classification system established by 3M Health Information Systems.
   2.  “Length of stay” means the total number of calendar days of an inpatient stay beginning with the date of admission through discharge, but not including the date of discharge (including the date of a discharge to another hospital, i.e., a transfer) unless the member expires.
   4.  “Medicare labor share” means a hospital’s labor costs as a percentage of its total costs as determined by CMS for purposes of the Medicare Inpatient Prospective Payment System.

Historical Note

R9-22-712.61.  DRG Payments: Exceptions
A.  Notwithstanding section R9-22-712.60, claims for inpatient services from the following hospitals shall be paid on a per diem basis, including provisions for outlier payments, where rates and outlier thresholds are included in the capped fee schedule published by the Administration on its website and available for inspection during normal business hours at 701 E.  Jefferson, Phoenix, Arizona.  If the covered costs per day on a claim exceed the published threshold for a day, the claim is considered an outlier.  Outliers will be paid by multiplying the covered charges by the outlier CCR.  The outlier CCR will be the sum of the urban or rural default operating CCR appropriate to the location of the hospital and the statewide capital cost-to-charge ratio in the data file established as part of the Medicare Inpatient Prospective Payment System by CMS.  The resulting amount will be the total reimbursement for the claim.  There is no provision for outlier payments for hospitals described under subsection (A)(3).
   1.  Hospitals designated as type: hospital, subtype: rehabilitation in the Provider & Facility Database for Arizona Medical Facilities posted by the Arizona Department of Health Services Division of Licensing Services on its website in March of each year;
   2.  Hospitals designated as type: hospital, subtype: long term in the Provider & Facility Database for Arizona Medical Facilities posted by the Arizona Department of Health Services Division of Licensing Services on its website for March of each year;
   3.  Hospitals designated as type: hospital, subtype: psychiatric in the Provider & Facility Database for Arizona Medical Facilities posted by the Arizona Department of Health Services Division of Licensing Services on its website for March of each year;
B.  Notwithstanding section R9-22-712.60, claims for inpatient services that are covered by a RBHA or TRBHA, where the principal diagnosis on the claim is a behavioral health diagnosis, shall be reimbursed as prescribed by a per diem rate described by a fee schedule established by the Administration; however, if the principal diagnosis is a physical health diagnosis, the claim shall be processed under the DRG methodology described in this section, even if behavioral health services are provided during the inpatient stay.
C.  Notwithstanding section R9-22-712.60, claims for services associated with transplant services shall be paid in accordance with the contract between the AHCCCS administration and the transplant facility.
D.  Notwithstanding section R9-22-712.60, claims from an IHS facility or 638 Tribal provider shall be paid the all-inclusive rate on a per visit basis in accordance with the rates published annually by IHS in the federal register.
E.  For hospitals that have contracts with the Administration for the provision of transplant services, inpatient days associated with transplant services are paid in accordance with the terms of the contract.
F.  For inpatient services with a date of admission from October 1, 2020 through September 30, 2021, provided by a hospital in subsection (A) that qualifies, the administration shall pay the hospital an Inpatient Differential Adjusted Payment equal to the sum of the payment otherwise provided for in subsection (A) plus the product of the amount otherwise provided for in subsection (A) and a percentage published on the Administration’s public website as part of its fee schedule, subsequent to a public notice published no later than September 1, 2020.  A hospital will qualify for an increase if it meets the criteria specified below for the applicable hospital subtype.
   1.  A hospital designated by the Arizona Department of Health Services Division of Licensing Services as type: hospital, subtype: short-term or children’s will qualify for an increase if it meets the criteria in subsection (F)(1)(a), (i) through (x), (F)(1)(b), (i) through (x), and (1) through (3); (F)(1)(c); (F)(1)(d), or (F)(1)(e):
   a.  By May 27, 2020, a hospital which did not receive Differential Adjusted Payments from October 1, 2019 through September 30, 2020, submits a Letter of Intent to AHCCCS and a qualifying Health Information Exchange (HIE) organization in which the hospital agrees to achieve all of the following:
   i.  By May 27, 2020, the hospital must have in place an active participation agreement with a qualifying HIE organization and submit a LOI to AHCCCS and the HIE, in which it agrees to
achieve the following milestones by the specified dates, or maintain its participation in the milestone activities if they have already been achieved;

ii. By June 1, 2020, the hospital must electronically submit the following actual patient identifiable information to the production environment of qualifying HIE organization: admission, discharge, and transfer information (generally known as ADT information), including data from the hospital emergency department if the provider has an emergency department;

iii. By August 1, 2020, the hospital must electronically submit the following actual patient identifiable information to the production environment of a qualifying HIE organization: laboratory and radiology information (if the provider has these services), transcription, medication information, immunization data, and discharge summaries that include, at a minimum, discharge orders, discharge instructions, active medications, new prescriptions, active problem lists (diagnosis), treatments and procedures conducted during the stay, active allergies, and discharge destination;

iv. By September 1, 2020, or within 30 days of initiating COVID-19 lab testing, submit all COVID-19 lab test codes and the associated LOINC codes to qualifying HIE to ensure proper processing of lab results within the HIE system if applicable;

v. By September 1, 2020, or within 30 days of initiating COVID-19 antibody testing, submit all COVID-19 antibody test codes and the associated LOINC codes to the qualifying HIE to ensure proper processing of lab results within the HIE system if applicable;

vi. Within 30 days of initiating COVID-19 immunizations, submit all COVID-19 immunization codes and the associated LOINC codes to the qualifying HIE to ensure proper processing of immunizations within the HIE system if applicable;

vii. By October 1, 2020, hospitals that utilize external reference labs for any lab result processing must submit necessary provider authorization forms to the qualifying HIE, if required by the external reference lab, to have all outsourced lab test results flow to the qualifying HIE on their behalf if applicable;

viii. By November 1, 2020, the hospital must approve and authorize a formal scope of work (SOW) with a qualifying HIE organization to initiate and complete a Phase 1 data quality improvement effort, as defined by the qualifying HIE organization in collaboration with the qualifying HIE organization;

ix. By January 1, 2021, the hospital must complete the Phase 1 initial data quality profile with a qualifying HIE organization;

x. By May 1, 2021, the hospital must complete the Phase 1 final data quality profile with a qualifying HIE organization;

b. By May 27, 2020, a hospital which received Differential Adjusted Payments October 1, 2019 through September 30, 2020, submits a Letter of Intent to AHCCCS and a qualifying HIE organization in which the hospital agrees to achieve all of the following:

i. By May 27, 2020, the hospital must have in place an active participation agreement with a qualifying HIE organization and submit a LOI to AHCCCS and the HIE, in which it agrees to achieve the following milestones by the specified dates, or maintain its participation in the milestone activities if they have already been achieved;

ii. By June 1, 2020, the hospital must electronically submit the following actual patient identifiable information to the production environment of a qualifying HIE organization: admission, discharge and transfer information (generally known as ADT information), including data from the hospital emergency department if the provider has an emergency department, laboratory and radiology information (if the provider has these services), transcription, medication information, immunization data, and discharge summaries that include, at a minimum, discharge orders, discharge instructions, active medications, new prescriptions, active problem lists (diagnosis), treatments and procedures conducted during the stay, active allergies, and discharge destination;

iii. By September 1, 2020, or within 30 days of initiating COVID-19 lab testing, submit all COVID-19 lab test codes and the associated LOINC codes to qualifying HIE to ensure proper processing of lab results within the HIE system if applicable;

iv. By September 1, 2020 or within 30 days of initiating COVID-19 antibody testing, submit all COVID-19 antibody test codes and the associated LOINC codes to the qualifying HIE to ensure proper processing of lab results within the HIE system if applicable;

v. Within 30 days of initiating COVID-19 immunizations, submit all COVID-19 immunization codes and the associated LOINC codes to the qualifying HIE to ensure proper processing of immunizations within the HIE system if applicable;

vi. By October 1, 2020, hospitals that utilize external reference labs for any lab result processing must submit necessary provider authorization forms to the qualifying HIE, if required by the external reference lab, to have all outsourced lab test results flow to the qualifying HIE on their behalf if applicable;

vii. By November 1, 2020, the hospital must approve and authorize a formal scope of work (SOW) with a qualifying HIE organization to initiate and complete a Phase 2 data quality improvement effort, as defined by the qualifying HIE organization in collaboration with the qualifying HIE organization;

viii. By January 1, 2021, the hospital must complete the Phase 2 initial data quality profile with a qualifying HIE organization.
ix. By May 1, 2021, the hospital must complete the Phase 2 final data quality profile with a qualifying HIE organization;

x. Hospitals that meet each of the following HIE data quality performance criteria will be eligible to receive DAP increases:

1) Demonstrate a 10% improvement from baseline measurements in the initial data quality profile, based on July 2019 data, to the final data quality profile, based on March 2020 data;

2) Meet a minimum performance standard of at least 60% based on March 2020 data;

3) If performance meets or exceeds an upper threshold of 90% based on March 2020 data the hospital meets the criteria. Regardless of the percentage improvement from the baseline measurements;

c. Meet or exceed the statewide average on May 12, 2020 for the Severe Sepsis/Septic Shock (SEP-1) performance measure from the Medicare Hospital Compare website;

d. Be a participant in the Improving Pediatric Sepsis Outcomes collaborative in 2020;

e. For dates of services from October 1, 2020 through September 30, 2021, hospitals subject to APR-DRG reimbursement (Provider Type 02) may qualify for a DAP on codes J7296-J7298, J7300-J7301, and J7307 billed on the 1500 or UB-04 forms for long-acting reversible contraception devices.

2. A hospital designated by the Arizona Department of Health Services Division of Licensing Services as type: hospital, subtype: critical access hospital will qualify for an increase if it meets this criteria. By May 27, 2020, a hospital which received Differential Adjusted Payments October 1, 2019 through September 30, 2020, submits a Letter of Intent to AHCCCS and a qualifying HIE organization in which the hospital agrees to achieve all of the following:

a. By May 27, 2020, the hospital must have in place an active participation agreement with a qualifying HIE organization and submit a LOI to AHCCCS and the HIE, in which it agrees to achieve the following milestones by the specified dates, or maintain its participation in the milestone activities if they have already been achieved;

b. By June 1, 2020, the hospital must electronically submit the following actual patient identifiable information to the production environment of a qualifying HIE organization: admission, discharge and transfer information (generally known as ADT information), including data from the hospital emergency department if the provider has an emergency department, laboratory and radiology information (if the provider has these services), transcription, medication information, immunization data, and discharge summaries that include, at a minimum, discharge orders, discharge instructions, active medications, new prescriptions, active problem lists (diagnosis), treatments and procedures conducted during the stay, active allergies, and discharge destination;

c. By September 1, 2020, or within 30 days of initiating COVID-19 lab testing, submit all COVID-19 lab test codes and the associated LOINC codes to qualifying HIE to ensure proper processing of lab results within the HIE system if applicable;

d. By September 1, 2020 or within 30 days of initiating COVID-19 antibody testing, submit all COVID-19 antibody test codes and the associated LOINC codes to the qualifying HIE to ensure proper processing of lab results within the HIE system if applicable;

e. Within 30 days of initiating COVID-19 immunizations, submit all COVID-19 immunization codes and the associated LOINC codes to the qualifying HIE to ensure proper processing of immunizations within the HIE system if applicable;

f. By October 1, 2020, hospitals that utilize external reference labs for any lab result processing must submit necessary provider authorization forms to the qualifying HIE, if required by the external reference lab, to have all outsourced lab test results flow to the qualifying HIE on their behalf if applicable;

g. By November 1, 2020, the hospital must approve and authorize a formal SOW to initiate and complete a Phase 2 data quality improvement effort, as defined by the qualifying HIE organization and in collaboration with the qualifying HIE organization;

h. By January 1, 2021, the hospital must complete the Phase 2 initial data quality profile with a qualifying HIE organization;

i. By May 1, 2021, the hospital must complete the Phase 2 final data quality profile with a qualifying HIE organization;

j. Hospitals that meet each of the following HIE data quality performance criteria will be eligible to receive DAP increases:

i) Demonstrate a 10% improvement from baseline measurements in the initial data quality profile, based on July 2019 data, to the final data quality profile, based on March 2020 data;

ii) Meet a minimum performance standard of at least 60% based on March 2020 data;

iii) If performance meets or exceeds an upper threshold of 90% based on March 2020 data the hospital meets the criteria, regardless of the percentage improvement from the baseline measurements.

Historical Note


R9-22-712.62. DRG Base Rate

A. The initial DRG base payment is the product of the DRG base rate, the DRG relative weight for the post-HCAC DRG code assigned to the claim, and any applicable provider and service policy adjustors.

B. The DRG base rate for each hospital is the statewide standardized amount of which the hospital’s labor-related share of that amount is adjusted by the hospital’s wage index. The hospital’s labor share is determined based on the labor share for the
Medicare inpatient prospective payment system published in Volume 81 of the Federal Register at page 57312, published August 22, 2016. The hospital’s wage index is determined based on the wage index tables reference in Volume 81 of the Federal Register at page 57311 published August 22, 2016. The statewide standardized amount is included in the AHCCCS capped fee schedule available on the agency’s website.

C. Claims shall be assigned both a DRG code derived from all diagnosis and surgical procedure codes included on the claim (the “pre-HCAC” DRG code) and a DRG code derived excluding diagnosis and surgical procedure codes associated with the health care acquired conditions that were not present on admission or any other provider-preventable conditions (the “post-HCAC” DRG code). The DRG code with the lower relative weight shall be used to process claims using the DRG methodology.

Historical Note

R9-22-712.63. DRG Base Payments Not Based on the Statewide Standardized Amount
A. Notwithstanding Section R9-22-712.62, a select specialty hospital statewide standardized amount shall be used in place of the statewide standardized amount in subsection R9-22-712.62(B) to calculate the DRG base rate for the following hospitals:
1. Hospitals located in a city with a population greater than one million, which on average have at least 15 percent of inpatient days for patients who reside outside of Arizona, and at least 50 percent of discharges as reported on the 2011 Medicare Cost Report are reimbursed by Medicare.
2. Hospitals designated as type: hospital, subtype: short-term that has a license number beginning “SH” in the Provider & Facility Database for Arizona Medical Facilities posted by the ADHS Division of Licensing Services on its website for March of each year.

B. The select specialty hospital standardized amount is included in the AHCCCS capped fee schedule available on the agency’s website.

Historical Note

R9-22-712.64. DRG Base Payments and Outlier CCR for Out-of-State Hospitals
A. DRG Base payment:
1. For high volume out-of-state hospitals defined in subsection (C), the wage adjusted DRG base payment is determined as described in R9-22-712.62.
2. Notwithstanding subsection R9-22-712.62 the wage adjusted DRG base rate for out-of-state hospitals that are not high volume hospitals shall be included in the AHCCCS capped fee schedule available on the agency’s website.

B. Outlier CCR:
1. Notwithstanding subsection R9-22-712.68, the CCR used for the outlier calculation for out-of-state hospitals that are not high volume hospitals shall be the sum of the statewide urban default operating cost-to-charge ratio and the statewide capital CCR in the data file established as part of the Medicare Inpatient Prospective Payment System by CMS.
2. The CCR used for the outlier calculation for high volume out-of-state hospitals is the same as in-state hospitals as described in R9-22-712.68.
3. A high volume out-of-state hospital is a hospital not otherwise excluded under R9-22-712.61, that is located in a county that borders the State of Arizona and had 500 or more AHCCCS covered inpatient days for the fiscal year beginning October 1, 2015.
4. Other than as required by this Section, DRG reimbursement for out-of-state hospitals is determined under R9-22-712.60 through R9-22-712.81.

Historical Note

R9-22-712.65. DRG Provider Policy Adjustor
A. After calculating the DRG base payment as required in sections R9-22-712.62, R9-22-712.63, or R9-22-712.64, for claims from a high-utilization hospital, the product of the DRG base rate and the DRG relative weight for the post-HCAC DRG code shall be multiplied by a provider policy adjustor that is included in the AHCCCS capped fee schedule available on the agency’s website.

B. A hospital is a high-utilization hospital if the hospital had:
1. Covered inpatient days subject to DRG reimbursement, determined using adjudicated claim and encounter data during the fiscal year beginning October 1, 2015, equal to at least four hundred percent of the statewide average number of AHCCCS-covered inpatient days at all hospitals;
2. A Medicaid inpatient utilization rate greater than 30% calculated as the ratio of AHCCCS-covered inpatient days to total inpatient days as reported in the hospital’s Medicare Cost Report for the fiscal year ending 2016; and,
3. Received less than $2 million in add-on payment for outliers under R9-22-712.68, based on adjudicated claims and encounters for fiscal year beginning October 1, 2015.

Historical Note

R9-22-712.66. DRG Service Policy Adjustor
In addition to Section R9-22-712.65, for claims with DRG codes in the following categories, the product of the DRG base rate, the DRG relative weight for the post-HCAC DRG code, and the DRG provider policy adjustor shall be multiplied by the service policy adjustor listed in the AHCCCS capped fee schedule, available on the agency’s website, corresponding to the following DRG codes:
1. Normal newborn DRG codes,
2. Neonates DRG codes,
3. Obstetrics DRG codes,
4. Psychiatric DRG codes,
5. Rehabilitation DRG codes,
6. Burn DRG codes,
7. Claims for members under age 19 assigned DRG codes other than listed above:
   a. For dates of discharge occurring on or after October 1, 2014 and ending no later than December 31, 2015 regardless of severity of illness level,
   b. For dates of discharge on or after January 1, 2016, for severity of illness levels 1 and 2.
CHAPTER 22. ARIZONA HEALTH CARE COST CONTAINMENT SYSTEM - ADMINISTRATION

9 A.A.C. 22

c. For dates of discharge on or after January 1, 2016 and before January 1, 2017, for severity of illness levels 3 and 4.
d. For dates of discharge on or after January 1, 2017, and before January 1, 2018 for severity of illness levels 3 and 4.
e. For dates of discharge on or after January 1, 2018, for severity of illness levels 3 and 4.
8. Claims for members assigned DRG codes other than listed above.

Historical Note

R9-22-712.67. DRG Reimbursement: Transfers

A. For purposes of this Section a “transfer” means the transfer of a member from a hospital to a short-term general hospital for inpatient care, a designated cancer center, children’s hospital, or a critical access hospital except when a member is moved for the purpose of receiving sub-acute services.
B. Designated cancer center or children’s hospitals are those hospitals identified as such in the UB-04 billing manual published by the National Uniform Billing Committee.
C. The hospital the member is transferred from shall be reimbursed either the initial DRG base payment or the transfer DRG base payment, whichever is less.
D. The transfer DRG base payment is an amount equal to the initial DRG base payment, as determined after making any provider or service policy adjustments, divided by the DRG National Average length of stay for the DRG code multiplied by the sum of one plus the length of stay.
E. The hospital the member is transferred to shall be reimbursed under the DRG payment methodology without a reduction due to the transfer.
F. Unadjusted DRG base payment. The unadjusted DRG base payment is either the initial DRG base payment, as determined after making any provider or service policy adjustments, or the transfer DRG base payment, whichever is less.

Historical Note

R9-22-712.68. DRG Reimbursement: Unadjusted Outlier Add-on Payment

A. Claims for inpatient hospital services qualify for an outlier add-on payment if the claim cost exceeds the outlier cost threshold.
B. The claim cost is determined by multiplying covered charges by an outlier CCR as described by the following subsections:
1. For hospitals designated as type: hospital, subtype: children’s in the Provider & Facility Database for Arizona Medical Facilities posted by the ADHS Division of Licensing Services on its website for March of each year. The outlier CCR will be calculated by dividing the hospital total costs by the total charges using the most recent Medicare Cost Report available as of September 1 of that year.
2. For Critical Access Hospitals the outlier CCR will be the sum of the statewide rural default operating cost-to-charge ratio and the statewide capital cost-to-charge ratio in the data file established as part of the Medicare Inpatient Prospective Payment System by CMS.
3. For all other hospitals the outlier CCR will be the sum of the operating cost-to-charge ratio and the capital cost-to-charge ratio established for each hospital in the impact file established as part of the Medicare Inpatient Prospective Payment System by CMS.
C. AHCCCS shall update the CCRs described in subsection (B) to conform to the most recent CCRs established by CMS as of September 1 of each year, and the CCRs so updated shall be used for claims with dates of discharge on or after October 1 of that year.
D. The outlier threshold is equal to the sum of the unadjusted DRG base payment plus the fixed loss amount. The fixed loss amount for critical access hospitals and for all other hospitals are included in the AHCCCS capped fee schedule available on the agency’s website.
E. For those inpatient hospital claims that qualify for an outlier add-on payment, the payment is calculated by subtracting the outlier threshold from the claim cost and multiplying the result by the DRG marginal cost percentage. The DRG marginal cost percentage for claims assigned DRG codes associated with the treatment of burns and for all other claims are included in the AHCCCS capped fee schedule available on the agency’s website.

Historical Note

R9-22-712.69. DRG Reimbursement: Covered Day Adjusted DRG Base Payment and Covered Day Adjusted Outlier Add-on Payment

Adjustments to the payments are made to account for days not covered by AHCCCS as follows:
1. A covered day reduction factor unadjusted is determined if the member is not eligible on the first day of the inpatient stay but is eligible for subsequent days during the inpatient stay. In this case, a covered day reduction factor unadjusted is calculated by dividing the number of AHCCS covered days by the DRG National Average length of stay. The number of AHCCS covered days is equal to the number of days the member is eligible during the inpatient stay.
2. A covered day reduction factor unadjusted is also determined if the member is eligible on the first day of the inpatient stay but is determined ineligible for one or more days prior to the date of discharge. In this case, a covered day reduction factor unadjusted is calculated by adding one to the number of AHCCS covered days and dividing the result by the DRG National Average length of stay. The number of AHCCS covered days is equal to the number of days the member is eligible during the inpatient stay.
3. If the covered day reduction factor unadjusted is greater than one, then the covered day reduction factor final is one; otherwise, the covered day reduction factor final is equal to the covered day reduction factor unadjusted.
4. The covered day adjusted DRG base payment is an amount equal to the product of the unadjusted DRG base payment and the covered day reduction factor final.
5. The covered day adjusted DRG outlier add-on payment is an amount equal to the product of the unadjusted DRG outlier add-on payment and the covered day reduction factor final.

September 30, 2021 Supp. 21-3 Page 81
Historical Note
New Section made by final rulemaking at 20 A.A.R. 1956, September 6, 2014 (Supp. 14-3).

R9-22-712.70. Covered Day Adjusted DRG Base Payment and Covered Day Adjusted Outlier Add-on Payment for FES members
In addition to the covered day reduction factor in R9-22-712.69, a covered day reduction factor unadjusted is determined for an inpatient stay during which an FES member receives services for the treatment of an emergency medical condition and also receives services once the condition no longer meets the criteria as an emergency medical condition described in R9-22-217.

1. A covered day reduction factor unadjusted is calculated by adding one to the AHCCCS covered days and dividing the result by the DRG National Average length of stay. The number of AHCCCS covered days is equal to the number of inpatient days during which an FES member receives services for an emergency medical condition as described in R9-22-217. For purposes of this adjustment, any portion of a day during which the FES member receives treatment for an emergency medical condition is counted as an AHCCCS covered day.

2. If the covered day reduction factor unadjusted is greater than one, then the covered day reduction factor final is one; otherwise, the covered day reduction factor final is equal to the covered day reduction factor unadjusted.

3. The covered day adjusted DRG base payment is an amount equal to the product of the unadjusted DRG base payment and the covered day reduction factor final.

4. The covered day adjusted DRG outlier add-on payment is an amount equal to the product of the unadjusted DRG outlier add-on payment and the covered day reduction factor final.

Historical Note
New Section made by final rulemaking at 20 A.A.R. 1956, September 6, 2014 (Supp. 14-3).

R9-22-712.71. Final DRG Payment
The final DRG payment is the sum of the final DRG base payment, the final DRG outlier add-on payment, and the Differential Adjusted Payment.

1. The final DRG base payment is an amount equal to the product of the covered day adjusted DRG base payment and a hospital-specific factor established to limit the financial impact to individual hospitals of the transition from the tiered per diem payment methodology and to account for improvements in documentation and coding that are expected as a result of the transition.

2. The final DRG outlier add-on payment is an amount equal to the product of the covered day adjusted DRG outlier add-on payment and a hospital-specific factor established to limit the financial impact to individual hospitals of the transition from the tiered per diem payment methodology and to account for improvements in documentation and coding that are expected as a result of the transition.

3. The factor for each hospital and for each federal fiscal year is published as part of the AHCCCS capped fee schedule and is available on the AHCCCS administration’s website and is on file for public inspection at the AHCCCS administration located at 701 E. Jefferson Street, Phoenix, Arizona.

4. For inpatient services with a date of discharge from October 1, 2020 through September 30, 2021, the Inpatient Differential Adjusted Payment is the sum of the final DRG base payment and the final DRG outlier add-on payment multiplied by a percentage published on the Administration’s public website as part of its fee schedule, subsequent to the public notice published no later than September 1, 2020. A hospital will qualify for an increase if it meets the criteria specified below for the applicable hospital subtype.

a. A hospital designated by the Arizona Department of Health Services Division of Licensing Services as type: hospital, subtype: short-term or children’s will qualify for an increase if it meets the criteria in (4)(a)(i), (1) through (10); (4)(a)(ii), (1) through (10)(a) through (c); and (4)(iii), (iv), or (v):

i. By May 27, 2020, a hospital which did not receive Differential Adjusted Payments from October 1, 2019 through September 30, 2020, submits a Letter of Intent to AHCCCS and a qualifying Health Information Exchange (HIE) organization in which the hospital agrees to achieve all of the following:

1. By May 27, 2020, the hospital must have in place an active participation agreement with a qualifying HIE organization and submit a LOI to AHCCCS and the HIE, in which it agrees to achieve the following milestones by the specified dates, or maintain its participation in the milestone activities if they have already been achieved;

2. By June 1, 2020, the hospital must electronically submit the following actual patient identifiable information to the production environment of qualifying HIE organization: admission, discharge, and transfer information (generally known as ADT information), including data from the hospital emergency department if the provider has an emergency department;

3. By August 1, 2020, the hospital must electronically submit the following actual patient identifiable information to the production environment of a qualifying HIE organization: laboratory and radiology information (if the provider has these services), transcription, medication information, immunization data, and discharge summaries that include, at a minimum, discharge orders, discharge instructions, active medications, new prescriptions, active problem lists (diagnosis), treatments and procedures conducted during the stay, active allergies, and discharge destination;

4. By September 1, 2020, electronically submit laboratory, radiology, transcription, and medication information, and discharge summaries that include, at a minimum, discharge orders, discharge instructions, active medications, new prescriptions, active problem lists (diagnosis), treatments and procedures conducted during the stay, active allergies, and discharge destination to a qualifying HIE or within 30 days of initiating COVID-19 lab testing, submit all COVID-19 lab test codes and the associated LOINC codes to qualifying HIE to ensure proper processing of lab results within the HIE system if appli-
cable;

(5) By September 1, 2020, or within 30 days of initiating COVID-19 antibody testing, submit all COVID-19 antibody test codes and the associated LOINC codes to the qualifying HIE to ensure proper processing of lab results within the HIE system if applicable;

(6) Within 30 days of initiating COVID-19 immunizations, submit all COVID-19 immunization codes and the associated LOINC codes to the qualifying HIE to ensure proper processing of immunizations within the HIE system if applicable;

(7) By October 1, 2020, hospitals that utilize external reference labs for any lab result processing must submit necessary provider authorization forms to the qualifying HIE, if required by the external reference lab, to have all outsourced lab test results flow to the qualifying HIE on their behalf if applicable;

(8) By November 1, 2020, the hospital must approve and authorize a formal scope of work (SOW) with a qualifying HIE organization to initiate and complete a Phase 1 data quality improvement effort, as defined by the qualifying HIE organization in collaboration with the qualifying HIE organization;

(9) By January 1, 2021, the hospital must complete the Phase 1 initial data quality profile with a qualifying HIE organization;

(10) By May 1, 2021, the hospital must complete the Phase 1 final data quality profile with a qualifying HIE organization;

ii. By May 27, 2020, a hospital which received Differential Adjusted Payments October 1, 2019 through September 30, 2020, submits a Letter of Intent to AHCCCS and a qualifying HIE organization in which the hospital agrees to achieve all of the following:

(1) By May 27, 2020, the hospital must have in place an active participation agreement with a qualifying HIE organization and submit a LOI to AHCCCS and the HIE, in which it agrees to achieve the following milestones by the specified dates, or maintain its participation in the milestone activities if they have already been achieved;

(2) By June 1, 2020, the hospital must electronically submit the following actual patient identifiable information to the production environment of a qualifying HIE organization: admission, discharge and transfer information (generally known as ADT information), including data from the hospital emergency department if the provider has an emergency department, laboratory and radiology information (if the provider has these services), transcription, medication information, immunization data, and discharge summaries that include, at a minimum, discharge orders, discharge instruction, active medication, new prescriptions, active problem lists (diagnosis), treatments and procedures conducted during the stay, active allergies, and discharge destination;

(3) By September 1, 2020, or within 30 days of initiating COVID-19 lab testing, submit all COVID-19 lab test codes and the associated LOINC codes to qualifying HIE to ensure proper processing of lab results within the HIE system if applicable;

(4) By September 1, 2020 or within 30 days of initiating COVID-19 antibody testing, submit all COVID-19 antibody test codes and the associated LOINC codes to the qualifying HIE to ensure proper processing of lab results within the HIE system if applicable;

(5) Within 30 days of initiating COVID-19 immunizations, submit all COVID-19 immunization codes and the associated LOINC codes to the qualifying HIE to ensure proper processing of immunizations within the HIE system if applicable;

(6) By October 1, 2020, hospitals that utilize external reference labs for any lab result processing must submit necessary provider authorization forms to the qualifying HIE, if required by the external reference lab, to have all outsourced lab test results flow to the qualifying HIE on their behalf if applicable;

(7) By November 1, 2020, the hospital must approve and authorize a formal SOW to initiate and complete a Phase 2 data quality improvement effort, as defined by the qualifying HIE organization and in collaboration with the qualifying HIE organization;

(8) By January 1, 2021, the hospital must complete the Phase 2 initial data quality profile with a qualifying HIE organization;

(9) By May 1, 2021, the hospital must complete the Phase 2 final data quality profile with a qualifying HIE organization;

(10) Hospitals that meet each of the following HIE data quality performance criteria will be eligible to receive DAP increases:

(a) Demonstrate a 10% improvement from baseline measurements in the initial data quality profile, based on July 2019 data, to the final data quality profile, based on March 2020 data;

(b) Meet a minimum performance standard of at least 60% based on March 2020 data;

(c) If performance meets or exceeds an upper threshold of 90% based on March 2020 data the hospital meets the criteria. Regardless of the percentage improvement from the baseline measurements;

iii. Meet or exceed the statewide average on May 12, 2020 for the Severe Sepsis/Septic Shock
(SEP-1) performance measure from the Medicare Hospital Compare website;

iv. Be a participant in the Improving Pediatric Sepsis Outcomes collaborative in 2020;

v. For dates of services from October 1, 2020 through September 30, 2021, hospitals subject to APR-DRG reimbursement (Provider Type 02) may qualify for a DAP on codes J2796-J2798, J300-J3301, and J7307 billed on the 1500 or UB-04 forms for long-acting reversible contraception devices.

b. A hospital designated by the Arizona Department of Health Services Division of Licensing Services as type: hospital, subtype: critical access hospital will qualify for an increase if by May 27, 2020, a hospital which received Differential Adjusted Payments October 1, 2019 through September 30, 2020, submits a Letter of Intent to AHCCCS and a qualifying HIE organization in which the hospital agrees to achieve all of the following:

i. By May 27, 2020, the hospital must have in place an active participation agreement with a qualifying HIE organization and submit a LOI to AHCCCS and the HIE, in which it agrees to achieve the following milestones by the specified dates, or maintain its participation in the milestone activities if they have already been achieved;

ii. By June 1, 2020, the hospital must electronically submit the following actual patient identifiable information to the production environment of a qualifying HIE organization: admission, discharge and transfer information (generally known as ADT information), including data from the hospital emergency department if the provider has an emergency department, laboratory and radiology information (if the provider has these services), transcription, medication information, immunization data, and discharge summaries that include, at a minimum, discharge orders, discharge instructions, active medications, new prescriptions, active problem lists (diagnosis), treatments and procedures conducted during the stay, active allergies, and discharge destination;

iii. By September 1, 2020, or within 30 days of initiating COVID-19 lab testing, submit all COVID-19 lab test codes and the associated LOINC codes to qualifying HIE to ensure proper processing of lab results within the HIE system if applicable;

iv. By September 1, 2020 or within 30 days of initiating COVID-19 antibody testing, submit all COVID-19 antibody test codes and the associated LOINC codes to the qualifying HIE to ensure proper processing of lab results within the HIE system if applicable;

v. Within 30 days of initiating COVID-19 immunizations, submit all COVID-19 immunization codes and the associated LOINC codes to the qualifying HIE to ensure proper processing of immunizations within the HIE system if applicable;

vi. By October 1, 2020, hospitals that utilize external reference labs for any lab result processing must submit necessary provider authorization forms to the qualifying HIE, if required by the external reference lab, to have all outsourced lab test results flow to the qualifying HIE on their behalf if applicable;

vii. By November 1, 2020, the hospital must approve and authorize a formal SOW to initiate and complete a Phase 2 data quality improvement effort, as defined by the qualifying HIE organization and in collaboration with the qualifying HIE organization;

viii. By January 1, 2021, the hospital must complete the Phase 2 initial data quality profile with a qualifying HIE organization;

ix. By May 1, 2021, the hospital must complete the Phase 2 final data quality profile with a qualifying HIE organization;

x. Hospitals that meet each of the following HIE data quality performance criteria will be eligible to receive DAP increases:

1. Demonstrate a 10% improvement from baseline measurements in the initial data quality profile, based on July 2019 data, to the final data quality profile, based on March 2020 data;

2. Meet a minimum performance standard of at least 60% based on March 2020 data;

3. If performance meets or exceeds an upper threshold of 90% based on March 2020 data the hospital meets the criteria, regardless of the percentage improvement from the baseline measurements.

Historical Note

R9-22-712.72. DRG Reimbursement: Enrollment Changes During an Inpatient Stay
A. If a member’s enrollment changes during an inpatient stay, including changing enrollment from fee-for-service to a contractor, or vice versa, or changing from one contractor to another contractor, the contractor with whom the member is enrolled on the date of discharge shall be responsible for reimbursing the hospital for the entire length of stay under the DRG payment rules in sections R9-22-712.60 through R9-22-712.81. If the member is eligible but not enrolled with a contractor on the date of discharge, then the AHCCCS administration shall be responsible for reimbursing the hospital for the entire length of stay under the DRG payment rules in sections R9-22-712.60 through R9-22-712.81.

B. When a member’s enrollment changes during an inpatient stay, the hospital shall use the date of enrollment with the payer responsible on the date of discharge as the “from” date of service on the claim regardless of the date of admission.

C. Interim claims submitted to a payer other than the payer responsible on the day of discharge shall be processed in the
same manner as other interim claims as described in R9-22-712.76.

**Historical Note**

**R9-22-712.73. DRG Reimbursement: Inpatient Stays for Members Eligible for Medicare**
If the hospital receives less than the full Medicare payment for a member eligible for benefits under Part A of Medicare because the member has exceeded the maximum benefit permitted under Part A of Medicare, the hospital shall submit a separate claim for services performed after the date the maximum Medicare Part A benefit is exceeded. The claim may include all diagnosis codes for the entire inpatient stay, but the hospital is only required to include revenue codes, surgical procedure codes, service units, and charges for services performed after the date the Medicare Part A benefit is exceeded. A claim so submitted shall be reimbursed using the DRG payment methodology.

**Historical Note**
New Section made by final rulemaking at 20 A.A.R. 1956, September 6, 2014 (Supp. 14-3).

**R9-22-712.74. DRG Reimbursement: Third Party Liability**
DRG payments are subject to reduction based on cost avoidance under Section R9-22-1003 and other rules regarding first-and third-party liability under Article 10 of this Chapter including cost avoidance for claims for ancillary services covered under Part B of Medicare.

**Historical Note**
New Section made by final rulemaking at 20 A.A.R. 1956, September 6, 2014 (Supp. 14-3).

**R9-22-712.75. DRG Reimbursement: Payment for Administrative Days**
A. Categories of Administrative Days. Administrative days fall into one of two categories, either subsection (A)(1) or (A)(2).

1. Administrative days due to lack of appropriate placement options and not meeting inpatient medical criteria. Administrative days are days in which a member is admitted as an inpatient to an acute care hospital, does not meet the criteria for an acute inpatient stay, but is admitted or not discharged because; (1) an appropriate placement outside the hospital is not available, (2) the member cannot be safely discharged or transferred, or (3) the Administration or the contractor failed to provide for the appropriate placement outside the hospital in a timely manner.
   a. Administrative days may occur prior to an acute care episode, for example, when a woman with a high-risk pregnancy is admitted to a hospital while awaiting delivery.
   b. Administrative days may also occur at the end of an acute care episode, for example, when a member is not discharged while awaiting placement in a nursing facility or other sub-acute or post-acute setting.
   c. Administrative days may also include days in a receiving hospital when the member has been discharged from one acute care hospital for the purpose of receiving sub-acute services at the receiving hospital.
   d. Administrative days do not include days when the member is awaiting appropriate placement or services that are currently available but the hospital has not transferred or discharged the member because of the hospital’s administrative or operational delays.
   e. Administrative days include inpatient claims covered by a RBHA or TRBH that otherwise meet the criteria in subsection (A)(1).

2. Administrative days for claims with the principal diagnosis of behavioral health meeting inpatient medical criteria. Administrative days are days with dates of discharge on or after October 1, 2018, in which a member is admitted as an inpatient to an acute care hospital, meets the criteria for an acute inpatient stay, and the principal diagnosis on the hospital claim is a behavioral health diagnosis. Inpatient claims covered by a RBHA or TRBH are not considered administrative days under subsection (A)(2) regardless of the principal diagnosis on the hospital claim.

B. Reimbursement of Administrative Days.
1. Administrative days under subsection (A)(1) are reimbursed at the rate the claim would have paid had the services not been provided in an inpatient hospital setting but had been provided at the appropriate level of care such as the rate paid for stays at a nursing facility.

2. Administrative days under subsection (A)(2) are reimbursed at the daily rate found on the Inpatient Behavioral Health Capped Fee-For-Service Schedule meeting the criteria of “Service Description – Psychiatric Stay,” regardless of revenue code.

C. Prior authorization is required for administrative days.
D. A hospital shall submit a claim for administrative days separate from any claim for reimbursement for the inpatient stay otherwise reimbursable under the DRG payment methodology.

**Historical Note**

**R9-22-712.76. DRG Reimbursement: Interim Claims**
A. For inpatient stays with a length of stay greater than 29 days, a hospital may submit interim claims for each 30 day period during the inpatient stay.

B. Hospitals shall be reimbursed for interim claims at a per diem rate of $500 per day.

C. Following discharge, the hospital shall void all interim claims. In such circumstances, the hospital shall submit a claim to the payer with whom the member is enrolled on the date of discharge, whether the Administration or a contractor, for the entire inpatient stay for which the final claim shall be reimbursed under the DRG payment methodology. Interim claims will be recouped.

**Historical Note**
New Section made by final rulemaking at 20 A.A.R. 1956, September 6, 2014 (Supp. 14-3).

**R9-22-712.77. DRG Reimbursement: Admissions and Discharges on the Same Day**
A. Except as provided for in subsection (B), for any claim for inpatient services with an admission date and discharge date that are the same calendar date, the contractor or the Administration shall process the claim as an outpatient claim and the hospital shall be reimbursed under R9-22-712.10 through R9-22-712.50.

B. Claims with an admission date and discharge date that are the same calendar date that also indicate that the member expired...
on the date of discharge shall be reimbursed under the DRG methodology.

Historical Note
New Section made by final rulemaking at 20 A.A.R. 1956, September 6, 2014 (Supp. 14-3).

R9-22-712.78. DRG Reimbursement: Readmissions
If a member is readmitted without prior authorization to the same hospital that the member was discharged from within 72 hours and the DRG code assigned to the claim for the prior admission has the same first three digits as the DRG code assigned to the claim for the readmission, then payment for the claim for the readmission will be disallowed only if the readmission could have been prevented by the hospital.

Historical Note
New Section made by final rulemaking at 20 A.A.R. 1956, September 6, 2014 (Supp. 14-3).

R9-22-712.79. DRG Reimbursement: Change of Ownership
The administration shall not change any of the components of the calculation of reimbursement for inpatient services using the DRG methodology based upon a change in the hospital’s ownership except to the extent those components would change under the methodology had the hospital not changed ownership (e.g., updating the hospital’s cost-to-charge ratio as of September 1 of each year under R9-22-712.68).

Historical Note
New Section made by final rulemaking at 20 A.A.R. 1956, September 6, 2014 (Supp. 14-3).

R9-22-712.80. DRG Reimbursement: New Hospitals
A. DRG base payment for new hospitals. For any hospital that does not have a labor share or wage index published by CMS as described in subsection R9-22-712.62(B) because the hospital was not in operation, the DRG base rate described in subsection R9-22-712.62(B) shall be calculated as the statewide standardized amount after adjusting that amount for the labor-related share and the wage index published by CMS as described in subsection R9-22-712.62(B) that is appropriate to the location of the hospital published by CMS as described in subsection R9-22-712.62(B).

B. Outlier calculations for new hospitals. For any hospital that does not have an operating cost-to-charge ratio listed in the impact file described in subsection R9-22-712.68(B) because the hospital was not in operation prior to the publication of the impact file, the statewide urban or rural default operating cost-to-charge ratio appropriate to the location of the hospital and the statewide capital cost-to-charge ratio shall be used to determine the unadjusted outlier add-on payment. The statewide urban or rural default operating cost-to-charge ratio and the statewide capital cost-to-charge ratio shall be based on the ratios published by CMS and updated by the Administration as described in subsection R9-22-712.68(C).

C. In addition to the requirement of this Section, DRG reimbursement for new hospitals is determined under R9-22-712.60 through R9-22-712.79.

Historical Note

R9-22-712.81. DRG Reimbursement: Updates
In addition to the other updates provided for in Sections R9-22-712.60 through R9-22-712.80, the Administration may update the version of the APR-DRG classification system established by 3M Health Information Systems, adjust the statewide standardized amount in Section R9-22-712.62, the base payments in sections R9-22-712.63 and R9-22-712.64, the provider policy adjustor in section R9-22-712.65, service policy adjustors Section R9-22-712.66, and the fixed loss amounts and marginal cost percentages used to calculate the outlier threshold in Section R9-22-712.68 to the extent necessary to assure that payments are consistent with efficiency, economy, and quality of care and are sufficient to enlist enough providers so that care and services are available at least to the extent that such care and services are available to the general population in the geographic area. The Administration shall publish any proposed classification system on the agency’s website at least 30 days prior to the effective date, to ensure a sufficient period for public comment, as required by 42 C.F.R. § 447.205. In addition, the public notice shall be available for inspection during normal business hours at 701 E. Jefferson, Phoenix, Arizona. The requirements of 42 CFR § 447.205 as of November 2, 2015 are incorporated by reference and do not include any later amendments.

Historical Note

R9-22-712.90. Reimbursement of Hospital-based Freestanding Emergency Departments
A. “Hospital-based freestanding emergency department” (hospital-based FSED) means an outpatient treatment center, as defined in R9-10-101, that: (1) provides emergency room services under R9-10-1019, (2) is subject to the requirements of 42 CFR 489.24, and (3) shares an ownership interest with a hospital, regardless of whether the outpatient treatment center operates under a hospital’s single group license as described in A.R.S. § 36-422.

B. A hospital-based FSED shall register with the Administration separately from the hospital with which an ownership interest is shared and shall obtain a separate provider identification number. The Administration shall not charge a separate provider enrollment fee for registration of a hospital-based FSED. The Administration shall accept a hospital’s compliance with the provider screening and enrollment requirements of 42 CFR Part 455 as compliance by the hospital-based FSED.

C. For dates of service on and after March 1, 2017, and except as provided in subsection (D), services provided by a hospital-based FSED for evaluation and management CPT codes 99281 through 99285 shall be reimbursed at the following percentages of the amounts otherwise reimbursable under sections R9-22-712.20 through R9-22-712.30. All other covered codes shall be reimbursed in accordance with sections R9-22-712.20 through R9-22-712.30 without a percentage reduction.

1. 60% for a level 1 emergency department visit as indicated by CPT 99281.
2. 80% for a level 2 emergency department visit as indicated by CPT 99282.
3. 90% for a level 3 emergency department visit as indicated by CPT 99283.
4. 100% for a level 4 or 5 emergency department visit as indicated by CPT codes 99284 and 99285.

D. A hospital-based FSED located in a city or town in a county with less than 500,000 residents, where the only hospital in the city or town operating an emergency department closed on or after January 1, 2015, shall be reimbursed under sections R9-22-712.20 through R9-22-712.35 using the adjustment in R9-22-712.35 associated with the nearest hospital with which the
freestanding emergency department shares an ownership interest.

E. Services provided by an outpatient treatment center that provides emergency room services under R9-10-1019, but does not otherwise meet the criteria in subsection A, shall be reimbursed based on the non-hospital AHCCCS capped fee-for-service schedule under R9-22-710.

F. The Administration shall not reimburse a hospital for services provided at a hospital-based FSED if the member is admitted directly from a hospital-based FSED to a hospital with an ownership interest in the hospital-based FSED. As provided in R9-22-712.60(B), payments made for the inpatient stay using the DRG methodology shall be the sole reimbursement.

**Historical Note**
New Section made by final rulemaking at 23 A.A.R. 22, February 11, 2017 (Supp. 16-4).

**R9-22-713. Overpayment and Recovery of Indebtedness**

A. If a contractor or a subcontracting provider receives an overpayment from the Administration or otherwise becomes indebted to the Administration, the contractor or subcontracting provider shall immediately remit the amount of the indebtedness or overpayment to the Administration for deposit in the AHCCCS fund.

B. If the funds described in subsection (A) are not remitted, the Administration may recover the funds paid by the Administration to a contractor or subcontracting provider through:
1. A repayment agreement executed with the Administration;
2. Withholding or offsetting against current or future payments to be paid to the contractor or subcontracting provider; or
3. Enforcement of, or collection against, the performance bond, financial reserve, or other financial security under A.R.S. § 36-2903.

**Historical Note**

**R9-22-714. Payments to Providers**

A. Provider agreement. The Administration or a contractor shall not reimburse a covered service provided to a member unless the provider has signed a provider agreement with the Administration that establishes the terms and conditions of participation and payment under A.R.S. § 36-2904.

B. Provider reimbursement. The Administration or a contractor shall reimburse a provider for a service furnished to a member only if:
1. The provider personally furnishes the service to a specific member. For purposes of this Section, services personally furnished by a provider include:
   a. Services provided by medical residents or dental students in a teaching environment; or
   b. Services provided by a licensed or certified assistant under the general supervision of a licensed practitioner in accordance with 4 A.A.C. 24, 9 A.A.C. 16, 4 A.A.C. 43, or 4 A.A.C. 45;
2. The provider verifies that individuals who have provided services described in subsection (B)(1) have not been placed on the List of Excluded Individuals/Entities (LEIE) maintained by the United States Department of Health and Human Services Office of the Inspector General (OIG), located at OIG’s website;
3. The service contributes directly to the diagnosis or treatment of the member; and
4. The service ordinarily requires performance by the type of provider seeking reimbursement.

C. The Administration or a contractor may make a payment for covered services only:
1. To the provider;
2. To anyone specified in an assignment from the provider to a government agency or assignment by a court order;
3. To a business agent, if the agent’s compensation for the service is:
   a. Related to the cost of processing the billing;
   b. Not related on a percentage or other basis to the amount that is billed or collected; and
   c. Not dependent on collection of the payment;
4. To the employer of the provider, if the provider is required as a condition of employment to turn over the provider’s fees to the employer;
5. To the inpatient facility in which the service is provided, if the provider has a contract under which the inpatient facility submits the claim; or
6. To a foundation, plan, or similar organization operating an organized health care delivery system, if the provider has a contract under which the foundation, plan or similar organization submits the claim.

D. The Administration or a contractor shall not make a payment to or through a factor, either directly or by power of attorney, for a covered service furnished to a member by a provider.

E. Reimbursement for a pathology service. Unless otherwise specified in a contract, the Administration or a contractor shall reimburse a pathologist for a pathology service furnished to a member only if the other requirements in this Section are met and the service is:
1. A surgical pathology service;
2. A specific cytopathology, hematology, or blood banking pathology service that requires performance by a physician and is listed in the capped fee-for-service schedule;
3. A clinical consultation service that:
   a. Is requested by the member’s attending physician or primary care physician;
   b. Is related to a test result that is outside the clinically significant normal or expected range in view of the condition of the member;
   c. Results in a written narrative report included in the member’s medical record;
   d. Requires the exercise of medical judgment by the consultant pathologist, and
   e. Is listed in the capped fee-for-service schedule;
4. A clinical laboratory interpretative service that:
   a. Is requested by the member’s attending physician or primary care physician;
   b. Results in a written narrative report included in the member’s medical record;
   c. Requires the exercise of medical judgment by the consultant pathologist, and
   d. Is listed in the capped fee-for-service schedule.
CHAPTER 22. ARIZONA HEALTH CARE COST CONTAINMENT SYSTEM - ADMINISTRATION

Historical Note

Editor’s Note: The following Section was amended under an exemption from the provisions of the Administrative Procedure Act which means that this rule was not reviewed by the Governor’s Regulatory Review Council; the agency did not submit notice of proposed rulemaking to the Secretary of State for publication in the Arizona Administrative Register; the agency was not required to hold public hearings on the rules; and the Attorney General did not certify this rule. This Section was subsequently amended through the regular rulemaking process.

R9-22-715. Hospital Rate Negotiations
A. A contractor that negotiates with hospitals for inpatient or outpatient services shall reimburse hospitals for services rendered on or after March 1, 1993, as described in A.R.S. § 36-2903.01 and this Article, or at the negotiated rate that, in the aggregate, does not exceed reimbursement levels that would have been paid under A.R.S. § 36-2903.01, and this Article. This subsection does not apply to urban hospitals described under R9-22-718. Contractors may engage in rate negotiations with a hospital at any time during the contract period.

B. The Administration may negotiate or contract with a hospital on behalf of a contractor for discounted hospital rates and may require that the negotiated discounted rates be included in a subcontract between the contractor and hospital.

Historical Note

Editor’s Note: The following Section was amended under an exemption from the provisions of the Administrative Procedure Act which means that this rule was not reviewed by the Governor’s Regulatory Review Council; the agency did not submit notice of proposed rulemaking to the Secretary of State for publication in the Arizona Administrative Register; the agency was not required to hold public hearings on the rules; and the Attorney General did not certify this rule. This Section was subsequently amended through the regular rulemaking process.

R9-22-716. Repealed

R9-22-717. Repealed

Historical Note

R9-22-718. Repealed

Historical Note
Adopted effective July 30, 1993 (Supp. 93-3). Amended effective September 22, 1997 (Supp. 97-3). Section repealed by final rulemaking at 11 A.A.R. 3222, effective October 1, 2005 (Supp. 05-3).

Editor’s Note: The following Section was originally adopted under an exemption from the provisions of the Administrative Procedure Act which means that this rule was not reviewed by the Governor’s Regulatory Review Council. The agency was required to submit notice of proposed rulemaking to the Secretary of State for publication in the Arizona Administrative Register; and was required to hold a public hearing. It has since been amended under the regular rulemaking process.

R9-22-719. Repealed

Historical Note
Adopted effective March 1, 1993 (Supp. 93-1). Repealed by final rulemaking at 8 A.A.R. 424, effective January 10, 2002 (Supp. 02-1). Section repealed by final rulemaking at 13 A.A.R. 662, effective April 7, 2007 (Supp. 07-1).

R9-22-719. Repealed

Historical Note
services in an urban hospital that result in an admission shall be paid as inpatient services in accordance with this Section.

E. Urban Hospital Contract,

1. Provisions of an urban hospital contracts. The urban hospital contract shall contain but is not limited to the following provisions:
   a. Required provisions as described in the Request for Proposals (RFP);
   b. Dispute settlement procedures. If the AHCCCS Grievance System prescribed in A.R.S. § 36-2903.01(B) and rule is not used, then arbitration shall be used;
   c. Arbitration procedure. If arbitration is used, the urban hospital contract shall identify:
      i. The parties’ agreement on arbitrating claims arising from the contract;
      ii. Whether arbitration is nonbinding or binding,
      iii. Timeliness of arbitration,
      iv. What contract provisions may be appealed,
      v. What rules will govern arbitrations,
      vi. The number of arbitrators that shall be used,
      vii. How arbitrators shall be selected, and
      viii. How arbitrators shall be compensated.
   d. Timeliness of claims submission and payment;
   e. Prior authorization;
   f. Concurrent review;
   g. Electronic submission of claims;
   h. Claims review criteria;
      i. Payment of discounts or penalties such as quick-pay and slow-pay provisions;
   j. Payment of outliers;
   k. Claim documentation specifications under A.R.S. § 36-2904.
   l. Treatment and payment of emergency room services; and
   m. Provisions for rate changes and adjustments.

2. AHCCCS review and approval of urban hospital contracts:
   a. AHCCCS may review, approve, or disapprove the hospital contract rates, terms, conditions, and amendments to the contract;
   b. The AHCCCS evaluation of each urban hospital contract shall include but not be limited to the following areas:
      i. Availability and accessibility of services to members,
      ii. Related party interests,
      iii. Inclusion of required terms pursuant to this Section, and
      iv. Reasonableness of the rates.

F. Quick-Pay/Slow-Pay. A payment made by a contractor to a noncontracted hospital shall be subject to quick-pay discounts and slow-pay penalties under A.R.S. § 36-2904.

Historical Note

rulemaking at 24 A.A.R. 1515, effective June 30, 2018 (Supp. 18-2).

R9-22-719. Contractor Performance Measure Outcomes
The Administration may retain a specified percentage of capitation reimbursement to distribute to contractors based on their performance measure outcomes under A.R.S. § 36-2904. The Administration shall notify contractors 60 days prior to a new contract year if this methodology is implemented. The Administration shall specify the details of the reimbursement methodology in contract.

Historical Note
New Section made by final rulemaking at 8 A.A.R. 424, effective January 10, 2002 (Supp. 02-1).

R9-22-720. Reinsurance
A. Reinsurance is a stop-loss program provided by the Administration to a contractor for partial reimbursement of the cost of covered services for a member with an acute medical condition when the cost of covered services exceeds a pre-determined deductible level amount within a contract year. The Administration self-insures the reinsurance program through a reduction to capitation rates. The reinsurance program also includes a catastrophic reinsurance program for members diagnosed with specific medical conditions.

B. The Administration shall specify in contract guidelines for claims submission, processing, payment, and the types of care and services that are provided to a member whose care is covered by reinsurance.

C. When the Administration determines that a contractor does not follow the specified guidelines for care or services and the care or services could have been provided at a lower cost according to the guidelines, the Administration shall reimburse the contractor as if the care or services had been provided as specified in the guidelines.

Historical Note
New Section made by final rulemaking at 8 A.A.R. 3317, effective July 15, 2002 (Supp. 02-3). Amended by final rulemaking at 13 A.A.R. 856, effective May 5, 2007 (Supp. 07-1).

R9-22-721. Behavioral Health Inpatient Facilities
“Behavioral health inpatient facility” means a health care institution, other than Arizona State Hospital, that meets the following requirements:

1. Provides continuous treatment to an individual experiencing a behavioral health issue that causes the individual to:
   a. Have a limited or reduced ability to meet the individual’s basic physical needs;
   b. Suffer harm that significantly impairs the individual’s judgment, reason, behavior, or capacity to recognize reality;
   c. Be a danger to self;
   d. Be a danger to others;
   e. Be persistently or acutely disabled as defined in A.R.S. § 36-501; or
   f. Be gravely disabled; and

2. Is one of the following facility types:
   a. Psychiatric hospitals;
   b. Mental health residential treatment centers;
   c. Secure residential treatment centers with 17 or more beds;
   d. Non-secure residential treatment centers with 1-16 beds;
   e. Non-secure residential treatment centers with 17 or more beds;
   f. Sub-acute facilities with 1-16 beds;
CHAPTER 22. ARIZONA HEALTH CARE COST CONTAINMENT SYSTEM - ADMINISTRATION

9 A.C. 22

R9-22-730. Hospital Assessment Fund - Hospital Assessment

A. For purposes of this Section, the following terms are defined as provided below unless the context specifically requires another meaning:


3. “Quarter” means the three month period beginning January 1, April 1, July 1, and October 1 of each year.

4. A “new hospital” means a licensed hospital that did not hold a license from the Arizona Department of Health Services prior to January 2, 2021.

5. “Outpatient Net Patient Revenues” means an amount, calculated using data in the hospital’s 2019 Uniform Accounting Report, that is equal to the hospital’s 2019 total net patient revenue multiplied by the ratio of the hospital’s 2019 gross outpatient revenue to the hospital’s 2019 total gross patient revenue.

B. Beginning January 1, 2014, for each Arizona licensed hospital not excluded under subsection (1) shall be subject to an assessment payable on a quarterly basis. The assessment shall be levied against the legal owner of each hospital as of the first day of the quarter, and except as otherwise required by subsections (D), (E) and (F). For the period beginning October 1, 2021, the assessment for each hospital shall be equal to the sum of: (1) the number of discharges reported on the hospital’s 2019 Medicare Cost Report, excluding discharges reported on the Medicare Cost Report as “Other Long Term Care Discharges,” multiplied by the following rates appropriate to the hospital’s peer group; and (2) the amount of outpatient net patient revenues multiplied by the following rate appropriate to the hospital’s peer group:

1. $748.50 per discharge and 1.3700% of outpatient net patient revenues for hospitals located in a county with a population less than 500,000 that are designated as type: hospital, subtype: short-term.

2. $748.50 per discharge and 0.5708% of outpatient net patient revenues for hospitals designated as type: hospital, subtype: critical access hospital.

3. $187.25 per discharge and 0.5708% of outpatient net patient revenues for hospitals designated as type: hospital, subtype: long term.

4. $187.25 per discharge and 0.5708% of outpatient net patient revenues for hospitals designated as type: hospital, subtype: psychiatric, that reported 2,500 or more discharges on the 2019 Medicare Cost Report.

5. $598.75 per discharge and 1.4842% of outpatient net patient revenues for hospitals designated as type: hospital, subtype: short-term with at least 10% but less than 20% of total licensed beds licensed as pediatric, pediatric intensive care and neonatal intensive care as reported in the hospital’s 2019 Uniform Accounting Report.

6. $673.50 per discharge and 1.7125% of outpatient net patient revenues for hospitals designated as type: hospital, subtype: short-term with at least 10% but less than 20% of total licensed beds licensed as pediatric, pediatric intensive care and neonatal intensive care as reported in the hospital’s 2019 Uniform Accounting Report.

7. $149.75 per discharge and 0.4567% of outpatient net patient revenues for hospitals designated as type: hospital, subtype: children’s.

8. $748.50 per discharge and 2.2834% of outpatient net patient revenues for hospitals designated as type: hospital, subtype: short-term not included in another peer group.

C. Peer groups for the four quarters beginning October 1 of each year are established based on hospital license type and subtype designated in the Provider & Facility Database for Arizona Medical Facilities posted by the Arizona Department of Health Services Division of Licensing Services on its website January 2, 2021.

D. Notwithstanding subsection (B), psychiatric discharges from a hospital that reported having a psychiatric sub-provider in the hospital’s 2019 Medicare Cost Report, are assessed a rate of $187.25 for each discharge from the psychiatric sub-provider as reported in the 2019 Medicare Cost Report. All discharges other than those reported as discharges from the psychiatric sub-provider are assessed at the rate required by subsection (B).

E. Notwithstanding subsection (B), rehabilitative discharges from a hospital that reported having a rehabilitative sub-provider in the hospital’s 2019 Medicare Cost Report, are assessed a rate of $0 for each discharge from the rehabilitative sub-provider as reported in the 2019 Medicare Cost Report. All discharges other than those reported as discharges from the rehabilitative sub-provider are assessed at the rate required by subsection (B).

F. Notwithstanding subsection (B), for any hospital that reported more than 23,000 discharges on the hospital’s 2019 Medicare Cost Report, discharges in excess of 23,000 are assessed a rate of $75.00 for each discharge in excess of 23,000. The initial 23,000 discharges are assessed at the rate required by subsection (B).

G. Assessment notice. On or before the 15th day of the first month of the quarter or upon CMS approval, whichever is later, the Administration shall send to each hospital a notification that the Hospital Assessment Fund assessment invoice is
available to be viewed on a secure website. The invoice shall include the hospital’s peer group assignment and the assessment due for the quarter.

H. Assessment due date. The Hospital Assessment Fund assessment must be received by the Administration no later than:
1. The 15th day of the second month of the quarter or
2. In the event CMS approves the assessment after the 15th day of the first month of the quarter, 30 days after notification by the Administration that the assessment invoice is available.

I. Excluded hospitals. The following hospitals are excluded from the assessment based on the hospital’s 2019 Medicare Cost Report and Provider & Facility Database for Arizona Medical Facilities posted by the Arizona Department of Health Services Division of Licensing Services on its website for January 2, 2021:
1. Hospitals owned and operated by the state, the United States, or an Indian tribe.
2. Hospitals designated as type: hospital, subtype: short-term that have a license number beginning “SH”.
5. Hospitals designated as type: med-hospital, subtype: special hospitals.
6. Hospitals designated as type: hospital, subtype: short-term located in a city with a population greater than one million, which on average have at least 15 percent of inpatient days for patients who reside outside of Arizona, and at least 50 percent of discharges as reported on the 2019 Medicare Cost Report are reimbursed by Medicare.
7. Hospitals designated as type: hospital, subtype: short-term that have at least 25 percent Medicare swing beds as percentage of total Medicare days, per the 2019 Medicare Cost Report.

J. New hospitals. For hospitals that did not file a 2019 Medicare Cost Report because of the date the hospital began operations:
1. If the hospital was open on the January 2 preceding the October assessment start date, the hospital assessment will begin on October 1 following the date the hospital began operating.
2. If the hospital began operating between January 3 and June 30, the assessment will begin on October 1 of the following calendar year.
3. A hospital is not considered a new hospital based on a change in ownership.
4. The assessment will be based on the discharges reported in the hospital’s first Medicare Cost Report and Uniform Accounting Report, which includes 12 months-worth of data, except when any of the following apply:
   a. If there is not a complete 12 months-worth of data available, the assessment will be based on the annualized number of discharges from the date hospital operations began through December 31 preceding the October assessment start date. The hospital shall self-report the discharge data and all other data requested by the Administration necessary to determine the appropriate assessment to the Administration no later than January preceding the assessment start date for the new hospitals. “Annualized” means divided by a ratio equal to the number of months of data divided by 12 months.
   b. If more than 12 months of data is available, the assessment will be based on the most recent 12 months of self-reported data, as of December 31.
5. For purposes of calculating subpart 4, if a new hospital shares a Medicare Identification Number with an existing hospital, the assessment amount will be based on self-reported data from the new hospital instead of the Medicare Cost Report. The data shall include the number of discharges and all other data requested by the Administration necessary to determine the appropriate assessment.
6. For hospitals providing self-reported data, described in subpart 4 and 5:
   a. Psychiatric discharges will be annualized to determine if subsections (B)(4) or (I)(3) apply to the assessment amount.
   b. Discharges will be annualized to determine if subsection (F) applies to the assessment amount.

K. Changes of ownership. The parties to a change of ownership shall promptly provide written notice to the Administration of a change of ownership and any agreement regarding the payment of the assessment. The assessed amount will continue at the same amount applied to the prior owner. Assessments are the responsibility of the owner of record as of the first day of the quarter; however, this rule is not intended to prohibit the parties to a change of ownership from entering into an agreement for a new owner to assume the assessment responsibility of the owner of record as of the first day of the prior quarter.

L. Hospital closures. Hospitals that close shall pay a proportion of the quarterly assessment equal to that portion of the quarter during which the hospital operated.

M. Required information for the inpatient assessment. For any hospital that has not filed a 2019 Medicare Cost report, or if the 2019 Medicare Cost report does not include the reliable information sufficient for the Administration to calculate the inpatient assessment, the Administration shall use data reported on the 2019 Uniform Accounting Report filed by the hospital in place of the 2019 Medicare Cost report to calculate the assessment. If the 2019 Uniform Accounting Report filed by the hospital does not include reliable information sufficient for the Administration to calculate the inpatient assessment amounts, the hospital shall provide the Administration with data specified by the Administration necessary in place of the 2019 Medicare Cost report to calculate the assessment.

N. Required information for the outpatient assessment. For any hospital that has not filed a 2019 Uniform Accounting Report, or if the 2019 Uniform Accounting Report does not reconcile to 2019 Audited Financial Statements, the Administration shall use the data reported on 2019 Audited Financial Statements to calculate the outpatient assessment. If the 2019 Audited Financial Statements do not include the reliable information sufficient for the Administration to calculate the outpatient assessment, the Administration will all use data reported on the 2019 Medicare Cost report. If the Medicare Cost report does not include reliable information sufficient for the Administration to calculate the outpatient assessment amounts, the hospital shall provide the Administration with data specified by the Administration necessary in place of the 2019 Medicare Cost report to calculate the outpatient assessment.

O. The Administration will review and update as necessary rates and peer groups periodically to ensure the assessment is sufficient to fund the state match obligation to cover the cost of the populations as specified in A.R.S. § 36-2901.08.

P. Enforcement. If a hospital does not comply with this Section, the director may suspend or revoke the hospital’s provider agreement. If the hospital does not comply within 180 days after the hospital’s provider agreement is suspended or
revoked, the director shall notify the director of the Department of Health Services who shall suspend or revoke the hospital’s license.

Historical Note

R9-22-731. Health Care Investment Fund - Hospital Assessment
A. For purposes of this Section, terms are the same as defined in R9-22-730 as provided below unless the context specifically requires another meaning.
B. Beginning October 1, 2020, for each Arizona licensed hospital not excluded under subsection (I) shall be subject to an assessment payable on a quarterly basis. The assessment shall be levied against the legal owner of each hospital as of the first day of the quarter, and except as otherwise required by subsections (D), (E), and (F). For the period beginning October 1, 2020, the assessment for each hospital shall be amount equal to the sum of: (1) the number of discharges reported on the hospital’s 2018 Medicare Cost Report, excluding discharges reported on the Medicare Cost Report as “Other Long Term Care Discharges,” multiplied by the following rates appropriate to the hospital’s peer group; and (2) the amount of outpatient net patient revenues multiplied by the following rate appropriate to the hospital’s peer group:
1. $151.50 per discharge and 2.5886% of outpatient net patient revenues for hospitals located in a county with a population less than 500,000 that are designated as type: hospital, subtype: short-term.
2. $151.50 per discharge and 1.0786% of outpatient net patient revenues for hospitals designated as type: hospital, subtype: critical access hospital.
3. $38.00 per discharge and 1.0786% of outpatient net patient revenues for hospitals designated as type: hospital, subtype: long term.
4. $38.00 per discharge and 1.0786% of outpatient net patient revenues for hospitals designated as type: hospital, subtype: psychiatric, that reported 2,500 or more discharges on the 2018 Medicare Cost Report.
5. $121.25 per discharge and 2.8043% of outpatient net patient revenues for hospitals designated as type: hospital, subtype: short-term with 20% of total licensed beds licensed as pediatric, psychiatric intensive care and neonatal intensive care as reported in the hospital’s 2018 Uniform Accounting Report.
6. $136.50 per discharge and 3.2357% of outpatient net patient revenues for hospitals designated as type: hospital, subtype: short-term with at least 10% but less than 20% of total licensed beds licensed as pediatric, pediatric intensive care and neonatal intensive care as reported in the hospital’s 2018 Uniform Accounting Report.
7. $30.50 per discharge and 0.8629% of outpatient net patient revenues for hospitals designated as type: hospital, subtype: children’s.
8. $151.50 per discharge and 4.3143% of outpatient net patient revenues for hospitals designated as type: hospital, subtype: short-term not included in another peer group.
C. Peer groups for the four quarters beginning October 1 of each year are established based on hospital license type and subtype designated in the Provider & Facility Database for Arizona Medical Facilities posted by the Arizona Department of Health Services Division of Licensing Services on its website January 2, 2020.
D. Notwithstanding subsection (B), psychiatric discharges from a hospital that reported having a psychiatric sub-provider in the hospital’s 2018 Medicare Cost Report, are assessed a rate of $38.00 for each discharge from the psychiatric sub-provider as reported in the 2018 Medicare Cost Report. All discharges other than those reported as discharges from the psychiatric sub-provider are assessed at the rate required by subsection (B).
E. Notwithstanding subsection (B), rehabilitative discharges from a hospital that reported having a rehabilitative sub-provider in the hospital’s 2018 Medicare Cost Report, are assessed a rate of $0 for each discharge from the rehabilitative sub-provider as reported in the 2018 Medicare Cost Report. All discharges other than those reported as discharges from the rehabilitative sub-provider are assessed at the rate required by subsection (B).
F. Notwithstanding subsection (B), for any hospital that reported more than 24,000 discharges on the hospital’s 2018 Medicare Cost Report, discharges in excess of 24,000 are assessed a rate of $15.25 for each discharge in excess of 24,000. The initial 24,000 discharges are assessed at the rate required by subsection (B).
G. Assessment notice. On or before the 20th day of the first month of the quarter or upon CMS approval, whichever is later, the Administration shall send to each hospital a notification that the assessment invoice is available to be viewed on a secure website. The invoice shall include the hospital’s peer group assignment and the assessment due for the quarter.
H. Assessment due date. The assessment must be received by the Administration no later than the 20th day of the second month of the quarter.
I. Excluded hospitals. The following hospitals are excluded from the assessment based on the hospital’s 2018 Medicare Cost Report and Provider & Facility Database for Arizona Medical Facilities posted by the Arizona Department of Health Services Division of Licensing Services on its website for January 2, 2020:
1. Hospitals owned and operated by the state, the United States, or an Indian tribe.
2. Hospitals designated as type: hospital, subtype: short-term that have a license number beginning “SH”.
5. Hospitals designated as type: med-hospital, subtype: special hospitals.
6. Hospitals designated as type: hospital, subtype: short-term located in a city with a population greater than one
CHAPTER 22. ARIZONA HEALTH CARE COST CONTAINMENT SYSTEM - ADMINISTRATION

million, which on average have at least 15 percent of inpatient days for patients who reside outside of Arizona, and at least 50 percent of discharges as reported on the 2018 Medicare Cost Report are reimbursed by Medicare.

7. Hospitals designated as type: hospital, subtype: short-term that have at least 25 percent Medicare swing beds as percentage of total Medicare days, per the 2018 Medicare Cost Report.

J. New hospitals. For hospitals that did not file a 2018 Medicare Cost Report because of the date the hospital began operations:

1. If the hospital was open on the January 2 preceding the October assessment start date, the hospital assessment will begin on October 1 following the date the hospital began operating.

2. If the hospital began operating between January 3 and June 30, the assessment will begin on October 1 of the following calendar year.

3. A hospital is not considered a new hospital based on a change in ownership.

4. The assessment will be based on the discharges reported in the hospital’s first Medicare Cost Report and Uniform Accounting Report, which includes 12 months worth of data, except when any of the following apply:

   a. If there is not a complete 12 months worth of data available, the assessment will be based on the annualized number of discharges from the date hospital operations began through December 31 preceding the October assessment start date. The hospital shall self-report the discharge data and all other data requested by the Administration necessary to determine the appropriate assessment to the Administration no later than January preceding the assessment start date for the new hospitals. “Annualized” means divided by a ratio equal to the number of months of data divided by 12 months.

   b. If more than 12 months of data is available, the assessment will be based on the most recent 12 months of self-reported data, as of December 31;

5. For purposes of calculating subpart 4, if a new hospital shares a Medicare Identification Number with an existing hospital, the assessment amount will be based on self-reported data from the new hospital instead of the Medicare Cost Report. The data shall include the number of discharges and all other data requested by the Administration necessary to determine the appropriate assessment.

6. For hospitals providing self-reported data, described in subpart 4 and 5:

   a. Psychiatric discharges will be annualized to determine if subsections (B)(4) or (I)(3) apply to the assessment amount.

   b. Discharges will be annualized to determine if subsection (F) applies to the assessment amount.

L. Changes of ownership. The parties to a change of ownership shall promptly provide written notice to the Administration of a change of ownership and any agreement regarding the payment of the assessment. The assessed amount will continue at the same amount applied to the prior owner. Assessments are the responsibility of the owner of record as of the first day of the quarter; however, this rule is not intended to prohibit the parties to a change of ownership from entering into an agreement for a new owner to assume the assessment responsibility of the owner of record as of the first day of the prior quarter.

M. Hospital closures. Hospitals that close shall pay a proportion of the quarterly assessment equal to that portion of the quarter during which the hospital operated.

N. Required information for the inpatient assessment. For any hospital that has not filed a 2018 Medicare Cost report, or if the 2018 Medicare Cost report does not include the reliable information sufficient for the Administration to calculate the inpatient assessment, the Administration shall use data reported on the 2018 Uniform Accounting Report filed by the hospital in place of the 2018 Medicare Cost report to calculate the assessment. If the 2018 Uniform Accounting Report filed by the hospital does not include reliable information sufficient for the Administration to calculate the inpatient assessment amounts, the hospital shall provide the Administration with data specified by the Administration necessary in place of the 2018 Medicare Cost report to calculate the assessment.

O. Required information for the outpatient assessment. For any hospital that has not filed a 2018 Uniform Accounting Report, or if the 2018 Uniform Accounting Report does not reconcile to 2018 Audited Financial Statements, the Administration shall use the data reported on 2018 Audited Financial Statements to calculate the outpatient assessment. If the 2018 Audited Financial Statements do not include the reliable information sufficient for the Administration to calculate the outpatient assessment, the Administration all use data reported on the 2018 Medicare Cost report. If the Medicare Cost report does not include reliable information sufficient for the Administration to calculate the outpatient assessment amounts, the hospital shall provide the Administration with data specified by the Administration necessary in place of the 2018 Medicare Cost report to calculate the outpatient assessment.

P. Enforcement. If a hospital does not comply with this section, the director may suspend or revoke the hospital’s provider agreement. If the hospital does not comply within 180 days after the hospital’s provider agreement is suspended or revoked, the director shall notify the director of the Department of Health Services who shall suspend or revoke the hospital’s license.

Historical Note

New Section made by final exempt rulemaking at 26 A.A.R. 2984, effective October 1, 2020 (Supp. 20-4).

ARTICLE 8. REPEALED

Article 8, consisting of Sections R9-22-801 through R9-22-804 and Exhibit A, repealed by final rulemaking at 10 A.A.R. 808, effective April 3, 2004. The subject matter of Article 8 is now in 9 A.A.C. 34 (Supp. 04-1).

R9-22-801. Repealed

Historical Note

Adopted as an emergency effective May 20, 1982, pursuant to A.R.S. § 41-1003, valid for only 90 days (Supp. 82-3). Former Section R9-22-801 adopted an emergency adoption now adopted and amended as a permanent rule effective August 30, 1982 (Supp. 82-4). Former Section R9-22-801 repealed, new Section R9-22-801 adopted effective October 29, 1985 (Supp. 85-5). Amended subsections (C), (F), (H), (I), and (K) effective October 1, 1986 (Supp. 86-5). Change of heading only effective January 1, 1987, filed December 31, 1986 (Supp. 86-6). Amended subsection (H) effective May 30, 1989 (Supp. 89-2). Amended effective September 29, 1992 (Supp. 92-3). Section heading amended under an exemption from the provisions of the Administrative Procedure Act, effective July 1, 1993 (Supp. 93-3). Amended under an exemption from the provisions of the Administrative Procedure Act, effective October 26, 1993 (Supp. 93-4). Amended effective December 13, 1993 (Supp. 93-4). Former Section R9-22-801 repealed, new Section R9-22-
36-2903.01. Additional powers and duties; report; definition

A. The director of the Arizona health care cost containment system administration may adopt rules that provide that the system may withhold or forfeit payments to be made to a noncontracting provider by the system if the noncontracting provider fails to comply with this article, the provider agreement or rules that are adopted pursuant to this article and that relate to the specific services rendered for which a claim for payment is made.

B. The director shall:

1. Prescribe uniform forms to be used by all contractors. The rules shall require a written and signed application by the applicant or an applicant's authorized representative, or, if the person is incompetent or incapacitated, a family member or a person acting responsibly for the applicant may obtain a signature or a reasonable facsimile and file the application as prescribed by the administration.

2. Enter into an interagency agreement with the department to establish a streamlined eligibility process to determine the eligibility of all persons defined pursuant to section 36-2901, paragraph 6, subdivision (a). At the administration's option, the interagency agreement may allow the administration to determine the eligibility of certain persons, including those defined pursuant to section 36-2901, paragraph 6, subdivision (a).

3. Enter into an intergovernmental agreement with the department to:

(a) Establish an expedited eligibility and enrollment process for all persons who are hospitalized at the time of application.

(b) Establish performance measures and incentives for the department.

(c) Establish the process for management evaluation reviews that the administration shall perform to evaluate the eligibility determination functions performed by the department.

(d) Establish eligibility quality control reviews by the administration.

(e) Require the department to adopt rules, consistent with the rules adopted by the administration for a hearing process, that applicants or members may use for appeals of eligibility determinations or redeterminations.

(f) Establish the department's responsibility to place sufficient eligibility workers at federally qualified health centers to screen for eligibility and at hospital sites and level one trauma centers to ensure that persons seeking hospital services are screened on a timely basis for eligibility for the system, including a process to ensure that applications for the system can be accepted on a twenty-four hour basis, seven days a week.

(g) Withhold payments based on the allowable sanctions for errors in eligibility determinations or redeterminations or failure to meet performance measures required by the intergovernmental agreement.

(h) Recoup from the department all federal fiscal sanctions that result from the department's inaccurate eligibility determinations. The director may offset all or part of a sanction if the department submits a corrective action plan and a strategy to remedy the error.

4. By rule establish a procedure and time frames for the intake of grievances and requests for hearings, for the continuation of benefits and services during the appeal process and for a grievance process at the contractor level. Notwithstanding sections 41-1092.02, 41-1092.03 and 41-1092.05, the administration shall develop rules to establish the procedure and time frame for the informal resolution of grievances and appeals. A grievance that is not related to a claim for payment of system covered services shall be filed in writing with and received by the administration or the prepaid capitated provider or program contractor not later than sixty days after the date of the adverse action, decision or policy implementation being grieved. A grievance that is related to a claim for payment of system covered services must be filed in writing and received by the administration or the prepaid capitated provider or program contractor within twelve months after the date of service, within twelve months.
after the date that eligibility is posted or within sixty days after the date of the denial of a timely claim submission, whichever is later. A grievance for the denial of a claim for reimbursement of services may contest the validity of any adverse action, decision, policy implementation or rule that related to or resulted in the full or partial denial of the claim. A policy implementation may be subject to a grievance procedure, but it may not be appealed for a hearing. The administration is not required to participate in a mandatory settlement conference if it is not a real party in interest. In any proceeding before the administration, including a grievance or hearing, persons may represent themselves or be represented by a duly authorized agent who is not charging a fee. A legal entity may be represented by an officer, partner or employee who is specifically authorized by the legal entity to represent it in the particular proceeding.

5. Apply for and accept federal funds available under title XIX of the social security act (P.L. 89-97; 79 Stat. 344; 42 United States Code section 1396 (1980)) in support of the system. The application made by the director pursuant to this paragraph shall be designed to qualify for federal funding primarily on a prepaid capitated basis. Such funds may be used only for the support of persons defined as eligible pursuant to title XIX of the social security act or the approved section 1115 waiver.

6. At least thirty days before the implementation of a policy or a change to an existing policy relating to reimbursement, provide notice to interested parties. Parties interested in receiving notification of policy changes shall submit a written request for notification to the administration.

7. In addition to the cost sharing requirements specified in subsection D, paragraph 4 of this section:

(a) Charge monthly premiums up to the maximum amount allowed by federal law to all populations of eligible persons who may be charged.

(b) Implement this paragraph to the extent permitted under the federal deficit reduction act of 2005 and other federal laws, subject to the approval of federal waiver authority and to the extent that any changes in the cost sharing requirements under this paragraph would permit this state to receive any enhanced federal matching rate.

C. The director is authorized to apply for any federal funds available for the support of programs to investigate and prosecute violations arising from the administration and operation of the system. Available state funds appropriated for the administration and operation of the system may be used as matching funds to secure federal funds pursuant to this subsection.

D. The director may adopt rules or procedures to do the following:

1. Authorize advance payments based on estimated liability to a contractor or a noncontracting provider after the contractor or noncontracting provider has submitted a claim for services and before the claim is ultimately resolved. The rules shall specify that any advance payment shall be conditioned on the execution before payment of a contract with the contractor or noncontracting provider that requires the administration to retain a specified percentage, which shall be at least twenty percent, of the claimed amount as security and that requires repayment to the administration if the administration makes any overpayment.

2. Defer liability, in whole or in part, of contractors for care provided to members who are hospitalized on the date of enrollment or under other circumstances. Payment shall be on a capped fee-for-service basis for services other than hospital services and at the rate established pursuant to subsection G of this section for hospital services or at the rate paid by the health plan, whichever is less.

3. Deputize, in writing, any qualified officer or employee in the administration to perform any act that the director by law is empowered to do or charged with the responsibility of doing, including the authority to issue final administrative decisions pursuant to section 41-1092.08.

4. Notwithstanding any other law, require persons eligible pursuant to section 36-2901, paragraph 6, subdivision (a), section 36-2931 and section 36-2981, paragraph 6 to be financially responsible for any cost sharing requirements established in a state plan or a section 1115 waiver and approved by the centers for medicare and
medicaid services. Cost sharing requirements may include copayments, coinsurance, deductibles, enrollment fees and monthly premiums for enrolled members, including households with children enrolled in the Arizona long-term care system.

E. The director shall adopt rules that further specify the medical care and hospital services that are covered by the system pursuant to section 36-2907.

F. In addition to the rules otherwise specified in this article, the director may adopt necessary rules pursuant to title 41, chapter 6 to carry out this article. Rules adopted by the director pursuant to this subsection shall consider the differences between rural and urban conditions on the delivery of hospitalization and medical care.

G. For inpatient hospital admissions and outpatient hospital services on and after March 1, 1993, the administration shall adopt rules for the reimbursement of hospitals according to the following procedures:

1. For inpatient hospital stays from March 1, 1993 through September 30, 2014, the administration shall use a prospective tiered per diem methodology, using hospital peer groups if analysis shows that cost differences can be attributed to independently definable features that hospitals within a peer group share. In peer grouping the administration may consider such factors as length of stay differences and labor market variations. If there are no cost differences, the administration shall implement a stop loss-stop gain or similar mechanism. Any stop loss-stop gain or similar mechanism shall ensure that the tiered per diem rates assigned to a hospital do not represent less than ninety percent of its 1990 base year costs or more than one hundred ten percent of its 1990 base year costs, adjusted by an audit factor, during the period of March 1, 1993 through September 30, 1994. The tiered per diem rates set for hospitals shall represent no less than eighty-seven and one-half percent or more than one hundred twelve and one-half percent of its 1990 base year costs, adjusted by an audit factor, from October 1, 1994 through September 30, 1995 and no less than eighty-five percent or more than one hundred fifteen percent of its 1990 base year costs, adjusted by an audit factor, from October 1, 1995 through September 30, 1996. For the periods after September 30, 1996 no stop loss-stop gain or similar mechanisms shall be in effect. An adjustment in the stop loss-stop gain percentage may be made to ensure that total payments do not increase as a result of this provision. If peer groups are used, the administration shall establish initial peer group designations for each hospital before implementation of the per diem system. The administration may also use a negotiated rate methodology. The tiered per diem methodology may include separate consideration for specialty hospitals that limit their provision of services to specific patient populations, such as rehabilitative patients or children. The initial per diem rates shall be based on hospital claims and encounter data for dates of service November 1, 1990 through October 31, 1991 and processed through May of 1992. The administration may also establish a separate reimbursement methodology for claims with extraordinarily high costs per day that exceed thresholds established by the administration.

2. For rates effective on October 1, 1994, and annually through September 30, 2011, the administration shall adjust tiered per diem payments for inpatient hospital care by the data resources incorporated market basket index for prospective payment system hospitals. For rates effective beginning on October 1, 1999, the administration shall adjust payments to reflect changes in length of stay for the maternity and nursery tiers.

3. Through June 30, 2004, for outpatient hospital services, the administration shall reimburse a hospital by applying a hospital specific outpatient cost-to-charge ratio to the covered charges. Beginning on July 1, 2004 through June 30, 2005, the administration shall reimburse a hospital by applying a hospital specific outpatient cost-to-charge ratio to covered charges. If the hospital increases its charges for outpatient services filed with the Arizona department of health services pursuant to chapter 4, article 3 of this title, by more than 4.7 percent for dates of service effective on or after July 1, 2004, the hospital specific cost-to-charge ratio will be reduced by the amount that it exceeds 4.7 percent. If charges exceed 4.7 percent, the effective date of the increased charges will be the effective date of the adjusted Arizona health care cost containment system cost-to-charge ratio. The administration shall develop the methodology for a capped fee-for-service schedule and a statewide cost-to-charge ratio. Any covered outpatient service not included in the capped fee-for-service schedule shall be reimbursed by applying the statewide cost-to-charge ratio that is based on the services not included in the capped fee-for-service schedule. Beginning on July 1, 2005, the administration shall reimburse clean claims with dates of service on or after July 1, 2005, based on the capped fee-for-service schedule or the statewide cost-to-charge ratio.

https://www.azleg.gov/ars/36/02903-01.htm
ratio established pursuant to this paragraph. The administration may make additional adjustments to the outpatient hospital rates established pursuant to this section based on other factors, including the number of beds in the hospital, specialty services available to patients and the geographic location of the hospital.

4. Except if submitted under an electronic claims submission system, a hospital bill is considered received for purposes of this paragraph on initial receipt of the legible, error-free claim form by the administration if the claim includes the following error-free documentation in legible form:

(a) An admission face sheet.

(b) An itemized statement.

(c) An admission history and physical.

(d) A discharge summary or an interim summary if the claim is split.

(e) An emergency record, if admission was through the emergency room.

(f) Operative reports, if applicable.

(g) A labor and delivery room report, if applicable.

Payment received by a hospital from the administration pursuant to this subsection or from a contractor either by contract or pursuant to section 36-2904, subsection I is considered payment by the administration or the contractor of the administration's or contractor's liability for the hospital bill. A hospital may collect any unpaid portion of its bill from other third-party payors or in situations covered by title 33, chapter 7, article 3.

5. For services rendered on and after October 1, 1997, the administration shall pay a hospital's rate established according to this section subject to the following:

(a) If the hospital's bill is paid within thirty days of the date the bill was received, the administration shall pay ninety-nine percent of the rate.

(b) If the hospital's bill is paid after thirty days but within sixty days of the date the bill was received, the administration shall pay one hundred percent of the rate.

(c) If the hospital's bill is paid any time after sixty days of the date the bill was received, the administration shall pay one hundred percent of the rate plus a fee of one percent per month for each month or portion of a month following the sixtieth day of receipt of the bill until the date of payment.

6. In developing the reimbursement methodology, if a review of the reports filed by a hospital pursuant to section 36-125.04 indicates that further investigation is considered necessary to verify the accuracy of the information in the reports, the administration may examine the hospital's records and accounts related to the reporting requirements of section 36-125.04. The administration shall bear the cost incurred in connection with this examination unless the administration finds that the records examined are significantly deficient or incorrect, in which case the administration may charge the cost of the investigation to the hospital examined.

7. Except for privileged medical information, the administration shall make available for public inspection the cost and charge data and the calculations used by the administration to determine payments under the tiered per diem system, provided that individual hospitals are not identified by name. The administration shall make the data and calculations available for public inspection during regular business hours and shall provide copies of the data and calculations to individuals requesting such copies within thirty days of receipt of a written request. The administration may charge a reasonable fee for the provision of the data or information.

8. The prospective tiered per diem payment methodology for inpatient hospital services shall include a mechanism for the prospective payment of inpatient hospital capital related costs. The capital payment shall
include hospital specific and statewide average amounts. For tiered per diem rates beginning on October 1, 1999, the capital related cost component is frozen at the blended rate of forty percent of the hospital specific capital cost and sixty percent of the statewide average capital cost in effect as of January 1, 1999 and as further adjusted by the calculation of tier rates for maternity and nursery as prescribed by law. Through September 30, 2011, the administration shall adjust the capital related cost component by the data resources incorporated market basket index for prospective payment system hospitals.

9. For graduate medical education programs:

(a) Beginning September 30, 1997, the administration shall establish a separate graduate medical education program to reimburse hospitals that had graduate medical education programs that were approved by the administration as of October 1, 1999. The administration shall separately account for monies for the graduate medical education program based on the total reimbursement for graduate medical education reimbursed to hospitals by the system in federal fiscal year 1995-1996 pursuant to the tiered per diem methodology specified in this section. The graduate medical education program reimbursement shall be adjusted annually by the increase or decrease in the index published by the global insight hospital market basket index for prospective hospital reimbursement. Subject to legislative appropriation, on an annual basis, each qualified hospital shall receive a single payment from the graduate medical education program that is equal to the same percentage of graduate medical education reimbursement that was paid by the system in federal fiscal year 1995-1996. Any reimbursement for graduate medical education made by the administration shall not be subject to future settlements or appeals by the hospitals to the administration. The monies available under this subdivision shall not exceed the fiscal year 2005-2006 appropriation adjusted annually by the increase or decrease in the index published by the global insight hospital market basket index for prospective hospital reimbursement, except for monies distributed for expansions pursuant to subdivision (b) of this paragraph.

(b) The monies available for graduate medical education programs pursuant to this subdivision shall not exceed the fiscal year 2006-2007 appropriation adjusted annually by the increase or decrease in the index published by the global insight hospital market basket index for prospective hospital reimbursement. Graduate medical education programs eligible for such reimbursement are not precluded from receiving reimbursement for funding under subdivision (c) of this paragraph. Beginning July 1, 2006, the administration shall distribute any monies appropriated for graduate medical education above the amount prescribed in subdivision (a) of this paragraph in the following order or priority:

(i) For the direct costs to support the expansion of graduate medical education programs established before July 1, 2006 at hospitals that do not receive payments pursuant to subdivision (a) of this paragraph. These programs must be approved by the administration.

(ii) For the direct costs to support the expansion of graduate medical education programs established on or before October 1, 1999. These programs must be approved by the administration.

(c) The administration shall distribute to hospitals any monies appropriated for graduate medical education above the amount prescribed in subdivisions (a) and (b) of this paragraph for the following purposes:

(i) For the direct costs of graduate medical education programs established or expanded on or after July 1, 2006. These programs must be approved by the administration.

(ii) For a portion of additional indirect graduate medical education costs for programs that are located in a county with a population of less than five hundred thousand persons at the time the residency position was created or for a residency position that includes a rotation in a county with a population of less than five hundred thousand persons at the time the residency position was established. These programs must be approved by the administration.

(d) The administration shall develop, by rule, the formula by which the monies are distributed.
(e) Each graduate medical education program that receives funding pursuant to subdivision (b) or (c) of this paragraph shall identify and report to the administration the number of new residency positions created by the funding provided in this paragraph, including positions in rural areas. The program shall also report information related to the number of funded residency positions that resulted in physicians locating their practices in this state. The administration shall report to the joint legislative budget committee by February 1 of each year on the number of new residency positions as reported by the graduate medical education programs.

(f) Local, county and tribal governments and any university under the jurisdiction of the Arizona board of regents may provide monies in addition to any state general fund monies appropriated for graduate medical education in order to qualify for additional matching federal monies for providers, programs or positions in a specific locality and costs incurred pursuant to a specific contract between the administration and providers or other entities to provide graduate medical education services as an administrative activity. Payments by the administration pursuant to this subdivision may be limited to those providers designated by the funding entity and may be based on any methodology deemed appropriate by the administration, including replacing any payments that might otherwise have been paid pursuant to subdivision (a), (b) or (c) of this paragraph had sufficient state general fund monies or other monies been appropriated to fully fund those payments. These programs, positions, payment methodologies and administrative graduate medical education services must be approved by the administration and the centers for medicare and medicaid services. The administration shall report to the president of the senate, the speaker of the house of representatives and the director of the joint legislative budget committee on or before July 1 of each year on the amount of money contributed and number of residency positions funded by local, county and tribal governments, including the amount of federal matching monies used.

(g) Any funds appropriated but not allocated by the administration for subdivision (b) or (c) of this paragraph may be reallocated if funding for either subdivision is insufficient to cover appropriate graduate medical education costs.

10. Notwithstanding section 41-1005, subsection A, paragraph 9, the administration shall adopt rules pursuant to title 41, chapter 6 establishing the methodology for determining the prospective tiered per diem payments that are in effect through September 30, 2014.

11. For inpatient hospital services rendered on or after October 1, 2011, the prospective tiered per diem payment rates are permanently reset to the amounts payable for those services as of October 1, 2011 pursuant to this subsection.

12. The administration shall adopt a diagnosis-related group based hospital reimbursement methodology consistent with title XIX of the social security act for inpatient dates of service on and after October 1, 2014. The administration may make additional adjustments to the inpatient hospital rates established pursuant to this section for hospitals that are publicly operated or based on other factors, including the number of beds in the hospital, the specialty services available to patients, the geographic location and diagnosis-related group codes that are made publicly available by the hospital pursuant to section 36-437. The administration may also provide additional reimbursement for extraordinarily high cost cases that exceed a threshold above the standard payment. The administration may also establish a separate payment methodology for specific services or hospitals serving unique populations.

H. The director may adopt rules that specify enrollment procedures, including notice to contractors of enrollment. The rules may provide for varying time limits for enrollment in different situations. The administration shall specify in contract when a person who has been determined eligible will be enrolled with that contractor and the date on which the contractor will be financially responsible for health and medical services to the person.

I. The administration may make direct payments to hospitals for hospitalization and medical care provided to a member in accordance with this article and rules. The director may adopt rules to establish the procedures by which the administration shall pay hospitals pursuant to this subsection if a contractor fails to make timely payment to a hospital. Such payment shall be at a level determined pursuant to section 36-2904, subsection H.
or I. The director may withhold payment due to a contractor in the amount of any payment made directly to a hospital by the administration on behalf of a contractor pursuant to this subsection.

J. The director shall establish a special unit within the administration for the purpose of monitoring the third-party payment collections required by contractors and noncontracting providers pursuant to section 36-2903, subsection B, paragraph 10 and subsection F and section 36-2915, subsection E. The director shall determine by rule:

1. The type of third-party payments to be monitored pursuant to this subsection.

2. The percentage of third-party payments that is collected by a contractor or noncontracting provider and that the contractor or noncontracting provider may keep and the percentage of such payments that the contractor or noncontracting provider may be required to pay to the administration. Contractors and noncontracting providers must pay to the administration one hundred percent of all third-party payments that are collected and that duplicate administration fee-for-service payments. A contractor that contracts with the administration pursuant to section 36-2904, subsection A may be entitled to retain a percentage of third-party payments if the payments collected and retained by a contractor are reflected in reduced capitation rates. A contractor may be required to pay the administration a percentage of third-party payments that are collected by a contractor and that are not reflected in reduced capitation rates.

K. The administration shall establish procedures to apply to the following if a provider that has a contract with a contractor or noncontracting provider seeks to collect from an individual or financially responsible relative or representative a claim that exceeds the amount that is reimbursed or should be reimbursed by the system:

1. On written notice from the administration or oral or written notice from a member that a claim for covered services may be in violation of this section, the provider that has a contract with a contractor or noncontracting provider shall investigate the inquiry and verify whether the person was eligible for services at the time that covered services were provided. If the claim was paid or should have been paid by the system, the provider that has a contract with a contractor or noncontracting provider shall not continue billing the member.

2. If the claim was paid or should have been paid by the system and the disputed claim has been referred for collection to a collection agency or referred to a credit reporting bureau, the provider that has a contract with a contractor or noncontracting provider shall:

   (a) Notify the collection agency and request that all attempts to collect this specific charge be terminated immediately.

   (b) Advise all credit reporting bureaus that the reported delinquency was in error and request that the affected credit report be corrected to remove any notation about this specific delinquency.

   (c) Notify the administration and the member that the request for payment was in error and that the collection agency and credit reporting bureaus have been notified.

3. If the administration determines that a provider that has a contract with a contractor or noncontracting provider has billed a member for charges that were paid or should have been paid by the administration, the administration shall send written notification by certified mail or other service with proof of delivery to the provider that has a contract with a contractor or noncontracting provider stating that this billing is in violation of federal and state law. If, twenty-one days or more after receiving the notification, a provider that has a contract with a contractor or noncontracting provider knowingly continues billing a member for charges that were paid or should have been paid by the system, the administration may assess a civil penalty in an amount equal to three times the amount of the billing and reduce payment to the provider that has a contract with a contractor or noncontracting provider accordingly. Receipt of delivery signed by the addressee or the addressee's employee is prima facie evidence of knowledge. Civil penalties collected pursuant to this subsection shall be deposited in the state general fund. Section 36-2918, subsections C, D and F, relating to the imposition, collection and enforcement of civil penalties, apply to civil penalties imposed pursuant to this paragraph.
L. The administration may conduct postpayment review of all claims paid by the administration and may recoup any monies erroneously paid. The director may adopt rules that specify procedures for conducting postpayment review. A contractor may conduct a postpayment review of all claims paid by the contractor and may recoup monies that are erroneously paid.

M. Subject to title 41, chapter 4, article 4, the director or the director's designee may employ and supervise personnel necessary to assist the director in performing the functions of the administration.

N. The administration may contract with contractors for obstetrical care who are eligible to provide services under title XIX of the social security act.

O. Notwithstanding any other law, on federal approval the administration may make disproportionate share payments to private hospitals, county operated hospitals, including hospitals owned or leased by a special health care district, and state operated institutions for mental disease beginning October 1, 1991 in accordance with federal law and subject to legislative appropriation. If at any time the administration receives written notification from federal authorities of any change or difference in the actual or estimated amount of federal funds available for disproportionate share payments from the amount reflected in the legislative appropriation for such purposes, the administration shall provide written notification of such change or difference to the president and the minority leader of the senate, the speaker and the minority leader of the house of representatives, the director of the joint legislative budget committee, the legislative committee of reference and any hospital trade association within this state, within three working days not including weekends after receipt of the notice of the change or difference. In calculating disproportionate share payments as prescribed in this section, the administration may use either a methodology based on claims and encounter data that is submitted to the administration from contractors or a methodology based on data that is reported to the administration by private hospitals and state operated institutions for mental disease. The selected methodology applies to all private hospitals and state operated institutions for mental disease qualifying for disproportionate share payments.

P. Disproportionate share payments made pursuant to subsection O of this section include amounts for disproportionate share hospitals designated by political subdivisions of this state, tribal governments and universities under the jurisdiction of the Arizona board of regents. Subject to the approval of the centers for medicare and medicaid services, any amount of federal funding allotted to this state pursuant to section 1923(f) of the social security act and not otherwise spent under subsection O of this section shall be made available for distribution pursuant to this subsection. Political subdivisions of this state, tribal governments and universities under the jurisdiction of the Arizona board of regents may designate hospitals eligible to receive disproportionate share payments in an amount up to the limit prescribed in section 1923(g) of the social security act if those political subdivisions, tribal governments or universities provide sufficient monies to qualify for the matching federal monies for the disproportionate share payments.

Q. Notwithstanding any law to the contrary, the administration may receive confidential adoption information to determine whether an adopted child should be terminated from the system.

R. The adoption agency or the adoption attorney shall notify the administration within thirty days after an eligible person receiving services has placed that person's child for adoption.

S. If the administration implements an electronic claims submission system, it may adopt procedures pursuant to subsection G of this section requiring documentation different than prescribed under subsection G, paragraph 4 of this section.

T. In addition to any requirements adopted pursuant to subsection D, paragraph 4 of this section, notwithstanding any other law, subject to approval by the centers for medicare and medicaid services, beginning July 1, 2011, members eligible pursuant to section 36-2901, paragraph 6, subdivision (a), section 36-2931 and section 36-2981, paragraph 6 shall pay the following:

1. A monthly premium of fifteen dollars, except that the total monthly premium for an entire household shall not exceed sixty dollars.
2. A copayment of five dollars for each physician office visit.

3. A copayment of ten dollars for each urgent care visit.

4. A copayment of thirty dollars for each emergency department visit.

U. Subject to the approval of the centers for medicare and medicaid services, political subdivisions of this state, tribal governments and any university under the jurisdiction of the Arizona board of regents may provide to the Arizona health care cost containment system administration monies in addition to any state general fund monies appropriated for critical access hospitals in order to qualify for additional federal monies. Any amount of federal monies received by this state pursuant to this subsection shall be distributed as supplemental payments to critical access hospitals.

V. For the purposes of this section, "disproportionate share payment" means a payment to a hospital that serves a disproportionate share of low-income patients as described by 42 United States Code section 1396r-4.
36-2906. **Qualified plan health services contracts; proposals; administration**

A. The administration shall:

1. Supervise the administrator.

2. Review the proposals.

3. Award contracts.

B. The director shall prepare and issue a request for proposal, including a proposed contract format, in each of the counties of this state, at least once every five years, to qualified group disability insurers, hospital and medical service corporations, health care services organizations and any other qualified public or private persons, including county-owned and operated health care facilities. The contracts shall specify the administrative requirements, the delivery of medically necessary services and the subcontracting requirements.

C. The director shall adopt rules regarding the request for proposal process that provide:

1. For definition of proposals in the following categories subject to the following conditions:

   (a) Inpatient hospital services.

   (b) Outpatient services, including emergency dental care, and early and periodic health screening and diagnostic services for children.

   (c) Pharmacy services.

   (d) Laboratory, x-ray and related diagnostic medical services and appliances.

2. Allowance for the adjustment of such categories by expansion, deletion, segregation or combination in order to secure the most financially advantageous proposals for the system.

3. An allowance for limitations on the number of high risk persons that must be included in any proposal.

4. For analysis of the proposals for each geographic service area as defined by the director to ensure the provision of health and medical services that are required to be provided throughout the geographic service area pursuant to section 36-2907.

5. For the submittal of proposals by a group disability insurer, a hospital and medical service corporation, a health care services organization or any other qualified public or private person intending to submit a proposal pursuant to this section. Each qualified proposal shall be entered with separate categories for the distinct groups of persons to be covered by the proposed contracts, as set forth in the request for proposal.

6. For the procurement of reinsurance for expenses incurred by any contractor or member or the system in providing services in excess of amounts specified by the director in any contract year. The director shall adopt rules to provide that the administrator may specify guidelines on a case by case basis for the types of care and services that may be provided to a person whose care is covered by reinsurance. The rules shall provide that if a contractor does not follow specified guidelines for care or services and if the care or services could be provided pursuant to the guidelines at a lower cost the contractor is entitled to reimbursement as if the care or services specified in the guidelines had been provided.

7. For the awarding of contracts to contractors with qualified proposals determined to be the most advantageous to the state for each of the counties in this state. A contract may be awarded that provides services only to persons defined as eligible pursuant to section 36-2901, paragraph 6, subdivision (b), (c), (d) or (e). The director may provide by rule a second round competitive proposal procedure for the director to request voluntary price

https://www.azleg.gov/ars/36/02906.htm
reduction of proposals from only those that have been tentatively selected for award, before the final award or rejection of proposals.

8. For the requirement that any proposal in a geographic service area provide for the full range of system covered services.

9. For the option of the administration to waive the requirement in any request for proposal or in any contract awarded pursuant to a request for proposal for a subcontract with a hospital for good cause in a county or area including but not limited to situations when such hospital is the only hospital in the health service area. In any situation where the subcontract requirement is waived, no hospital may refuse to treat members of the system admitted by primary care physicians or primary care practitioners with hospital privileges in that hospital. In the absence of a subcontract, the reimbursement level shall be at the levels specified in section 36-2904, subsection H or I.

D. Reinsurance may be obtained against expenses in excess of a specified amount on behalf of any individual for system covered emergency or inpatient services either through the purchase of a reinsurance policy or through a system self-insurance program as determined by the director. Reinsurance, subject to the approval of the director, may be obtained against expenses in excess of a specified amount on behalf of any individual for outpatient services either through the purchase of a reinsurance policy or through a system self-insurance program as determined by the director.

E. Notwithstanding the other provisions of this section, the administration may procure, provide or coordinate system covered services by interagency agreement with authorized agencies of this state or with a federal agency for distinct groups of eligible persons, including persons eligible for children's rehabilitative services through the department of economic security and persons eligible for comprehensive medical and dental program services through the department of child safety.

F. Contracts shall be awarded as otherwise provided by law, except that in no event may a contract be awarded to any respondent that will cause the system to lose any federal monies to which it is otherwise entitled.

G. After contracts are awarded pursuant to this section, the director may negotiate with any successful proposal respondent for the expansion or contraction of services or service areas if there are unnecessary gaps or duplications in services or service areas.
CONSIDERATION AND DISCUSSION OF A REQUEST FOR A ONE-YEAR EXTENSION OF THE DUE DATE FOR A FIVE YEAR REVIEW REPORT ON 18 A.A.C. 11, ARTICLE 6 FROM THE DEPARTMENT OF ENVIRONMENTAL QUALITY.
May 3, 2022

SENT VIA EMAIL ONLY

Nicole Sornsin
Chairperson
Governor’s Regulatory Review Council
100 North 15th Avenue, Suite 305
Phoenix, Arizona 85007
grrc@azdoa.gov

Re: Five-Year Review Report for A.A.C. Title 18, Chapter 11, Article 6 (Impaired Water Identification) – Extension Request

Dear Chairperson Sornsin:

Pursuant to A.R.S. § 41-1056(F) and A.A.C. R1-6-303(B), the Arizona Department of Environmental Quality (ADEQ) requests a one-year extension of the July 29, 2022 due date for the above-referenced Five-Year Review Report because ADEQ is in the process of modifying the rules to adopt a new program as required by state statute and update existing programs consistent with federal law. ADEQ requests a new deadline date of July 29, 2023.

ADEQ has begun the process of making significant modifications to our Clean Water Act (CWA) programs. Last year, the Arizona legislature passed landmark legislation, HB2691 (2021), that directs the ADEQ to develop a state-level Surface Water Protection Program and establish a variety of regulations by December 31, 2022. Laws 2021, Ch.325, § 11 charges the Department to “amend rules to update the impaired waters identification rules within one year after adopting surface water quality standards for Non-WOTUS protected surface waters pursuant to section 49-221, subsection A, paragraph 2.” There is a significant amount of overlap between the rulemaking required by HB2691 that is underway and the rules subject to this five-year review in A.A.C. Title 18, Chapter 11, Article 6. ADEQ will likely need to make modifications to Article 6 as it develops rules for the new Surface Water Protection Program. In addition, ADEQ has identified changes that should be made for Article 6, and will make those modifications during the same rulemaking. Therefore, ADEQ would like to complete a five-year rule review for these rules after they have been updated.

Please contact Jonathan Quinsey at 602-771-8193 or quinsey.jonathan@azdeq.gov if you have any questions.
Sincerely,

Trevor Baggiore  
Director, Water Quality Division  
Arizona Department of Environmental Quality  

CC: Anakaren Lemus  
Paralegal Project Specialist  
Governor’s Regulatory Review Council  
anakaren.lemus@azdoa.gov
CONSIDERATION AND DISCUSSION OF A REQUEST FOR RESCHEDULING THE FIVE-YEAR REVIEW REPORT ON 19 A.A.C 3, ARTICLE 2 FROM THE ARIZONA LOTTERY.
April 22, 2022

Nicole Sornsin, Chair
Governor’s Regulatory Review Council
100 North 15th Avenue, Suite 402
Phoenix, AZ 85007

Re: Five Year Review Report
19 A.A.C. 3
Article 2: Retailers

Dear Ms Sornsin,

Pursuant to Arizona Revised Statute § 41-1056(H) and Arizona Administrative Code R1-6-302, the Lottery Arizona Lottery (Lottery) respectfully requests to reschedule the five-year rule review for Article 2, currently due on May 31, 2022. The Lottery has recently reviewed and substantially revised the rules in this Article to implement improvements in Lottery business processes and recent changes to Lottery statutes permitting the Lottery to develop a Keno game for distribution by certain qualified retailers. Additionally, the rule amendments tightened compliance provisions with respect to inventory and stolen ticket reporting procedures, and improved the clarity and understandability of the rules.

Revisions to Article 2 were approved by the Council on February 1, 2022, published by the Arizona Secretary of State on February 25, 2022, and effective April 5, 2022.

Thank you for your consideration of this request. If you have any questions or need further information, please contact Sherri Zendri at (480) 921-4401 or email szendri@azlottery.gov.

Sincerely,

Gregg Edgar
Executive Director